

TOWN OF TRURO
ZONING BOARD OF APPEALS
Meeting Minutes
December 17, 2020 – 5:30 pm
REMOTE MEETING

Present (Quorum): Arthur Hultin (Chair); Fred Todd (Vice Chair); Chris Lucy (Clerk); John Dundas; John Thornley; Darrell Shedd (Alternate); Heidi Townsend (Alternate)

Other Participants: Barbara Huggins Carboni, Esq. – Interim Town Planner/Town Counsel, KP Law; Ted Malone – Community Housing Resource; John O'Reilly – Project Engineer; Jessica Snare – Architect; Mark Nelson – Horsley Witten Group

Members of the Public Addressing the Board: Pamela Wolff, Raymond Clarke, Scott Warner, Patti Bellinger, Karen Ruymann

Remote meeting convened at 5:30 pm by Chair Hultin.

Interim Town Planner/Town Counsel, Barbara Huggins Carboni, Esq., read the detailed instructions for citizens interested in watching or joining this meeting.

Chair Hultin turned the meeting briefly over to Clerk Lucy who made a statement to encourage citizens of the community to consider appointments to the different Boards and Committees of the Town. Chair Hultin stated that through involvement with the Cloverleaf process, citizen input has been heard which has led to major changes in what is being considered and thanked those involved for their efforts.

Public Comment

Chair Hultin recognized the two public comment letters submitted as part of the packet. Pamela Wolff discussed her letter regarding Water and read a brief statement expanding on that subject. Raymond Clarke, retired professor of marine biology, discussed his opinion on getting a hydrogeological study done. Scott Warner, Twine Field Road, asked about contingency planning and whether that would be addressed.

Public Hearing – Continued

2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land area.

Chair Hultin recited the **2019-008 ZBA – Community Housing Resource, Inc.** Public Hearing case description. Chair Hultin introduced the members of the Board attending the meeting as well as Mark Nelson, Horsley Witten Group.

Chair Hultin asked Mr. Nelson to reply to the idea of a hydrogeological study, the value of that, and what that would show. He also would like to discuss the quality of drinking water in Truro and the area. Chair Hultin also referenced the Weston Sampson Water Resources Plan done several years ago, 2014, regarding stormwater runoff and stormwater management which are key elements to controlling water quality and mentioned that the Applicant has addressed stormwater management adequately. Chair Hultin addressed effluent standard.

Mr. Nelson replied to Chair Hultin regarding his opinion on the feasibility of a hydrogeological study and the information that would be gathered. He stated that their initial task when asked to look at the peer review of this project was to conduct a hydrogeologic study. They had installed three (3) monitoring wells in the vicinity of Cloverleaf and downgradient from there with measuring points within the wetlands and the pond. Mr. Nelson explained the process, what was done, and what was found and stated that Horsley Witten continued to make recommendations for the wastewater treatment plant standard as new information was received. Mr. Nelson explained the system with further information including test well depths.

Karen Ruymann commented on current Board of Health testing and involvement and asked what else could be done prior to Cloverleaf. She mentioned the hydrogeological study and monitoring wells. Raymond Clarke asked about the Horsley Witten Report detailing what was found, etc. Mr. Nelson pointed out their report was submitted back in early March and discussed findings reiterating that their concentration was on Cloverleaf. Chair Hultin recapped the key points of the project and the Applicant regarding wastewater and stormwater management, and he also pointed out where the focus and responsibilities of the project lie. Patti Bellinger, Pond Village resident, offered comment regarding their expressed concerns but also wants the Board to consider a hydrogeologic study.

Attorney Carboni reviewed and summarized the changes to the Waiver document. Article 14, Board of Health Regulations, needs further review for waivers and a decision. Attorney Carboni also further described the Decision conditions, with Chair Hultin restating pertinent points. Member Shedd asked Attorney Carboni for specific further information regarding AMI and SHI.

Ted Malone stated that he and his counsel have been reviewing the Decision conditions and have some concerns regarding references to the affordability mix; he discussed those concerns. He stated those have since been revised based on the State Department of Housing and Community Development (DHCD) input since their initial funding round, and there have been changes in the Low-Income Housing Tax Credit Program which may also affect the mix. Attorney Carboni offered comment on the initial affordability mix presented to the Board and the current mix proposed by Mr. Malone. Attorney Carboni stated that the Board is granting considerable relief and would like Mr. Malone to provide more information on the income mix he is proposing and what the changes are; she would like the Board to review that as there is a lot of relief being granted because of the number of affordable units and the depth of affordability that was proposed to DHCD and the Board. Mr. Malone stated that after DHCD's review and the additional costs incurred to get this to move forward, we are not going to be able to include the seven (7) market-rate units. The numbers just don't work, and the State doesn't want any more than three (3) tiers of income eligibility. Chair Hultin stated at this time it is four (4) levels. Mr. Malone believes that

it is not necessary to restrict it as much as it is here and described why. Attorney Carboni restated that the Board's decision would be based on the affordability levels the project would offer. Attorney Carboni asked Mr. Malone to provide a summary of what he is now intending to build so the Board can consider whether it is willing to substitute that. Mr. Malone further explained the affordability mix. Chair Hultin stated that this seems to be more complex and that something should be submitted in writing to clarify the language; Mr. Malone stated he is working on this with his Counsel, Peter Freeman. Chair Hultin asked that included with this clarification should be an explanation of what has changed and that it be a timely submittal; Attorney Carboni agreed this revised/proposed affordability levels document be clear.

Further comments from Mr. Malone regarding what has been covered so far are related to how things might conflict with the State Department of Housing as the subsidizing agency regulating the project as well as the project financing. There is a level of detail that may conflict with the regulatory agreements drafted by the subsidizing agency. Also, Local Preference definition is not consistent with how the State defines it nor with how the Truro Select Board defines it. Chair Hultin asked Mr. Malone to further explain his statements relating to item numbers 33 through 38; Mr. Malone has recently been reviewing these with his Counsel and should be able to forward their comments to Town Counsel and the Board within a couple of days. Chair Hultin asked Mr. Malone to verify that he could have this information for the next meeting on January 7, 2021. Mr. Malone stated he could and that he would possibly have some discussion with Town Counsel. Attorney Carboni stated she would speak to the technical things with Mr. Malone and his Counsel and come back to the Board for input.

Attorney Carboni continued her review of the Decision, with explanation and discussion, at "Section III. Findings of the Board" found on page 4. At "Section IV. Waivers", Member Shedd suggested that the Board go back to Article 14 of the Waivers for further review/determination. Chair Hultin agreed this was the appropriate time to do so. Attorney Carboni stated that this has been updated with the latest comments from Mr. Nelson. Chair Hultin asked for further discussion from the Board and polled each member: Member Shedd noted that based on what the Applicant's engineer has provided for detailed drawings, and with improvements in the system, and especially with what has been heard from Mr. Nelson, he is in favor of agreeing to this waiver. Member Dundas agrees the waiver should be granted. Clerk Lucy stated he agrees with granting the waiver providing it can be reduced down to 5 ppm. Member Thornley had some reservations and suggested the Town do more before it be granted. Member Townsend also agrees as long as it is 5 ppm. Vice Chair Todd favors this waiver.

Chair Hultin agreed with the previous comment but did have a question regarding the contingency plan. He would like further explanation as to what is being proposed by the Applicant and what exactly that means. Mr. O'Reilly stated he addressed this question in his memo dated November 25, 2020, page 3 where he talks about the operation and maintenance plan along with the copy provided regarding the pilot approval. There were also 10 additions to the operation and maintenance plan listed on page 4 of the pilot approval. Mr. O'Reilly discussed these details with various questions being asked and answered. Clerk Lucy stated that he believed the Town Health Agent had reviewed this material and given her approval at a previous meeting. Attorney Carboni asked Mr. Nelson to comment as he had drafted some proposed conditions on wastewater treatment. Mr. Nelson discussed some of the contingency plans that Mr. O'Reilly put together and also those they are both looking into. Mr. O'Reilly then summarized his plan of action going forward. Board of Health involvement and review was also discussed.

Attorney Carboni suggested the Board defer to Mr. Nelson's advice on whether there is any condition this Board might want to impose on its own, or complementary to whatever the Board of Health might impose. Attorney Carboni asked Mr. Nelson if there were anything else this Board should think about and not defer to the Board of Health. Mr. Nelson stated the performance and monitoring of the system are two big parts of that, and he explained these reasons. Chair Hultin asked Attorney Carboni if there was an option now to create language for those conditions to be met. Attorney Carboni would prefer that Mr. Nelson amend his draft of the conditions to reflect exactly what he wants to say. The Board could make a decision on the waiver contingent on receiving a full set of conditions from Mr. Nelson and then review later. Chair Hultin stated that voting on this should be deferred until the Board has the next level of input and asked if this could be available at the next meeting date of January 7 which will have a full Board.

Returning back to the Comprehensive Permit Decision, Terms and Conditions, Attorney Carboni explained boilerplate language and the reasons for this particular language. Attorney Carboni then reviewed each numbered condition with explanation and detail. Chair Hultin particularly wanted further explanation to number 25 regarding Safe Harbor which Attorney Carboni explained in depth. Chair Hultin asked Attorney Carboni if there was a threshold when working toward the ten (10) percent when there are Safe Harbor provisions activated? Attorney Carboni spoke in detail about Safe Harbor.

Attorney Carboni reviewed the Profitability section and spoke about the regulations. The next section, Marketing and Local Preference, was added by Attorney Carboni in case the Board wants to include a local preference requirement. Attorney Carboni explained a Local Preference category and the language and definitions used. The Board was polled, and they are in agreement that local preference for Truro is important. Mr. Malone supplied more information on local preference applicants and stated that the Select Board would need to define 40B local preference policies further, per DHCD, as he believes there is to be more modification to their current definition. Member Dundas brought up the subject of different scenarios of local preference, possible hierarchy, e.g., fire/police/EMT, which were discussed. Attorney Carboni to inquire. Member Shedd offered his opinion that, referring to the comments from Member Dundas, he believes the Board should go for the maximum allowable local preferences.

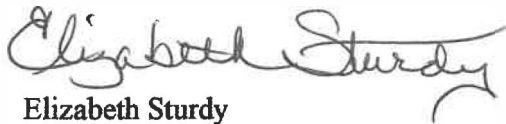
The next section, Conditions Precedent to Commencement of Project, and forward, will be discussed at the next meeting. This will give everyone more opportunity to review and focus on the remaining sections, and more detailed information and clarification from the Applicant regarding the housing/affordability mix can be addressed at the next meeting. Clerk Lucy stated that there is a definition in the Bylaw for Truro Resident which is more extensive than mentioned and should be looked at which Attorney Carboni stated she would do.

Chair Hultin stated the next meeting would be January 7, but he wanted to poll the Members to see if they wanted to continue or adjourn. Vice Chair Todd asked Mr. Malone, through the Chair, if Mr. Malone had any other areas of concern, in general, with the revisions so the Board could get an idea of what would be reviewed at the next meeting even though they would not be discussed at this time. Mr. Malone stated that the past section regarding the lottery and the marketing plan will have comments as it is a potential area that is going to conflict with the regulatory agreements with the State; there is some redundancy with the land lease that the Town and Select Board will be drafting with him because of the maintenance and management requirements; they will have comments on the section management documents and agreements with the Town; and also on marketing and local preference. His Counsel, Attorney Freeman, has comments on timing and

process for the building permit vs final approvals which Mr. Malone needs to get clarified. Mr. Malone stated that Attorney Freeman is not going to comment on the waivers, it would be more the procedural and other areas mentioned.

Chair Hultin stated that a motion to continue to January 7 was needed. Member Thornley moved that this meeting be continued to the 7th of January. Vice Chair Todd seconded the motion. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a vote to continue to January 7 at 5:30 pm. Voted all in favor. So voted: 7-0-0. Meeting adjourned.

Respectfully submitted,


Elizabeth Sturdy

