

SUDBURY ZONING BOARD OF APPEALS

MINUTES

October 23, 2017

Board Members Present: John Riordan, Chairman; William Ray, Clerk; Nancy Rubenstein; Jonathan Gossels and Frank Riepe.

Attorney Joshua Fox of Rollins, Rollins and Fox representing B'nai Brith Housing/Covenant Commonwealth Corporation—Post Road Limited Partnership, Owner; Holly Grace, Coolidge Senior Project Manager; Max Glickman, Coolidge Project Manager; and Michael Jacobs, Financial Consultant for the Owner were present for the meeting.

The meeting was called to order at 7:30 p.m.

Mr. Riordan opened the hearing by asking the Clerk to read the notice as published in the newspaper.

1. Public Meeting Case 11-27 – B'nai Brith Housing New England, Inc./Covenant Commonwealth Corporation—Post Road Limited Partnership (Owner), Applicants, for a Modification of the existing Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B and 760 CMR 56.04 & 56.05, The project is known as Coolidge at Sudbury, Phase One, and is identified as Parcels 0012, 0080, 0081 and 0082 on Town Assessor's Map K10, at 187 and 189 Boston Post Road. The Board will discuss and vote to determine whether the proposed modification is substantial pursuant to 760 CMR 56.05(11).
2. Public Meeting Case 16-21 – B'nai Brith Housing New England, Inc./Covenant Commonwealth Corporation—Post Road Limited Partnership (Owner), Applicants, for a Modification of the existing Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B and 760 CMR 56.04 & 56.05. The project is known as Coolidge at Sudbury, Phase Two, and is identified as Parcels 0012, 0080, 0081 and 0082 on Town Assessor's Map K10, at 187 and 189 Boston Post Road. The Board will discuss and vote to determine whether the proposed modification is substantial pursuant to 760 CMR Regulations 56.05(11).

Mr. Riordan read the guidelines with respect to MGL Chapter 40A and 40B and 760 CMR 56.04 and 56.0. Mr. Gossels and Mr. Riordan discussed and clarified tonight is an administrative meeting; not a hearing. Mr. Riordan also noted that in Chapter 11 of CMR 56.04 the Zoning Board of Appeals hold a meeting and provide a determination within 20 days of the filing of the request, in cases where the Comprehensive Permit has already been granted. The Board will determine whether the request is insubstantial or substantial. Mr. Riordan continued explaining the decision-making process pursuant to MGL Chapter 40 B Section 21 and 40 A, Section 17.

Mr. Riordan asked the Owner's representatives the nature of the meeting pertaining to the Comprehensive Permits for Coolidge Phase I, issued on August 9, 2011, and Coolidge Phase II, issued on April 7, 2017.

Attorney Joshua Fox introduced the team representing the Owners (Applicant) and indicated that though the request was lengthy, the request is simple. He is seeking a finding of an insubstantial change to both Phase I and Phase II Comprehensive Permits. He explained there is a clause within both Comprehensive Permits listing the Town as having the first right of refusal in the very unlikely event of the developer having a financing problem. This would include the developer going into default, failing to cure the default, or having a modification with the lender wherein the lender would have to notify the Town which would have the right to assume the obligation to pay the lender under the terms of the mortgage. Then the Town would stand in the shoes of the developer, if the Town wanted to exercise that right. In the event of such a foreclosure, under the Regulatory Agreement, if the project was deemed uneconomical, the

SUDBURY ZONING BOARD OF APPEALS

MINUTES

October 23, 2017

affordability component would be reduced from 100% to 25%. This does not mean the Subsidized Housing Inventory (SHI) changes. All units in Phase I and II buildings would be accountable towards the affordability component of the SHI.

Mr. Gossels explained why the clause was implemented within the Comprehensive Permit highlighting it was to ensure that residents within these developments had their interests protected. Mr. Fox noted that the two Coolidge projects are quite different from other affordable housing projects in town and the issue is with financing because his clients are unable to obtain it.

Mr. Riordan asked Mr. Fox to explain why if there was a foreclosure, a “failure to cure” and other remedies are available, the Town currently has a provision what the Applicant seeks to modify. However, if that were to happen, and the number of affordable units were to revert from 100% to 25%, is it true that still 100% of the units would be treated as though they were “affordable” as part of the SHI Mr. Fox reiterated that the number affordable housing units would not change in the SHT.

Mr. Gossels asked for clarification of the financing issue facing the Applicant. Mr. Riordan asked if they received financing for Phase I, what the roadblock with Phase II is. Mr. Fox stated the financing should not have happened for Phase I given the current language within the Comprehensive Permit. What they are seeking now is a HUD insured program, which does not permit a town to have a right of first refusal on one of their HUD insured mortgages. As a result, the Applicant is seeking a refinance for Phase I so they could pursue financing for Phase II, and the lender denied the Applicant.

Mr. Gossels stated the only way the Town would receive the property would be if it went into default but then the debt would be paid off by the Town, so why does HUD have a problem? Mr. Fox indicated the Applicant did not want to have their hands tied by further procedure and they want to preserve affordability. Mr. Fox noted that what happens in these projects is that the mortgages are surprisingly low, which get paid off by the rents of the affordable occupants. As a result, HUD keeps full control over the project. Therefore, if there is a default, they collect rents directly. They could not do that if rent is not coming in, which is a result of vacancies out of no demand for affordable units. In which case, the project is uneconomical for the Applicant and the Town if it 100% affordable—that is the only way it would go into default.

Mr. Jacobs elaborated on the no market risk, which includes, first, setting rents below the maximum rent to build in a cushion of affordability. Second, they build in a replacement reserve that finances capital improvements over time. Three, they work with investors to build in a large operating reserve to cover debt service and operating expense issues. These components lead to a low foreclosure rate among similar projects of its kind.

Mr. Gossels asked if the language needed to be changed in both Phase I and II Comprehensive Permits. Mr. Fox stated that is correct. Mr. Riordan reiterated that is because Phase I will be refinanced as part of the project development for Phase II. Ms. Grace indicated this process is essential.

Ms. Rubenstein asked for clarification about a section in CMR 56.07 regarding changes in the financing program, particularly with subsidies. Mr. Fox indicated it is a guideline for what is “substantial” vs “insubstantial” and said that this particular project does not fit squarely in either category, but feel that they are in the spirit of “insubstantial” because the change is procedural in nature. Ms. Grace stated that nothing is changing in financing. In addition, Mr. Jacobs noted the mortgage program is not considered the primary mortgage company. He added that the eligibility that the project received is the tax credit program, which was the main finance program for both programs.

SUDBURY ZONING BOARD OF APPEALS

MINUTES

October 23, 2017

Mr. Riordan noted that the example in the regulations speaks to a change in the financing program, under which the applicant plans to receive a subsidy, which is not the case here. He asked what happens with the original financing of the project and with the low-income tax credit program, and the investors who purchased those for Phase I. Mr. Jacobs stated everything stays the same. Ms. Grace added that everything stays the same but changing one component that is the mortgage.

Ms. Rubenstein referred to a letter from Regional Housing Service Office (RHSO) that suggested Town Counsel be consulted to ensure Town interests are protected, but opined that the request from the Applicant was “insubstantial.” She asked if Town Counsel was consulted. Mr. Riordan indicated that Town Counsel had been consulted very early on, even before the letter was written and he and Ms. Donoghue discussed the matter as well. He further noted that Town Counsel explained the procedural path the ZBA should take for the evening and the subsequent deadlines based on the regulations. Counsel did not take a position, he added.

Mr. Riordan noted that there could be important consequences for the Town, referring to the SHI. He noted that the Town has worked hard to get to the 10%, but continues to strive for affordable housing. He asked the Applicant if they used HUD financing on the first project. Response inaudible. He said that it was the introduction of HUD financing that stirred the pot.

Mr. Riordan asked if there was any further discussion.

Mr. Gossels moved in the words of the application that this is an “insubstantial” modification to the Phase I Comprehensive Permit (petition 11-27). Seconded; vote: unanimous.

Mr. Riepe moved in the words of the application that this is an “insubstantial” modification to the Phase II Comprehensive Permit (petition 16-21). Seconded; vote: unanimous.

Meeting adjourned at 8:07 p.m.