

MINUTES OF THE PUBLIC MEETING
SUDBURY BOARD OF APPEALS
Wednesday, July 11, 2012

The Board consisted of:

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

Also:

Paul Haverty, Attorney, Regnante, Sterio & Osborne LLP
Ed Marchant, Consultant

For the Applicant:

Robert Moss, Madison Place Sudbury LLC
Steven Schwartz, Goulston & Storrs

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, called the meeting to order. The Board was in previous receipt of two first drafts of a decision for Comprehensive Permit 11-40 prepared by Attorney Haverty. One version was the original first draft and the second version contained revisions proposed by the applicant's attorney after their review. The Board then discussed the substantive issues of the decision and began a page-by-page review making several alterations with the understanding that other drafts would be reviewed and approved prior to the final version.

Mr. Stevenson said that he felt the ZBA was stepping off in the wrong direction with this decision. He referenced page 10 of the red-lined version where the language contained information about community impact. He said that in doing his research to formulate his own decision he drove around Sudbury during the last week and made an informal map of all of the 40B developments. He noted that the majority of substantial 40Bs were located in South Sudbury. In his tally he estimated that eighty percent of the Town's 40B units were being carried by twenty percent of the Town. As such he was opposed to the direction the draft decision approving 56 units with conditions was heading.

Mr. Gossels said that he understood what Mr. Stevenson was saying and even agreed with his points but the State and MassHousing approved the Johnson Farm site for this development and that set it in motion.

Attorney Haverty supported Mr. Gossel's point adding that the Board does not have the ability to control where the 40Bs are located because that is done at the project eligibility stage. He said that he included the language about municipal planning and concentration of housing so that, when a new 40B application comes in, the ZBA would be able to show MassHousing some tangible evidence of its desire to avoid further density issues in South Sudbury. He said that MassHousing, as the subsidizing agency, can deny future 40Bs at the project eligibility stage if MassHousing deems there to be too much affordable housing development in one geographic area of town.

Mr. Stevenson asked whether the State had known about all three new projects when it approved them for the Landham Road area. The State was aware. Mr. Haverty added that the Town has the ability to submit letters of opinion, which the Selectmen did in this case expressing their grave concerns.

Ms. Quirk asked Mr. Stevenson what he suggested the ZBA do. Mr. Stevenson suggested dramatically trimming the project. He felt that Mr. Moss had a good project and if it were the first one to be built in the area then he would not have as much of an issue approving it, but he was not comfortable with the fact that it was one of several already approved for this area of town.

Mr. Haverty said that there has been no case law before the HAC or higher courts that a ZBA has the ability to deny a project due to concentration. This has not yet been tried successfully. Mr. Stevenson asked whether it might work. Mr. Haverty said that the ZBA should take a look at the risks of trying this. The Board was aware that the 120-unit plan might be the outcome if the ZBA were unsuccessful.

Mr. Marchant said that Towns such as Concord have gotten around the 40B issue by selecting sites where large 40B projects have been built in order to reach their ten percent affordability requirement. He said that Sudbury's Housing Production Plan could be revised at any time to suggest that sites be utilized for affordable housing in other areas of Sudbury.

Attorney Haverty said that this initial draft decision read like a denial because he had begun preparing it at the mid-point in the hearing process when it looked as though the Board were heading toward a denial of the 120-unit project. However, he does not think that the ZBA has a chance of winning a denial now that there are alternatives on the table.

Mr. Stevenson said that he had heard a different story from the neighbor's attorney, Jonathan Witten. Ms. Quirk said that the ZBA should be listening to Attorney Haverty who was their attorney and who has the ZBA's best interests in mind. She said that Attorney Haverty was giving the ZBA advice to minimize risk to the Town. She said that while Mr. Stevenson was willing to risk the 120 units based upon concentration in South Sudbury she was not willing to risk that on the Town's behalf. She said that the ZBA is not Attorney Witten's client and she felt strongly that the Board needed to take a measured approach in their decision which Attorney Haverty is providing. Mr. Stevenson still felt it was a mistake not to take Mr. Witten's argument into account.

Mr. Gossels said that he understood Mr. Stevenson's goals and agreed with him but said that the ZBA's professional advisors, Attorney Haverty and Mr. Marchant, have said that there is too great of a risk that the Town could end up with a larger project or worse. He said that many of the identified impacts have been mitigated by the 58-unit plan.

The Board then discussed whether or not to include the language under item number six, municipal planning. Attorney Haverty said that the purpose of including the language would be to help the ZBA's and the Selectmen's efforts to diversify housing in the future. When the Town's comments on a future proposed development are sent to MassHousing they can say that the last project was reduced in unit size to avoid over-concentration and would be incompatible with the Town's Affordable Housing Plan. The Selectmen could point to the Johnson Farm decision as evidence.

In thinking further about the wastewater treatment plant Mr. Klofft pointed out that the facility would be highly regulated and maintained but a failed septic system with less regulation would also be bad.

Returning back to the issue of concentrated development, Mr. Stevenson said that in approving a 56-unit development the ZBA would be creating a 40B district. Ms. Quirk said for clarification that the ZBA itself would not be creating it because the ZBA does not determine where developers choose to build. Mr. Klofft supported his by saying that developers choose large open parcels that have major access to major roads. He noted that there are also large tracts of land in North Sudbury on major roads as well that are

not yet developed. Mr. Gossels added that there is only one family that put the Town in this position with the Johnson Farm property and the ZBA did not want to have to go through with the process. Ms. Quirk said that the ZBA was in fact responding to the applications and the Town itself was not choosing parcels.

The Board then discussed the differences between forty-five units and fifty-six units. Mr. Klofft said that a 45-unit development was still a developed parcel and with only eleven fewer units there would not be much of a difference with its impact. He said that there was, however, a big difference between 56 and 120 units.

Mr. O'Brien said that he appreciated the drafting of the decision as it was. His concerns were less about the diversity of housing than on the environmental impacts with the hardening of the site and the site's ability to handle it thus creating potential impacts downstream.

The majority of the Board then agreed to move forward with utilizing this first draft of the decision and continued going through it page-by-page making changes and providing comments for Attorney Haverty to work into another version.

A public meeting to continue deliberation was scheduled for Tuesday, July 31, 2012 at 7:30 p.m. at the Grange Hall.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels