

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Nicholas B. Palmer, Clerk; Nancy Rubenstein; Jeffrey P. Klofft; and John Riordan (Alternate)

Also present at the meeting on behalf of the Town were Barbara Saint Andre, Jonathan Silverstein of Kopelman and Paige, Glenn Garber, Jeffrey Dirk of Vanasse and Associates, and Janet Bernardo of Horsley & Witten.

The Clerk read the Public Notice. Mr. O'Brien read the preamble:

This Board is acting under the authority granted in the Massachusetts General Laws, Chapter 40B, sections 20-23, and under the DHCD regulations codified in 760 CMR 56.

Under section 21 of Chapter 40B, the zoning board of appeals is to hear a single application to build low or moderate income housing rather than requiring the applicant to make separate applications to the applicable local boards such as the Town's Conservation Commission, the Board of Health, the Historic District Commission, and others.

Under section 21, the board has the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to the said permit conditions or requirements with respect to height, site plan, size or shape, or building materials consistent with the terms of Chapter 40B.

The Board is reviewing this application because at the time the application was submitted to the town, less than 10% of the year round housing units planned or actually constructed in the town of Sudbury were "affordable" units according to Massachusetts regulation.

The Board may act upon the application in the following manner:

- Approve a comprehensive permit on the terms and conditions set forth in the application;
- Deny a comprehensive permit as not consistent with local needs, or
- Approve a comprehensive permit with conditions that do not render the construction or operation of such housing uneconomic.

In the event this 10% threshold has not been met, Chapter 40B provides that a rebuttable presumption exists that there is a substantial housing need that outweighs local concerns. Further, Massachusetts regulation limits those "local concerns" that may be taken into consideration when reviewing a comprehensive permit to (i) the need to protect the health or safety of the occupants of a proposed project or of the residents of the municipality, (ii) to protect the natural environment, (iii) to promote better site and building design in relation to the surroundings and municipal and regional planning, or (iv) to preserve open spaces.

If the Board approves the comprehensive permit, any person aggrieved may appeal to the court in accordance with the requirements set forth in M.G.L. c. 40A, Section 17.

If the Board denies the comprehensive permit or approves the permit with conditions or requirements the applicant considers unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, Section 22.

The first hearing on this application was on February 22, 2016. Massachusetts regulation requires that, in the absence of an extension agreed by the applicant and the board, the hearing shall be closed within 180 days of the first hearing. For this application, the hearing must then be closed by August 20, 2016, and a decision must be issued within 40 days. Because this is the final publicly scheduled hearing on this application, unless an extension is agreed, the board must issue a decision on or before Saturday, September 3, 2017.

The agenda for tonight's hearing is as follows:

- Stormwater
- Pro-Forma analysis
- Other site impacts.
- Mitigation & community needs.

The board expects that all persons present in this room will act respectfully towards one another, in the spirit of what may well be an animated discussion, but which at all times shall remain civil and respectful.

A few rules then to ensure some decorum:

1. You must be recognized by the Chair to speak.
2. All questions must be addressed to the Chair. The board will direct the questions to the appropriate responder.
3. When you speak, please state your name and address so that our records may be complete.

You may call our administrator, Lillian Vert at 978-639-3389 for information about this application and for documentation that may be discussed tonight. We will attempt to provide application materials on the Town's website so that the public may examine the same evidence that the Board is reviewing.

Mr. O'Brien stated that they had a negotiation session last Thursday with the applicant and the applicant proposed a reduction in units to 198. Mr. O'Brien also asked if the applicant would be willing to allow an extension to the closing of the hearings. He added that approving a plan with a 198 units would require an entire redesign of the project. If after the redesign the Board still feels a unit count of less than 198 is necessary, they would need to issue a decision that would be less than 198 units, which the applicant would most likely appeal as a constructive denial of the application, as being beyond the protections required to address local concerns. Mr. O'Brien also asked if Sudbury is beholden to 40B since the Avalon Bay Development has been approved.

Mr. Klofft was concerned that if the Board agrees to investigate the 198-unit scenario the public comment would be closed during their investigation. Mr. O'Brien said the applicant agreed to keeping the public comment period open during the 40 days. Ms. Saint Andre stated that the Board's first hearing was on 2/22/16 so they have until 8/20/16 to close the hearing and then have an additional 40 days for the decision.

Ms. Rubenstein, Mr. Palmer, and Mr. Riordan raised concerns about the applicant not being able to submit the necessary documents in enough time. Mr. Klofft still has concerns about Hudson Road and Peter's Way entrance. Mr. O'Brien asked if the applicant is willing to extend. Mr. Henchy said no. Mr. O'Brien stated the Board's decision is to not pursue the 198-unit plan if there wasn't sufficient time to do so.

Mr. O'Brien invited Janet Bernardo, Horsley & Witten, to speak about LID drainage, floating tanks, and MEPA review from her report. Mr. Bernardo stated that her review was in addition to Hancock's peer review. She stated that it is good environmental engineering practices to use Sudbury's higher storm values and a LID design.

Mr. O'Brien asked about the tanks at ground water elevation. Ms. Bernardo said her understanding is that the ground water is high and varies throughout. She believes that the water table is probably not 144 inches down for the interior 2,000ft length. The design includes a stone blanket and the water follows the stone until it reaches an outlet.

Mr. O'Brien asked about Ms. Bernardo's MEPA comment in her report. She stated that they were never given the documents that showed the reasoning for the 48,000 gallons for wastewater and there was concern because it was close to the 50,000-gallon threshold for MEPA review. Mr. O'Brien asked Mr. Silverstein about NEF funding. To his knowledge there is no case law that determines if NEF funding constitutes a state subsidy that would trigger MEPA.

Mr. O'Brien asked about the impact at TI Sales. Ms. Bernardo stated that wastewater is based on mounding analysis and the applicant hasn't done it. Mr. Henchy said that the analysis is done through the DEP permit and Sudbury's BOH has no jurisdiction. Mr. Klofft made the point that wastewater has an effect on the stormwater which is under the ZBA's jurisdiction. Mr. O'Brien is still concerned about the effect next door especially since there are already issues. Mr. Palmer estimated the height of the retaining wall at 13-14 feet. Mr. Henchy states the wall ends up being 12.5 feet. Mr. Palmer asked if there are any plans that show that. Mr. Henchy stated that they were provided on July 14, 2016.

Mr. O'Brien asked why a developer would do a project that is uneconomical. Mr. Engler stated that an uneconomic project can still generate cash flow and developers often build for other reasons. Mr. O'Brien asked what the tipping point for a return is. Mr. Engler said it has to be looked at on a case by case basis and operational costs aren't cut down proportionately by decreasing units.

Mr. O'Brien asked Mr. Dirk if the fire and police chiefs were ok with the most recent design of Peters Way, a no left turn coming out of Peters Way going north towards Concord Way at restricted times. Mr. Dirk stated that it was ok. Mr. O'Brien also asked for confirmation that a right turn only out of Peters Way and the use of serrated concrete was not allowed by the fire and police chiefs and Mr. Dirk confirmed. Mr. O'Brien asked how the turn restriction would be enforced if it is on private property. Mr. Dirk responded that the sign would not be on private property and enforced by the police.

Mr. O'Brien asked if Mr. Dirk thought it was sufficient solution to manage the safety concern. Mr. Dirk stated his opinion is that the applicant has exhausted all options other than closing that access. Mr. Dirk stated that any development over 30 units needs two access points. Mr. Klofft questioned the number 30. Mr. Dirk stated that he will help clarify the origin of the standard.

David Hornstein, 22 Candy Hill Road, responded to Mr. O'Brien about the traffic memo he submitted today. He is concerned about traffic crossing Hudson road. Mr. Hornstein presented a diagram showing the existing and proposed sidewalk. There is no current proposal on how to connect the new crosswalk to new bike path. Mr. Hornstein doesn't believe the sight line has been peer reviewed or accurate. He noted problems with the sight lines when leaving the development. He had concerns about the lack of a crosswalk at First Parish and the need to cross the street twice. In addition, he had concerns that pedestrians crossing the street can't see the car existing the development from the center lane or the car traveling westbound. His memo included other scenarios. He noted that the applicant never provided a

diagram of the pedestrian crossings. Mr. Hornstein had concerns with the hiring of Mr. Dirk and stated that he works with Mr. Engler. Mr. O'Brien expressed concerns with the 40B process and the fact that all the consultants work together.

Mr. Henchy objects to all statements and lines of personal attack. Mr. Klofft stated he was not impugning his professional work but the process.

Mr. Henchy called Mr. Hornstein's objection a charade and then apologized for using that word. Mr. Henchy points out that his stormwater engineer was asked to come to the meeting twice and not asked to speak at either meeting.

The Board agrees that Mr. Hornstein's has presented valid information during the public process. Mr. Klofft added that he has done zoning for over 25 years and this was the most inefficient process with which he has been associated.

Mr. Klofft asked if the principal access road as designed complicated the intersection. Mr. Dirk stated that it meets the minimum engineering standards for safe operations to a foot. Relative to the pedestrian crossing, it is a controlled crossing and meets the design standards for safety.

Mr. Gossels added that the secondary egress is in the historic district and a three-lane design is not in character. Mr. Dirk said the exit does not affect the public way and the impact would be an increase in delays for cars exiting the development. Mr. Gossels followed up by asking about the safety implications for emergency vehicles if the driveway was reduced to two lanes. Mr. Dirk responded that the turning radius is the issue and if that were kept the same a two-lane layout would not affect the safety. The implication would still be the same for the public way but it would increase the exiting time from the development. Mr. Riordan stated that increasing exiting times for the development would just shift the traffic problem.

Janie Dretler, 286 Goodmans Hill Road, is concerned about the traffic safety impact on children.

Taryn Trexler, 253 Concord Road, looked at crash data from Hudson and Concord Road intersection. She stated that if the radius is expanded around the intersection to where the traffic usually queues, the data is significantly different than what was presented. Mr. Dirk responded that if the radius is extended outside influences come into play. He added that the number of cars determines the crash rates and that number is diluted when the intersection is expanded.

Mike O'Malley, 177 Plympton Road, stated the peer reviewer, Mr. Dirk, had worked on 4 other projects with Mr. Engler. He encouraged the Board to look into the peer reviewer.

Kristen Salerno, 564 Peakham Road, stated she agreed with Mr. O'Malley. She also asked what a controlled crosswalk is. Mr. O'Brien said that it is light beacon on the side of the road. She asked if the glare is considered for the beacon. Mr. Dirk said yes. She asked the board to scrutinize that crosswalk design.

Tracy Leu, 29 Meadow Drive, has concerns about the one-way traffic movement proposed for Peters Way proposal. She stated that the signs on Meadow Drive are routinely ignored.

Amrita Nichols, 220 Old Lancaster Road, request the board review the background of the peer reviewers.

Kristen Roopenian, 45 Harness Lane commented on the sloppiness of the applicant.

Dan Reich, 28 Normandy Drive, commented that this project is contradictory of all the recommendations of the American Association of Highway and Transportation Officials.

Jill Falvey, 409 Dutton Road, thanked the Board and asked that they continue to fight for Sudbury.

Tom Rogan, 80 Goodnow Road, requested that the Board make their decision using the facts made to date without consideration of what may or may not happen in the future. Mr. O'Brien responded that the board has to be conscious of the past and the odds are stacked against them. They would prefer to get a project that might be upheld with some sacrifices rather than get the project they do not want.

Peter S P Gimber, 377 Concord Road, thanked the Board for its effort and asked them to rely on empirical observations relevant to the traffic study.

Scot Smigler, 125 Plympton Road, stated that 90 percent of 40B projects denied at ZBA level eventually get full approval, but asked what percent of those projects actually get built. He suggests that the Board read the MIT study.

Mr. Dirk stated that the applicant for this project is not SEB and that he has never worked for the applicant, which is what would create a conflict of interest. He added that his ethics have never been questioned. Mr. Gossels stated that they are not impugning his professionalism. Mr. Henchy stated the applicant is Sudbury station LLC and they don't have any other projects. Mr. Henchy also stated he has never had any conversations with Mr. Dirk prior to this project. Mr. Klofft clarified that he was referring to the system and not Mr. Dirk.

Kevin Tighe, of TiSales, Hudson Road, has concern about the line of sight at the crosswalk. He is surprised by the lack of consideration given to the traffic entering and exiting his site.

Owen Hughes, 31 Candy Hill Lane, thanks the Board for their time and added if they approve this project he would like them to consider offsite concessions. Mr. Gossels stated the reason he hasn't raised that point is because they have been so far from a project he would vote for.

Jenna Roberts, 14 Griffin Lane, has concerns about the traffic.

Ms. Trexler is curious about developers plan for 30 Hudson Road. Mr. Henchy stated that the plan has the garage and house intact and they will have an easement for the road. Mr. Klofft asked how that impacts the pro forma and questioned whether the cost of property should be included or just the easement.

Ms. Trexler asked if all the buildings are setback 300ft or more and wonders why the jurisdiction of the historic district was too burdensome. Mr. O'Brien stated the historic district waiver that was requested was too broad.

Ms. Rubenstein hasn't seen response from the applicant regarding the architects peer reviewers report and requested it. Mr. Claussen said there wasn't one required.

A discussion about the date of the next hearing ensued and it was decided that the next hearing would be on August 17, 2016 at 7:30PM and Mr. O'Brien request all correspondence be submitted 5 days in advance. Ms. Saint Andre also requested that the applicant respond to the architect's peer review.

Motion was made, seconded and voted to continue them to August 17, 2016 at 7:30 pm.

SUDBURY ZONING BOARD OF APPEALS  
MINUTES  
JULY 25, 2016

There being no further business, the meeting was adjourned at 10:12 pm.
