

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Tuesday, September 6, 2011

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

For the Applicant:

Robert Moss, Manager, Madison Place Sudbury LLC
Steven Schwartz, Goulston & Storrs
Peter Tamm, Goulston & Storrs
Bob Daylor, Tetra Tech
Glen Dougherty, Tetra Tech
Paul McManus, Ecotech

Notice was published in the *Sudbury Town Crier* on August 18 and August 25, 2011, posted, mailed and read at this hearing.

Elizabeth Quirk, Chair of the Zoning Board of Appeals, began the meeting by giving an opening statement to those present about the ZBA hearing process and an overview of Massachusetts General Law (M.G.L.), Chapter 40B. She outlined the Board's procedural expectations for the hearing and explained that this was to be the first of several hearings to be held before any decision from the ZBA would be rendered on the proposed project, The Residences at Johnson Farm, which would enable construction of a 120-unit rental property on a 36 acre-site located at 189 Landham Road.

Ms. Quirk then introduced Attorney Paul Haverty of Regnante, Sterio & Osborne LLP, who has been retained by the Town with funds provided by the applicant, and Consultant Ed Marchant, a 40B expert, whose fees are to be paid for with a grant from the Mass Housing Partnership, to assist the ZBA with the review of the applicant's proposal.

Ms. Quirk then read the list of documents received for the September 6, 2011 Meeting:

- 8/8/2011 - Comprehensive Permit Application, The Residences at Johnson Farm, 189 Landham Road
- 8/8/2011 - Traffic and Parking Analysis
- 8/8/2011 - Preliminary Site Plan and Landscape Plan
- 8/8/2011 - Architectural drawings
- 8/15/2011 - Letter from Jody Kablack, Director of Planning and Community Development, to the Applicant
- 8/25/2011 - Memo from Sudbury Resident Stan Kaplan, 98 Victoria Road, to the ZBA
- 8/25/2011 - Letter from Attorney Kevin O'Flaherty, Goulston & Storrs, to Jody Kablack/the ZBA

- 8/30/2011 – Letter from Attorney Paul Haverty, Regnante, Sterio & Osbourne LLP
- 8/30/2011 – Memo from Bill Place, Town Engineer/Director of Public Works, to the ZBA
- 9/2/2011 – Memo from Attorney Kevin O’Flaherty, Goulston & Storrs, to Jody Kablack/the ZBA, two stamped copies of architectural drawings enclosed
- 9/2/2011 – E-mail from Peter Sargent, Commission on Disability, to the ZBA
- 9/6/2011 – Memo from Jody Kablack, Director of Planning and Community Development, to the ZBA

Ms. Quirk then asked Director of Planning and Community Development to discuss her memorandum dated September 6, 2011. Ms. Kablack then noted several items that she considered germane to the application review process and for technical completeness of the application. For thorough technical review she said that she would like to see added to the application and for feasibility analysis: drainage calculations; a stormwater management plan that demonstrates compliance with the DEP; identification of construction in floodplain areas on the plans; soils data; wastewater treatment plan; earth removal calculations; a gap was noted and Mass Housing pointed it out in their site eligibility letter that there should be information added that addresses protection of watershed and wetland areas, vernal pools, and wildlife habitat; compliance with MEPA; and for feasibility information Mass Housing asked that the applicant demonstrate the applicability of Executive Order 193 governing the use of agricultural land. She said that this information would be essential for the Board’s review of this proposal and for any technical consultant’s review as well.

Ms. Kablack said that due to the size and complexity of the project, along with the environmental aspects, the technical review will require more than the staff can provide. Therefore she recommends that the ZBA request funding from the applicant for peer review which is normal and customary for the Board to do during review of a comprehensive permit. She estimated costs of \$10,000 for Engineering, \$5,000 for a traffic consultant, \$10,000 for a wetlands specialist, \$10,000 for a legal consultant, which she noted the applicant has already given to the ZBA, and \$5,000 for a financial consultant to be used at a future point in the review process. She then suggested that there could be a hearing scheduled for the ZBA to vote on the various consultants or she could be designated as the staff person who identified and hired the consultant, if the applicant agreed to provide the funds.

Ms. Kablack noted that the applicant has asked for a number of waivers from local bylaws in his proposal. She said that the reasons for the waivers need further explanation. More detailed description would provide the reasoning for why these are included in the application.

She also requested, to allow further clarity for the Board and the community, that the applicant provide an aerial photo with superimposition of proposed buildings on the site plan along with the adjacent properties and measurements so that everyone would have a better sense of the height and scale of the project. She requested that the measurements and distances be shown on the plan so that the abutters would be able to see the dimensions and understand the location of the buildings in relation to their own properties. She also asked for a graphic presentation as well. Also requested was a narrative description that would offer a sense of the amount of clearing that would occur and what vegetation would remain along the property so that there could be a greater understanding of the natural and planted buffers. She also asked whether the applicant could suggest an example of other projects he has built that are similar in design and scale to this proposal that could be visited by the Board. Additionally she requested that the height of the buildings be noted on the plans. Lastly she noted that in her memo regarding the completeness of the application she had originally asked for stamped architectural plans, which have now arrived.

Ms. Kablack also noted that September 6, 2011 was the thirtieth day that the application has been in the Town's possession, but she said that more Town Boards and Committees would be weighing in on the discussion with their own memos.

Ms. Quirk then asked applicant Bob Moss to provide an overview of the proposal.

Mr. Moss introduced Steven Schwartz and Peter Tamm, his legal team from Goulston and Storrs, civil engineers Bob Daylor and Glenn Dougherty of TetraTech, and environmental consultant Paul McManus of EchoTech. He then walked the Board through the site plan, explaining that there was approximately thirty-five acres with frontage on Landham Road. The land has been owned and farmed by the Johnson family for the last one hundred years. While there is little farming on the site now, a two-acre portion at the front of the property has been utilized as a farm stand in recent years. Mr. Moss said that he would consider devoting that area to some sort of agricultural use once the development is built. He said that the existing farm house and majority of outbuildings would be demolished, but the large, red barn on the property would be utilized to house a wastewater treatment plant for the development. He said that there would be a double-barrel roadway, with eighteen feet per side with landscaping in the median. He said that foliage would screen the project almost completely. The project would be comprised of ten three-story apartment buildings to include 120 units. Half of the units would be one bedroom apartments and half would be two-bedroom. He said that there would be single-car garages for twenty-two of the units. Additionally there would be a business office and recycling structure. The development would be linked to the Town's water supply. Apartments would be fueled by natural gas. Power and cable would connect from Landham Road. There would be a private wastewater treatment plant that the DEP would regulate and test. He said that the DEP has tested the soils in the front three acres of the property and the DEP currently has the test report. Mr. Moss reported that monitoring wells were being installed as of September 6, 2011. He said that he is now two months into an eight month review process with the DEP but all indications are that the area will support a wastewater treatment plant. All communications that the applicant has with the DEP will be submitted to the Sudbury Board of Health.

Mr. Moss then suggested Madison Place in Shrewsbury as an example of a recent project that he has built. The architectural style and lighting would be almost identical and he offered the ZBA a tour of the site. He suggested that they tour the development in the evening so that they could have a sense of the lighting. The landscaping for Johnson Farm would be done by Sudbury Design Group. All construction would be energy star rated.

Mr. Moss noted that the proposal includes the use of porous pavement over the entire development, which he felt was a unique and distinguishing characteristic of the project. The porous pavement would be considered in the stormwater analysis.

As for concerns with significant increases in area schoolchildren, Mr. Moss said that in his experience bedroom size would limit the number of school-aged children. Given that half of the apartments are one-bedroom and half are only two-bedroom he felt that would attract fewer families with school-children. For comparison he said that only six out of ninety leases in the Shrewsbury development have school-aged children.

Mr. Moss said that for a development this size the average number of car trips per unit were estimated to be seven trips per day. He said that he has submitted a traffic study but he expects the number to be lower due to bedroom numbers.

He said that the intersection at Landham Road and Boston Post Road is difficult and that he is aware of the situation. He also noted that there are two other developments that could be built at the intersection, (one being the recently approved Coolidge at Sudbury and the other being the proposed Landham Crossing development). He said that between the three developments all would likely be participating in some form of mitigation that would impact the intersection problem.

Bob Daylor, with Tetra Tech, supported Mr. Moss' comments. He walked the Board through the site plan noting that the lines were drawn showing wetlands boundaries which were approved by the wetlands commission. He said that the roadway would be flanked by retaining walls to further protect wetlands. In regard to stormwater management he said that all runoff would be recharged through porous pavement and storage layers under the pavement. Rain gardens would be utilized for roof runoff. He said that there would be no direct discharge into any stream, ditch, or any wetland without being treated. He said that he agreed with many of the points of Ms. Kablack's memo, however they do have a plan to accommodate the stormwater issues. He estimated that only seven acres of the thirty-five acres of property would be disturbed, which is only twenty-one percent of the site with the exception of the entrance road which is 10,500 square feet of construction. He said that the applicant's team believes the project to be a limited project given that residents would need to cross the wetland on a constructed road to get to the upland area. He noted that the dwellings are set back 600 feet from Landham Road and the front of the property would be obscured by vegetation including a tall red maple swamp and the uplands are filled with tall white pines.

In response to questions Ms. Kablack raised, Mr. Moss said that Tetra Tech could submit stormwater calculations within a week and will want to file a Notice of Intent with the Conservation Commission by the end of September. He said that he also plans to submit an ENF with MEPA at the same time.

Mr. Moss said that he does not have a problem funding reasonable fees for consultants and studies, but he would rather get consultant proposals first and then pay for the services. Ms. Quirk asked Ms. Kablack whether she could write the scope of services and obtain estimates. Both Ms. Quirk and Ms. Kablack felt that the process could begin in that manner. Ms. Quirk and Mr. Gossels both approved of the idea of Ms. Kablack working with the applicant to determine the consultants rather than holding a separate public hearing to vote on particular consultants.

A discussion then ensued with the potential schedule of when information would be due. The stormwater plan should arrive in the next week. Drainage calculations and a flood plain study could be done by the week of September 12. Data on soils is ready and earth removal data could take two or three weeks more to complete. Mr. Moss said that they were meeting with the Conservation Commission at the end of September. Copies of information to be submitted to the Conservation Commission and MEPA will be given to the ZBA.

Attorney Steven Schwartz said that regarding the point about use of agricultural land for non-agricultural uses, the MEPA process addresses this conversion. Paul Haverty, Counsel for the ZBA, concurred.

Ms. Quirk confirmed that the first order of business would then be acquiring a consultant who would deal with water and soil issues.

In regard to the waiver requests, Attorney Schwartz said that the applicant wanted to be consistent with other 40B projects, including other 40B projects in Sudbury. He said that he would be happy to work with Ms. Kablack on refining the waiver list.

Ms. Quirk then asked whether the Board had any comments.

Mr. Garanin said that he had no comments at the moment.

Mr. Klofft asked for confirmation on the number of upland acres out of the thirty-five total acres. Mr. Moss said that of the thirty-five and a half acres of property approximately 21.8 acres are upland and approximately 13.6 are wetlands. He said he is planning to develop seven of the twenty-one acres.

Mr. Klofft then asked about this historic value of the existing farmhouse. Mr. Moss said that a review may need to be done by the Historical Commission, however he does not see any value in rehabbing the house and the current plans are to demolish it. He said that the owner is fine with the demolition plan. Ms. Quirk and Ms. Kablack both said that they would speak with the Historical Commission for their opinion.

Mr. Gossels said that while he understands that a larger setback from Landham Road lends itself to a larger development, he is still concerned about the height, density, and scale of this proposal and he said that he would be looking at those issues throughout the hearing process.

Mr. Stevenson echoed Mr. Gossels comment.

Mr. O'Brien stated that he had questions about the environmental impacts of the proposed development of this property. He asked whether the development would comply with local and state regulations protecting the environment and in particular whether the developer intended to comply with or to exceed the requirements set forth in the Wetlands Protection Act. Mr. Moss said that he is doing in excess of what the State Wetlands Protection Act requires but is requesting a waiver from the local wetlands bylaw.

Ms. Quirk then provided an overview of the issues. Specifically she identified issues as the following:

- 1) Project feasibility hinges upon the stormwater report. Ms. Quirk suggested devoting the next hearing to that topic;
- 2) building mass and density;
- 3) Fiscal and traffic impacts;
- 4) Design and landscaping; and
- 5) Mitigation and community needs, for example the intersection at Landham and Boston Post Roads.

Ms. Quirk reminded the Board and the public that the law requires that a decision be filed within 180 days from this hearing, which would be Monday, March 5, 2012 because the 180th day falls on a weekend.

Mr. Klofft noted that the project also needed to coincide with DEP's timeline. Attorney Schwartz said that the applicant is farther along in that process than the state permits require since the 40B process does not state that the state permit has to be in hand. He said that the comprehensive permit can be granted subject to the issuance of state permits.

Ms. Quirk then asked whether any representatives from Town Boards wanted to speak.

Conservation Coordinator Debbie Dineen, along with John Sklenak, the Chair of the Conservation Commission, said that this proposal has the most potential for wetlands impacts since the bylaw changes in 1983. She said that she had concerns about the timing of the ZBA's review of the proposal because she said that the potential for necessary revisions is significant. She likened this proposal to a large development on islands. She requested that the discussion of stormwater be held for a later date. She then

said that riverfront regulations will require an alternatives analysis either for other sites in Sudbury and/or for additional access to the site. Ms. Dineen was concerned that with concurrent meetings efforts may be duplicated and time could be potentially wasted if there are revisions so she wanted the Board to be aware of this.

Ms. Dineen pointed out that Mr. Daylor had mentioned that only 13.6 acres of wetlands. She said that she did not feel that number included the riverfront area which is a wetlands resource area which means that there is actually more jurisdictional area to be considered. She also said that in regard to the roadway, it is important to keep in mind that just because the roadway is avoiding a wetland this does not mean that there is no impact on wetlands. She also felt that the double-barrel roadway does not qualify it as a limited project, which means that there would have to be some sort of wetlands replication and floodplain alteration. Ms. Dineen felt that the plan will change maybe minimally or maybe in a dramatic way and so she said the Conservation Commission may want to tweak the plans before the ZBA reviews them.

Mr. Schwartz said that the applicant is eager to work with the Conservation Commission. He said that normally the notice of intent would be submitted later in the process. In this case, he acknowledged that it is being submitted earlier because wetlands are a significant issue. He does not feel that it is appropriate to wait to hear the wetlands issues out, nor did he feel that it is consistent with 40B.

Ms. Quirk also felt that the ZBA had to keep to the schedule she previously outlined and she said that the Board is prepared for revisions. Other members of the Board agreed. Mr. Gossels said that due to the fact that the law requires a decision from the ZBA within 180 days the ZBA needs to proceed.

Ms. Quirk then asked if there were any members of the public who wished to speak.

Jon Danielson, 37 Landham Road, began by saying that he was puzzled and concerned about the legal specifics. He wanted to know what legal tactics could be exerted from the public, and specifically the concerned residents of South Sudbury, to reduce this project's scale or ensure that the project does not happen at all. He felt that the project currently is a highly engineered plan built on a swamp with retaining walls, a wastewater treatment plant, massive leaching fields, 120 apartment units, massive traffic impacts, and unclear impacts in the schools. He felt that the process had become procedural and was concerned that this is the first meeting that the public has been invited to since the Board of Selectmen's meeting nine months ago. He expressed concerns about the amount public awareness of the project and he then implored the Board to listen to residents' concerns about this project.

As the attendees began to applaud Mr. Danielson's comments, Ms. Quirk had to request that there be no more clapping in order to proceed with the meeting. She said that she and the Board, as residents of Sudbury and as volunteers for the Town, understand that this is a big project and a big deal for the Town but said that the process has to get procedural in order to move forward in as organized a manner as possible. She then invited other neighbors to share their comments.

Mr. Klofft said that he understood Mr. Danielson's question to be "What can the Town do about this to mitigate this or potentially stop the project?" He said that the Town was operating within the guidelines of the State's Chapter 40B law and there is a limited amount that can be done to outright stop it. The ballot question was not passed at the last election to repeal 40B. This has left Sudbury with the option to develop within the confines of 40B law. He said that the ZBA works hard with developers to mitigate potential impacts and to take into consideration neighbors' concerns. He said that the ZBA is not trying to push the project through and is trying to work in the Town's best interests and to ensure that the law is followed.

Mr. Gossels said that they have worked on many 40B projects in this town and in every case the ZBA has done a lot to negotiate and work with the developers to reduce the scale and impacts and refine projects to produce a much better product. But he did say that this work has to be done in accordance with the law.

Attorney Jonathan Witten, with Huggins and Witten, LLC, introduced himself as representing the neighbors of the Johnson Farm. He presented the ZBA with a letter dated September 6, 2011 and explained its contents. In regard to the site plan he said that the parcel has been identified as a priority parcel for acquisition for open space in the Town's 2009 Open Space Plan. Under Chapter 40B the developer therefore needs to prove that parcel is not needed for open space preservation but is instead needed for affordable housing.

In paragraph three Mr. Witten questions whether or not the Board of Appeals can deny this application. He referenced a case in the Town of Middleborough where the Board of Appeals was able to deny the developer's proposal on the basis of the Town's comprehensive plan. He agreed that this tactic was risky here.

He also said that this project is not a limited project. There is a large portion of the property that is upland and therefore has economic value. He said that the fact that there is a large area of riverfront makes it too bad for the developer. He said that it is an agricultural parcel and has been used as such for many years, and is not developable in the manner that the developer proposes. He requested that the ZBA ask the developer to prove through the Conservation filings that it is a limited project, which he feels it is not.

He also wanted the ZBA to get an objective review of pro forma for a solid Financial analysis. He suggested that there could be a major false claim of the property's value which the developer's pro forma does not support.

Attorney's Witten's final comment was about how many units the ZBA should approve. Applicant has proposed 120 units, but the developer has to prove why anything less than 120 units would render the project financially infeasible.

He also commended the Board for laying out its scheduled approach to application review and its plan for acquiring consultants. He asked that the Board coordinate efforts with Conservation Commission on the Commission's timeline because he suggested that the applicant would grant an extension of time.

Mario Mummolo, 71 Stock Farm Road, said that as a hard-working resident he did not feel that the ZBA was listening to the group assembled this evening and was instead leaning toward the developer's financial interests rather than the Town's resources. He did not feel that the ZBA is doing justice for the residents. He then asked why the Town did not buy the property when it was initially offered for sale.

Ms. Quirk said that the issue of the town's purchase of the land would be under the purview of the Board of Selectmen rather than the ZBA, which is a technical board. The Board of Selectmen would have to take up the issue of purchase and bring it before Town Meeting in order to do that.

Mr. Mummolo said that he understood the ZBA's role but he said that he did not feel that the Selectmen therefore had done the town justice on this issue.

Mr. Klofft said that the ZBA does, in fact, have the Town's best interest at heart, and he said that if the Board were to do what is probably the majority of residents' desires then the Board would outright deny

the permit. However, he said that a denial would potentially not be in the Town's best interest because the jurisdiction of the matter would then be turned over to the Land Court for appeal and the Town would have no ability to negotiate from then on. He felt that Attorney Witten would agree that the law limits the Board but within the confines of the law the Board works to ensure that the Town's best interests are represented.

Stan Kaplan, 98 Victoria Road, questioned the process of approving peer review proposals. He wanted to know why the applicant was approving the consultants.

Ms. Kablack clarified Mr. Kaplan's comment by saying that according to DHCD's regulations, when the Board requests funds for technical assistance there is a procedure for doing so through the applicant. Ms. Kablack read the regulation as posted in the ZBA's Supplemental Rules and Regulations that can be found on the Town's web site so that the public could hear how the process works. The Town is setting forth the proposal for funds to work with the applicant to obtain necessary technical assistance. The procedure, therefore, is that the town will hire a consultant, let the applicant know the price, and then the applicant will have an opportunity to appeal that price.

Virginia Buckley, 14 Patricia Road, said that she did not understand why the burden of proof rests with the developer. She said that she appreciated Attorney Witten's comments. When she first walked into the room she felt that this proposal was a fait accompli, which she felt was not the case. She said that she also appreciate the time taken to look at all issues. She said that as a resident of many years she has concerns about the shift in population density with potentially three new 40B developments in one area of town. She said that these developments would bring new residences, new cars, and more children, which would dramatically change the rural neighborhood and she was concerned about the impact on the environment, the effects on which are unknown.

John Sklenack, 93 Robbins Road and Chair of the Conservation Commission, asked about the implications of extending the time for application review beyond the 180 days. He asked whether if the applicant chooses not to grant an extension of time would the ZBA still be required to render a decision, regardless of the status of other Boards' findings. Ms. Quirk said yes, given the state's law the ZBA does need to render a decision at that time.

Ms. Dineen asked whether, if applicant is agreeable to an extension beyond 180 days, could the extension be requested now or at the next meeting. Ms. Quirk then asked Attorney Schwartz whether the applicant would be willing to grant an extension. Attorney Schwartz said that it was too early to discuss extensions.

Ms. Quirk said that she expected that it was too early in the process to know whether an extension would be necessary. She said that in the Board's experience with 40B applications the extension requests usually come toward the end of the review period. She also cautioned that an extension might not be granted.

Mr. Sklenack asked whether, if an extension were not granted, the application could be deemed incomplete if the ZBA did not have enough information to render a decision. Ms. Quirk said that at this time the Board would not be able to speculate about that option. She said that a decision would be made with whatever information was in hand and following the requirements of the law.

Debbie Dineen added as a final comment that the parcel is definitely on the Open Space Plan, however in regard to the Town's ability to purchase the property the Town could only buy the property through eminent domain if there were a willing seller. She said that there is no willing seller now.

A motion was made to continue the hearing.

The hearing was continued to Tuesday, October 18, 2011 at 8:00 p.m. in the Grange Hall Meeting Room.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels

Stephen A. Garanin, Associate