

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Wednesday, February 15, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft;
Jonathan F.X. O'Brien; and Stephen A. Garanin, Associate

Also:

Jody Kablack, Director of Planning and Community Development
Paul Haverty, Attorney, Regnante, Sterio & Osborne LLP
Ed Marchant, Consultant
Joe Peznola, Hancock Associates
Fred King, Schofield Brothers
Howard Muise, Vanasse Hangen Brustlin, Inc.

For the Applicant:

Robert Moss, Madison Place Sudbury LLC
Peter Tamm, Goulston & Storrs
Paul McManus, EcoTech, Inc.
Glenn Dougherty, Tetra Tech
Nancy Doherty, Tetra Tech

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, re-opened the hearing. She read into the record the minutes from the January 26, 2012 hearing that were then approved by the Board.

She read the list of documents received for the February 15, 2012 Meeting which included:

- 2/2012 – Revised Operations and Maintenance Plan from Tetra Tech
- 2/2/2012 – Check from Bob Moss for \$15,000 for additional peer review received
- 2/3/2012 – Letter from Maurice Pilette, Mechanical Designs Ltd., to the ZBA
- 2/3/2012 – Alternative Concept Wetland Crossing Plan, from Tetra Tech
- 2/3/2012 – Alternative Layout Plan, from Tetra Tech
- 2/3/2012 – Revised Layout Plans, from Tetra Tech
- 2/3/2012 – Memo from Howard Muise, VHB, to the ZBA/Jody Kablack
- 2/3/2012 – Memo from Paul McManus, EcoTec, Inc. to the ZBA
- 2/3/2012 – Hydrogeologic Evaluation and Groundwater Mounding Report
- 2/3/2012 – Revised Existing Watershed Map
- 2/3/2012 – Revised Proposed Watershed Map
- 2/6/2012 – Revised Drainage Calculations
- 2/6/2012 – Memo from Glen Dougherty, Tetra Tech, to the ZBA and Jody Kablack
- 2/7/2012 – Letter from Frank Huntowski and Kim Ogden, 42 Cutler Farm Road to the ZBA
- 2/8/2012 – Memo from Nancy Doherty, Tetra Tech, to Jody Kablack and the ZBA
- 2/11/2012 – Letter from Jon Danielson, 37 Landham Road, to the ZBA
- 2/14/2012 – Letter from Amy Adolfsson, 60 Hopesill Brown Road, to the ZBA
- 2/15/2012 – Letter from the Planning Board to the ZBA
- 2/15/2012 – Letter from Steve and Colleen Connors, 57 Cutler Farm Road, to the ZBA

Ms. Quirk then read into the record the text of the February 15, 2012 memorandum from the Sudbury Planning Board which recommended that the ZBA deny the application based on a number of deficiencies the Planning Board had identified.

Ms. Quirk then asked for a status report on stormwater review from the Board's engineering consultant, Joe Peznola of Hancock Associates. Mr. Peznola said that he has received from the applicant all of the updated plans, calculations, and documentation prepared to date. He has reviewed all of it and has begun to draft a report of his findings which he said he would complete and submit to the ZBA in a matter of days. He then gave a report of the outstanding issues he still needed clarification for in order to make a determination.

One issue that still needs to be addressed is earth migration. The applicant's report stated that earth would only be imported to the site and there would be no migration of material off-site. However, Mr. Peznola said that based on the soil test results there are at least twelve to twenty-two inches of loam on the developed area of farm land that will need to be trucked off site. There is no space designated at the site to store it. He said that the applicant should present to the Board the specific truck routes, number of earth removal trucks required, and the times during which the trucks would be in operation so that the Board could consider those issues.

As for parking, Mr. Peznola said a great deal of information has been submitted to support the applicant's position that the allotted 1.5 parking spaces per unit is sufficient, however he felt this number was low. He reminded the Board that Sudbury's bylaw has a provision for reduction in parking that requires the establishment of a reserve parking area. He said that the applicant will need to provide plans for a reserve parking area, even if it is not built, and he said that Stormwater attenuation should be provided along with the details for that parking area.

The applicant has proposed trucking snow to the front field of the property for storage. Mr. Peznola did not see this as practical. He said that there would be normal plowing with smaller storms and he suggested that snow plow contractors might not follow the plow plan during smaller storms and so snow might end up elsewhere. He suggested that snow plow contractors should be advised in advance of storms on where to dump snow in a place that is sensitive to the environment. Signage should be installed to show where snow cannot be stored.

With regard to the hydrogeological report, he has reviewed this. He said he had some questions on the methodology used to obtain the acidity of the soils. He understood that this was under the jurisdiction of the DEP and the applicant will need to get a groundwater discharge permit from DEP. He said that the ZBA needs to consider the placement of the effluent field. He said that the applicant should address other concerns noted in his most recent memo to the ZBA.

Mr. Peznola said that a lot of information has been provided on porous pavement, particularly construction sequencing and methodology, however he said that Hancock Associates feels that this is a unique application at a unique site, particularly due to the extent that porous pavement would be used, and he still has concerns for the use of this technology at this site. The need to use the same roadways for transportation of construction vehicles and for stockpiling materials will require a rigorous sequencing plan. He mentioned the previously referenced New Hampshire sample site. Porous pavement there has been used as a parking lot and the porous section is a significant distance away from the building. Pavement around the building where equipment and construction staging is located is solid pavement. He said that the applicant is close in terms of construction details, but they still need more.

With regard to testing, Mr. Peznola felt that every piece of this system should be tested before they move on to the next step. He said that the applicant plans to bring in a test course of the porous material or in some cases a piece of standard pavement that would later be removed and replaced with porous pavement after construction. Mr. Peznola feels there should be a tested protocol for the under layer of the system with information and certification provided to the Town. As for Hancock Associates' call for a bio-test in the porous pavement the applicant said that they would watch it for any problems. Mr. Peznola, however, felt that more formal testing is required, particularly before tenants move in.

With operations and maintenance there are still questions as to the sufficiency and frequency of vacuuming. Information has ranged from weekly in higher loading areas to two to twelve times per year. He said he would like to have a better handle on this and err on the side of caution rather than have to worry about clogging.

Ms. Quirk asked whether there were any other sites of this kind in this area of New England that have used porous pavement to this extent. Mr. Peznola has not heard of any others.

With regard to stormwater, Mr. Peznola said that he is not yet in a position to say that everything is fine. Areas of concern include the computer model that was used to evaluate existing conditions compared with proposed conditions. He still thinks that there are some problems with the model and it is not, in Hancock Associates' estimation, accurately depicting the interrelationship between porous pavement system and some of the basins with under drains. He said that he would have more comments to share with the Board soon.

From their analysis the ten basins appear to be designed as infiltration basins. The applicant calls them vegetated basins. He said that the basins rely upon infiltration to empty and be ready for the next storm. They are not used for treatment and re-charge, however they are using them for attenuation. Hancock Associates feels that it is critical that the DEP design parameters applicable to infiltration should be applied here.

Mr. Peznola also felt that the analysis points should be more localized with regard to those that are entering into the wetlands in order to better understand the impacts of those individual systems.

Lastly Mr. Peznola commented on the use of wetlands for stormwater attenuation. He noted that by the applicant's calculations the area to the north of the crossing would experience an increase as a post development condition. He said that the use of the wetlands for stormwater attenuation is not allowed under DEP wetlands regulations.

Mr. O'Brien asked about the effectiveness of the wetlands replication area at the north of the site. Mr. Peznola said that Schofield Brothers is doing a more comprehensive wetlands review however he feels that the applicant is probably providing ample compensation.

Ms. Kablack asked about any potential impacts the Board should be concerned about if the ten small basins that are not being designed to the standards of infiltration. Mr. Peznola answered that if they are not draining properly or are not maintained then that could impact the infiltration capacity and they may not be ready for the next storm. The basins would not be meeting the standards that they need to meet in order to control post development runoff rates. Downstream flooding could be an issue. Individually the basins are small, however, used cumulatively they will collect and treat a significant amount of runoff.

Attorney Tamm said that the applicant is not ready to respond to Mr. Peznola's comments from tonight but would respond in writing in time for the next hearing. He said that the applicant had responded to Mr. Peznola's initial comments from two weeks ago. He felt Mr. Peznola's issues were fairly targeted, for instance whether or not the applicant needs to comply with stormwater standards, and construction-related issues such as snow management and operations.

Mr. Moss asked whether the consulting engineers could have a technical meeting to go over outstanding issues. The Board's Attorney, Mr. Haverty, said that it is absolutely appropriate for the technical consultants to meet and work through issues. He asked to what extent there was time to hold this meeting prior to the March 5 deadline. He suggested that the Board would need an extension of time in order to work on this. Mr. Klofft said that he would want a record of the discussion.

Mr. Peznola said that he was much deeper into the details of the analysis but he felt it was warranted due to the nature of the site's configuration and the site's reliance on porous pavement. He said that there were not a lot of these systems out there like this.

Mr. Gossels reminded the Board of a December 12, 2011 letter that was submitted by Steve Garvin, a professional engineer and Sudbury Resident, whose comments also support Mr. Peznola's assessment.

Ms. Quirk then asked whether any members of the public wished to make any comments on engineering issues.

Colleen Labib, 9 Stagecoach Drive, said that she understood that the floodplain would be disturbed and asked whether anyone could clarify the analysis of flooding to abutters. Mr. Peznola said that the analysis was to prevent any worsening of conditions. He said that the applicant is required to mimic existing conditions post-development at or up to the boundary of the property with regard to neighbors. Mr. Peznola said that he feels that pre and post conditions should also be looked at as they impact the wetlands edge to ensure no impact.

Mario Mummolo, 71 Stockfarm Road, asked Mr. Peznola what happens to Town water when salt impacts wetlands and water wells that are about a mile and a half away. Mr. Peznola said that the applicant is committing to use no sodium-based snow removal products. He added that the University of New Hampshire literature says that a porous system does not treat potassium or sodium so if it were mistakenly used, some amount of sodium could get to the groundwater or into the wetland.

Mr. Klofft asked what sort of mitigation there would be for this. Mr. Peznola said it was unknown.

Steve Garvin, 26 Bowditch Road, discussed time concentration which is the rate at which water works its way through the porous pavement system. As an engineer, and given his experience with porous pavement, he was not satisfied that the data provided regarding time concentration was accurate. Mr. Peznola confirmed that the applicant was using an eight hour time concentration for their design and he said that his firm had questioned that measurement as well and had asked for some backup information. He referenced design guidelines established by the developer of the HydroCAD software. The design guidelines point back to the University of New Hampshire stormwater center but Mr. Peznola questioned whether these were based on theory or actual analysis. He said that UNH did provide a comprehensive document which went through their study and he noted that this time concentration was based on actual field studies to measure water.

Mr. Gossels asked how many projects were included in any test installations. Dr. Roseen, of the University of New Hampshire Stormwater Center said that the study was done at more than one site and said that the calculations are consistent with studies done around the country. Dr. Roseen said that Mr. Garvin's questions about surface water were accurate but said that in this case he is dealing with groundwater flow, or subsurface flows moving through a filter course which is really not much different from a standard septic system.

Mr. Garvin said that in his experience he has seen water work its way very quickly through the pavement which could impact storage potential below the pavement. He suggested that if there were an eight hour length of time for water to get through the pavement there would be a backup on top of the pavement.

Ms. Kablack asked Mr. Garvin to share his credentials with the Board. He said he is a professional engineer in Massachusetts and has been since 2000. He is the President of Samiotes Consultants, Inc., a firm that has done work throughout New England and has designed three sites with pervious pavement and has done soil evaluation throughout Massachusetts.

Mr. O'Brien asked Mr. Garvin whether it was his view that the use of the pavement in this location was a novel application of the material. Mr. Garvin said that porous pavement is good in a lot of areas but said that it is going to be difficult for use in an application of this size and with these site conditions. He said that normally construction should be kept off of it to avoid compaction.

Mr. Mummolo asked about salt water. Mr. Klofft said that there would be a condition that no sodium based products be used. Mr. Moss clarified that no sodium chloride snow removal products would be used.

Mr. Stevenson asked Mr. Peznola about concerns with the design using wetlands for stormwater attenuation. Mr. Peznola said that the farmer's road would be replaced with a new roadway, walls, and a cross culvert. He said weirs would restrict flow, but the existing conditions of the farmer's road cannot be matched perfectly. More water would be impounded behind the cross culvert which would violate the Wetlands Protection regulations for the 100 year storm. Instead they need to find a way to attenuate in the high and dry areas so as not to result in impounding the water.

Fred King, Schofield Brothers, then provided an update on the status of his review. In his opinion an outstanding issue is that an additional study be done during the proper seasons to determine the value of the adjacent upland resource area (AURA), and whether the property contains vernal pools. He said that there is going to be some impact on wildlife and the habitat value of the AURA. The applicant's engineer has stated that on a regional basis any impact on the area is not significant but it is Mr. King's assertion that the applicant has not overcome the assumption of impact. The question remains whether there will be an impact and its significance. In conclusion the applicant would need a waiver from the Sudbury Wetlands Administration Bylaw because he cannot meet the bylaw's standards and the applicant has asked for this waiver. Mr. King said that the Board would find value in more study. He said that the vernal pool season is coming up in March so the timing would be right. He said that Eco Tech did do a good job with the data that they were able to gather during the time they did their study but they did not take the next step to overcome the presumption. He said that the Conservation Commission would typically require a 100 foot no disturb zone from the wetlands but due to the area of disturbance proposed for this project it is not possible to implement that 100 foot no disturb zone at this site because the majority of the project is in the AURA.

Ms. Quirk then asked Mr. McManus whether or not they would be doing more study. Mr. McManus said that Eco Tech does not intend to do pitfall trapping or further study.

In regard to the alternatives analysis Mr. King said that he had questioned whether the buildings could be moved to the front of the site to avoid all of the wetlands crossings and the imposition into the wetlands. The applicant gave a detailed response which was that it probably could be engineered to put all 120 units up front but it would be a tight squeeze with tall buildings which would raise a whole host of other code and neighborhood issues that makes that sort of plan impractical.

Mr. King said that the applicant admitted in the alternatives analysis that a smaller development could be put up front however, it wouldn't be economic due to the scale and management of the site. Mr. King said that all of the alternatives offered call for 120 units so there seems to be resistance to reducing the number of units.

He said that the Kayla Court alternative would not be a good alternative. While there would be less direct wetland alteration with the alternate access there would be more AURA and riverfront alteration. He questioned the practicality of that alternative and suggested that Kayla Court could be used as a secondary access, but not as the main entrance as that would create other impacts.

Mr. King also had concerns about the hydrologic model. He said he was still working through that aspect. However he is so far in agreement with Mr. Peznola's assessment that the calculations would put more water into the wetlands. He has yet to formulate a solid conclusion.

He said that he was also still working on wetlands impacts caused by groundwater mounding.

Mr. McManus, Eco Tech, referenced his February 3, 2012 submittal. He said that he disagrees with Conservation Coordinator Debbie Dineen with respect to the habitat issue. His statement was that "wildlife per se" is not an interest of the bylaw. Ms. Dineen had disputed this by saying that it is a consideration of bylaw. He said that there are not rare species present on this site.

Mr. McManus agreed that there is some impact on habitat. He said that the ZBA's issue is to determine whether the impact is significant under the bylaw. He disagrees with Mr. King about the standard that the ZBA is being asked to apply which is that there is a presumption of habitat function, but he does not feel that there is a presumption beyond that as to what is significant.

Mr. King said that the rare species applies to the Wetlands Protection Act. The presumption is that if there are rare species present they don't have to be mapped by MESA. He referred to the example of Bosse Sports where studies were required based on this presumption of species being present.

Mr. McManus said that the presumption is that on the Johnson Farm site there are no endangered species. They did not find the endangered species located across the street at Brookside Farm (three marsh birds) at Johnson Farm.

Ms. Kablack asked Mr. King whether the presumption is that wildlife is there if there are vernal pools. He said yes. Mr. King and Mr. McManus disagree over the local bylaw presumption of whether twenty percent of the habitat disruption is significant or not. She added that Sudbury has never had a site with this much disturbance to a wetland.

Ms. Quirk asked whether anyone from the audience wished to speak.

Attorney Jon Witten, from the law firm Huggins and Witten who is representing the Sudbury River Neighborhood Association, said that he wanted to respond globally to Mr. King's and Mr. Peznola's talks. He said that at this late stage in the game there should be an urgent request for a pro forma review. He said that the Board should request a pro forma. He said that the ZBA is entitled to it because the applicant has asked for waivers and because the applicant has used the phrase, "requiring us to do that would render the project uneconomic." He pointed to the 40B regulations, 760.5605.6. He asked that the Board demand this pro forma to determine whether or not their conditions would make the project uneconomic. He said that it should be sent out for an objective peer review.

Ms. Quirk confirmed with the ZBA's Attorney, Paul Haverty, that asking the applicant for a pro forma was appropriate. Mr. Haverty said that Ms. Quirk could ask the applicant and see what their team's response would be. Ms. Quirk asked the applicant for a copy of the pro forma.

Attorney Tamm said that at this stage under the regulations the ZBA is not allowed to review the pro forma and said that Mr. Witten was incorrect. He said that there are four circumstances under the regulations before review of financial statements. The first is that consultant review needs to be completed and this has not happened yet. The second is that the applicant has to have had an opportunity to modify or mitigate issues that have been raised. Thirdly the ZBA has to have proposed conditions and considered the waivers and that has not occurred yet. And finally, the applicant has to disagree with those conditions. He said that Mr. Witten has suggested, through Mr. King's comments about issues pertaining to the Wetlands Protection Act, that the proposed alternatives would make the project uneconomic are really outside of the jurisdiction here. He said that the alternatives proposed for the riverfront area of the property were not the economic equivalent of the original proposal. He said that is a separate standard under a separate statute. He said that the applicant is not objecting to giving the pro forma, but not at this stage.

Attorney Haverty said that he partially agreed with Mr. Tamm. The Board has not submitted its conditions to the applicant and the applicant has not declared that those conditions would render the project uneconomic so it is not the time to conduct pro forma review. He said that should the ZBA wish to issue proposed conditions to the applicant then the applicant could grant additional time to review those and the pro forma review could be done after that.

Mr. Gossels reminded the Board that the applicant had said during a discussion of the Fire Chief's recommendations that requiring the three story buildings to have elevators would render the project uneconomic.

Mr. Haverty said that under the regulations the list of conditions needs to be proposed and submitted to the applicant, the applicant should have the opportunity to review that list, and make a determination on whether it could live with that list or whether that list as proposed in the aggregate would render the project uneconomic. At that time the Board would then conduct a review of the pro forma to determine whether the ZBA agrees with that assessment.

Mr. Tamm reminded the Board that the consultant review process needs to be completed otherwise the ZBA cannot fully assess all of the outstanding issues.

Attorney Witten vigorously disagreed saying that the both Attorney Haverty and Attorney Tamm were incorrect. He said he had the regulation in his hand and it said that the pro forma needed to be presented prior to closure of the hearing. He suggested that the Board read the regulation. He also was critical of the

fact that consultant review was not complete when the end date for closure of the hearing was near. He suggested that it was a cruel joke on the public to say that the Board cannot get the pro forma until the consultant review is completed then there is only a limited time left before the hearing must be closed. Mr. Witten also commented on the other requirements of the regulation which state that the applicant must have a chance to modify his proposal. He suggested that the applicant has had six months to modify his proposal. He said that once the hearing has been closed there cannot be a colloquy between the applicant and the Board and the applicant cannot produce the pro forma after the hearing has been closed or else there will be an Open Meeting violation. As to the third condition, the Board has not had an opportunity to propose conditions and consider requested waivers. He said the applicant has to first come forward with the pro forma before the Board can make those comments. And finally he said that the applicant has to disagree with the proposed conditions and he argued that the applicant has already stated that he disagrees with the conditions that the ZBA, the Board's consultants, and Town staff have suggested because it would render the project uneconomic. He felt that there was no requirement that there be a logical sequence in this order. He said that as the Board waits until the very end when all of the reviews have been concluded then the March 5 deadline will have arrived and the applicant would not have submitted the pro forma. He insisted that the applicant has said that the conditions proposed by the peer review consultants would render the project uneconomic.

Mr. Haverty agreed that the consultants need to finish their review but review was close to conclusion. He said that if the Board was ready to submit their conditions they would be within their rights to request the pro forma, however until that list is submitted then the applicant doesn't know what he is submitting the pro forma for and without that list he cannot prepare a pro forma. He explained that that is how the regulation reads. Before the ZBA is allowed to conduct a pro forma review a list of conditions has to be submitted. He said that if the Board is ready to submit conditions it is now or never and therefore is up to the Board. He said that he has not seen much in the way of modification of the plan.

Ms. Quirk said that she believes the reason the Board has not submitted conditions with any specificity is that there would be such a gap between conditions that the Board would impose to make the project something the Town could accept and what the applicant is willing to do in the way of modifications that it would not be productive. She asked other Board members whether her summary was fair to say.

Mr. Klofft said that he still sees significant issues with the proposed plan. He felt there was a long way to go with stormwater which is a significant issue.

Attorney Haverty said that the process was far enough along that if the Board had thoughts on conditions it could propose them.

Mr. Klofft said that he was not there yet because he has not heard enough between the reviews and what models were used. He said it would be difficult to construct conditions around this.

Mr. Haverty said that on March 5th the Board could submit conditions, ask for an extension, and continue the hearing so that a pro forma review could be done.

Ms. Quirk and Mr. Klofft both agreed that the Board might not be in the position to be able to write conditions at the meeting. Ms. Quirk said that the Board would probably have to proceed until March 5.

Mr. Witten again said that the Board could ask the applicant for the pro forma. He said that it did not have to be sent out for review. On behalf of his large number of clients he then urged the Board not to deny the project but to instead to impose conditions that show alternatives such as were included in the MEPA

report to show that the project can be built with twenty or twenty-four units or at six or at eight units. He said that a denial is a direct pipeline to the Housing Appeals Committee (HAC).

Attorney Haverty mentioned that a copy of the pro forma was included in the initial application to Mass Housing in 2010. The Board could use that for reference, but not send it out for peer review.

Mr. Moss said that there have been no changes made to the preliminary pro forma that was submitted to Mass Housing. Ms. Quirk reminded the Board and audience that it is part of the public record.

Frank Huntowski, 42 Cutler Farm Road, said that the Mass Housing pro forma is incorrect. He said that the applicant is not allowed to put down \$2 million for the purchase price, but rather they would have to put down \$700,000. He suggested that the Board have the correct pro forma, and not one that he felt was incorrect because the applicant would be paying three times the market value for the land. He said he felt that the Board and the Town were being squeezed by the applicant's team by their not granting an extension. Without an extension and time to review the pro forma he said that the applicant is not giving the Board a sense of the economics of the project. He asked the Board to approve the project with all of the public's conditions that have been submitted to the ZBA through various resident memos.

Ms. Quirk then asked for an update from traffic consultant Howard Muise of VHB.

Mr. Muise said that from discussions at the December 13, 2011 ZBA hearing more analysis was requested on the potential diversion of trips from Landham Road to Woodside and Raymond Roads and on the impact on the Landham and Boston Post Road intersection. On January 4, 2012 travel time runs were conducted. The trips per day and travel time at the alternate Woodside and Raymond Road route was forty-nine seconds longer and two tenths of a mile longer than the Boston Post Road and Landham Road intersection route. An average delay of thirty-three seconds was calculated for vehicles turning left at Landham Road onto Boston Post Road. He said that given that the date was close to the New Year holiday and from hearing accounts from the public at ZBA meetings he felt another look was warranted and was therefore conducted on February 7, 2012. He said that the morning study determined a thirty-four second average delay which supported the earlier study.

There was a good deal of discussion about the analysis technique and type of software used by the applicant's traffic consultant and VHB. The software Tetra Tech used is from Great Britain and is not widely used in the United States, nor is it sanctioned by the Massachusetts Department of Transportation. Mr. Muise said that the delay that was determined by Tetra Tech's software was thirty-three seconds with an average queue of two cars. In comparison, VHB's software showed an average queue of four to twelve cars which he argued was more consistent with other traffic reports for the area. He said that Tetra Tech did not do a full review for the evening hours but they did conduct a review of existing conditions. Results showed a seventy-three second delay and five car queue for the evening hours. In comparison, VHB's study showed a nine to sixteen car queue. He said that all studies show that the intersection operates at a level of service F currently. He said that site distance is not adequate for cars turning left onto Boston Post Road because of the curve. Also, the crash rate at the intersection is higher than the Massachusetts average. He questioned Tetra Tech's response that they did not expect the crash rate to change because Mr. Muise said that with more traffic volume, crashes are likely to increase. In summary, Mr. Muise said that through his additional study he just wanted to clarify what the condition was there. VHB does not think that there would be much additional diversion through the Woodside Road route due to increased travel time. The Landham and Boston Post Road intersection is clearly operating at level F already and would continue to do so and the crash rate could increase.

Ms. Quirk asked for clarification on whether Mr. Muise had any issues with the applicant's methodology used to analyze the Woodside Road diversion study. Mr. Muise said he had none. He said that he was unfamiliar with the British software. The delay time matched VHB's study but the number of cars in the queue was inconsistent with what VHB has observed.

Ms. Kablack asked Mr. Muise for clarification on his observations of the queue line. Mr. Muise said that there could be four cars on average in the morning. Ms. Kablack noted that were three previous studies, including the applicant's initial traffic study, there was found to be a delay of over fifty seconds, which makes it a level of service F. But on this second round of study done on January 4 and again in February the delay time went down to thirty-three seconds. She said that there is still some inconsistency with data that she still does not understand.

One other point she wanted to note was that the applicant's January 20 data on the number of morning car trips turning right from the project onto Woodside Road does not seem logical to her with Loring Elementary school there and for the morning peak hour. And she said that is one more piece of data that does not seem accurate.

Mr. Klofft wanted to know whether the study took into consideration that there was a school there.

Nancy Doherty said they took into consideration that people would be heading out to work to the west. She felt that the additional time it took for drivers to take the Woodside to Raymond Road route would make it less likely since it was a longer distance. She said three percent of the traffic was assigned to Woodside Road. She said it would be only a few parents driving kids who missed the school bus to the school.

Mr. O'Brien said that in Sudbury many people drive the back roads to avoid congested intersections even if the actual mileage is longer. Ms. Doherty stated numbers to show that not many cars are doing that in this case.

Ms. Quirk questioned the estimated number of people driving from the site to the school. She said that it would definitely be more than two families driving children from the project to the school. She noted that Sudbury charges a high fee for the school bus for residents who live within two miles of a school. With the cost being significant more parents opt not to pay and drive their children instead. She felt that the school/project site interaction needs greater analysis.

Ms. Doherty noted again that the level of service for the Landham and Boston Post Road intersection operates currently at Level F. She then explained the use of Synchro Software to determine level of service and she described the methodology used with the alternative software which showed a thirty-three second average delay impact. She felt her intersection queue results of four cars were accurate from her observations.

Ms. Quirk asked whether any Board members or members of the public wished to comment.

Mr. Mummolo, 71 Stock Farm Road, questioned the credibility of the applicant's analysis. He suggested that the numbers were wrong judging from his experience as a driver that uses those roads. He suggested that the applicant's software was useless since it was not accepted by the state. He felt the model did not make sense since it provided only a snapshot.

Jon Danielson, 37 Landham Road, said that the models are difficult to analyze. He said that the core assumption driving each of these models is a single calculation based on 120 units. He said that 120 units multiplied by a nationwide average provided by the Institute of Transportation Engineers for apartment complexes is 850 cars per day. He then raised the issue of increased numbers of children at the site with the potential for offices to be turned into bedrooms. This would raise the number of car trips. He also added that with the potential for home businesses at the site there will likely be UPS delivery trucks, client visits, and occupants running multiple business-related errands. He sees much more activity than anticipated at this site due to more children and more business uses.

Mr. Danielson also reminded the Board that the Johnson Farm site is located in a remote location where there is no public transportation so all of the occupants will be car-dependent. He said the discrepancy in actual volume of vehicles matters because it could become a high traffic site. He said that he understood from all of the literature on porous pavement that high traffic on porous pavement is not acceptable. He asked the Board to impose a condition that porous pavement not be used.

Mr. Klofft asked whether there was an actual number of trips per day for Landham Road. Ms. Doherty said that it was approximately 11,000 car trips. Ms. Doherty walked the Board through the process of how a traffic study is done in order to determine trip generation.

Amy Adolffson, 60 Hopestill Brown Road, asked whether anyone had studied the traffic impact around the school on Woodside Road when school gets out in the early afternoon around 2:45 p.m. She said that she drives to and from the school five days a week and the traffic impact from the school's presence is extreme congestion. She said that the queue is a lot longer than 14 cars. She further added that the wait time getting from Woodside Road onto Landham Road is also over a minute. She felt that the project at Johnson Farm would be adding significantly more traffic to an existing problem.

Gene Willette, 5 Dawson Drive, cited his own family's number of car trips just that evening by saying that he and his wife each made six to ten trips alone on Landham Road just shuttling his family to and from school and to after-school lessons.

Mr. Klofft asked Dr. Roseen to comment on Mr. Danielson's mention of 1,000 trips being too high a density for porous pavement. Dr. Roseen said that the limitation of a thousand trips per day on porous pavement has less to do with durability of the pavement and more to do with the classification of a pavement and its pollutant load. He said that porous pavement is not as durable but that factor is part of the design specifications. He said that the highest grade pavement would be used here and they are capable of designing a system that can accommodate that level of use. Problems would only happen if there were not quality control at the site.

Mr. Klofft said that he would agree but added that as an engineer one would test products where the risk of failure is lower. He said that there is no option for failure at this site given its sensitivity. Dr. Roseen respectfully disagreed because there are engineering redundancies that have been built in for this site and a high level of review has been given. He said that communities should embrace this technology if they are genuinely concerned about the quality of habitat and water. He added that from the questions brought up at the meeting he felt the community was never going to be ready to embrace this technology.

Mr. Stevenson said that the ZBA was really in a filibuster on every issue raised with this project. He said that he felt that the ZBA was being pushed right up until the last minute and forced to vote yes or no on one proposal. He said that this proposal is way too big and he felt that the applicant should come up with

a proposal that the applicant and the Board could live with. He referenced the recently approved Landham Crossing and Coolidge at Sudbury proposals as examples of projects that have been approved for this neighborhood. He suggested that alternatives need to be discussed so that the Board is not left with one bad option.

Ms. Quirk then took a poll of the ZBA members to see what number of units the Board would be comfortable with.

Mr. Stevenson said that perhaps a condition should be set in front of applicant with a number we all can live with.

Mr. Klofft agreed with Mr. Stevenson because at past meetings he also brought up the question about whether or not the applicant was willing to come up with an alternative. But he said that it was difficult to throw out a unit number due to the engineering of the site. He questioned how stormwater and wetlands could be dealt with in a more reasonable way than this 120 unit plan. He said that the site deals with serious technical issues beyond simply density, neighborhood impact, screening, and quality of community issues. He wondered what this sensitive site could support.

Mr. Stevenson agreed with Mr. Klofft that not all of the details would be known at this meeting. But he said that 120 units would probably not work and less would be better.

Ms. Quirk said that if the project had fewer than ninety bedrooms then the applicant could build a conventional septic system which would be less expensive than having to build the wastewater treatment facility. She suggested sixty units with the current bedroom mix. She said that sixty units could alleviate some of the issues with the porous pavement because more of the parcel could be freed up. She suggested perhaps using a combination of conventional and porous pavement.

Mr. O'Brien asked about the den, or office, issue. Ms. Quirk said that she would impose a condition that there be no offices in the floorplan.

Mr. Stevenson suggested a development smaller than sixty units given the amount of true buildable land and the septic system issues. He again pointed to the recently approved Landham Crossing and suggested that a development in the thirty to forty unit range would be more appropriate for the site. He said that there could be just one access point and he suggested two story buildings. He said four buildings with eight units to make thirty-two units would be more reasonable. He did not see why that could not work financially except that the purchase price might make it prohibitive.

Mr. Klofft asked whether the applicant would work together with representatives of the Board and Town Staff to come up with an alternate plan that would meet the developer's profitability, needs and limitations, and also meet needs of the neighborhood. He said that typically the ZBA, when faced with the numerous 40B proposals it has seen over the years, establishes a dialogue and works collaboratively through the issues.

Mr. Tamm said that the 120 unit development is being proposed under the 40B regime and he said that the applicant and the ZBA need to comply with the regulations. He said that the regulations lay out when contemplations of unit counts can be made and those discussions can be done in the context of the pro forma. He said that the applicant cannot simply contemplate a wholesale reduction in units without consideration of the comprehensive conditions. He said that the Board should read the regulations.

Mr. Klofft said that he was well aware of the regulations. He said that Attorney Tamm has provided one way to deal with the situation. However, he said that all of the past 40B projects that the Board had approved were arrived at through a collaborative effort between the Board and the developers. He referenced Landham Crossing again explaining that the conditions imposed were those that all parties approved. He said that he hoped that the applicant was sensitive to the fact that there are a number of 40Bs in the area of Landham Road creating a high density of affordable housing in one geographic area of Sudbury. He then referenced a CHAPA meeting he attended that provided a review of the number of approved 40B applications in Massachusetts and Sudbury had in excess of 80% of 40Bs approved throughout the state over the window of time that CHAPA had analyzed. So he felt that this Board and the community has done a lot to meet needs of developers and for the community to get its required percentage of affordable housing.

Attorney Haverty said that giving the applicant an incomplete list at this hearing is going to make the pro forma review a waste of time. For instance, he said that the applicant could come back with just Mr. Stevenson's suggested condition saying that the condition would render the project uneconomic.

Mr. O'Brien asked whether the Board could close hearing and issue the conditions. Attorney Haverty said that it could. He said that the Board has the right to impose conditions without having had a pro forma review but that could mean taking a risk that those conditions would render the project uneconomic because there has not been a back and forth with the applicant. He said that the Board also has a right to impose conditions that render the project uneconomic if those conditions are consistent with local needs. If the Board feels that it has conditions that are necessary for health, safety, and open space, that are consistent with local needs then it does not need to do a pro forma review.

Mr. Stevenson said that he was not necessarily looking to do that legally or to the applicant. He said that he would prefer to come up with a suitable plan in a cooperative fashion to create a project that is financially economic where the applicant can make a reasonable return on his investment and where the Town can have a project that it can live with.

Mr. Klofft agreed. He said that this proposal is large in scale and is right up against the boundaries of the abutters, there are legitimate safety issues that have been raised by the Fire Chief, a twenty-five percent increase in traffic and delays at the intersection and there are several outstanding stormwater issues hinging upon porous pavement.

Ms. Quirk said that the ZBA has been getting signals all along that this would not be a collaboration so she does not feel that the ZBA has been caught by surprise that there is only one more hearing and there are still outstanding issues. She said that the ZBA can ask the applicant one more time if he would be willing to collaborate and she said that the ZBA should just proceed to next hearing to ensure that it has all the data that it needs and render a decision after the hearing is closed.

Mr. Stevenson said then there would only be one plan on the table. He would be more comfortable with two plans.

Mr. Moss said for the record that he was interested in collaborating with the Board. However, he said that if the Board's terms were for thirty units that was not realistic. He said that if the Board would like to have a working session in the next few weeks with appropriate representatives from the ZBA and legal representation where he could lay out some economic scenarios for the ZBA to consider as alternatives to the project, he would be happy to do that. He said that he was not prepared to do this at this meeting.

Mr. Klofft said that if the applicant did this and it looked as though there was some progress then maybe the applicant would be willing to grant an extension.

Ms. Kablack said that ZBA counsel would probably advise that ZBA members should not be involved in the working session due to open meeting laws but rather Town staff and the ZBA's consultants could be at the meeting. This would avoid any inference that anything is being done outside of the open hearing.

Ms. Kablack said that she would need to hear from the Board on whether they had any parameters that they wished to have addressed at the working session.

Mr. Klofft said that he would have a difficult time suggesting a number of units because it would depend largely on design and other factors including the need to maneuver around buildings and setbacks from property lines.

Mr. O'Brien said that perhaps four buildings could be cut from the southern side.

Mr. Klofft said that the problem with the existing plan is that there is so little margin for error that if something goes wrong it would be problematic. He said that if something is removed from the plan then the applicant could build a traditional septic system, use less porous pavement and more conventional pavement. He suggested that the height be two stories. Although he did acknowledge that with three stories there would be less of a building footprint.

Ms. Quirk said that generally since the buildings would be built in the AURA and cannot be seen then higher buildings are perhaps fine at the rear of the building but should be lower where seen by the public way. Mr. O'Brien agreed.

Mr. Gossels said that he was ok with the parameters mentioned.

Mr. Klofft asked whether a Design Review Board representative could be present. Ms. Kablack said that the DRB mainly comments on architecture. Mr. Klofft wondered whether the DRB would have input on layout.

Ms. Quirk said that a new plan should minimize any impact, visual or otherwise, on any or all abutting properties.

Mr. O'Brien said that he had less of an issue with overall height because having taller buildings would result in a smaller footprint.

Mr. Gossels said revisions should mitigate impacts on the southern border.

Ms. Quirk then asked whether any members of the public wished to give comments that would be helpful for potential alternatives.

Frank Huntowski, 42 Cutler Farm Road, said that he is not optimistic about the proposed working session. He said that everything has become larger since the original proposal in 2010. He did not see how there could be significant changes. He said that the ZBA needs to be strategic. He felt that a condition of thirty units would be denied by HAC. He encouraged the Board to look at Attorney Witten's conditions instead and he urged the Board not to deny the project. He told the Board not to worry about the headline that would appear, meaning the Town's perception. He said that the Board should put in a lot of redundant

conditions such as every fire, safety, and wetland condition so that all that would be left is the possibility of a thirty-unit development. He said that there can be pro formas that say the project is not economic, but he said that a thirty-unit development is, in fact, economic. He said that he has a background in economics and offered to buy the property himself for \$700,000, which he said was a bona fide offer, and he could put in thirty units or fewer on the property and make it work financially. He offered to show the ZBA his financial statements to show that he can buy the property. He asked the ZBA to be thoughtful about their conditions. He said that the ZBA does not need to worry about designing the project but instead should put in enough conditions that if many were struck down some would remain. He said that a denial will ensure that the neighbors would lose control of their appeal and the Board would regret that decision.

Mr. Stevenson asked Mr. Huntowski what conditions he was suggesting. Mr. Huntowski said that this project is not a limited project and cannot cross the wetlands, there needs to be fire access behind the buildings, there needs to be a secondary access to the property, there should be no three story buildings, and there should be a 100 foot buffer from all lot lines. He said that the Sudbury River Neighborhood Association had also submitted a condition about porous pavement and he said they could submit more. He encouraged the ZBA to put all of them into the decision because to date the hearing process has not been a negotiation.

Ms. Kablack asked Mr. Haverty to explain what the Board's options are if the HAC does send the decision back to ZBA. Mr. Haverty said if the ZBA issues an approval with conditions then the HAC determines whether the conditions, in the aggregate, would render the project uneconomic. Then the HAC will issue its decision and the ZBA will have a thirty day appeal period to issue new decision with conditions that are consistent with the HAC's. He said that there might be more room for the ZBA to affect conditions in that manner than if there was an outright denial. With a denial the HAC's view would be dependent upon what the denial is based on.

Ms. Quirk said for clarification that there is not much procedural difference between issuing a decision with an approval and conditions that might be deemed uneconomic and issuing a denial. Attorney Haverty said that there might not be a big difference between issuing a decision with a condition that would allow only thirty units and a denial. He said that the HAC appears to be following a guideline that if a project is reduced by over five percent then the presumption is that the project is going to be rendered uneconomic. This presumption puts the ZBA in the position of having to impose conditions that would be consistent with valid local needs, which is the same standard for a denial.

There was a discussion about how the reduction of the 120 unit proposal to thirty units could be uneconomic due to the purchase price.

Attorney Witten then listed his various credentials with litigation of 40B, SJC, Appeals Court cases, Trial Court cases, and HAC cases. He said he could tell the ZBA what the law is and how it works. He said he represents cities and towns. He said the rule of thumb today is "don't deny the 40B." He said that if the ZBA denies then it will lose. He said that not only would the ZBA lose, he said his clients, the Sudbury River Neighborhood Association, would lose the right to a 40A appeal. He therefore asked the Board not to deny this 40B because it would take away the neighbors' rights, depriving them the opportunity to raise these issues in a fair tribunal, the Superior Court. He cited a case in Holliston, MA. He said the ZBA should grant approval for the minimum number of units that would still be economic because the burden of proof would then be on the applicant to show that the project is uneconomic. Attorney Witten also said that he disagrees with Attorney Haverty that the ZBA has another chance to submit conditions once the decision is reviewed by the HAC. He said that instead the ZBA would be stuck with their conditions. He

said the same would be true in the case of a denial. He said that instead the twenty-five pages of conditions would stick if they did not render the project uneconomic.

A discussion between Attorney Witten and Attorney Haverty ensued.

Frank Huntowski asked the ZBA not to take away the neighbors' appeal rights by denying the project. He said that the neighbors have been talking about this for a very long time and he was extremely surprised that this was coming out at this late date with the Board because he thought it was well known. He said he appreciated the advice that the ZBA was getting from Mr. Haverty but he said that his attorney, Mr. Witten, was very experienced. And he again asked the ZBA not to take away the neighbors' appeal rights.

Ms. Quirk assured Mr. Huntowski that Mr. Haverty was also very experienced.

Mr. Haverty said that he never suggested a denial and that he was merely helping the ZBA make a determination on how to proceed.

Mr. Klofft said that he still feels that there is a way to collaborate and come up with something everyone could live with. He said he would support continuing the hearing to March 5, unless there is no extension provided, but this would be known from the results of the working session.

Attorney Tamm said that he and his applicant were not inclined to provide an extension at this time. Mr. Moss added that he has given as much as he can technically and he and the peer reviewers do not agree on certain things. He said that if he thought the working session would be productive then he would meet, but only if there were a give and take process. He said that he understood that he was in for a multi-year approval process since the neighbors made fact that clear. He estimated that it would be about three years until the project would get underway.

It was agreed that a working session would be scheduled by Ms. Kablack.

There being no additional comments from the Board or the public, a motion was made and seconded to continue the hearing to Monday, March 5, 2012 at 7:30 p.m. in the Sudbury Grange Hall.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels

Stephen A. Garanin, Associate