

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
MONDAY, MARCH 18, 2002

The Board consisted of:

Mark A. Kablack, Chairman
Patrick J. Delaney III, Clerk
Thomas W.H. Phelps
Lauren S. O'Brien
Melinda M. Berman, Alternate

The hearing was reconvened by the Chairman, Mr. Kablack who noted the Board was in receipt of the following:

- letter dated March 5, 2002 from Ann McCabe expressing continuing concerns re the scale of the development, the lack of facilities for a children's play area and her desire for a reduced density of development.

- from Town Engineer dated March 13, 2002 addressing the most recent plans he had at that time which was the February 12, 2002 submission from the Sudbury Design Group and the February 22, 2002 plans from Sullivan, Connors & Associates.

- letter dated March 5, 2002 from the Board of Health Director which notes Sheet 1 of the Sudbury Design Group plans shows two 40X80 foot proposed septic system areas which would be the primary and expansion leach areas. There is limited parking shown on these areas which is not recommended but is not prohibited. The proposed septic tanks and sewer lines are not shown on the plan. It appears that a pump chamber may be needed for three or more of the westerly units.

A septic design plan for the proposed development has not been submitted to the Board of Health for review, therefore, the site plan cannot be fully evaluated. However, soil testing did indicate favorable soils in the proposed leaching areas.

- letter dated March 11, 2002 from the Assistant Building Inspector referencing the scope of his authority in enforcing ZBA conditions and recommending a surety bond

- letter dated March 18, 2002 from Safety Officer Deldon which notes that putting the crosswalk 120 feet east of the main entrance at the emergency fire access gate, along with a sidewalk that follows along the inside of the 3-foot picket fence that runs along Boston Post Road then turns at the main entrance and runs along the picket fence back into the development ending at the end of the picket fence will make it safe for people walking and crossing Boston Post Road.

- from Town Manager Valente dated March 13, 2002 which states that the Selectmen's earlier comments are applicable.

- letter dated March 13, 2002 from the Town Planner addressing the January 12 and 22, 2002 submissions from the applicant

- from the applicant, a sketch drawing which shows the pedestrian pathway and crosswalk across Route 20, a Light Comparison Study, a breakdown of requested waivers from the local Bylaws; i.e., Zoning Bylaws, Wetlands Bylaw, Planning Board Rules & Regulations and Regulations Governing the Subsurface Disposal of Sewerage.

Mr. Kablack also received this date a set of forms recommended by MHFA which include a Deed Rider, Regulatory Agreement, and Monitoring Services Agreement

In addition to the revised plans submitted March 14, 2002 Sullivan, Connors & Associates have further revised their plans through March 18, 2002 and have submitted them this evening. A revised set of plans through March 13, 2002 were also submitted this evening by Sudbury Design Group.

Attorney Wallace believed he had shown virtually all the items on the punch list with the exception of identifying the affordable units.

Alan Marrone pointed out those units. Mr. Kablack requested they be marked on the plan. Starting at the northeasterly part of the site running in a clockwise direction those units would be 1-6-9-16.

Mr. Delaney had questions on the plans submitted earlier. He said he had not yet had a chance to look at the plans submitted this evening.

Mike Sullivan wanted to clarify that the difference between the plans submitted this evening and his earlier one was the walkway to accommodate the Safety Officer, and the grades coming into the driveway to accommodate Town Engineer's and Town Planner's concern.

Attorney Wallace explained that the grading is normally required to be a 2% grade from the street for a distance of 50 feet. Because of the narrowness of the lot, it had to be reduced to 30 feet. He said Town Engineer agreed with that.

The Board wanted this in writing.

At the request of the Board, the applicants pointed out or addressed the following items on the punch list:

- Road profile – pointed out by Mr. Sullivan
- Drainage system – was submitted earlier (Sullivan)
- Cut and fill will be 1,316 cubic yards to be removed which translates into a 10-wheeler carrying 30 cubic yards to 40 trucks at 3 trucks per day over a 3-week period (Sullivan)
- Drainage basins – All are subsurface and reflected in previous plans. Drainage is the same for the revised plans (Sullivan)
- Understanding that Town Engineer had indicated he was going to submit a revised letter indicating satisfaction with the TSS removal. Subsequent to his March 13, 2002 letter, 80% TSS and the revision to the driveway was submitted to Town Engineer (Sullivan)

Mr. Delaney said the Board wants a letter from Town Engineer confirming this.

- Siding will be cedar clapboards and is shown on the plan (Couto)
- Setbacks – The plan took the unit that was closest to the property line and called that setback out. The worst case scenario is shown on the plan. The remaining setbacks will be greater (Sullivan)

Mr. Kablack noted an additional waiver of setback to street centerline may be required. If required, both street centerline and front yards setbacks are required to be shown.

- Full Board comments from the Conservation Commission and Planning Board – Mr. Kablack clarified that at the time of the first hearing neither the Planning Board nor the conservation Commission had actually met. Since then the ZBA has received a Planning Board letter which was read into the record at the last hearing. Subsequent memos were written to the Conservation Commission Design Review Board, Sudbury Water District, among others.

Mr. Kablack wanted clarification from the Building Inspector on enforcement, assuming the Board comes to a decision with conditions, as to how those conditions would be enforced.

Pat: He seems to be saying that he wants to separate items that are requirements necessary for occupancy and limit occupancy permit only to those items. I'm not sure where that leaves the other items.

Discussion followed. Mr. Kablack believed that to some extent there is an overarching issue which is particularly brought to light in Comprehensive Permits where the ZBA is the sole Board and there is one decision which has all of the conditions of local approval but does not have different Boards and different staff people in town interacting with an application the way it

would normally happen. Issues the ZBA has seen before on the other comprehensive permit were just illustrative of the fact that this is a unique application. It is one Board reviewing all local issues and putting it in one decision with a set of conditions and it is one person from that point on that has the enforcement authority. It is the Building Inspector who is also the Zoning Enforcement Agent of the town.

Mr. Kablack said from the list of items discussed, three items have been identified to be further addressed (1) wanted the applicant to address in more detail. (1) whether the Town Engineer is now satisfied with the TSS removal plan (in writing) (2) whether the revised plans showing the grade at entrance are now satisfactory (3) more clarity on the façade materials (4) whether there is a requirement for an earth removal permit.

Attorney Wallace believed he had addressed the waiver requests in detail with the exception of the street centerline setback.

With regard to the waiver of the Conservation Bylaw regulations, he explained that if he wants to appeal a finding by the Conservation Commission of the local bylaws, he must go to Superior Court. If he bypasses the regulations and goes strictly by the state statute, he still goes to the Conservation, and if he is not satisfied with the decision, he then goes directly to the DEP, which is a more expedited process. Instead of being held up for a year or two, it could go forward on the adjudication if there was an adverse finding relevant as to whether this was an intermittent or perennial stream. There are no wetlands issues other than the one stream. No land is being disturbed within 100 feet so that the wetland part of it does not apply. The only issue would be the Rivers Protection Act which talks about within 200 feet. There will be no discharge into any drainage on Route 20 so there are really no other issues. Attorney Wallace believed that he had enough material to convince the Conservation Commission that the stream does not fall under the Rivers Protection Act.

Mr. Kablack commented that Attorney Wallace raised an interesting issue which is that some other local Board would still have local review. It was his (Kablack's) understanding that under a 40B application that cannot happen. The ZBA cannot defer to another Board to sit and rule on a local bylaw issue; that jurisdiction is exclusively the ZBA's. This was why he thought it was so important to go back to the Conservation Commission and ask them to weigh in on the substance of this application since it appears that there is no other opportunity for them to act on this application relative to the local bylaw.

With regard to questions brought up at the earlier hearing regarding Condo Association Rules & Regulations, Attorney Wallace said he addressed that issue with the Town Planner before this evening. She felt it wasn't necessary to give you a full set of documents at this point; however, the decision can be subject to whatever the Board wants. He said he met with Richard

Herlihy, MHFA, Friday asking him specifically about those issues. He was given three documents which were just published by MHFA this month and was told these are the documents that help govern the 40B aspect. There are restrictions built into the documents regarding resale which is always controlled in perpetuity. Attorney Wallace had provided Mr. Kablack with copies of these forms prior to this hearing.

Mr. Kablack pointed out that in those documents he was not sure that they would be applicable if the applicant doesn't go through Mass. Housing Partnership for financing. He wanted to be sure that the scope of those documents would still be the same in terms of the monitoring agent that is identified, which he believed was CHAPA, and that CHAPA would still have a role even if the applicant goes for private financing as opposed to public financing.

Attorney Wallace said Mr. Marrone is going for private financing and it was his understanding that it doesn't matter. The only thing that it would further involve would be a review of his would be a review of everything he owns, but CHAPA would still be monitoring everything. I'm sure I can a statement from them to that effect regardless of whether he goes to them for the loan.

Also, Attorney Wallace said anyone who wants to buy the affordable unit, if they qualify, can get a low interest loan through MHFA.

Mr. Kablack noted that one aspect of this application is the willingness to give local preference to people who meet the criteria and are from Sudbury. Looking at those documents it looks like the Housing Partnership Program identifies that and sanctions it but only allows 70% of the affordable units to be earmarked for local needs. This translates to three of the four units would be for local needs.

Discussion followed on the screening process and the entity responsible for same. Town Planner Kablack said in this instance, where there are only four units, she would request the Sudbury Housing Authority be that entity.

With regard to the drainage structures, Mr. Kablack noted that Town Engineer in his letter wanted the existing drainage structures in Route 20 shown on the plan. He asked whether this had been done.

Mr. Sullivan said there are no plans detailing where the existing drainage is. What he did do to satisfy Town Engineer was to open up a manhole in front of the site and got the elevations of the existing 30-inch RCP. It runs down the same side of the road as this project but it is down 8 feet. With this project he will only going to be down 3 or 4 feet. Town Engineer was concerned that there might be a conflict but after he was informed of the elevation he was satisfied.

Mr. Kablack said the Board will need written confirmation from Town Engineer on this as well as the grade and TSS.

Discussion followed among the Board members on whether to hire an outside consultant.

Mr. Phelps said his sense was that the Board indefinitely deferred it until or unless someone comes up with a major problem. He was somewhat satisfied with the information he has seen to date unless someone brings up an issue that hasn't been addressed. Ms. Berman agreed.

Mr. Delaney was in favor of hiring a consultant. Mr. Phelps asked what the Board could ask a consultant to do.

Mr. Delaney said he would ask a variety of questions: (1) – is the 20% profitability a maximum, (2) – will a density change result in a lesser profitability, i.e., given a density level at 16, if the number of affordable units increased to 5, or could density level be changed.

Mr. Delaney felt the Board would not have the option of considering anything different unless they had information from consultant.

Mr. Phelps said that argument deals with hypotheticals. Ms. Berman said the applicant has made it quite clear with the newest plans that this is the project they are submitting, and if this is not what we are going to allow, the project is dead.

Mr. Kablack said he was approaching this along the lines of whatever conditions he felt would be appropriate along with any recommendations made by other town officials being made a part of the conditions. His position was that the application is within the guidelines. Further, it was his feeling that if there should be a mitigation imposed, he would impose it and if it runs the risk of having the applicant appeal it to the Housing Appeals Committee, it is the applicant who will be demonstrating that the conditions renders the project uneconomical.

Ms. Berman agreed. She said the Board does not have any evidence on things that it might propose would be rejected. She said the Board should continue its evaluation for whatever conditions we think are necessary.

Mr. Delaney believed it to be the responsibility of the Board to examine the question of density, number of affordable units and, for example sprinklering for public safety. He also felt the Board has an obligation to consider all of those items and he could not see how they could be considered without the financial information.

After considerable discussion on this subject, Mr. Kablack suggested a roll call vote on whether to defer the hiring of a consultant. The vote was four in favor to defer, one opposed.

As Attorney Wallace had to leave, the Board scheduled a continuance date of April 30, 2002.

Town Planner suggested she could begin going through the memos and public hearing records and make a list of conditions that would be applicable to a decision which could be discussed by the Board. The Board was in agreement with this suggestion.

Mr. Sullivan spoke to the Conservation Commission issue as outlined by Attorney Wallace previously. He said the only issue under the Commission's jurisdiction is a river of approximately 150-160 feet off the property line. If it is a river, the Conservation Commission has jurisdiction within 200 feet. As far as the technical aspects between the local and state there are none. Local does not have any more stringent criteria. The waivers that he is looking for are directed more towards the appeal process. In determining a river, there are several different criteria used, hydrology, draining, etc., but the foolproof method is that one can stand out there and not see that channel running year round. The only exception is during a drought which is what we are in now. If we were not in a drought and that area was dry, that is empirical evidence that it is not a river and there is no question about it. Short of that, there is other criteria. He said he has filed a Request for Determination with extensive support data and was comfortable that the Conservation Commission will concur that it is not a river. However, should they not concur, all the waivers that are being requested just go to the DEP. It's a quick, technical review. and is the way he would like to go.

With regard to Board of Health issues, Mr. Sullivan said the Board of Health Supplementary Regulations under Title 5 were adopted the mid 80s. In 1995, Title 5 was revised. Part of that revision requires that any project of over 2,000 gallons per day, which this project is, requires a pressure dose system. Mr. Sullivan described that system.

Mr. Sullivan said the waivers being requested all center around this type of system. The town doesn't allow pumps. The only way you can dose the field is with pumps. The town requires a separation requirement with the leach pipes. Under the design criteria for the pressure dose system the orifice of the pipe needs to be 5 feet apart. The Sudbury regulations require a 12-foot separation. The waivers that he is looking for, if they were not granted, are in direct conflict with Title 5 and should not be approved. After Board of Director Leupold realized there was a pressure dose system he then said that is no problem; that the waivers would have to be granted, otherwise the town would be requiring the applicant to build a system that's not in compliance with Title 5. There is no way the town can enforce the local regulations and be in compliance with the state.

Mr. Delaney wanted to see this in writing from Mr. Leupold. Mr. Kablack was looking for Mr. Leupold to weigh in on the scale of the project and septic system as laid out on the site. He said this was not addressed. He would also want some indication that the waivers being requested are appropriate.

At Mr. Kablack's request, Mr. Sullivan described the modifications made at the entrance. He said the Subdivision Rules & Regulations require a subdivision road to come in at a very gradual grade which is almost level and then goes to 6%. For this project there was a 5 ½% grade all the way in since he didn't think this was a subdivision road. Town Engineer disagreed. This revised plan reflects the 30 feet from Boston Post Road to a vertical curve and then a 6% grade after that. What it means is that instead of it being a one-foot cut it becomes a 3-foot cut. Subsequently the buildings drop down. To make the aesthetics he pointed out the units which have been dropped down. As a result, the rear wall has to come up. The good news to the abutters in the rear is that the buildings are coming down another 2 feet. The other thing that has changed on the plan is that Mr. Couto has designed a walking trail and crosswalk. Those are the only changes.

Mr. Kablack was pleased to see the walkway and the crosswalk. He asked whether the grade change at the entrance will change the amount of excavated material.

Mr. Sullivan said he will revise the figures. Did not revise those figures.

Lynne Ashe, 44 Easy Street asked about the crosswalk noting there are existing residences on the side street. She asked whether there was any way to get them safely to the crosswalk.

Mr. Couto said he would take a more specific look at it on site. One of the problems is that on the abutter's property to the east there is a fair amount of trees between the fence and Route 20 which provide him with a substantial amount of protection. He would have to look at this closely because right now one can walk and hug the trees. If the sidewalk has to be closer to Route 20, it might actually be more dangerous than a walkway. Mr. Couto agreed to look at it but said it would be unfair to propose a walkway that would require removal of a vegetated buffer.

Mr. Kablack referenced the DRB letter dated March 18, 2002 which comments on landscape modifications. The DRB also commented that they need more detail on the colors and the finished materials of the buildings and they want an additional time to review signage. Since there is a month before the next hearing, the ZBA can contact them and ask them to further comment on those items. Mr. Kablack would suggest the applicant contact the DRB directly and try to work out both a color scheme and finish scheme that they can look at and report back to this Board. They can look at the signage and specs at the same time.

With regard to the Light Comparison Study, Mr. Couto pointed out that on each building unit on the front there is a wall sconce and post light. There are an additional nine lights that would be considered common area lights. On the backs of the buildings there will be recessed lights in a soffit above the doors to illuminate the stairs.

Mr. Couto said he tried to get an understanding of what the Board was looking for and I actually went out and visited a number of sites adjacent to this property and some commercial sites not adjacent. He measured the foot candles and intensity of the lights at various sites hoping that that might give the Board a point of reference as to what one would expect to see here. In general, the light here is below what is generally the standard for this application. For a typical residential roadway the standard would be 9-foot candles. The light was considerably less than that for the entire complex. A typical residential walkway would be 4-foot candles. This project proposes 2-3 foot candles. As an example the Wayside Inn has a residential-looking post light with an incandescent light which is what is being proposed here.

Mr. Delaney said he was satisfied with what was presented. He asked what how the common area was controlled.

Mr. Couto said those lights will be on a timer or photocell and will be on all night. He described the recessed lights which he said will have no spillover. The sign lighting is a 75-watt incandescent light which contains a shield to only direct the light onto the sign.

Mr. Delaney said lights below the sign don't always work so well. The area is residential and the Board may even decide there is no need for a sign.

Mr. Delaney asked how many entrance lights there were. Mr. Couto said there is one and it is on the lighting schedule as one. Mr. Delaney felt it might be more effective to have lighting at the entrance driveway that projects downward or have the pole higher.

Mr. Kablack asked whether the sign is proposed to be lit all night as well. Mr. Couto replied that it was.

Martin Bodley, 52 Easy Street, had two concerns, the first involving a financial analyst and the density and number of subsidized units. He felt this to be very pertinent to the neighbors and particularly my family because this plot of land is going to have as many families living in it as there are in the entire neighborhood that it's now abutting. This is a concern in terms of the impact. It is pertinent to know whether this is a finalized number of 16 or whether it could be less, and the impact of this many units in that small of an area.

The second issue was that of traffic safety. He noted that a neighbor has had two or three cars within the last 12 months going through the fence. He pointed out the proximity of a unit with respect to a car which he felt was a serious traffic safety concern.

Mr. Kablack said these are people traveling Route 20 and going out of control. He said the applicant did a traffic study and in addition the Board asked the Safety Officer to give a report on accidents over a length of Route 20. There was a problem with getting the data because of some computer issue but there was a verbal report in which he stated that according

to him this particular stretch of roadway didn't present any extreme hazard over any other stretch of Route 20. That's what the Board looked at.

Mr. Bodley said the more units, the more potential for accidents.

Janet Jennings, 34 Easy Street, asked how far the closest buildings are from her property line. Mr. Couto pointed this out on the plan

Lynne Ashe, 44 Easy Street, asked how the Board conducted its site walk.

Mr. Kablack said they walked the property and were in woods that bordered Easy Street.

Ms. Ashe would prefer the Board view the area from the neighbors' perspective.

Mr. Kablack said the Board could perhaps do this independently.

The hearing was then adjourned and will continue on April 30, 2002.

Mark A. Kablack, Chairman

Patrick J. Delaney III, Clerk

Thomas W.H. Phelps

Lauren S. O'Brien

Melinda M. Berman, Alternate

