

**TOWN OF TRURO
ZONING BOARD OF APPEALS**

Meeting Minutes
January 7, 2021 – 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; Mark Nelson – Horsley Witten Group; Leedara Zola – Truro Town Housing Consultant

Members of the Public Addressing the Board: Jason R. Talerman, Esq., Counsel for Pond Village Residents; Patti Bellinger; Susan Areson

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.

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.

Public Comment

Chair Hultin recognized the public comment submittals to the Board. He also thanked the citizens for their contributions, as well as the Alternates on the Zoning Board as they were instrumental in making this process work. Chair Hultin asked Attorney Carboni to introduce Attorney Talerman and proceed from there. Attorney Carboni reviewed the letter received from the Concerned Members of the Pond Village Watershed Community and noted that a member of this community and their Counsel, Jay Talerman, were present at this meeting and would like the opportunity to speak.

Patti Bellinger, resident of Pond Village on Pond Road, commented on a letter that had been sent to the Board by herself and the group represented by Attorney Talerman. She reviewed their intent and interests and expressed they are very much in support of the Cloverleaf project. Their goal is

to make sure that the pilot program that is intended to be implemented will operate to an average of 5, and not above that, and want to make sure there is a very strong fail-safe backup plan in the event the system fails to perform at any point. Attorney Talerman stated that they support the Cloverleaf project, but the concern is that the system is a pilot system and is still being studied. Attorney Talerman addressed those concerns in detail and stated that a hydrogeological study should be done. He also discussed having a replacement system should the pilot fail.

Chair Hultin asked Mr. Nelson for a direct response to Attorney Talerman's comments. Mr. Nelson commented on the contingency plan/backup referred to by Attorney Talerman and explained in detail. Conditions for the contingency plan, which have been prepared by John O'Reilly, follow the State's requirements for approval of the technology and the Board of Health will also look at these conditions when the permit is brought to them for review and approval.

Chair Hultin asked Mr. O'Reilly to offer a response to Mr. Talerman's comments. Mr. O'Reilly stated, in agreement with Mr. Nelson, that it would not be a completely different system but rather perhaps an added system. Mr. O'Reilly further explained potential issues and resolutions and addressed the letter from the Pond Village Residents. He spoke to the manufacturer and asked for additional case studies on the type of system we are proposing which was forwarded to Mr. Nelson and Attorney Carboni late today. Mr. O'Reilly discussed the information contained in those studies in detail. He stated that ultimately it will be the Board of Health that reviews the operation and maintenance manual and to review the sampling and timing of reporting. Mr. O'Reilly cited Condition #85 which speaks to notification to the Board of Health and reporting to the State. Mr. O'Reilly addressed the flow chart contained in the Pond Village letter, and he recommended as a condition that a flow chart be added as part of the Cloverleaf manual which would be reviewed by the Board of Health during a public meeting so the public could also review it and discuss. Chair Hultin asked Mr. O'Reilly to further explain his comments regarding a flow chart. Mr. O'Reilly stated that the key component is the operator, and the operator should have input in preparing a flow chart for the O&M manual. Mr. O'Reilly further explained the role and authority of the DEP.

Chair Hultin asked Mr. O'Reilly about the maximum 5 ppm suggested earlier, since he believed a system like this could have variable rates. Mr. O'Reilly explained the BioMicrobics System when originally designed for 10 ppm and now with the new enhancements where it is designed to get to 5 ppm. Attorney Talerman reiterated the concerns of Pond Village residents but recognized the efforts of Mr. Nelson and Mr. O'Reilly to address them. Attorney Talerman still would like more due diligence toward the secondary assurance they are looking for.

Chair Hultin asked Mr. O'Reilly about similar technologies and pilot programs which are very tightly controlled by the DEP and carefully monitored. Mr. O'Reilly explained this system and the reason it was chosen including their customer support. Chair Hultin asked the Board for comment or if they wanted to direct questions to any of the speakers.

Vice Chair Todd asked Mr. Nelson if he had any further comments based on the discussion so far. Mr. Nelson stated that the overview of the technology from Mr. O'Reilly was good and wanted to point out that this is not brand-new technology – it has been used in many wastewater treatment facilities, many of them larger, and he believes the contingencies provide the added level of protection he has been looking for.

Member Dundas questioned Mr. O'Reilly asking about the manufacturer and their success/failure rate history with this system which Mr. O'Reilly detailed including DEP's involvement within a pilot program.

Clerk Lucy asked Mr. O'Reilly about the flow numbers which Mr. O'Reilly reviewed in detail as it relates to the design and the process.

Member Shedd reviewed the steps taken by the Board throughout this process, including retaining an independent third party to assess the system – The Horsley Witten Group – as well as improvements made along the way, and also involving the Cape Cod Commission. He also reviewed the water and septic issues in the Pond Village area.

John Thornley asked Mr. O'Reilly if in the event something needed replacing, how long would the system be down to make the correction? Not knowing specifics, Mr. O'Reilly stated that the conditions would outline procedure and he gave some examples.

Chair Hultin asked Mr. O'Reilly if all the components of this system were accessible – not under houses, structures, pavement, etc.? Mr. O'Reilly stated that every component that is installed can be dug up and has an access.

Member Townsend asked, as a follow-up to the Member Dundas question to Mr. O'Reilly regarding the pilot and the success rate, if it was possible to also determine how long those pilots have been functioning/active? Mr. O'Reilly stated that he can include that information in the materials he will be forwarding – this should be readily available from the manufacturer or the distributor.

Vice Chair Todd asked Mr. O'Reilly to clarify the list of “spare parts” that would be kept on site. Mr. O'Reilly stated that most of those components that would be on the surplus list would be items that would be in the treatment process themselves, e.g., a pump, and he described the notification process and operator replacement procedures.

Chair Hultin reviewed the Cloverleaf meeting process and the inclusion of public input along the way, stating that the Board has tried to move with the requests from concerned citizens to improve/change/upgrade this project, and he believes they have done their due diligence. They have been presented with much material and many issues repeatedly, and he believes they and the engineers have effectively addressed them.

Returning back to the Comprehensive Permit Decision, Marketing and Local Preference, and where it was left at last meeting, Chair Hultin asked Attorney Carboni to introduce Leedara Zola, Truro Town Housing Consultant, to address local preference and assist the Board with conditions. Ms. Zola stated that DHCD, the Department of Housing and Community Development, may approve a local preference, it is not automatic, and the Town has to provide documentation showing a local need. The local preference that may be awarded is for up to 70% of the units on the initial lottery, and there are defined categories as part of the DHCD guidelines: current residents, municipal employees, employees of local businesses, and households with children attending Town schools. Therefore, this is what can be requested. Attorney Carboni stated that there was a discussion this week with a Director at DHCD to confirm these requirements.

Attorney Carboni will rewrite the conditions so as to be compliant with DHCD requirements. Member Townsend asked regarding the guideline “employees of local businesses”, and since most of the Town is seasonal, do they count as a Truro resident for eligibility. Ms. Zola stated yes they do; however, this is year-round housing and leases are for a year.

Attorney Carboni stated that, at the last meeting when Mr. Malone mentioned that he might have a different unit mix, a change, the Chair asked that Mr. Malone go into more detail at this meeting. Attorney Carboni suggested that the Board hear from Mr. Malone at this time and then Ms. Zola

for any comments she might have on this subject.

Mr. Malone explained what was being proposed and further explained the process and steps taken. DHCD has stated to the applicant that they were uncomfortable with the multiple tiers of income eligibility and the feasibility of managing that process as well as concern that the low-income housing tax credit investors, who were expected to attract the funding of the project, were getting less comfortable with mixed income suggested in general. Mostly due to the COVID uncertainties. The applicant was told that when they came back, they should be limiting their income tiers to three (3) income levels; originally there were five (5): 30% of median income, 60% of median income, 80% of median income, 100% of median income, and market rate. The applicant followed the income mix outlined in the RFP, but that was 2½ years ago and DHCD has changed their position on that, even though DHCD approved the project eligibility letter and income mix. They want the applicant to submit just the three (3) income tiers. Mr. Malone is pursuing with DHCD the inclusion of the market rate units with the income tiers as he believes the market rate units and multiple-income levels are important. They have up to 100% approved for a number of units, but the way the finances come together for the project, the mix of those affordability levels – Mr. Malone needs the flexibility to adjust those based on where the subsidy funding is available through DHCD. Mr. Malone was going to ask the Board to consider limiting the income eligibility restriction just to 50% of the units below 80% as, when read, the case information states “not less than 25% or 10 units shall be restricted”. If the Board were to have the Decision read 50% below 80%, this would not interfere with the income mix that we end up with. DHCD has already stated that they can have a 100% category that will serve people at 80 and up to 100%, but the specific numbers were included in the project eligibility letter based on the mix that Mr. Malone could demonstrate as feasible to DHCD two years ago. Project costs have increased, and certain funding sources have not yet been secured. He does not want to have to come back to the Board for revision because the restriction was written in such a way that it tied us too tightly and took away the flexibility for making that income mix work.

Lastly, Mr. Malone stated he informed DHCD that he already has investors interested who understand the Outer Cape market and that market rate units would not give them concern. Mr. Malone stated his commitment is to have an income mix like it was originally laid out, but it is possible different funding sources may be needed. More MassWorks money would make for a different income mix. If the Board could decide for a minimum of 50% for 20 units up to 80% of median and another 15% for 6 units restricted to 100% of median, then 35% would be wiggle room to work with the funding sources and assemble a unit mix income tiers that is acceptable. Until Mr. Malone has confirmation from DHCD, he cannot commit to the market rate and is concerned about that not being in this Decision.

Chair Hultin stated that they would want to review that, and asked Mr. Malone how the market rate units would be addressed. Mr. Malone stated that the Town can fine-tune that as part of the land development agreement but not as part of the 40B. The lease agreement will reflect both this Decision and the objectives of the Town, so there is another forum once financing has been identified and approval has been received for the market rate units. Chair Hultin reiterated that market rate units are a key component of this Decision and does not want it left up in the air.

Sue Areson, a member of the Select Board but not speaking for the Select Board, stated that the Town signed a Development Agreement with Mr. Malone that had the development mix in it. Since it has changed, the question was posed to Mr. Malone if it now needs to go back to the Town as a new and different development agreement and would the Select Board have an opportunity to

weigh-in on the mix of units? Mr. Malone answered stating that currently they have a Land Development Option Agreement, and it is the precursor to the actual Land Development Agreement and the Lease, because the Town will own the land, so negotiation of the lease is still pending, and it would go back to the Select Board. Attorney Carboni reviewed the steps taken thus far and reiterated that this Board still needs to determine what the unit mix will be that they vote on.

Member Shedd asked Mr. Malone for further information on what he would consider acceptable for market rate units. Mr. Malone explained his thoughts on the mix and restated that if DHCD won't fund the project with market rate units, he would need to come back to the Zoning Board and the Select Board for a revision. He further explained his position. Attorney Carboni restated that the Board could decide based on local needs and put language in the Decision expressly stating that if DHCD does not approve then the applicant could come back to request an insubstantial change. At the request of Chair Hultin, and a further request for information from Member Shedd, Attorney Carboni reviewed the steps necessary to do this with a detailed explanation of the process.

Vice Chair Todd asked for more information on the low-income aspect of the mix which Ms. Zola addressed. She reviewed Truro's past success in advocating for its needs, and she believes that if the Town feels strongly, it should pursue what it wants but recommends that on income levels it should not specify levels – give a range instead, and she offered examples of language that could be used. Ms. Zola explained the history behind this process. Chair Hultin asked Attorney Carboni how to proceed, and Attorney Carboni explained her procedure recommendations to the Board. Mr. Malone described how the low-income housing tax credits program is involved with the unit mix as well as DHCD funding.

Member Thornley suggested a document clearly presenting these numbers would be helpful in further discussion, which was agreed. Chair Hultin recognized Ms. Zola for further comment. She stated she agrees with Mr. Malone, and Mr. Malone needs a lot of funding to make this work. He needs the flexibility to finesse this to best meet what the funding sources are asking. Ms. Zola also suggested that rather than using numbers/percentages, think of this in terms of wording and separate each into a category, such as: low to moderate income, middle workforce income, and the unrestricted.

Chair Hultin stated his personal view behind market rate units. He thinks of this more as community housing than income-restricted housing. Vice Chair Todd agrees with the Chair's thought regarding market housing and the original vision for this development. He also agrees with Member Thornley that it would be helpful to have a table/matrix showing the breakdown. Chair Hultin offered to Mr. Malone that he recognizes the original mix was done a few years ago and things change. That will all be taken into consideration. He wants Mr. Malone to have the flexibility but doesn't want anything eliminated later and determined elsewhere.

Member Shedd agreed with Chair Hultin regarding market rate units being desirable, appreciated the input from Mr. Malone and Ms. Zola, but had questions regarding workforce and median income levels. Ms. Zola stated the Barnstable County 2020 Urban Housing Development Income Limits and read some family-based numbers. She stated a previous table could be updated showing the income limits at the different qualification levels with the rental rates also included. The Board agreed it would be beneficial to have this data.

For viewing, Attorney Carboni shared the Comprehensive Permit document and reviewed some of the changes/updates from the last meeting, which the Board commented/discussed. The next

section for review, Conditions Precedent to Commencement of Project, are the steps to the actual permit mostly having to do with reviewing plans for consistency with the Decision, compliance with regulatory schemes, and review of stormwater operations and maintenance plan. These conditions ensure that things happen in the order they are supposed to and that appropriate personnel are involved.

#42 and #43 possibility of Horsley Witten being Board's consultant. Because there will be site disturbance from the Town prior to commencement of construction, continuity of on-site consultant ensuring compliance during the different stages important. #47 Counsel for the Applicant and Attorney Carboni discussed but disagree. Attorney Freeman believes the Board cannot comment on this section; however, Attorney Carboni believes the Board is a party to the Regulatory Agreement and can comment so further discussion is needed. Mr. Malone stated that the Town is going to have a Regulatory Agreement related to the Comprehensive Permit, but there is a Regulatory Agreement that is from the subsidizing agency that encompasses all the relevant restrictions governing regulations for the subsidy funds. There will be multiple Regulatory Agreements and cannot have conflicting documents plus the monitoring agent is usually the subsidizing agent. Mr. Malone stated that his Counsel and Town Counsel will review this language. Attorney Carboni stated that sometimes DHCD designates a monitoring agent but that she would work on this with Counsel and Ms. Zola. Mr. Malone had a comment on #50, SWPPP. The plan that was submitted to the Board was just a draft; the final plan has to include the applicant's contractor, and the Town engages one as well. What was originally submitted by John O'Reilly will be the model. Attorney Carboni will add "final SWPPP" to the second sentence for clarification.

The next section for review is Conditions Prior to Application for a Building Permit, #55. Chair Hultin questioned six sets of plans for the Building Department; need to check with them. #56, according to Mr. Malone, happens when a construction contract is signed. Attorney Carboni will work with the applicant to see which items can reasonably be deferred and clarify language. Attorney Carboni stated that prior to the applicant's construction, site disturbance will occur by the Town and wants these points identified. She needs to modify the Decision to reflect the fact that these are Town requirements prior to applicant construction, not before Town site disturbance. Attorney Carboni will also discuss with the Town DPW Director, Jarrod Cabral.

The Conditions Relating to Construction section, #57, was language written by Mr. Cabral. #58, hours of construction, was discussed. Mr. Malone felt that these hours were too constricting, especially during the summer months and if there would be no impact such as with interior work. The Board determined that 7:00 am until 7:00 pm, 6 days per week, no Sunday activity, would be acceptable. At #66 from Mr. Cabral and Emily Beebe, Conservation Agent, regarding soil removal from the site for beach nourishment, Mr. Malone stated that from his perspective this does not change anything.

At #68 Attorney Carboni inquired of Mr. Malone if there was a commitment to solar panels on the duplexes? Mr. Malone stated that there is a Cape Light Compact award for HVAC if they install solar on all of the buildings. However, the small duplexes might not have the area needed. Vice Chair Todd pointed out that in previous conversation it was stated that the buildings would be solar ready.

At #71 Attorney Carboni stated that she needs to work with the applicant and applicant's Counsel to rewrite this condition to read requires As-Built Plans building by building.

Going back to #61, Member Dundas asked if, regarding the utility and infrastructure, it would be commercial line or Open Cape or a combination of both. Mr. Malone stated that all utilities would be run underground; each renter would apply for their own cable/internet service. As for “smart home” construction, that level of electrical detail has not been completed but will be considered.

#72 Vice Chair Todd asked about this condition in the Decision. Attorney Carboni stated the agent is typically a Planner/Planning Department involved with the project working in addition to the Building Inspector to review for consistency with the Decision. Attorney Carboni sees it as helpful to the Building Inspector. Vice Chair Todd believes the last part of the sentence is too vague, and the rest of the Board would like this condition removed entirely. Mr. Malone also suggests that the next condition, #73, also be removed as he believes it is the responsibility of the Building Inspector, and the Board agrees with its removal. #74, per Mr. Malone, will be modified further to allow for some additional plants, but no real difference to what is written.

In the section on Wastewater Treatment, Attorney Carboni stated the reason for the deletions is that they are replicated in Mr. Nelson’s conditions, and Mr. Malone furthered that these were all acceptable to Mr. O’Reilly. Chair Hultin stated that they are going over these conditions quickly now, but they will need to be reviewed carefully at the next meeting to make sure there are no objections. Board agreed. Attorney Carboni stated that this section contains more detail than they had before about monitoring and the technical requirements, but not different in concept. Chair Hultin stated that most of these details are specified in the plans. #85 speaks to the contingency plan, and the Board needs to determine if they find this to be sufficient. Vice Chair Todd stated that he assumes this language is consistent with anything in the DEP Piloting Manual. Attorney Carboni stated that Mr. Nelson’s language is inherent with the DEP Pilot Approval Process. Vice Chair Todd offered that the DEP materials are very stringent and explicit.

Administrative, the next section, is boilerplate language for this type of comprehensive permit process. At #91, Attorney Carboni reviewed the Cost Certification process, which is peculiar to 40B. After the project is constructed, DHCD farms out review of the project construction and the costs associated. They do a Cost Certification, which is not an audit, but a process DHCD uses to determine the profit of the project to ensure that the limited dividends of 40B are adhered to. #92 language at the beginning of this condition is per Mr. Cabral, and this language will also be in the lease that is negotiated. Mr. Malone does not believe that the three (3) years [best case scenario] stated in condition #93 is enough time, but after clarification and discussion with the Board, he agreed to let the language stay as is.

At #94 Chair Hultin asked Mr. Malone if he had any timetables for the Board. Mr. Malone stated they are looking at an 18-month construction schedule from start to finish, and the rest is funding commitments and closings. They are outside the three (3) year mark at this point. Condition #95 was discussed as to its intent, and source verification of allocated Town funding would be confirmed. #96 through #99, and #101 boilerplate language explained. #100 and Springing Regulatory Agreement [KP Law term] explained by Attorney Carboni.

Member Shedd asked Attorney Carboni, regarding the Regulatory Agreement, does it mean that whatever housing mix decided upon within this Comprehensive Permit remains intact in perpetuity? So, if there is a change of hands this unit mix remains the same as it was under the original agreement? Attorney Carboni replied that a specific unit may not remain at the same affordability level as they may move around depending on occupancy. The unit mix is whatever DHCD has committed to through the Regulatory Agreement; the Town’s preference is in the

Comprehensive Permit. This section provides that ultimately what is approved for unit mix in the DHCD Regulatory Agreement is the same as in the Town's Regulatory Agreement. In 40B, in perpetuity means "for so long as the project does not conform to local zoning".

Ms. Zola wanted to revisit #93 and stated she believed it was three (3) years from start of construction as in 760 CMR. Attorney Carboni checked this reference online, and Chair Hultin stated that if this language is part of the Regulation, we should use it. Attorney Carboni copied this Regulation language, 760 CMR 56.05(12)(c), into Condition #93 and also noted as otherwise provided in the Regulation.

With the exception of Mr. Nelson's section still needing review, Chair Hultin asked if an updated document could be sent to the Board early next week for review as it is complex. Attorney Carboni asked if Waiver of Article 14, Board of Health Regulations, would be voted on next week as well. Chair Hultin polled the Board and voting on this Article will take place next week. Mr. Malone and Ms. Zola will get something to the Board for review on the housing mix for next week's meeting.

Chair Hultin stated that a motion to continue to next Thursday, January 14th at 6:30 pm was needed. Member Thornley moved that this meeting be continued to Thursday, January 14th, at 6:30 pm. Chair Hultin 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 14 at 6:30 pm. Voted all in favor. So voted: 7-0-0. Meeting adjourned.

Respectfully submitted,



Elizabeth Sturdy

