

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
SEPTEMBER 5, 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
Beth Rust, Community Housing Specialist
Edward Marchant, Consultant

For the Applicant:

Geoff Engler, Development Consultant
Kevin Duffy, Steven Duffy, Duffy Properties
Jerry Scully, Architect
Paul Finger, Engineer

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

- Letter dated July 25, 2007 from Paul Finger Associates requesting a waiver from local wetland bylaws with encls: West Drive Drainage Option 1 plan & Option 2 plan dated July 20, 2007, Pre-development Conditions plan dated April 4, 2007, Post-development Conditions plan dated April 5, 2007
- Email dated August 1, 2007 from Geoff Engler enclosing Revised Unit Plans
- Email dated August 10, 2007 from Conservation Coordinator re rain gardens and drainage improvements
- Work Session draft minutes August 8, 2007
- Letter dated August 23, 2007 from Paul Finer Associates to EOT regarding drainage easement
- Email dated August 30, 2007 from Robert Engler with attachments for 9/5 hearing: Development Budget, Workforce Sales Price Calculations, Affordable Sales Price Calculations for 1 & 2 bedroom units @ 70%, Affordable Sales Price Calculations for 2 bedroom unit, Schedule of Expenses, Exterior wall envelope construction & renovation specs dated August 22, 2007, 1st & 2nd floor plan
- Site Acquisition Cost Comparative Analysis prepared by Edward Marchant (handed out at hearing)
- Breakdown of square footage for all buildings dated September 5, 2007 prepared by Clinton Design Associates (handed out at hearing)

Mr. Engler said he did not have the email from the Conservation Coordinator. Mr. Gossels read that email which dealt with the rain gardens, adding his feeling that from previous hearings the sentiment of the ZBA was consistent with the Design Review Board in not recommending rain gardens.

Mr. Engler said there have been slight modifications to the budget. He outlined those changes which deal with square footage of the lofts.

Mr. Gossels noted that a working session, for which proper notice had been given and was open to the public, was held on August 8th, and asked Ms. Kablack for a summary of the meeting.

Ms. Kablack said the work session was conducted after the walk-through of the premises which included members of the ZBA. During that walk-through major areas looked at included the large building, loft and attic spaces and the far eastern end of the building. Most felt comfortable with the reconfiguration. With regard to the smaller 2-unit buildings, the general feeling was that they were of a good size with good access. There was some discussion to possibly removing the new construction in back and putting those units in the existing footprint; however, she felt there was some comfort level that that building would have 11 units with 4 units in the back. Mr. Gossels interjected that the Board was split on that. He said a slight majority was not in favor of the additional construction in back.

Ms. Kablack said the August 8th meeting dealt with the financials. It was a difficult meeting because what the town wants is not what the applicant wanted. There was a lot of discussion about the appraisal. The overriding premise is that the appraisal has an elevated value – more than any other 40B project, which brings the profit level lower leaving no room for mitigation without making the project uneconomic. Every other application in the past 4-5 years has given both internal and external mitigations, and this project is in the midst of the town center traffic problems.

Also discussed was the property next to this property, 15 Hudson Road, which is located between Grinnell Park which is right at the intersection. It is a one-acre parcel which would lend itself very well to potentially being a part of this development and the historic district and park. She said the applicant was asked to consider purchasing this property.

Mr. Gossels said there was also a willingness on the part of the town to increase the number of units for the development with the remainder of the property being added to the park, which would then allow the town to reconfigure the intersection. Ms. Kablack said the applicant's cover letter doesn't seem to underscore that the town definitely wants to explore this.

Ms. Kablack said the desire is to have this work for both sides. Therefore, some ideas were brought up and are contained in the work session notes with regard to the finishing the lofts, pricing and affordable units. She added that in the applicant's August 29th letter they state they will finish off the loft space and are willing to go with 25% affordable at 70% which results in 5 affordable units plus a buy-down unit. More discussion, however, is needed.

Referring to the August 29th letter, Mr. Gossels said it does not seem to support exploring the purchase of 15 Hudson Road.

Mr. Engler said they are not closing that door entirely. However, he said they are closing the door as part of this permit process. He would be willing to consider an amended permit which they would take to Mass. Housing at an appropriate time that they were able to negotiate that purchase and do all of the other engineering work. He said they have a different viewpoint as to how many units could go on that site. His feeling is that they are at the end of the process and this change would be quite lengthy. They are not prepared to entertain it at this point.

Kevin Duffy agreed. He said if this had been brought up earlier at the start of this process they would have been more amenable. They were not enthusiastic about slowing down the process down to work on this.

Discussion followed on the perception of where in the process this application stands. Board members generally felt they were more in the middle rather than at the end.

Mr. Gossels asked Mr. Marchant for his comments.

Mr. Marchant said after the walk-through with the applicant and architect he had a better sense of the buildings and felt the developer and architect had a very good sense of figuring out how to deal with the buildings.

He said his concern from the beginning has been the appraisal and land value. With the other 40Bs, he reviewed the appraisals and concluded that those appraisals were reasonable. Per unit land cost for this development is \$150K, which is higher than any of the other 40Bs he has reviewed for the town. The Duffy's purchased this property as part of a distressed sale and Mr. Marchant said he felt they were driving the cost up to a level that was unreasonable. Although it was appraised by an approved Mass. Housing appraiser, in his mind it didn't pass the "common sense test." It's an obsolete building – a non-performing asset and he felt the appraisal should not be based on a retail and office use, adding that if he were a developer and had a functioning, thriving retail office building in Sudbury, he would want to keep that asset.

Mr. Marchant said the Duffy's have been extremely successful and have enjoyed a very good reputation for buying properties right. This one just didn't work. And the proof is that you can't get people to rent the available spaces.

Mr. Marchant provided a summary of the comparative analysis which he prepared and distributed at this hearing. He said the applicants are presenting this project as uneconomical based upon the appraisal, which raises some concern – and at certain points Boards have to make a decision. He mentioned there have been attempts to repeal 40B and felt that, if unchallenged, an appraisal like this weakens 40B, and he could not in good faith go along with that appraisal.

He felt the alternatives are to hire an independent appraiser to provide an appraisal on what is realistic for the land and building or, add a condition to the decision with language that for cost certification, the value of the property shall not exceed X dollars.

Considerable discussion followed, specifically on land valuation, land costs, development costs, construction costs, affordable units, mitigation, etc., comparing those to other 40B projects approved by the town.

Mr. Gossels felt the sense of the Board was to have an appraisal they believed. Or, Mr. Klofft interjected, to have acceptable mitigation so the Board and the town felt comfortable with moving forward.

Mr. Marchant felt the \$100/s.f. construction cost for renovation was reasonable. As to the \$142/s.f. for new construction, based on discussions with his developer clients, it seems to be a very high level of finish. In terms of the market – they have it at \$305/s.f. He felt this was probably aggressive in the market today – not understated. He would like to see some backup from the developer on site costs.

Another question on the pro forma was the line item for the cellular tower on the building. Mr. Marchant said that the rental revenue should be multiplied by an appropriate capitalization rate to compute the value of that lease asset and that value should be incorporated into the pro forma financial statement. He felt the Board should see a copy of the lease. It was unclear as to whether that is going to be a separate unit of development and whether the developer will take control of it.

Mr. Marchant would also like to know where the affordable units will be located.

Mr. Gossels said it seemed that Mr. Marchant's review confirms almost everything the applicants have indicated in the budgets and pro forma with the exception of the appraisal. He said the appraisal is 2 years old. According to the Board's Comprehensive Permit Rules, from which he read excerpts, he said the Board can hire an outside consultant with the cost to be borne by the applicant. He felt this provided direction in terms of resolving the appraisal situation.

Mr. Engler was asked to comment. He said he felt it somewhat discouraging in that the town indicates that they want the project to be successful and the developer to make a reasonable profit, but indications are that this runs counter to those statements. He said he could give as examples six projects with similar situations with much higher acquisition costs. With regard to the appraisal, it was done by an appraiser certified by Mass. Housing. He said Mr. Marchant's evaluation looks at it as raw land or commercial but doesn't look at it together and gives no credit to the infrastructure and a lot of other things that make up an appraisal.

Mr. Gossels said the bottom line of Mr. Marchant's presentation was that generally the numbers fit – the only issue he raised to advise the Board on is on the appraisal.

Kevin Duffy said there is an inherent value in that building. He added that at the time they were engaging seb as consultants they spoke with Rich Herlihy at Mass. Housing and questioned how the appraisal would work and the fact that an existing structure was going to be reused. He said Mr. Herlihy referenced a case and said they have cases which show that the value of the land and building should be considered in the appraisal.

Mr. Marchant said he was not challenging that – he was challenging the assumption that that is a functioning retail/office building.

Mr. Gossels felt the next step should be for the Board to contract for a new appraisal.

Mr. Engler asked what happens if, hypothetically the appraisal comes back and says \$3M.

Mr. Gossels felt that if the updated independent appraisal comes back with \$3M, he would be comfortable with the applicant's financials and the Board would move forward. He said in that case it would confirm the developer's position that the town is asking for too much for external mitigation. If it comes back substantially lower than that – from the Board's position the town is not asking for too much external mitigation.

A motion was made, seconded and unanimously voted to hire an independent appraiser as allowed in the Board's Comprehensive Permit Rules to appraise the property. Said services shall not exceed \$5K and will be paid for by the applicant.

Mr. Gossels explained the process and ability for applicant input on the selection of the appraiser. Ms. Kablack estimated it would take a couple of weeks to receive responses.

Mr. Gossels asked if there were any other comments. Ms. Kablack said the distribution of affordable units has changed. She was not sure whether she was comfortable with the distribution at this point. Unit size was also mentioned.

Mr. Gossels said he was more concerned with clustering of those units than size.

Ms. Kablack asked where the developer was with the Conservation Commission. She said the ZBA needs to hear from the Commission as to what waivers are appropriate.

Paul Finger said he is revising the plan with regard to the drainage. The key issue is still off-site water. They are scheduled to meet with the Commission at the end of the month. He has confirmed with Town Engineer that the drainage system does not go off-site as was originally thought but goes straight to the site.

The hearing was continued to September 24, 2007, 6PM, in the Lower Town Hall.

THE RESIDENCES AT SUDBURY COMMONS

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