

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Wednesday, May 16, 2012

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, Madison Place Sudbury LLC  
Steven Schwartz, Goulston & Storrs  
Peter Tamm, Goulston & Storrs  
Paul McManus, EcoTech, Inc.

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, re-opened the hearing.

She read the list of documents received for the May 16, 2012 Meeting which included:

- 3/27/2012 – Fire Flow Test Report, Tata and Howard
- 3/30/2012 – Letter from Frank and Regina Letteri, 208 Landham Road to Elizabeth Quirk
- 4/3/2012 – Revised Town House Alternative
- 4/25/2012 – Letter from Jon Danielson, 37 Landham Road, to the ZBA
- 4/25/2012 – Extension of Time Form from Bob Moss to the ZBA
- 5/3/2012 – E-mail from Frank Huntowski and Kim Ogden, 42 Cutler Farm Road, to the ZBA
- 5/8/2012 – Letter from Glenn Dougherty, Tetra Tech, to the ZBA
- 5/8/2012 – 60-unit Revised Townhouse Alternative
- 5/8/2012 – Letter from Paul McManus, Eco Tec, Inc., to the Conservation Commission
- 5/10/2012 – Letter from Virginia Buckley, 14 Patricia Road, to the ZBA
- 5/11/2012 – Memo from Jody Kablack, Director of Planning and Community Development, to the ZBA
- 5/14/2012 – Memo from John Whalen, Assistant Fire Chief, to the ZBA
- 5/14/2012 – Letter from Bob Moss to the ZBA
- 5/14/2012 – Revised Farmhouse-Barn configuration
- 5/15/2012 – Letter from John Sklenak, Chairman, Conservation Commission, to the ZBA
- 5/16/2012 – Letter from Sudbury Resident Philip Green, 11 Brookside Farm Lane, to the ZBA

Mr. Gossels gave a report on the latest work session he attended on May 2, 2012 that included representatives from the Conservation Commission and also the applicant. Further work was done on the massing of the buildings and retaining walls were added around the vernal pools. He felt that the project is getting better due to the work sessions, both for the abutters and the wildlife. It was his personal opinion that the project is not quite where he would want it to be but it has been improved.

Mr. Moss then walked the Board through a revised 60-unit plan. He reminded the Board that the earlier 64-unit plan included eight units at the front right of the site in the field along Landham Road and fifty-six units in the back. With the 60-unit plan there would be six units arranged in a farmhouse and barn configuration in the area of the existing farm house which is on the front left side. The farmhouse would consist of two units and the barn would house four units.

Mr. Moss said that from discussions at the last ZBA hearing he was going to put all of the units at the back of the site, however, through work sessions issues came up with that concept. At the April 5 work session at which Mr. Huntowski, the abutting neighbor to the south, was present, meeting participants worked to reconfigure the block of twelve units along the rear southern property line to better allay Mr. Huntowski's concerns about the proximity to his property and his view. At the May 2 work session Mr. Moss further worked on the arrangement of units at the rear southern property line by breaking up the twelve-unit block into three segments of four units each, removing a few units, and shifting the buildings which then necessitated putting six units back at the front of the property. The buildings along the rear southern boundary are now between fifty and eighty feet away from Mr. Huntowski's property line. Mr. Moss noted that the old cart path between the properties, which is about twenty-five feet wide, would also serve to screen the project from the abutters. Trees along Mr. Huntowski's lot line would be preserved and not cut and Mr. Moss would add a landscape berm with additional plantings spanning the cart path. Mr. Moss felt that plan offered a significant improvement for Mr. Huntowski's situation because he is perhaps the most impacted abutter.

Mr. Moss said that with the 64-unit plan the eight units along Landham Road were not well-received by the Zoning Board or abutters. He said that he had also preferred the open field and so when he reconfigured the remaining six units into the traditional house and barn design to help improve the streetscape along Landham Road.

Mr. Moss said that representatives from the Conservation Commission were included in the May 2 working session. He reminded those present that there are two vernal pools at this site. One is located in the middle of the property and one is at the north of the site. As a result of discussions and concerns for possible blue spotted salamander habitats Mr. Moss's team went out and studied the wildlife in the vernal pools. The team determined that the central vernal pool is not a critical vernal pool. Due to the lack of rain this year the vernal pool has almost completely dried up and so any living things would have died or moved on from that area. The northern vernal pool does have some interesting species, mostly frogs. The Conservation Commission requested that the buildings to the north be moved away from that pool. As Mr. Moss further adjusted the buildings he was able to ensure that about 30,000 square feet of area that was to be built upon previously was instead protected in the upland buffer zone of the vernal pool. Additionally the applicant agreed to build a two- to four-foot retaining wall around the buildings to help keep animals out of the development and in the vernal pool areas.

The leasing office was moved from the front of the property to the back. A reproduction barn will house the wastewater treatment facility. He noted that Colleen Labib, the closest abutter to the north on Stage Coach Drive, requested that the water treatment plant be moved to the opposite side of the driveway so it is now located on the south side of the road and is further away from her property.

The previous alternative plan showed four first-floor master apartments at the front of the property. Upon rethinking the design of the first floor master units Mr. Moss said that he has taken them from the front and interspersed them throughout the back of the property. The six units in the front farmhouse and barn buildings would be two-story which is an easier floorplan to work with.

Mr. Moss said that he reduced the total roadway coming in to the property due to the size of the project. Originally twenty-six feet it has been reduced to twenty-two feet. He said this was well-received by the Conservation Commission. He then described the two turn-around areas at the end of the driveways at the rear of the development which would accommodate delivery trucks and fire trucks. He proposed using gravel or bluestone for the inter-connector roadway. This would also allow an open corridor for wildlife moving between vernal pools.

Additionally a small retaining wall would be built along the back of the rear units to act as a buffer for wildlife to keep wildlife directed toward the vernal pools, out of the development, and out of the way of cars. Mr. Moss explained that from their studies wildlife primarily pertains to frogs and not large animals.

Mr. Moss said that there would be one trash receptacle, or dumpster, for the property located at the south cluster of units at the rear of the property. He said that he felt comfortable with providing only one, due to the size of the property and costs, which would be emptied more often per week, versus multiple dumpsters. He said that Jody Kablack, Director of Planning and Community Development, had wanted two, but Mr. Moss did not feel that having only one would be problematic for the residents. He said that there would be one bin for household trash and a set of bins for recyclables.

He noted that Ms. Kablack asked that some parking spaces be removed but Mr. Moss said that he would like to discuss this because he wanted to have additional parking spaces for guests.

In terms of pavement he said that the overall amount of pavement has been reduced, including sidewalks and parking areas. The driveway would have standard pavement up to the loop and then would be porous in and among the units with pavers used for the individual driveways. Mr. Moss said that he is prepared to go through the drainage calculations again for the engineers to peer review.

Mr. Moss reported that he had been in discussions with the Conservation Commission about off-site mitigation. Mr. Moss, along with a landscaper and Ms. Dineen visited the sites of three proposed projects. One included the eradication of bittersweet from two and a half acres in the King Philip historic area which would then be replanted as a meadow. Ms. Dineen was concerned that if left uncontrolled the bittersweet would eventually engulf the pond. A second project included clearing out about three to five acres of honeysuckle and bittersweet at the observation area at Tippling Rock and engineering a new vista plan. This would involve grinding any stumps and hydro-seeding. A third project Mr. Moss referred to as a gift for the Town which would be rebuilding a colonial-style tool shed at the communal farm on Concord Road. Mr. Moss said that he and the Conservation Commission still need to work out the details but there is a general understanding of the scope of work.

Ms. Quirk asked whether any Board members wished to comment.

Mr. Garanin said that he appreciated Mr. Moss' efforts to reduce the project to a more reasonable size. He said it sounded as though the working sessions have helped the project head in the right direction, noting the work that was done to make changes along the southern border at the back of the property. He questioned, however, the massing of the barn and farmhouse at the front of the site. He felt that the barn with four units was too large and too near the abutting neighbor there which essentially moved the massing problem to one abutter to another.

Mr. Moss said that most of the trees along that particular property line would be saved to help with screening. Only one needed to be cut down. He said that the units would be no closer to the lot line than

the existing house. Mr. Garanin said that he felt the barn building overwhelms the farmhouse. He had no problem with the two-unit farmhouse.

Mr. Klofft asked what the barn would look like. Mr. Moss said the width of the barn would be forty-six feet and the length of the four units would measure 100 feet along the lot line. He said that there are many houses in Sudbury that are that large.

Mr. Gossels asked about the height of the building. Mr. Moss said that it is not a tall building because the walls are sixteen feet high with a barn-type roof. It would be approximately one and a half stories high.

Mr. Stevenson asked if there was a reason the front buildings were so close to the lot line. Mr. Moss said that he could probably shift the buildings ten feet farther away from the lot line.

Ms. Quirk said that the existing streetscape is well screened and she did not want to see the barn structure become more visible. There was some discussion about whether shifting the building would impact existing trees.

The Board agreed that the small shift of ten feet to the north would be an improvement.

Ms. Kablack referenced a May 14, 2012 memo from the Assistant Fire Chief which discussed the points of access to the site which the Fire Department would be using every time they enter the development. She said that the Fire Department would prefer that the chain gates be removed and perhaps signage prohibiting use by residents could be put in their place. Also they would prefer to have a paved loop driveway, possibly porous, that would be eighteen feet wide so that in the event that there are three pieces of apparatus they would not have to turn them around to get in and out of the development. Mr. Moss said that he was fine with removing the gates but felt that the proposed twelve foot road width was fine. He also preferred using bluestone rather than more pavement in that location and felt that the Conservation Commission would rather see bluestone. He said that he would work with the Fire Department on these issues. Mr. Klofft asked whether the Y turn arounds were necessary if there was an access road. Mr. Moss said that turnarounds would probably still be necessary because delivery trucks would be using them as well but they could be reshaped. Ms. Kablack said that due to the reduction in units the Fire Department no longer needed to see a wider main entrance to the development as was requested in an earlier memo.

Mr. O'Brien asked about the total project cost. Mr. Moss estimated that it would be between thirteen and fourteen million dollars. He said that he has not yet decided upon the financing because the state has requirements that fluctuate. The rents would be approximately \$2,800 per month for market rate units and \$1,318 per month for affordable units. The apartments would measure around 1,400 square feet.

Mr. O'Brien asked about the annual costs to operate the facility. Mr. Moss said that he would have to do more research because it would depend upon how the facility was run, either with a full-time manager and maintenance man. He said that the overhead was yet to be determined. There was a discussion about the differences between the 120 and 60 unit plans and Mr. Moss said that he would be making less money with the sixty unit plan but was trying to come up with a workable plan for the Town. He said that townhouses are significantly more expensive to build than apartment-style buildings.

Ms. Quirk asked whether any members of the public wished to speak.

Frank Huntowski, 42 Cutler Farm Road, referenced the February 15 ZBA hearing where he said there was a thoughtful discussion about the project's parameters. He noted that at that meeting Ms. Quirk had

suggested that the project be around ninety bedrooms. Mr. Stevenson had suggested a smaller development of thirty-two to forty-eight bedrooms. Mr. Huntowski felt these parameters were far more reasonable and in-keeping with the developments around the corner than the sixty units proposed with the potential for 120 bedrooms. He said that the ZBA was asking the wrong questions and should not be discussing unit placement on the site and how to best make a sixty-unit development, but should instead be discussing how this can be the best development it can be. In his mind that would be less than sixty units. He questioned why there needed to be sixty units, noting that it was the developer who said it needed to be sixty. He tried explaining to the Board how the 40B process works and then asked the Board to ask the applicant for the pro forma so that the applicant would prove why he needs the number of units he says he needs. He then said it was the consensus of the neighbors that the ZBA should not approve the sixty unit plan as they want fewer units. He said that the neighbors and Board have to unite as a Town and then asked the Board to stand up for this land. He said that he does not feel that the applicant would provide a pro forma that could be analyzed. In that case he said that the Board should approve fewer units and then there would be two years of the Housing Appeals Committee process where the pro forma would be given then, followed by another two years of negotiations. He said that the neighbors would be willing to do this. He did not think that the project has been brought down to a reasonable level yet.

Jon Danielson, 37 Landham Road, said that he was appalled and offended by how South Sudbury is being treated and suggested that South Sudbury is carrying water for all of the Town's 40B developments. He noted that the Town is asking for money to fix up the invasive species in other areas of Sudbury but South Sudbury does not get any of those funds. He referenced the recent approval of funds at Town Meeting to purchase Pantry Brook Farm which he described as an eight million dollar view. He then referenced an April 25, 2012 letter that he submitted to the ZBA where he pointed out that Mass Housing had preapproved the Johnson Farm project based on the fact that nothing was going to be built at the front of the site to preserve the open meadow. He did not think it was right to be discussing six new units at the front of the site within a few feet from the abutting neighbor's play structure. He felt that it was not unreasonable to ask that nothing be built along Landham Road, including the bus shelter, and said that it would be consistent with Mass Housing's opinion. He said that he wanted to preserve something for South Sudbury.

Mike Palmer, 62 Cutler Farm, said that the sixty-unit plan was far from acceptable. He suggested that there is a big disconnect between what the Town thinks and what the neighbors think about the project and somehow that gap needed to be bridged. He felt that the applicant could make money on only half of the proposed number of units at around thirty units. He said that the next step should be a review of the financials for the project. He also said that if the project only had thirty-two units then there could be a standard septic system. He said he does not feel that the mitigation efforts are needed.

Ms. Quirk asked Mr. Marchant to explain the state statute as it pertained to the pro forma request and a new regulation that was just promulgated a month ago that ties the hands of Zoning Boards even further.

Mr. Marchant said that in the last few months there have been changes made to 40B regulations that determine whether a project is economic. For rental housing the state would take the current year's standard treasury rate and the economic return would be the return that was equal to the ten year treasury rate plus 250 to 350 rate points. Treasury rates are now at historic lows. The new regulations redefine what is a reasonable return and it says that a reasonable return shall be defined by the subsidy subsidizing agency. Mr. Marchant and Attorney Haverty have looked into whether there are any published responses on what a reasonable return might be and there are none. He did not feel that it would be greater than ten percent. The new regulations reaffirmed the return and the definition of economic. If an applicant submits a project eligibility letter application with a return less than the number that the subsidizing agency feels

is a reasonable return and the PEL is approved, the project has to appear feasible. He reminded those present that these projects take a long time to get from the PEL stage to the occupancy stage. There is little leeway for ZBAs to improve conditions because any condition would have consequences and could reduce the return equity and it would no longer be a return on total cost but is a return on equity. The whole discussion about land value becomes invalid with that methodology. It would weaken the ZBA's decision.

Mr. Gossels asked when the ZBA could look at real numbers. Mr. Marchant said that the ZBA has asked the applicant a number of times for the pro forma and the applicant has declined the requests. He felt that the question should be asked again.

Mr. Gossels said that approving the proposal without understanding the financials seems reckless.

Attorney Haverty said that the ZBA got into a situation procedurally because initially it appeared that the Board was leaning toward a denial of 120 units. The Board wasn't seeing much in the way of negotiation with the developer and the Board was receiving a very strong sense from the abutters that they wanted a denial. The Planning Board had also submitted a letter supporting a denial. But then at the end of the 180 day period the abutters implored the ZBA not to deny but instead to give an approval with conditions. The applicant then expressed a willingness to make some concessions and at that point procedurally the ZBA no longer had the ability to do a pro forma review. The regulations therefore require the ZBA to give the applicant a draft decision with conditions so the applicant can review it. There has not been an opportunity for the ZBA to create this draft decision. Mr. Haverty said that the ZBA cannot simply ask the applicant for the pro forma so that the ZBA can do a review in order to reduce the project further.

Mr. Klofft said that there were still several engineering problems to work through.

Mr. Haverty said that the Board could take a straw poll over the sixty unit concept presuming that engineering does not cause problems. He said that the draft decision needs to be submitted before the pro forma review.

Attorney Schwartz was in agreement with Mr. Haverty and Mr. Marchant. He said that although there were changes to the regulations the overall parameters of 40B in terms of financial review by the Board have not changed. The matter of the pro forma and the financial return is a matter between the applicant and the subsidizing agency. He said that the process is that the Board looks at a plan and raises legitimate health, safety, and environmental concerns and if it is satisfied that those have been addressed it approves a plan or approves a plan with conditions. What the Board cannot do is ask for a pro forma to justify this plan. He reminded those attending that Mr. Moss has a 120-unit plan that has an approved pro forma that has been submitted to Mass Housing and the applicant can rest with that plan.

Before making a decision Mr. Klofft said that he wanted to know more about the engineering. He felt that there should be more work done in working sessions. He also said that he was sensitive to Mr. Danielson's comments about building in the front of the site. He noted that the applicant did not want to put any units in the front but was doing so to accommodate the Conservation Commission's requests. He also felt that the revisions to the south side of the proposed project were better.

Attorney Schwartz said that the process has gone well beyond the 180-day period and he had the sense that the Board and the Applicant understood that a denial would not be in anyone's best interest, the Town or the neighbors'.

Mr. Stevenson said that he was certain that Mr. Moss has some numbers in mind because if he were losing money he probably would be showing the Board his financials sheet. Therefore, because Mr. Moss is not willing to show the financials Mr. Stevenson said that he is going with the assumption that there would be a good return on Mr. Moss' investment. Mr. Moss interjected that he was making a significant return on his investment. Mr. Stevenson said that it is Mr. Moss's choice not to give the Board his financials and the procedure allows him to do this. He said that there is probably room to work on this. In terms of the size of this development, however, Mr. Stevenson said does disagree slightly with neighbors because while he feels that it can be smaller he is not certain that even smaller still is best. He said that he understands the desire to want this development as small as possible and said that he was sympathetic to this since he lives near a 40B development in his neighborhood. He said that the development needs to be looked at through the lens of its impact of neighborhood, and not just the size and number of units.

Mr. Gossels wanted to share with those present how cooperative the applicant has become since the initial hearings. He said that Mr. Moss has been responsive to the neighbors and abutters and the neighborhood impacts. He felt that many of the direct abutter impacts have been mitigated but in shifting the units from the back to the front the Board and the applicant have inadvertently caused a problem for the abutter to the south at the front of the property. He said that there is still a design problem. He asked the applicant whether the plan could be fewer than sixty units. He also did expect a more forthright response about the realities of the financials and why a sixty-unit plan was decided upon. He asked Mr. Moss if he would reconsider sharing his numbers and if he did not want to would he consider reducing the impact to the neighbor at the front of the site.

Mr. was on board with altering the massing of the barn. He said that there was a cap set by the State on how much money he could make on a particular development and he has no interest in having the Board or the neighbors get involved in the minutia of how the development is run financially.

Mr. O'Brien said that the ZBA has always had a back and forth discussion with 40B developers about their finances to ensure that there won't be bankruptcies that could impact the town.

Mr. Stevenson said that Mr. Moss has not given the Board any numbers to back up the proposed number of units. He asked whether a 56-unit project would work if the four units comprising the barn were taken away to help preserve the streetscape view and help the abutter. He said that the inability to see the numbers puts the Board members in a bind.

Mr. Schwartz said that under 40B law a Board cannot conduct review of a pro forma in order to see whether a project would be economic if the number of dwelling units is reduced. The Board may not condition a reduced number of units on a proposed project unless the reduction is justified by a valid health, safety, and open space reason of local concern. He suggested that the concern with the barn units was the impact to a single abutter and that is not a 40B protected reason.

Mr. Klofft said that it was not just a matter of that large structure impacting one abutter but the open meadow and the environmental and open space concerns.

Philip Green, 11 Brookside Farm Lane, suggested that the Board should not be afraid of the original 120-unit plan. He asked the Board not to make a fast decision because it could be dealt with at the next level of appeal. He asked that the Board think in terms of a smaller, more manageable, development, particularly given how much development was happening in South Sudbury.

Colleen Labib, 9 Stagecoach Drive, said that from the one working session she attended several wastewater concerns had been addressed but she felt that the project was still too large. She said it would appear like a good plan because it is half the size but she felt there was a ways to go. She wanted the Board to approve a much smaller plan because she felt that no one is really sure what they would be dealing with if a larger development were built. She said that if the Board was not comfortable going with Mr. Green's plan then the project needed to be approved with a much smaller number. She wanted the buildings in the front and the wastewater treatment plant eliminated. She also expressed great concerns about potential flooding, particularly because the Town's engineer is not certain about the effects. She was also concerned about what recourse neighbors would have should problems occur. Additionally she was having trouble dealing with the idea that mitigation would occur in parts of Sudbury other than South Sudbury. She said that the ZBA should approve a smaller number of units and the neighbors would fight at another level.

Mr. Haverty explained that the offsite mitigation proposals evolved because the Conservation Commission felt this was something that they needed in order to have a good feeling about approving what is a borderline case. The Conservation Commission and the ZBA had opposing viewpoints about the placement of units at the front of the site and so the mitigation efforts were something that could offset the environmental effects on this site.

Mr. Klofft noted that the Nobscot project was in South Sudbury and the King Philip project was very close to South Sudbury. He said that he did not feel it was necessarily his duty to position his decisions so that court cases would go a certain way. He said that he felt it was his responsibility to craft the best decision that he can make that can stand on its own and that is right for the Town. This is how he was prepared to approach his decision.

Mario Mummolo, 71 Stock Farm Road, said that he sees only the benefit of money to be made for the developer. He felt that this project will not reduce taxes, or traffic, and that it does not give any extra benefit to Sudbury. He said that negotiations should not be based solely on numbers of units but should also include wetlands, wells, and salt use. He felt that the project was sitting in the wrong place and would jeopardize Sudbury's wetlands and wells.

Ms. Quirk said that the Town is in this position because the landowners, the Johnson family, entered into a purchase and sale agreement with the applicant to build a 40B development. She said that everyone has heard about how the Town had attempted to buy the land for use in a similar way, but now the ZBA has constraints in this process. She said that the Board to date has done its job to try to balance everything and will continue to work hard to ensure that there is the best resolution there can be.

Mr. Klofft also noted that the benefit of this development to the Town is to add to the diversification of its housing stock and the contribution it will make to its affordable housing inventory.

Mr. Marchant said that another benefit of rental housing is that all of the units would count toward the 40B requirement. He said that it would take the equivalent of four for-sale developments to meet the same goal. He also added that for-sale projects would not have just one-bedroom units. Most would be two-bedroom and the state is also pushing for some number of three-bedroom units.

Blenda Jeffrey, 2 Brookside Farm Lane, said that she lives across the street from the proposed development and has concerns about the wastewater treatment plant. She said that Sudbury's water table is already high and noted that water flows to the site from three directions and she was very concerned about flooding. She wanted the wastewater treatment plant eliminated.



Virginia Buckley, 14 Patricia Road, said that she knows the ZBA is working hard but she referred to the Johnson Farm and South Sudbury as the “last frontier”. She had many safety concerns relative to the traffic impacts on the Landham Road thoroughfare. She said that children walk to school there and the flooding potential could impact a highly functional part of town.

Paul Korzeniowski, 12 Stagecoach Drive, said that the scale of the project is the issue. He noted that other developers had passed on the site due to its complications. He was also concerned about flooding due to the prevalence of the wetlands and questioned where the water would go. He wanted a smaller development that he felt would make more sense and the neighbors would support.

Jon Danielson, 37 Landham Road, said that if it is worth it for the Town to support the purchase of Pantry Brook then the Board should insist that Mr. Moss comply with Mass Housing and put no units at the front of the site to conserve that open space. He said that Mr. Moss has a high fixed cost due to the wastewater treatment plant. He wondered if there was a plan that was smaller that would be as profitable and that does not have the wastewater treatment plant. He said that a smaller development would allay fears from the residents on Stagecoach Drive and could be more profitable for Mr. Moss.

Mr. Stevenson said that an issue on his mind was the argument that the wastewater treatment plant would put out cleaner, treated water. He also noted that the wells should be protected and this is yet another issue to balance.

Frank Huntowski, 42 Cutler Farm Road, said that it does not make sense to approve a plan for between 56 and 60 units when there are other developments going in around the corner. He said that the applicant is using tactics. He asked whether the ZBA was going to fight for the rights of South Sudbury or was the Bard going to settle for something else. He said that it has been a privilege to talk in Town Hall because the country is based upon contentious decisions. He reminded those present that Sudbury’s zip code is 1776. He asked, “Are we not going to stand up to this developer?” He said that the Town’s forefathers would be ashamed and everyone would be ashamed of themselves if the development were approved. He said the Town need to fight this, the probabilities are with the Town and everyone should stop saying that the Town is defenseless. He said the number of units needs to be way down below sixty. He asked the ZBA not to approve the sixty unit plan.

Mr. Gossels said that if he were an abutter he would be saying the same things as have been said at these meetings. As a Board member he is trying to balance two evils. He said that if the Board approved a 56-unit plan and the 120-unit plan is prevented that would be a huge benefit than having the 120 units in three-story apartments backed up against the abutters. He does not view this as a singular activity and understands that the neighbors have representative counsel, that the neighbors will do what they need to do, and whatever the ZBA approves the neighbors will take legal action and work to negotiate this to something that is more suitable to the neighborhood. But he said that he is trying to protect against the 120 units.

Ms. Quirk said that on March 5, 2012 she was prepared to encourage the ZBA to deny the 120-unit proposal. She said that the project at 120 units was reprehensible and an environmental mess. A denial would have been right for public safety issues. She said the Board would have had a defense for it in court. She said that in her ten years on this board she was ready to deny a project for the first time and the ZBA has seen bigger projects proposed. But she said that the ZBA was encouraged by the abutters not to deny this project but now the neighbors are saying that the ZBA must deny it with conditions. She said that the developer had every right not to grant a single extension and to force that denial from the ZBA,

but based on discussion from participants at the hearings where the ZBA was requested by the abutters to not deny the project the ZBA stopped and listened and started negotiations with the developer. Now, based on her own research and the advice of counsel, she did not feel that the ZBA was at a point where they could win at an appeal if it were conditioned below sixty units. Based on case law she said she is not willing to risk 120 units by conditioning this plan in a way that would be immediately rejected by any appeals process.

Mr. Klofft said that the applicant has engaged in more discussion and in all of the 40B cases he has sat on in twenty years the ZBA and the applicant have tried to come up with workable plan because the development will be there forever. He said that he will not go into a decision to give a particular legal tactical advantage if he thinks it is the wrong thing for the Town. He said that if for some reason that legal approach were to fail he does not think that is what he was appointed to the ZBA to do. He was appointed to make the best decisions the ZBA can make.

Mr. Moss said that by changing the Y turnarounds he could move some units from the barn at the front of the project to the back. He said that the neighbors made it clear from the start that they would appeal any decision and that is their right. He said he had a work order from Tetra Tech for \$42,000 to re-engineer the plan for 58 units. The process would take three weeks. He said he has been developing projects for thirty-two years and they are always controversial. He said that he does understand the finances of the project and what his adequate return might be. Therefore he offered to reduce the number to 58 units with a two-unit farmhouse only in the front. He said that this would allow the same streetscape as is there today with the existing farmhouse. He said that he was fine with tweaking the plans but would not change the plans much more than that.

Mr. Klofft said that he would be more comfortable with that, unless there is a problem with the engineering.

Mr. Garanin agreed. He said that he lives near the property and would prefer to see the rest of the units at the back of the site where they would not be seen.

Mr. O'Brien was still uncertain of his opinion.

Ms. Quirk said that her feeling was that the majority of concerns raised through the process would have supported a denial but a fifty-eight unit plan on this site could work and she does not want to risk the 120-unit development should an appeal be lost.

Before he gave his straw poll opinion Mr. Stevenson wanted to hear from the neighbors.

Frank Huntowski, 42 Cutler Farm Road, said that the neighbors would prefer that the ZBA deny the project. He said that the neighbors are in worse shape than six months ago because if the ZBA does not approve the 58-unit plan Mr. Moss will still go to the HAC with the 120-unit plan so the neighbors are back to the same problems as before. He said that it costs the abutters the most if the 120-unit plan stands. He said that he is asking the ZBA to fight for his property line. In his opinion he felt that the ZBA would be approving the 58-unit plan not for the Town but because they do not want to fight anymore. He said that if the approves the 58-unit plan then the neighbors' appeal would be against the applicant and the ZBA. He said that Attorney Witten, the neighbors' attorney, would be deposing the ZBA. He said that the neighbors do not want that and the model for success is to stay unified and approve a smaller number of units. He said that the neighbors never thought that a reduced plan would only be a reduction to fifty-eight units which he felt was just as bad as the original plan. He further stated that the ZBA has not done

something to respond to neighbors but in fact has done something worse than denying the 120 units. He asked again that the ZBA either approve a smaller number of units or deny the 58-unit project. He said that if the ZBA approves 58 units then the Board will not have done its job.

Ms. Quirk took issue with those comments and asked Attorney Haverty to explain the ramifications of conditioning a smaller development.

Attorney Haverty said that if the ZBA imposes conditions on a development as small as twenty-four units then it would essentially be the same as issuing a denial.

Ms. Quirk said that because the developer has now proposed a plan with legitimate local needs which the ZBA was able to create a record of from the review of the 120-unit plan, a review body such as the HAC would likely look at the ZBA's actions of conditioning at 24 units and would determine whether those conditions render the project uneconomic.

Mr. Klofft said that the ZBA has to consider the worst case scenario.

Mr. O'Brien said that the ZBA is charged with looking at health, environmental, and safety concerns and many have been addressed with the reduced, revised plan.

Attorney Haverty said that if the denial of the 120 units does go before the HAC then it will be the Board's burden to show that the local concerns of health, environmental, and safety are sufficient enough to sustain a denial. And one of the issues is going to be was the denial necessary or not. The Board will then have to have reasons for the denial.

Mr. Stevenson said that thinking about the HAC is useful to an extent but he does not want to issue a decision which results in a 120-unit development, nor does he want to issue a decision that would be overturned on an automatic appeal. He said that the best way to avoid this is to go through the process that the ZBA has gone through which is somewhere down the middle. He said that he disagreed with Mr. Huntowski that the ZBA is not fighting. Yes the ZBA has been fighting through many evening meetings. He said that he would love to see nothing built on the property but that is not going to happen so the ZBA is left to shape the plan. Additionally he said that many neighbors have used giant phrases such as "it doesn't make sense" or "our zip code is 1776" but Mr. Stevenson said that he cannot work with those phrases. He said he needed specific impacts and how the Board can make them better. He said that this plan is significantly better in every measurable way. He does have concerns about the units in front and the burden still placed on Mr. Huntowski's property. Ideally he would like one of the blocks of three units at the back go away so that the block of units goes from twelve to eight. He said that the plan has improved, but some issues are not totally resolved. He said that he could support a fifty-two unit plan if four were taken off the southern border and four were removed from the front.

Mr. Gossels agreed with Mr. Stevenson and said that he would have wanted the neighbors to have bought the land but that has not happened. Now that there is going to be a potential 40B there it is important to make it as good as it can be and he felt that the applicant was close. He said he wants only the farmhouse units in the front and would like to reduce the number of units at the southern boundary.

Mr. O'Brien said that he also agreed with Mr. Stevenson and he wondered whether some units at the southern boundary, while screened by trees, could be moved. He also wanted to mitigate the impact at the front southern property line and wanted to take away the units along Landham Road.

Mr. Moss said that if he shifted the plan from the southern boundary there would be issues with the wetlands to the north.

Mike Palmer, 62 Cutler Farm Road, did not understand the relevance of the offsite work. He said it was silly to spend money on other projects. Ms. Quirk said that the mitigation work is being handled through the Conservation Commission.

Mr. Gossels said that the Conservation Commission is dedicated to what they do in order to preserve the resource values in town. The Con Comm needed these mitigation projects, even if they are off-site, in order to help them with their decision on the Johnson Farm project.

Mr. Haverty said that if the Conservation Commission is presented with a plan that had environmental impacts on the wetlands at the back of the site they could deny the plan and the issue would go to the Department of Environmental Protection. However, if the DEP denies their decision then the developer could come back with a modified plan with more building in the front to avoid the wetlands issues in the back.

Colleen Labib, 9 Stagecoach Drive, asked about safety issues. She wondered how large the building in the front would be. She said there would be noise and smells from the wastewater treatment plant so building units in front could create an impact. Building in the front could also impact flooding and alter the environment.

Mr. Moss said that he needed to decide whether he was withdrawing the revised plan or signing the work order for Tetra Tech to proceed with the engineering. His current proposal is fifty-eight units with no barn and more relief on the southern border. Attorney Schwartz said that the plan complies with Sudbury's building height and setback requirements.

Mr. Stevenson and Mr. Gossels both wanted to see four units removed from the front of the property and more relief on the southern side.

Mr. Moss said that he would then proceed with a detailed engineering plan and with stormwater information and would revise the plan to have only two units in the front of the site in a farmhouse configuration. He said that he would also provide architectural details and a rendering for the farmhouse.

Mario Mummolo, 71 Stock Farm Road, asked if there was any Security Bond for water damage or smells from the wastewater treatment plant.

Mr. Klofft said that the developer could put a bond up for that purpose.

Brian McCabe, 17 Brookside Farm Lane, asked whether Mr. Moss was going to withdraw his 120-unit plan. Mr. Moss said no, he was not withdrawing his 120-unit plan.

Mr. Haverty reminded those present that although the Board had given their sense of the revised project it was not a binding vote.

Ms. Quirk presented Mr. Moss with an extension of time form and Mr. Moss agreed to extend the review period through Tuesday, June 19, 2012.

There being no additional comments from the Board or the public, a motion was made and seconded to continue the hearing to Monday, June 18, 2012 at 7:30 p.m. in the Town Hall.

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Elizabeth T. Quirk, Chair

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Jeffrey P. Klofft

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Benjamin D. Stevenson, Clerk

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Jonathan F.X. O'Brien

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Jonathan G. Gossels

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Stephen A. Garanin, Associate