

ANNUAL MEETING MINUTES
SUDBURY BOARD OF APPEALS
TUESDAY, JANUARY 29, 2002

The Board consisted of:

Mark A. Kablack, Chairman
Patrick J. Delaney III, Clerk
Thomas W.H. Phelps
Lauren S. O'Brien

and also Associate Members

Melinda M. Berman
Jonathan G. Gossels

Election of Chairman and Clerk

It was voted to elect Mark A. Kablack, Chairman and Patrick J. Delaney III, Clerk, to serve until the next Annual Meeting.

Review and Vote on Rules & Regulations

Following a review of the fees of surrounding towns, it was voted to keep the current fee schedule in place.

The following changes were unanimously voted:

A. Meeting and Hearings

Item 10. Delete "or continuance date."

C. Deliberation After the Public Hearing is Completed

Item 10. Add the following at the end of the sentence: "unless, at the discretion of the Board, additional clarification or information is required."

Item 12. Change 11:00PM to "10:30PM"

Review and Vote on Model Local Rules for Comprehensive Permits

It was voted to delete Section 3.02 (fees) and to add the following: "Refer to the Rules of the Board of Appeals, Section A.6."

This change will allow for compatibility between the Board's Rules and the Model Local Rules.

There being no further business, the meeting was adjourned.

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MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
TUESDAY, JANUARY 29, 2002

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Mark A. Kablack, Chairman
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Mr. Kablack, Chairman, reconvened the public hearing for the Carriage Lane LLC comprehensive permit application.

For the record, Attorney David Wallace submitted copies of an extension agreement to the Purchase and Sale Agreement as well as a letter dated January 24, 2002 from Assistant Assessor Cynthia Gerry with attachment indicating acreage and housing in Sudbury.

Mr. Kablack noted the following correspondence has been received:

- from the Fire Chief dated January 14, 2002 acknowledging receipt of an updated plan which shows the exits from the property requested by the Fire Department. The letter notes that at this time the concerns of the Fire Department have been met for site access and exit provided curb cut permits are issued by the Mass. Highway Department.

- Report of telephone conversation January 28, 2002 between Safety Officer Sgt. Deldon and the ZBA Secretary in which Sgt. Deldon stated he has no problem with sight distance from the proposed entrance location as long as there is a street light at the entrance. Sgt. Deldon was unable to provide 5-year traffic reports because of a problem with their new computer program; however, he said it was his opinion, in the 32 years he has been on the force, that this area is not a hazardous area in terms of traffic accidents. This includes traffic from the shopping plaza opposite the proposed project.

- Letter dated January 9, 2002 from Anne McCabe, 15 Easy Street, which addressed several concerns she had raised at the January 8, 2002 hearing which included concerns regarding water, traffic, safety, marketability and recreational area. Ms. McCabe stressed a reduction in the number of units.

- Letter dated January 28, 2002 from Richard J. Herlihy, Development Officer, MHFA, in response to Mr. Kablack's letter dated January 14, 2002. Mr. Herlihy describes what the applicant is required to submit to MHFA for project eligibility and notes that MHFA found the

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proposed budget for Carriage Lane to be reasonable and the developer's application to meet the basic requirements of the Housing Starts Program and Chapter 40B.

With regard to the information supplied by the Assessors, Attorney Wallace said he made it clear to the Assessors Office what the Board was looking for and they provided the chart. He said they do not keep track of acreage on affordable house as opposed to market rate. They made their assumptions based on the letter submitted by Jo Ann Howe, Sudbury Housing Authority.

Commenting on the letter from Richard Herlihy, MHFA, Attorney Wallace said during the process, in addition to the documentation submitted, he was required to submit an independent appraisal. He said MHFA has specific criteria which must be met for project eligibility and the appraisal was the only additional item required by MHFA.

Mr. Kablack referenced his telephone with Richard Herlihy during which Mr. Herlihy described in great detail the project eligibility application process and the specific financial details which are required to be provided. From that conversation and the resulting letter, Mr. Kablack got a sense that the applicant had met certain criteria, that there was review of the construction budget in great detail and that this project fell within the standards of other projects.

Mr. Phelps said the application was based on 16 units. He wanted to see the “what-ifs” if there were less than 16 units.

Attorney Wallace said the applicant is not a government program. He is a developer who wants to make a profit. To show the Board what would be made on each increment is not what MHFA says has to be shown. Attorney Wallace said he feels that the 16 units is the critical mass that is needed. With 16 units, there is enough built-in profit to make this a well-built development. He said 16 is the bottom line and reminded the Board that originally the proposal was for many more units.

Mr. Phelps asked whether Attorney Wallace was saying that a 20% profit on a level below 16 units was not worth doing. Attorney Wallace said “yes.”

Mr. Delaney said at some point the Board would have to find some compromise between Chapter 40B and the town zoning. He believed they were at odds with each other in that it appears there is the ability to accept 16 units, but not another number.

Ms. O’Brien asked what happens if the project begins but fails.

Attorney Wallace replied that for the individual affordable units, the applicant has their own lender in place. However, if the project failed, those units could be assigned, similar to what was done for Orchard Hills. Also, the regulatory agreement calls for a minimum of fifty

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years for those units; however, the applicant has offered those to be in perpetuity. These can all be written into the Decision as conditions.

Mr. Kablack said once site development has begun, there should be some surety or bonding mechanism in place for the infrastructure, i.e., landscaping, access, lighting, etc., to insure completion. He pointed out that once construction has begun, the face of the land will be changed.

Both Attorney Wallace and Mr. Marrone had no problem with this.

Mr. Kablack referenced a request made at the previous hearing to review condominium documents at some point in the process to be sure they dovetail into the regulatory requirements for the affordable units.

Further discussion followed on potential outcomes for this project. Attorney Wallace pointed out that the applicant is someone who is using his own property and betting that he can make it. Obviously, he said one could never guarantee success.

Attorney Wallace said there needs to be consensus that the Board would agree that in order for the applicant to proceed further it would be on the premise that if the Board finds everything else acceptable it would be on the base of 16 units and nothing less.

Mr. Kablack felt it to premature to vote on density. He would want to approach it from the point that if there was no ongoing scrutiny necessary on the financial side, the applicant could proceed.

Attorney Wallace said he would at least need some understanding that there is no preclusion to 16 units.

Mr. Kablack felt that to be fair. However, since the time allotted for this hearing was over, he wanted to open it up to hear from the abutters on the feasibility of the project from a financial perspective.

Lynn Ashe, 44 Easy Street, abutter, requested the Board look into the financials as it ties into the density of the project as well as all relevant information. She felt the information to date was vague. For example, it was not known who did the appraisal, and the effect of September 11th on the economy might have some impact. Ms. Ashe would want an evaluation of a lesser number of units rather than be forced to go with the 16 units proposed. For the record, Ms. Ashe submitted a letter from Martin and Danielle Bodley, 52 Easy Street, abutters who were opposed to the project and felt that 4 to 8 quality units or several customer homes would be a far better solution.

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Jay Ashe, 44 Easy Street, voiced concern that if once the development is 3/4s completed and funding runs out what would happen.

The hearing was temporarily suspended in order to hear the advertised petitions, after which it again resumed.

It was Mr. Kablack's understanding, from discussions earlier this evening, that the applicant wanted some sense that the Board was at least not precluding density based on financial aspects of the project. Attorney Wallace said that statement was correct. Mr. Kablack felt comfortable with that statement; he would not feel comfortable setting a density this evening knowing there is a host of supplemental information being requested by the Board.

Attorney Wallace understood Mr. Kablack to be saying that based on the financial information the Board has, it has not decided that there is anything wrong with 16 units.

Mr. Delaney said the Board does not have enough information. He said the only information it has is from the applicant.

Attorney Wallace said he found nothing wrong with what the Board has told him so far.

Mr. Delaney added that if the Board decides to hire a financial advisor and pose the question as to whether other lesser densities would also be viable, it might lead in another direction. He felt the question was whether the Board was going to pursue additional financial information other than what was submitted by the applicant. He said after the Board makes that decision it will know whether lesser densities are viable.

The remainder of the evening centered on the issue of density, viability, profit margin and whether an independent consultant should be hired.

Mr. Delaney felt the question to be whether the Board wanted to retain the option for numbers less than 16 units. He would be interested in knowing whether a lesser amount was possible, economically, and would like to have an independent consultant provide that information. His sentiments were shared by Ms. O'Brien, Ms. Berman and Mr. Phelps.

Mr. Kablack said he felt comfortable with the numbers, more so after having spoken with Richard Herlihy, MHFA, and felt no need for someone else to scrutinize the figures more than has been done. Mr. Kablack would be willing to say that the density of the property is not going to be driven up or down based on the proposed budget and the return the applicant is looking for seems to be within the statutory framework. However, he added that the other Board members felt differently.

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Further discussion followed on the subject between Board members and the applicant. The Board generally agreed that it was not predisposed to the number of units. Additionally, there was agreement to request that the Town Planner, investigate consultants to review the financial information provided by the applicant, including scope of work and cost estimates with a report back to the Board and to look into the MHFA Peer-to-Peer Program.

Attorney Wallace wanted to know what detail in the plans the Board was looking for since this involves considerable expense. It was suggested that he discuss this with the Town Planner who is providing technical support to the ZBA.

The hearing was continued to Thursday, February 28, 2002.

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