

MINUTES SOF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
JULY 25, 2007

The Board consisted of:

Jonathan G. Gossels, Acting Chairman
Elizabeth A. Taylor, Clerk
Jeffrey P. Klofft
Nancy G. Rubenstein
Stephen A. Garanin, Associate
Richard D. Vetstein, Alternate
Jonas D.L. McCray, Alternate

Also: Jody Kablack, Planning Director
Edward Marchant, Consultant
Beth Rust, Community Housing Specialist
Frank Riepe, Design Review Board

For the Applicant:

Robert Engler, Geoff Engler, Development Consultants
Kevin Duffy, Steven Duffy, Duffy Properties
Paul Finger, Engineer

The hearing was reconvened by the Acting Chairman, Mr. Gossels. In accordance with the Mullin Rule, Stephen Garanin and Richard Vetstein have certified in writing that they have examined the audio recording and/or transcript of the missed hearing held on June 18, 2007.

The Board was in receipt of the following:

- Letter from Geoff Engler dated June 19, 2007 with encls: Preliminary development budget, Building specifications, As-of-right Land Appraisal, William Raveis Market Analysis
- Design Review Board letter dated June 28, 2007
- Work Session Notes from July 6, 2007
- Email from Fire Chief dated July 24, 2007 regarding fire lane width
- Memo from Community Housing Specialist dated July 24, 2007 – Comments on the Affordable Component
- Email from Geoff Engler dated July 25, 2007 – Revised Development Budget
- Email from Conservation Coordinator dated July 25, 2007 – Outstanding issues
- Certification from Stephen Garanin and Richard Vetstein under Mullin Rule
- Memo from Planning Director dated July 25, 2007
- Letter from Paul Finger Associates dated July 25, 2007 requesting waiver from local Wetlands Bylaw with encls: Pre-Development & Post Development Conditions plans, West Drive Drainage Option 1 &2 (submitted at this hearing)

- Stormwater Management Report dated April 6, 2007 prepared by ESS Group, Inc., Waltham, MA (submitted at this hearing)
- Preliminary floor plans dated June 14, 2007 prepared by Clinton Associates (3 sheets) (submitted at this hearing)
- Sensitivity Analysis based on developer's 7/22/07 pro forma (submitted by Mr. Marchant at this hearing)

Mr. Klofft reported on the work session of July 6th which focused on traffic; i.e., understanding how best to flow traffic through the site given the current intersection and design going forward for the Concord Road intersection as well as the Hudson Road/Peakham Road intersection.

There was also some discussion on storm water management for the water flows around the site which go down towards the side of Peakham Road and the rail trail property.

Unit size and placement was briefly discussed, specifically the number of outbuildings, with discussion on whether they could be potentially either reduced or integrated better.

Mr. Gossels said at the last hearing the Board took a straw vote to get a sense of the Board as to whether everyone was comfortable with the number of units and the outbuildings. The vote was 2-2. Since Mr. Garanin was not present that evening, Mr. Gossels requested his input.

Mr. Garanin said based on all the information received and read, 20 units seemed to be what the Selectmen wanted in terms of size. From the previous hearings he attended, the general feeling was that the buildings along the back edge seem rather large. Mr. Garanin was not comfortable with the amount of the square footage proposed for this property and felt the density was too high.

Mr. Gossels said in a discussion with Selectmen Lawrence O'Brien, he asked for the rationale in the switch from 24 to 20 units, and Mr. O'Brien said the Selectmen objected to the new construction in back – they wanted to see 20 units in the existing footprint.

With that as background, Mr. Gossels asked the applicant to present what has changed.

Paul Finger said there is no major change to the circulation from that which was proposed at the previous hearing which is a 2-way entrance/exit on the westerly side (near Peakham Road) and an exit only right turn only on the easterly side (near Concord Road). During that hearing the question came up as to whether the pavement width on the easterly side could be reduced since it is one way. He referenced the Fire Chief's email which indicates that the width for emergency egress has to be 18 feet according to state regulations – that anything less would not be acceptable.

Mr. Finger said that pavement width is at 22 feet so there is adequate turning. He could narrow it down but would suggest that the width be a little bit more than 18 feet to be sure that the radii is appropriate.

Mr. Finger said they have sent a letter to the ZBA requesting a waiver from filing with the Conservation Commission under the local bylaws. He reiterated the issues between Town Engineer and the Commission which were discussed at the previous hearing with regard to stormwater runoff in the Peakham Road/Hudson Road/ railway right of way area. He felt the best solution would be to put a catch basin and an outfall onto the railroad right of way; however, he will design it with two options. When it comes time for construction, if the town is able to secure permission from the state to be able to discharge water onto the right of way, they will follow through construct it that way. If not, they will propose to put it into a drywell and recharge it. This will also have to be discussed with the Conservation Commission.

Ms. Kablack felt the applicant should approach the state, and the town will support it. Mr. Finger agreed to send a letter along with the plans to the state.

Mr. Finger then addressed the issues raised by the Conservation Commission in their email, the first being that there is no filing under the local Wetland Bylaw and that a filing or more formal process is needed to identify the various items that had been raised.

Mr. Finger said he mentioned at the last ZBA hearing that they are exempt from filing under the local bylaws. He said they will provide them with all the information they need; however, for some reason the Commission is pushing for this formal process because they don't believe they can address the ZBA formally unless there's a formal submission associated with the bylaw. He felt the solution to this is actually a request for an exemption or a waiver and that will now become a formal process that they will submit to the Commission.

Mr. Gossels asked Ms. Kablack if it was her recommendation to ask them formally. Ms. Kablack said it was.

The second item deals with the Commission's concern about the impact on off-site wetlands from decreasing drainage leaving the site. Mr. Finger said this is a public safety matter which still needs to be worked out between the Conservation Commission and Town Engineer.

The next item is the possible need to address or upgrade the through drainage on the east side of the site. This area was pointed out on the plan. Mr. Finger said he will be doing video work to locate the pipes and will address this.

Discharge of drainage off site from the proposed detention basin to the abutting property without a drainage easement in place. Mr. Finger pointed out where the discharge has been in place since the day the project was constructed and where the town drainage comes out. He said there is nothing in the record to indicate that there is an easement there. He believed this could be handled by a letter prepared by his legal counsel.

Ms. Taylor asked whether the entire outflow pipe is located on this property. Mr. Finger said the outflow pipe is not on the property, the headwall is. He said he was told by his counsel that they don't have an easement the same as the town doesn't actually have an easement for

their drainage onto our property. This whole area is built up of a series of drainage systems that basically are predated for a number of years.

Ms. Taylor said she would like to see something from the applicant's counsel which shows that this has been examined and determined to be the case.

Ms. Kablack asked whether the runoff rate was changing. Mr. Finger said the rate is such that they are basically making improvements to the rate and the volume by redirecting a portion of the watershed to the rear of the property so it's actually not going out onto Hudson Road. He said that was one of the things that Town Engineer was looking for.

The drainage system was redesigned because the original one had garages in the middle with one central pond. He pointed out where there will now be two ponds in the back which will combine together and exit out the middle.

Mr. Gossels said he had not understood there were to be ponds in the two corner. He said one of the issues discussed at the previous hearing was the screening in the area – on the Peakham Road side.

Mr. Finger said it won't impact the screening. He said they will continue to enhance the property on that side.

With regard to the Conservation Commission's issue of soils in the recharge areas, Mr. Finger said this is a typical submission to the Commission. He said they will be able to demonstrate that they can deal with the roof drainage.

As to rail trail access, it was Mr. Finger's understanding that this is a community concern, not a Conservation Commission concern.

Overall landscaping is also not a wetland issues under the Wetlands Protection Act.

Low impact development and construction techniques – Mr. Finger said they will be doing the best that they can. However, he felt these are items that could be protected under the bylaws but not under the Wetland Protection Act.

In summary, Mr. Finger felt they will be able to comply with everything the Conservation Commission is concerned about regarding the state regulations. There are just a couple of small items under the local bylaws.

Mr. Finger said he didn't see comments or questions from the Board of Health. However, he added that they can't get a building permit unless they have an operational septic system, and the Board of Health has been given some guidance or clarification to their questions or concerns from DEP.

Ms. Kablack said the Board of Health's biggest concern is the issue of soil testing which has never been done. There has been a Title 5 and there is the letter from DEP saying that the existing system can be reused. One of Board of Director Leupold's main concerns is at the site of the reserve system and testing of that area which, because the reserve system will be a new system, and he's concerned as to where the ground water elevation is and where the elevation of the pipes will have to be. That level of detail has not been provided.

Mr. Finger said in order to get approval of the septic system they will need to do testing.

Ms. Kablack questioned when that testing would be done. She said the ZBA needs a comfort level that the plan that they're going to approve won't need major changes based on the elevations of that reserve system. They need to know how it will be designed in case a waiver is needed from the local regulations.

Mr. Finger said when a reserve system is designed, you don't actually do the layout – you show that it has enough square footage in order to put it in for that size. Soil testing will need to be done. He said the DEP has indicated that it be done before they can get a building permit. He said they will not need any waivers from the local bylaws.

Ms. Kablack said the ZBA needs to see the soil testing and for Mr. Leupold to tell them that no waivers are needed.

Mr. Engler did not feel that was necessary at this time. He felt the purpose of the comprehensive permit is schematic. Soil testing is detailed – and the developer is at risk if it goes wrong and they have to come back to the ZBA for a modification. He said they don't need to have the soil testing for the schematic design stage – it's a condition of the final drawings to be subject to that.

Mr. Klofft said the ZBA would then say in the permit that it has to comply with all of the bylaws. If it doesn't then they would have to come back and would be at risk.

Ms. Kablack said they typically like plans to be in almost definitive form. She added that this has never been an issue with other 40B permits. If the applicant chooses to proceed this way, the ZBA will have to protect the town with the conditions in the permit.

Mr. Gossels asked Frank Riepe for input from the Design Review Board (DRB).

Mr. Riepe said at the DRB's last meeting there was some confusion with regard to the drawings which showed both a stone wall and fence along Hudson Road. He said they were not regular drawings but designer drawings. It also seemed that the landscaping scheme and placement of the trees may have changed since the previous meeting with the applicant.

Mr. Finger said he was not aware of the DRB meeting and would have been present otherwise. He said they met with the Historic Districts Commission (HDC) – actually they wanted to have a joint meeting with everybody but have not been able to do that. The proposal

was the section that had the stone wall was where they were talking about putting in the granite posts and wood rail – and he thought that that was the compromise that everybody was looking for.

Mr. Gossels said at the last hearing the stone wall was going to remain and where the driveway was would be patched in with a granite post and wood rail.

Mr. Finger said he understood the HDC agreed on granite post and rail throughout the entire length.

Mr. Riepe felt the HDC was comfortable with that. He said part of the confusion was with what he saw in his role as a DRB member and then as an HDC member.

With regard to the landscaping, Mr. Finger said the original plan proposed a more formal gathering spot and the DRB wanted it to be less formal. It will have more of a meandering aspect. The flagpole will remain the same as will the stone wall. He said the only issue was with the rain garden which has been eliminated.

Mr. Riepe said the third area of concern was behind the gathering spot – the row of houses behind the building. He said the DRB wanted to see more of a landscape design and sense of propriety in that area.

Mr. Finger said the intent is to have enough landscape material to provide some privacy, not a barrier per se, but some visual break so that the views to these backyards have some privacy.

Ms. Taylor said in addition to the private space, the Board is also concerned with the streetscape, and they would like to see some plans.

Discussion followed on the affordables and pro forma. Mr. Marchant said he did a preliminary review and forwarded his comments to Ms. Kablack. He said he took a look at the pro forma and feels if the town wants 25%, they should push for it. He said the revised pro forma is not very much different from the earlier one.

Mr. Marchant said there are three critical items to look at in the pro forma: (1) land acquisition cost (2) construction cost on a square foot basis and (3) what you can get for the market rate price.

He said land acquisition and building cost is included as \$3M, which is creating the low return on the project. An appraisal by Avery Associates backs up that number. \$3M being the cost means the average per unit cost is \$150K with a market rate of \$200K per unit.

For the Sudbury Village 40B the average per unit cost for the land was \$45K – for Old County Road it was \$45K. Mr. Marchant said he plans to do a comparative analysis of land costs for his final presentation.

Mr. Marchant explained that appraisals for 40B are based on the highest and best use, and in this case the appraiser concluded that it was worth more with the buildings on it. As a vacant parcel it was valued at \$1.94M.

With regard to construction costs, Mr. Marchant said his experience has been that for rehabs, costs would occasionally be less if the building was in very good condition. He would put these buildings in that category – and rehab costs could be more. Further, he said one of the downsides of rehabs is that they're not designed for reuse as efficiently as for new construction. Construction costs for the rehabs was put at \$100/s.f.

New construction costs are listed at \$142.50/s.f. which Mr. Marchant felt was on the high side.

Mr. Gossels said with the other 40Bs, the affordable units have been treated much more like the market rate units. This did not seem to be the case here.

Mr. Marchant mentioned that the exteriors are similar but not necessarily the interiors.

Regarding sales price to market ratio, Mr. Marchant compared the sales numbers used in the pro forma with the sales numbers recommended by Eileen Logan, Realtor for Raveis Realty, and found them to be generally consistent except for a discrepancy for Unit 1C which might have been an error in the report.

Landscaping at \$135K – Mr. Marchant suggested this be reviewed to be sure it is adequate since the town generally likes to see a lot of landscaping.

Soft costs – these are generally consistent – some are high, some are low.

Condo fee information was not provided. Mr. Marchant would like to see this.

Mr. Marchant distributed copies of a sensitivity analysis which demonstrates the impact on the developer's fee if the site acquisition costs were decreased in \$250K increments.

Mr. Vetstein asked about the implication based on the fact that there are two related entities.

Mr. Marchant replied that for a 40B it doesn't make any difference as long as a legitimate appraisal is submitted. In response to a comment that it was two years old, he said the square footage is very important because it determines potential income. This appraisal shows 41,925 s.f., yet the square footage in the pro forma is 33,772 s.f. which is a 24% difference. He suggested the applicant be requested to address where the shrinkage occurred.

When reviewing the drawings, Mr. Marchant said he saw a lot of loft area, and that square footage was not included in the calculations – and it should be. He suggested the

developer look at that space to see if they can get more marketable space. He could not tell how much loft space there was but felt this could be dealt with during a work session by going through the space for each unit.

Further discussion followed on land acquisition costs, method for determining same, and profit in terms of economic vs. uneconomic.

For Mr. Riepe's benefit, Mr. Gossels reiterated his discussion with Selectmen O'Brien who indicated the Selectmen wanted 20 units on the existing footprint.

Mr. Engler said density is always the #1 issue with public officials and that Mass. Housing told him that they did not get a strong endorsement from the Selectmen that they were not going to go with 24 units.

Mr. Gossels said the result, perhaps by miscommunication, was 20 units plus the additional outbuildings.

Mr. Engler said those buildings were always in the plan. Although the Board may feel they are large, he said he needs that market niche.

Mr. Riepe said his personal opinion is that he did not believe there is a negative to the density for this project. He felt a certain critical mass is necessary in order for the project to be successful. Ultimately, what is seen from the road and the neighbors will remain unchanged.

Ms. Kablack said Mr. Marchant has presented information in a way for the Board to be able to negotiate once the issues of density and number of units is resolved.

Mr. Engler said at the last work session there was agreement that there are issues with regard to the lofts and where the numbers came from. He said he would like to work on this and schedule another work session because the design sensitivity is important.

Mr. Gossels said the Board needs to understand what the real usable square footage is for the existing buildings. Also, discussion is needed on the 20% vs. 25% affordable and whether there is a way to reduce the footprint. He noted some members are comfortable with the density – others are not.

Mr. Klofft suggested a walk-through be scheduled before the next work session.

The walk through was scheduled for July 30th, 7:30AM.

A work session was scheduled for August 8th, 8AM in the Flynn Building Conference Room.

The hearing was continued to September 5th, 7:30PM in the Lower Town Hall.

Jonathan G. Gossels, Acting Chairman

Elizabeth A. Taylor, Clerk

Jeffrey P. Klofft

Nancy G. Rubenstein

Stephen A. Gararin, Associate

Richard D. Vetstein, Alternate

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