

SUDBURY MEADOWS  
534 North Road  
05-19

SUDBURY BOARD OF APPEALS  
NOTICE OF PUBLIC HEARING CANCELLATION  
AUGUST 18, 2005

Mr. Gossels, Acting Clerk announced that the Public Hearing schedule for August 18, 2005 is canceled and has been rescheduled to August 30, 2005, 7:30PM in the Lower Town Hall.

MINUTES OF THE PUBLIC HEARING CONTINUATION  
AUGUST 30, 2005

The Board consisted of:

Jeffrey P. Klofft, Acting Chairman  
Jonathan G. Gossels, Acting Clerk  
Elizabeth A. Taylor  
Richard L. Burpee, Associate  
Constantine Athanas, Associate

Also: Nancy G. Rubenstein, Alternate  
Jody Kablack, Town Planner

For the Applicant:

Louis W. Mountzoures, Esq., Pari Holdings LLC, applicant  
Michael Sullivan, Sullivan & Connors, Engineer  
Robert L. Devin, Esq.

The hearing was reconvened by the Acting Chairman, Mr. Klofft. The Board was in receipt of the following:

- Letter dated July 28, 2005 from the Design Review Board
- Letter dated August 1, 2005 from Jonathan D. Witten, Esq., with pro forma
- Letter dated August 22, 2005 from Louis Mountzoures, with revised Site Development Plan, Market Analysis, updated Waiver request, and revised pro forma
- Letter dated August 25, 2005 from the Design Review Board
- Letter dated August 25, 2005 from the Conservation Commission
- Letter dated August 25, 2005 from Town Engineer

- Memo dated August 29, 2005 from the Town Planner which includes a letter dated August 24, 2005 from Town Engineer and email dated August 29, 2005 from the Fire Chief

Mr. Sullivan said the plan is the same as the previous plan except that 4 units, which he pointed out, have been pulled 20 feet of the side property line. In addition, the decks have been tucked as part of the building providing a little more buffer from the properties and a minimum of 20 feet off the sidelines. Those are the only changes.

Mr. Gossels felt pulling the units 20 feet away was a good move and liked the way the decks were relocated. However, he was surprised that some of the comments the Design Review Board (DRB) raised last time, specifically about making them duplexes, weren't addressed.

Mr. Mountzoures said this went more towards what he had envisioned and where we going with regard to this. He said we had talked about duplex buildings at 16 units, and at 11 and the previous 10-unit plan that Mr. Riepe had formulated. When it gets down to 8 units, he felt that he couldn't support the market price needed for the unit. In addition, the construction price would also increase under that circumstance. He said Mr. Riepe's plan only consisted of boxes.

Mr. Gossels said Mr. Riepe's plan was just a concept. However, going beyond a concept, he felt there's a design principle of having the garages subordinate to the building facades. He said this hasn't been shown.

Mr. Mountzoures said duplexes would fit better because some space would be given up between units, so it helps position the units better. One of the problems is that the first time he proposed a reduction in density and the single family subdivision; he felt the neighbors and Board seemed to be getting away from the duplex structure. He thought this was a direction they liked – people having their own yards, their own private homes, essentially nice houses. He said if the garages are pushed back, there is not enough first floor space to sell the units. The first floor is where we have our problems – family room, dining room, kitchen, bath, etc. The upstairs is fine at least with the 2-bedroom houses and some sort of garage area. Mr. Mountzoures said he also believed that at one point or the Board liked the 2-car garage because everybody seemed to think that keeping the cars off the road and off the driveways was a benefit. He said he has attempted to design everything he could.

Mr. Gossels said the Board understands that Mr. Mountzoures has been pushed in a lot of different directions. However, he was still concerned about the garages dominating the elevation.

Mr. Klofft said he understood the need for square footage space on the first floor but felt that essentially the same box but with a garage back and the house forward would result in a

similar layout. He said he would like to push the houses, the living space, forward and garages can stay where they are or go back. He went up to the plans and described what he meant.

Mr. Gossels felt the plans shouldn't be designed at this hearing. Rather, he felt the Board owed the applicant some clear direction. He felt the consensus was to support the DRB's suggestion that the garage doors be subordinate.

Mr. Klofft felt the other significant point with regard to house placement was with Unit 5 and the Conservation Commission's concern about the placement of that relative to the 100 foot line.

Mr. Sullivan said the Commission mentioned the 216 elevation which was confusing because originally Deborah Dineen, Conservation Coordinator said the 210 elevation was what she wanted them to hold. He said they did stay out of the 210. Then when he saw the 216 he was confused because of the way that line goes. He pointed it out on the plan adding that he felt the homeowner might be concerned seeing that it would be part of his front yard.

Mr. Klofft read from the Commission's letter which said that the Vice Chairman had an opportunity to review the plan and strongly recommended that the lot line on Lot 5 be relocated at a minimum up to or above the 216 foot elevation to prevent future work on the slope. He felt from reading various other memos from the Commission that their principle concern is not having the homeowners, especially on the two end units, encroaching into the wetland space.

Mr. Sullivan said he was sure they have a reason and hopefully, it can be resolved one way or the other when he goes before them.

At Mr. Klofft's request Mr. Mountzoures provided an overview of the pro forma which was submitted to the Board with his letter dated August 22, 2005. The pro form was revised on August 8th and primarily reflected design changes and a plan based on 8 lots as opposed to 11 multi-family homes. The road was a different configuration, the house construction was different, and the sales price was different. He provided an explanation of the figures in that pro forma which result in a percentage profit over total development costs of 13.98%.

Mr. Klofft asked how the hard costs contingency was calculated. Mr. Mountzoures said it was 5%, which is Mass. Housing based.

Mr. Klofft asked if the Board had any questions. Mr. Gossels said most of the numbers seem very reasonable. The only one that he would ask about would be the \$100K for the construction manager. He asked for an explanation of that cost.

Mr. Mountzoures said the construction manager will be an on-site manager. Typically, he may be involved from the beginning with building the road and through the building of the

units. He said at \$120/foot it is again very difficult to build a competitive house so the builder's fee is not in the actual general contractor's fee. He said he would never be able to hire a general contractor, third party, and say here's \$120/foot, build us this house. Those numbers would never work under any circumstances right now.

Ms. Rubenstein had a question about the fair market value in the Caldwell Banker letter finding it curious that they didn't look at comparisons of houses that have sold. She asked whether the broker looked at what actually has sold that would be a comparison for these properties.

Mr. Mountzoures said his broker checked the last 90 days for similar for 2 and/or 3 bedroom homes that are updated so they relate to new construction and were not on a main road. He had not spoken to her since the second week in August; however, there was nothing at the time. He said the \$569K was based on her assessment of what the market would be.

Mr. Klofft asked Mr. Witten to provide an overview of the pro forma he submitted.

Mr. Witten, representing the Stewarts, said his letter consists of two parts – the first is his legal opinion to the Board as to what the statute says. For way of background Mr. Witten said he is Town Counsel for the Town of Stow, Town Counsel for the Town of Marion, Special Town Counsel for comprehensive permits in the towns of Wareham, Middleboro, Dunstable and Bourne. He said he has written a lot about 40Bs and teaches land use law at Boston College Law School as well as Boston University.

Mr. Witten elaborated on his letter regarding the statute including a case in Sudbury where the Housing Appeals Committee made it clear that as long as the conditions proposed by the Board do not render the project uneconomical, those conditions shall not be disturbed. He said there is testimony throughout a series of recent Housing Appeals cases that a 12% profit is economical. So the benchmark that most communities are looking at in its decisions is a 12% profit because that has been essentially defined by one of the greatest advocates of 40Bs as a profit.

The second half of the letter then goes through the applicant's project and produces a pro forma based on four units. He was suggesting, on behalf of the Stewarts, that a project that is approved with three market rate units and one below market, for a total of four, results in one affordable unit, where the applicant's proposal results in two. However, the difference on the neighborhood of eight vs. four is dramatic. He said most importantly, as far as the statute is concerned, a 4-unit 40B approval does not render the project uneconomical. The pro forma he put together using the applicant's numbers and square footage construction costs shows a percentage profit of 15% for a dollar profit which is just short of \$300K.

Mr. Witten said the Board is not obligated to give the applicant the profit that he seeks. The Board only needs to watch for that line which renders it uneconomic. He said the net benefit of the additional four units to the Town of Sudbury is only one below market, but the net impact on his clients' backyard is significant.

Mr. Witten said he could demonstrate to the Board that four units doesn't render the project uneconomical, but rather leaves the applicant with a 15% profit. It was his opinion that the Board should not approve 8 lots. He said the only number that is missing from his pro forma is the contingency costs, and general accounting principles do not allow use of contingencies unless they can be identified. Unless the applicant can identify contingencies in this project, which he can't because he's not far enough along, they're not allowable in a pro forma that's being used to determine density. He said the developer is not going to Mass. Housing or the bank with this pro forma, he's going to the Board with it to demonstrate why he can get away with 8 units.

Mr. Witten said contingencies should not be allowed on a pro forma to determine density because the question is what happens when contingencies are expensed. It goes to profit. With due respect, it was Mr. Witten's opinion that the Board shouldn't be rendering opinions on density and on a contingency which was a "padded number."

He would also suggest the same is true with the manager for construction. He would propose a 4-lot subdivision with a shorter road and construction costs of approximately \$250-\$275/foot can easily be met as detailed in his pro forma. Therefore, with the exception of the construction manager and the contingency costs, all of the numbers the applicant has provided for can be at much reduced rate, because we're only talking about four.

Mr. Klofft said it would seem to him that there are certain costs that are going to be somewhat fixed, irrespective of number of units. For example, architectural – to develop plans whether or not you've got four or eight – it's going to be straightforward.

Mr. Witten said for 17 years he owned an engineering business and knows a little bit about this business. He said his numbers are reasonable in the market today. Interest rates might be going up, or down, but today these are reasonable costs for the development of a subdivision with four houses.

Mr. Witten said the \$700K sale price came from his client who is a property owner and is confident in what the prices of the houses next door could go for. But four single family houses, three single family detached houses on a good sized lots in Sudbury - \$700K doesn't seem out of touch at all. \$182K, based on interest rates at the end of July would be the sale price under the Mass. Housing Guidelines for a 3-bedroom unit. He would feel confident that a single-family detached structure in a 4-lot subdivision would sell for \$700K.

Mr. Mountzoures said he did not disagree with \$700K sales price. It's a larger house with less density. However, he said with site preparation you can't take a per linear foot construction when you have common septic systems, underground drainage, significant wetland and offsite contemplated improvements. The actual road is not going to change – it's just going to shorten. There is some saving in that. You still have underground utilities, running water, you're still running your drainage the same, the cul de sac is the same. You're giving up the least expensive portion of the road. You still have to put all the same improvements. As far as the landscaping number Mr. Witten had of \$12,000, that wouldn't even cover loam on the site, not even close to it. This site is sand, it needs work. It's not a realistic number.

Mr. Mountzoures said his number of \$120/s.f. for residential construction contemplates the contingency. Without a contingency it's \$130 or \$135, a number that has been accepted by HAC. That's without a construction manager. To give up the contingencies he would have to adjust his numbers. He added that he has built many projects and has never once come in under.

With regard to the soft costs proposed by Mr. Witten, Mr. Mountzoures said every one of them is already gone. He said he is a year into the process since he first went to Mass. Housing – and he's not close to even starting the road at this point. He also has to do the hard engineering, the hard legal and then construction, etc.

Mr. Gossels said it would be helpful if Mr. Mountzoures could try and apply his real numbers to a model of four homes at the \$700K sale price.

Mr. Mountzoures said without a contingency and without a construction manager he cannot build at \$120/s.f. Even if it's brought up to \$130/s.f., that's about \$90K right off the top – building four homes. Then there is the site landscaping. He was not looking at individual houses but the whole infrastructure.

Mr. Klofft felt on that point, the number does seem very low, having built a house himself in Sudbury and landscaped it. He said one could easily exceed \$12K in landscaping a single home. He asked how Mr. Witten arrived at his figure.

Mr. Witten said with a 4-lot subdivision the concept of the open cul de sac with the middle planted area goes away. The maximum is a cul de sac and the minimum is a T turn around with no center island and no landscape is required. The individual lots are graded and the homeowner landscapes it themselves. He said the concept of doing more is perfectly fine but somebody else is bearing that burden, and that somebody is his client.

Mr. Klofft had some issues with Mr. Witten's comments. He said with regard to the cul de sac there are safety issues that were brought up by the Fire Chief and the T configuration contrary to what the DRB says is preferable. The other concern he had was with leaving the landscaping up to the homeowners

because there is an affordable unit and their ability to afford to landscape would be greatly curtailed.

Mr. Witten still felt that a \$10-12K budget for a 4-lot subdivision is not unreasonable for a small lot.

Mr. Klofft said there are plantings that the Conservation Commission has asked for to create a barrier to protect some of the wetlands.

Mr. Witten said this goes to shortening the road and clustering the units in a less intrusive manner. It would seem that the wetland issues would almost go away.

Mr. Mountzoures reiterated his earlier statement with regard to landscaping, noting that Mr. Witten's landscape figure is for loam only. Just looking at the trees on North Road, there's going to be off-site work.

Ms. Kablack said the applicant's pro formas have varied from 9.75% to 13.78%. She has heard that a 12% profit is not uncommon. She asked whether Mr. Mountzoures would be amenable to limiting profit to a certain percent, this being a condition of approval, with any overage returned to the town.

Mr. Mountzoures said although this seems like the right thing to do, it limits what he can construct. He said he has to be confident enough to know he's going to make a profit. He said his market profit of is based on a reasonable scenario and again, it's tight.

Mr. Athanas said under the statute the applicant is allowed a profit up to 20%. He didn't think the Board could reduce it.

Mr. Witten said he didn't disagree with Mr. Athanas, but for a different reason. He said the statute doesn't give a 20% ceiling, the Housing Starts says 20%. The statute is silent because it's written for non profit. He said a lot of towns have adopted a 12% cap and they've all been appealed. Some have been resolved some are still in appeal. The concern he would have is a different one which is that in all the years he's been in this business he's never seen a developer return a dime to the municipality.

Ms. Taylor asked what the resolution has been on the cases that have been appealed for having adopted a 12% cap.

Mr. Witten said in some they have been upheld, in others they've been returned for other reasons. However, there is no case exactly on point that says that towns cannot cap a profit.

Referring to his pro forma, Mr. Witten said a \$300K profit on a 4-lot subdivision isn't bad and would have much less impact on his client. He would ask the Board to try and work with the applicant to see if this can't happen. He said this product doesn't require a common septic system or an infrastructure that the engineer is proposing. Concerns for traffic and fire safety can all be dealt with in a small subdivision with limited infrastructure.

Ms. Taylor asked where Mr. Witten would fit a septic system on the lot.

Mr. Witten said he was sure this could be done. .

Mr. Sullivan said it can't be done. He said he looked at doing that in an attempt to try and reduce the price of the common system. The setback is 20 feet off the foundation and 10 feet off the property line. And the largest area that you have is 38 feet from the back of the building to the property line to put a septic system in.

Mr. Witten said Mr. Sullivan was calculating this for an 8-lot subdivision. He was referring to 4 lots.

Ms. Kablack wasn't sure it could be done since the property is located in a Zone 2.

Mr. Witten said it can be done for a 4-lot subdivision.

Mr. Sullivan wouldn't say absolutely, particularly if the houses are bigger and selling for \$700K. He said he doesn't have enough information to say absolutely that an individual system can be put on each lot. Realizing also that the Conservation Commission is trying to preserve a lot of a portion of that under an easement, he could only say there would probably be a possibility but no guarantee.

Mr. Klofft said at this point he would ask the Board for their thoughts on the number of units, the basic layout, etc.

Mr. Gossels said his initial inclination would have been to see a 4-lot subdivision work out. He was not convinced by Mr. Witten's pro forma. Actually, he said he was convinced that a 4-lot subdivision won't work and that it would be uneconomic. He did not feel the Board should go in that direction. Looking at the 8-lot subdivision, Mr. Gossels felt there has been improvement and we're moving in the right direction in the overall design. He was comfortable going forward in that direction.

Ms. Taylor agreed, as did Mr. Burpee and Mr. Athanas.

Mr. Klofft wanted to go back and discuss some of the comments received from various Boards. The first was a letter from the Building Inspector dated April 25, 2005, which raised

three issues (1) that the final plans would need to be signed by a registered architect (2) the developer needs to present final detail construction plans to the Building Inspector (3) a mention of a surety bond being put forward to insure completeness. He asked whether Mr. Mountzoures had a comment on the last item.

Mr. Mountzoures said Ms. Kablack had indicated that that this is the policy. He was willing to live with it.

Next were three letters from the Engineering Department dated April 1, 2005 which raised 10 issues, a few of which were addressed in later plans. Again it notes the need for plans with building elevations, a detailed construction sheet showing drainage, utilities and other items, earth removal calculations if necessary, and a request for a public way access permit. Mr. Klofft wanted to be sure the access permit is included.

The second letter was dated June 1, 2005. Engineering wants to see calculations showing compliance with DEP storm water regulations, a request for a street opening permit and erosion control plans. That letter also referenced sidewalks, both to the Mary Catherine Lane and from Longfellow to Mossman Road. The third letter was dated August 24, 2005.

Mr. Mountzoures said he had met with Town Engineer and discussed his memo, including the sidewalks. He said obviously it depends upon approval and what he gets approved for. However, he always contemplated that there would be some condition for walkways.

There was also a letter dated July 18, 2005 which reiterated the points of the previous letter.

With regard to the Conservation Commission, there was a letter dated April 28, 2005 which was merely an overview of the plan without any specific questions or recommendations. It was requesting that Mr. Mountzoures appear and present his plan to them. Another letter dated Further, June 20, 2005 questioned the relocation of the irrigation well.

Mr. Mountzoures said he took it off the plan but left it on the waiver list. The hope was that when he went before Conservation he would either find a location where a waiver wouldn't be needed or, if he needed a waiver, perhaps it would issue from the Commission after which he would come back and it would be part of the comprehensive permit.

Another letter dated June 22, 2005 voiced concern if lighting was to be directed towards the wetlands from Units 4 & 5. Also included was a notation that the sloped area be heavily vegetated to provide a physical and visual barrier. Mr. Klofft said this is something that can be considered in the landscape design plan.

In a memo dated July 11, 2005, the Commission refers to reducing the disturbance area around Unit 5 to eliminate the fill on the slope. Mr. Klofft said he would like Mr. Mountzoures to meet with them to decide exactly what they are looking for, since there seems to be some confusion.

The latest memo dated August 25, 2005 states the Commission wants there to be a clear limit of lawn identified especially with the units that border on the wetland. He said this is the memo where they mention the 216 elevation. There needs to be some clarification on this.

Mr. Klofft asked how the undeveloped land is going to be permanently protected.

Mr. Mountzoures said he had to talk to his attorney. At this time he wasn't sure how it would be handled. It may be that it is deeded to the town after the development is constructed.

Mr. Klofft said there was a question as to whether there would be any public or private access to the undeveloped part of the property - like trails. He had some question on that given that they've asked for the physical barrier and felt they would not want trails there.

Mr. Mountzoures felt this would be addressed in the Order of Conditions. He said while he wouldn't try to prevent people from walking on the road to access the wetlands, he's not planning to do anything back there whatsoever.

The next letters were from the DRB dated June 9, 2005 dealing with the basic plan and layout, and another dated on July 28, 2005 which refers to the garage doors and the placement of the garage doors relative to the street.

There was a memo from the Board of Selectmen dated June 22 which referenced two issues: the sidewalk and the local preference in the lottery process.

Mr. Mountzoures had no issues with the Selectmen's memo.

There was a memo dated August 29, 2005 from the Fire Chief which references two points (1) the overall radius being 45 feet, (2) shrinking the interior diameter to 21 ½ feet – on that area.

Mr. Klofft referred to requests contained in the Planning Board's memo dated April 6, May 13, May 31 and August 29, 2005.

In response to questions on some of the items, Mr. Mountzoures said the condominium document will have to be completely redone because it will now be a homeowners association.

A 21E has not been done, he will make it part of the financial package when he gets approval.

Mr. Klofft noted that the Planning Board in their May 13<sup>th</sup> memo will need to see an architectural rendering of the property from North Road- to see what the entrance looks like.

Mr. Klofft referenced the May 31<sup>st</sup> letter regarding sight lines and the fact that the new road and Mary Catherine Lane might be closer than allowed.

Ms. Kablack commented that the sight distance has been calculated on the engineering plans and there will be some further refinements. There is a critical area at the property line between this property and the Stewart's property. There are a few bushes and a couple of trees in the right of way which will need to be removed out to just open up that corner so that you can see cars coming out of Mary Catherine Lane from this driveway.

With regard to a memo dated August 29<sup>th</sup>, Mr. Klofft would like to see a cross section plan of the roadway construction to be sure that it meets code. There was a discussion also about planting drought resistant plants in the center area and/or irrigating it. He would also assume that the roadway is going to be a private roadway and the homeowner's association is going to take care of all of the storm water system and the septic in the road.

Mr. Mountzoures replied that this was correct.

Mr. Klofft said there was some question about these being considered single lots, given the size and frontage.

Ms. Kablack said she had discussed this with Mr. Mountzoures and had called Don Schmidt at the State; however, she still does not yet have an answer to this.

Mr. Witten said he checked on this noting the statute is in 40A, Section 6. It says that an increase in the dimensional requirements do not apply to a grandfathered lot not held in common ownership, or something else, as long as that lot had 5,000 s.f. and 50 feet of frontage. It doesn't deal with anything else in terms of minimal lot size.

Mr. Klofft felt the pertinent items had been addressed. At this point he felt the significant design issue to be resolved before moving to final plans is the architectural drawings, house facades and an elevation looking from Route 117.

Mr. Kablack said one issue that wasn't addressed was the Fire Chief's who is on record as saying that he thinks the cul de sac design is inferior to the T-turnaround. This may have some ramifications for the placement of those four end units. The idea of the cul de sac idea came from the DRB.

Mr. Gossels felt the DRB suggested this as a way of creating a sense of community.

Mr. Klofft felt there were two other points that DRB was trying to bring up with the cul de sac design vs. the T design. First, was to open up the open space that was there that so it wasn't sort of blocked off with the buildings. Second, was so the view of the street, given that it was already fairly dense, if screened it properly, when you looked up the street, then you were looking up just across the fronts of the houses into the open space behind it. You would get more of an open view as opposed to a hard end where the buildings end.

Further discussion followed on this with the conclusion being that the cul-de-sac was preferred.

Mr. Mountzoures agreed to submit his revised plans 7 days prior to the next continuance.

The hearing was continued to September 20, 2005.