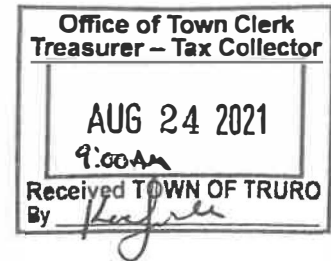


**TOWN OF TRURO**  
**ZONING BOARD OF APPEALS**  
Meeting Minutes  
January 14, 2021 – 6:30 pm  
REMOTE MEETING



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; Leedara Zola – Truro Town Housing Consultant

Members of the Public Addressing the Board: Jason R. Talerman, Esq., Counsel for Pond Village Residents; Elizabeth Bradfield

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 and introduced the Board Members.

**Public Comment**

Chair Hultin introduced Attorney Talerman, representing Pond Village Citizens, to discuss the most recent communication from him to the Board. Attorney Talerman reiterated their position. He and the Pond Village residents believe there is still more due diligence to be done in the areas of hydrology and a back-up plan. They recognize the Board has been reviewing this plan for a while now and acknowledge the benefits that this project would provide to the community and would like to see it come to fruition as soon as possible.

They have come up with a compromise which is rather than doing studies now and developing a contingency plan/back-up system design now, that it be made a condition of the permit to be done after the permit is issued. Additionally, they are not suggesting an exhaustive hydrologic study

but rather a means by which the water flow could be studied for assurances that the monitoring wells are in their appropriate place. They want to move this process forward; it is accepted that this piloting system has a good chance of success. Part of the monitoring program developed should include more study to actively address the downstream concerns of his clients. Attorney Talerman referred to his letter which his clients helped with. Chair Hultin thanked Attorney Talerman and stated that the details in his letter would be discussed in more detail later. Attorney Carboni suggested these details be included in the discussion when the Board reviews the conditions proposed by Mark Nelson as well as when they review Article #14. These should all be discussed together.

For viewing, Attorney Carboni shared the Comprehensive Permit document and reviewed the changes/updates from the last meeting, which the Board commented/discussed. New revisions were made as necessary. After review of the Plans of Record section in Terms and Conditions, Attorney Carboni discussed Appendix A – Records that will be attached to this Decision. This Appendix will include all records of this proceeding which includes everything the Board has received.

At Dwelling Units: Affordability in Perpetuity section, Condition #20, Attorney Carboni used a scenario to explain how this would work. However, according to Ted Malone, it would not be possible for the tenant to stay in the same Low-Income Tax Credit Unit. The “Next Available Unit Rule” allows a tenant to stay in the same unit and the designation would just move, but it gets complicated with the Low-Income Tax Credit Units. Attorney Carboni clarified to explain how it would work out without losing a Low-Income Tax Credit Unit. Mr. Malone further stated that sometimes they can keep people in the same unit just paying a higher rent.

Darrell Shedd stated that if an occupant’s income were to go up the mix may change. What about if an income goes down – does it work the other way? Mr. Malone responded that if there were an available unit at the lower income tier, that occupant could be considered but it is not automatic. Leedara Zola stated she wanted to echo what Mr. Malone said as he is very well versed in this area. The subsidizing agencies have different layers of funding and have a lot of control in this, so she believes it is important to trust those overseeing this area and the programs that have been put in place.

The Marketing and Local Preference section at Condition #35 was explained by Attorney Carboni and Ms. Zola; Board questions were also answered regarding the seventy (70%) percent local preference. Mr. Malone offered further explanation of the local preference and lottery applicants.

Board discussed language regarding Conditions Prior to “Application for” or “Issuance of” a Building Permit. Chair Hultin, Vice Chair Todd and Member Shedd stated their preference was “Issuance of” a Building Permit. At Condition #57, Performance Guarantee, Attorney Carboni suggested a review of this Condition as she had rewritten the paragraph. Chair Hultin pointed out the Town should release the performance guarantee, not the Board.

Attorney Carboni stated that the next series of conditions were based on the Board’s review last time and discussion with Applicant/Applicant’s Counsel. At Condition #74 Chair Hultin asked Mr. Malone how he was going to record the progress and location of things – via photograph, engineer’s updated drawing? He wants to ensure everything is documented along the way; As-Built prior and through completion? Mr. Malone stated they photo document and date each day’s activities. After the infrastructure and foundation are in, certification is required of the foundations before the building permit is released. The Town will know the footprints of the buildings and

roadways are in the places where they were intended because there will be an As-Built as the infrastructure is put in. The As-Built of the architectural plans are a series of sketch plans, SKs, that get added to the plans of record and will document the actual changes in the plans that were made in the construction process and those only get added to the As-Built architectural drawings at the end. The civil engineer drawings are going to be As-Built as soon as the foundations are in the ground. Chair Hultin asked if that included sewer lines, odd buildings, and to what extent does that certification extend. Mr. Malone believes it is to the building foundations that it would be identified.

Chair Hultin further asked what kind of documentation is provided to the Town regarding electrical, communications, infrastructure underground? John O'Reilly anticipates the foundations being As-Built once they are installed prior to the wood frame construction and submitted to the Town as part of the process; and, as far as the other infrastructure, the water, sewer, and drainage will all be As-Built as progress goes along. Mr. O'Reilly gave an example. He stated one of the Conditions is that upon completion of the site, there has to be a complete As-Built Plan provided to the Town. Jessica Snare stated that as architectural changes occur, changes are made at the time, so when they are doing As-Built Architectural Drawings, they are being done in real time. Vice Chair Todd stated that he agrees in Condition #74 it should be "Project Engineer and/or Architect".

Mr. Malone reviewed Condition #77 which covers the landscaping agreement with the abutters. He noted there were a few small changes to the trees chosen. To clarify, he also stated that the fencing is on the Cloverleaf property and the trees are on the abutter's property, which will be planted and maintained by the abutter.

The Wastewater Treatment section drafted by Mr. Nelson, not yet accepted by the Board, was thoroughly reviewed. Mr. Nelson walked through each of the Conditions, stating up front that these Conditions cover what he and Mr. O'Reilly have discussed and presented in the past. At Condition #84 Mr. Nelson rewrote the section to better detail groundwater monitoring of the wells, the development of a new water table map to better understand the detail of water leaving the Cloverleaf site, the addition of a third long-term monitoring well, and to get better information regarding flow direction. Mr. O'Reilly stated that Mr. Nelson did reach out to him to discuss the addition of this third well, and Mr. O'Reilly also spoke to Mr. Malone regarding this as well. Mr. O'Reilly stated that this third well location that is being proposed would be on state-owned Cloverleaf property. Chair Hultin raised a concern regarding obtaining an easement which was discussed as well as the approximate portion of Highland Road that is State-owned. Mr. Nelson explained where, approximately, he believed the site should be and why. Clerk Lucy voiced concerns of locating this third well close to where there are other septic issues. Mr. Nelson stated that is why he is looking at specific sites to avoid these other septic issues and further explained.

During this conversation, Elizabeth Bradfield, 6 Professional Heights – an abutter to this project, again offered to be a part of whatever studies were necessary to gather the data needed.

Mr. Nelson further reviewed in detail Conditions #85 through #89. Chair Hultin asked Mr. Nelson, referring back to Attorney Talerman's comments, if these Conditions would satisfy the bulk of questions from the Pond Village Residents? Mr. Nelson responded by stating there are two parts to their requests: (1) more hydrogeologic evaluation which he believes will be addressed by monitoring it closer to the facility; and (2) a contingency plan in place if something isn't working correctly which he believes is contained in the DEP approval requirements and with their added

steps with Board of Health and on-site equipment ready for immediate response.

Chair Hultin asked the Board if they felt the Conditions had been addressed in enough detail to draw opinions about issuing a Waiver to Article #14. In general discussion, the Board Members each voiced their support of the process and thanked Mark Nelson and John O'Reilly for their efforts. Member John Thornley also asked, relating to Attorney Talerman's email, the process if a hydrogeologic study were to be done. Member Lucy stated that the recent Select Board meeting addressed this issue and that it seems as if this is in the works for the Pond Village area.

Chair Hultin asked Attorney Carboni if this was an appropriate time to vote on Article #14 Nitrogen Loading Requirement. She responded that if the Board members are satisfied, they have all the information they need at this time, then yes. The Article was shared on screen for final review. Chair Hultin asked for a Motion to grant the Waiver and for a vote from the voting members (himself, Fred Todd, Chris Lucy, John Dundas, John Thornley): Vice Chair Todd made a Motion to grant the waiver of Article 14; seconded by Clerk Lucy. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a roll-call vote. Voted all in favor. So voted: 5-0-0.

Chair Hultin stated they would now complete a review of the revised draft and any of the edits not yet covered tonight. The Administrative section beginning at Condition #90 through #103 was explained by Attorney Carboni, and the Conditions citing regulatory language was discussed.

Returning to discussions on unit mix, Mr. Malone had prepared a proposal and an exhibit which Attorney Carboni shared for viewing. Mr. Malone reviewed his exhibit in detail citing the original presentation to the Board and the unit mix that existed at the time with the multiple affordability levels. He also referenced last week's discussion regarding his having sufficient flexibility in working with the financing structure and his current outlined mix. He then discussed the differences in his initial proposal and his current proposal.

Ms. Zola reminded the Board that the housing program that the Community and the Truro Housing Authority presented to the Board of Selectmen, and that the Board of Selectmen proved, included more of the moderate and more of the market rate units. The percentage that was put forth in those documents was 50% at the low-income level, 30% at the workforce, and 20% of the units should be market. From her perspective with history of this project, she feels those are important benchmarks. However, regarding discussion of funding sources, she recommends that if a change needs to be made from what was put forth originally to the Board of Selectmen, that should be done based on very specific data: this specific funding source is available if we do x, y, z; or if Truro wants to commit more funds, we can do a, b, c. Ms. Zola feels it is a bit premature to be changing from what was put forth in the beginning.

Chair Hultin reiterated what Ms. Zola just stated to make sure he understood correctly. He believes one of the principal reasons for this project is workforce housing and that this new unit mix leaves too many undesignated. Flexibility and funding needs are understood. Chair Hultin then asked each of the Board Members for their opinions.

Member Dundas asked Mr. Malone to again explain his rationale for the designation of those units. Mr. Malone reviewed in detail the funding proposal that was most recently put together preparing for the second round where they did not have the commitment for additional infrastructure work from MassWorks or non-DHCD sources. Mr. Malone gave a breakdown for the funding and stated what was, and was not, included and how it affected the unit mix.

Member Thornley asked Chair Hultin for more clarification. Attorney Carboni reviewed by stating that the original proposal, Project Eligibility Letter, and the Application to the Board had the 20 units at affordability to 60 percent of AMI; Mr. Malone's more recent proposal had those units at 80 percent of AMI. In the Board's discussion tonight is the level of affordability for those units. Mr. Malone stated that the reason he had not placed the restriction at 60 percent was because of the changes to the Housing Tax Credit Program that is currently limited to 50 percent median income but has the potential in the future to have an average of 60 – meaning an eligible tenant could be at 80 percent if someone was balancing that at 40 percent of median income. Mr. Malone noted that subsequent to the income mix in the Project Eligibility Letter, there were further restrictions from DHCD to not have more than three income tiers (30, 60, 100). This can be fine-tuned in the Land Development Agreement with the Town. Chair Hultin expressed his thoughts that the Board should discuss what the mix should be for the Town through regulation or other requirement as it is their responsibility, obligation to the Town, to get the best 40B housing project specified to the extent allowed.

Member Thornley further asked if the column “# of Units 40B appl” was fixed or otherwise and does it conform to what is going to be built? Mr. Malone responded that these were units proposed in the Application and the number of units would be built depending on designation for one level of affordability or another or market rate.

Attorney Carboni believed the Board was to consider a comparison of the original proposal which had half of the units at 60 percent and are now proposed at 80 percent. Mr. Malone's explanation is understood, but the Board and public need to know what is being considered. For clarity, another entry for affordability levels needs to be shown on this chart – 20 of the units at 80 percent, 6 of the units at 110 percent, and 4 of the units at market rate, which Mr. Malone confirmed.

Mr. Malone, when asked for further information by Chair Hultin, explained that there are requirements for 15 percent of the project to be affordable at 30 percent of median or below which translates into 6 units, or 15 at the 60 percent level. Likewise in the 110 percent category there would be units priced at 80 percent affordability. There will be overlap in the edges of these categories. Mr. Malone responded to a question from Member Thornley regarding the cost of the market rate units by stating that the Town wanted 20 percent of the project to be market rate and 10 percent, at minimum, is being proposed. The remaining 9 units are for his discretion to use in one of the three categories – flexibility to have that identified in conjunction with his funding with the State, DHCD, and the negotiation with the Land Lease with the Town.

More discussion and comment referring to the table followed. Attorney Carboni clarified a few details and prepared a new proposal. MassWorks grant money and funding was discussed as were the differences between the RFP and new proposal by Mr. Malone. Attorney Carboni's notes are as follows:

**Old Proposal** (Project Eligibility Letter, Application)

20 Units: up to 60%  
 6 Units: up to 80%  
 6 Units: up to 110%  
 7 Units: Market Rate

**New Proposal**

20 Units: up to 80% (of these, 5 at 30%; 15 at 80%)  
 6 Units: up to 110%  
 4 Units: Market Rate  
 9 Units: to be determined

Ms. Zola asked the Chair whether the Board would be comfortable changing the 110 percent to 120 percent to allow more flexibility to the developer to do lower or higher. Chair Hultin reiterated his position regarding those 9 units unspecified – too large a percentage to be left floating. He

believes it is the job of the Board to specify what it is they want, and this is what our approval is based on. State a position that can be argued. Member Shedd suggested a compromise which was agreed upon by all. The new proposal as presented by Attorney Carboni will be:

**Approved Unit Mix:**

20 Units: up to 80% (of these, 5 units are affordable up to 30% AMI; 15 units are affordable up to 80% AMI)

8 Units: Affordable between 80% to 120% AMI

6 Units: Unrestricted/Market Rate

5 Units: to be allocated as warranted by funding sources

Affirmation by Board – consensus on this language. Chair Hultin asked for a Motion to close the Public Hearing. He moved the Public Hearing be closed. Vice Chair Todd seconded the Motion. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a roll-call vote. Voted all in favor. So voted: 7-0-0. This Public Hearing is now closed.

Deliberations followed. Chair Hultin asked the Board if there were any areas that needed further discussion or further input. Hearing none, Chair Hultin asked if the Board was satisfied with the draft Decision which will now become the Decision when voted upon as amended during this Hearing and asked if there was any objection to the Decision as amended. Hearing none, Chair Hultin referred the Board to Waivers – Appendix B. For viewing, Attorney Carboni screen-shared Appendix B – Decision on Waivers and stated that Appendix B will be part of the Board's Decision. Each of the Waivers were reviewed.

Chair Hultin asked the Board if there were any questions. Chair Hultin made a Motion to Approve the Waiver document in its entirety, called Appendix B, and as was amended tonight to include Article 14. Clerk Lucy seconded the Motion. Chair Hultin asked the Board if further discussion was needed on this Motion to approve the Waiver document, Appendix B? There being none, Chair Hultin asked for a roll-call vote with regular members. Chair Hultin thanked the Board's Alternates for their diligence, perseverance, and input – Heidi Townsend and Darrell Shedd. Chair Hultin once again asked if any further discussion of the Waivers Appendix was needed? Hearing none, Chair Hultin called for a roll-call vote. Voted all in favor. So voted: 5-0-0.

Chair Hultin stated he would entertain a Motion to approve the project in general and the Comprehensive Permit and Decision as amended during the Hearing tonight. Member Thornley so moved the Comprehensive Permits and amendments to the agreed unit mix amended tonight. Member Dundas seconded. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a roll-call vote. Voted all in favor. So voted: 5-0-0. The Comprehensive Permit for the Cloverleaf Project has now passed.

Chair Hultin personally thanked everyone involved. Attorney Carboni reviewed the procedure for reviewing the final Decision prior to Chair/Board signature(s).

Motion to adjourn by Vice Chair Todd; seconded by John Thornley. No objections or discussion. Voted all in favor. Meeting adjourned.

Respectfully submitted,

  
Elizabeth Sturdy

