

SUDBURY ZONING BOARD OF APPEALS
DRAFT MINUTES
FEBRUARY 22, 2016

The Board consisted of: Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Nicholas B. Palmer, Clerk, Jeffrey Klofft; and John Riordan (Associate Member).

Absent: Nancy Rubenstein and William Ray (Associate Member)

The meeting was opened at 7:30 p.m.

Mr. Palmer read the Hearing Notice published in the Sudbury Town Crier.

1. Public Hearing Case 16-4 – Sudbury Station LLC, Chris Claussen, Applicant and JOL TRUST, JRH TRUST, Matthew and Molly Gilmartin, Owners, for a Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-23, and 760 CMR 56, for the construction of a 250-unit rental apartment community, 25% of which will be affordable units, on approximately 40 acres, (13.45 buildable acres), property shown on Town Assessor Map G09-0100, G09-0004, G09-0300 and H09-0068, Peters Way and Peters Way Extension, Zoned Residential A-1 and Residential C.

Mr. O'Brien opened with the Public Hearing Preamble for Sudbury Station 40B, which is attached.

Mr. O'Brien introduced the Board Administrator, Lillian Vert, who will be available to provide information on the application during normal office hours. Also, introduced was Michael Jacobs, the Board's 40B Consultant, paid for by MA Housing Partnership and; Jody Kablack, Director of Planning and Community Development, who will provide the Board with expertise and comments. Also introduced was Barbara Saint Andre, Town Counsel, who will provide legal counsel to the Board during the hearings regarding the application.

Mr. O'Brien stated that he had filed the State-required Disclosure of Appearance of Conflict of Interest form with the Town Selectmen on Thursday (2/18/16) and with the Town Clerk on Friday (2/19/2016) after consulting with town counsel, Ms. Saint Andre regarding the fact that his parents are friends of Molly Gilmartin's parents. After discussion with Town counsel and attorney with the State ethics commission, Mr. O'Brien's belief is that this relationship would not modify his decision on this application nor would it impact him in performing his duties to the Board and the Town. Mr. O'Brien noted that the State conflict of interest rules require this disclosure. Mr. O'Brien asked if anyone else had a conflict with the parties involved with this application.

Ms. Kablack also stated that she had similar discussions with Town counsel, Ms. Saint Andre and had filed a Disclosure of Appearance of Conflict of Interest form with her appointing authority, the Town Manager, this morning for this application and the Avalon Bay application. Ms. Kablack stated she feels no circumstance will impede her duties to act in the best interests of the Town and that her disclosure involved her husband's employment in the real estate development industry but Town counsel advised that there is no conflict.

Mr. Henchy asked to be given Ms. Kablack's disclosure, as that was not in the file which he reviewed earlier today. Ms. Kablack stated that she made her disclosure to her appointing authority and it doesn't necessarily go in the ZBA file but she will make it available to him.

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Mr. O'Brien asked Associate Member John Riordan to be here tonight and to sit in on all meetings and participate, but will not be a voting member unless a Member misses two meetings. Bill Ray was asked to do the same but could not attend tonight's meeting.

Mr. O'Brien stated that from the ZBA's perspective there are number of overarching concerns with this application that must be addressed through the course of the hearings on this application. These concerns include:

1. The project abuts Sudbury Center Historic District and the two entrances and exits for this project require traffic through two parcels in the District.
2. The parcel of land in question is on the 2009 Open Space and Recreation Plan. How will the undeveloped parcel of land be improved by going through this process?
3. The parcel swap that created the ability to develop this parcel needs to be better understood.
4. Egress and ingress presents a number of problems including conflict with just the recently improved traffic intersection in the center of town, extensive Hudson Road backup that is already present, conflict with the proposed Bruce Freeman Rail Trail, and ingress and egress from Peters Way conflicts with Concord Road and Candy Hill lane. How do we deal with traffic and intersections?
5. There was not a lot of detail in the application regarding wastewater handling, treatment of soil, and runoff of storm water.
7. What is the impact on wildlife? The application did not include much detail on the impact on wildlife in the proposed development. What other wildlife is there besides salamanders?
8. Requested more data on potential tenants, comparable facilities, number of kids, and number of renters.
9. Concerns about setbacks, particularly the buildings in proximity to the abutting Town cemetery.
10. Building height exceeds zoning. The Board would like it reduced. How will fire department access to units be provided?
12. Board wants to see reduction in units.
13. There are inaccuracies in the filings with Mass Housing that need to be identified regarding the creation of the lot and the subdivision approval.

Mr. O'Brien asked the applicant to begin his presentation.

William Henchy introduced himself and the project team. He is an attorney based in Orleans, MA and will be representing the applicant, Sudbury Station LLC. He introduced Christopher Claussen, Principal of Sudbury Station, LLC, along with Chris Kennedy, who is present, and Joseph Hakim, who couldn't be present because of a medical issue.

Mr. Claussen began his presentation by thanking the Chair, Board and Mr. Henchy. He introduced Chris Kennedy his partner in Sudbury Station, LLC and stated Mr. Hakim is not in attendance. Mr. Claussen grew up in Sudbury and graduated Lincoln Sudbury Regional High School in 1979. He started a development company 30 years ago and developed in Florida for the last 25 years. He has developed about \$1 billion worth of projects in Florida. He is friends with the property owners, who were selling the property and asked him to look at the property for development. He came up with two development scenarios; a multifamily development or subdivision. He thought a 40B development would be most appropriate for this site, as did several people that he spoke to about the project. He felt the Town's sentiment for 40B is they wanted to reach the 10% so they could be done with it. He stated that the site

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could be developed for multifamily with the caveat that the buildings would need to disappear visually from town center.

This property is residentially zoned and the Sudbury Station LLC will be making a significant investment in it. The applicant's intention is to own the asset for an extended period of time and will select materials that will lower annual maintenance cost. They welcome the chance to be good neighbors and are extremely experienced in real estate development and very well capitalized. They have a desire to work with residents, as well as hire local contractors.

The name Sudbury Station, LLC came from the history of the property. It had many uses, for example a farm and a train station, so that's how the name of the project "Village at Sudbury Station" was determined.

Mr. Henchy introduced Mr. Robert Engler. Mr. Engler has been involved in 40B projects since 1970 and had previously worked for the developer of a 40B project across the street. He will assist the developer's team with 40B questions and data requests. Mr. Engler stated that the legal requirements for proceeding with a 40B project on this site have been met.

Ms. Tomassetti from Winn Residential stated that Winn Residential is a family owned firm, established 30 years ago and operates in 22 states and manages over 100,000 homes. They completed renter search behavior research in connection with this application, and found that between January 2015 and January 2016, people looking for rental housing in Sudbury received 8,418 hits. Generally a 20% conversion rate can be applied within a town to determine demand for the product. Data also suggests that 50% of the people are looking for housing within 10 miles of the Sudbury zip code, which would include the towns of Sudbury, Concord, Maynard and Stow. Ms. Tomassetti asserted that these are all towns with little rental inventory. In addition, 20% of those users were looking for housing that is worth \$200,000 and higher. To determine a renter profile, they sampled a project they manage in Concord and found that 75% of renters moved into the units from Concord or an abutting town. In addition, 46% earn annual income of \$150k, 22% are retired, 63% employed, and 15% are self-employed. Ms. Tomassetti further asserted that leasing velocity in the Boston market is strong. The Concord project leased in 4 months of opening its doors and the average rent/month is \$2,300.

Mr. O'Brien asked Ms. Tomassetti if she could clarify who would be the leasing agent for this project. It was noted that Mr. Engler would manage the lottery for the affordable units and Ms. Tomassetti's firm would manage the market rate units.

Next, Steve Cecil from The Cecil Group presented the developer's land planning efforts. He gave a description of the land and stated that a portion of the land at the rear of the development is subject to a restriction requiring that it be preserved for agricultural purposes and also contains a largely wooded area. Mr. Cecil noted that a large piece of land is tucked below the crest of the hill that abuts the cemetery. There is a narrow neck that leads to Hudson Road and buildings have been placed in an array that responds to site topography. The overall development is comprised of different buildings/types including a series of townhouses, a series of apartment buildings around a courtyard, and club house. Mr. Cecil claimed that the open space will benefit everyone. He further noted that while the site has a steep slope between 5-20%, the plan takes advantage of the slope as the slope of the site will mean the taller buildings will be located at the bottom of the slope and the smaller buildings will be located at the top. Mr. Cecil claimed this arrangement will conceal all of the buildings from the public view along Concord and Hudson Roads. Mr. Cecil pointed out that parking will be on lower level (basement) of the units and will result in minimal paving and create more green space. In Mr. Cecil's opinion, the development would be tucked out of view.

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Mike Sullivan from Sullivan, Connors and Associates was introduced. Mr. Sullivan noted that his firm has offices in Northboro and Sudbury and have been in existence for 40 years. Projects that they have designed in Sudbury include Mahoney Farms and the Carriage Lane 40B. Mr. Sullivan agrees with Ms. Kablack that there wasn't enough information on drainage in the preliminary documents. He stated that what was submitted with the application was a preliminary evaluation to satisfy the State requirements, and they will now move to a more definitive stormwater design. Conceptually there will be a series of catch basins and man holes and they will be discharged in the open space area between the buildings in a subsurface retention basin. Mr. Sullivan stated that his firm has completed soil tests at the site and ledge is not a problem. He stated that there will be an outfall for the retention basin at the edge of the development and plans and further documentation will be submitted to the Town in upcoming months for future discussions. Mr. Sullivan noted that the developer intends to mitigate runoff so that abutting properties are not affected. Wastewater leaching fields will be under the parking lots and most of the soil tests are sandy with 2 min percolation times.

Mr. Henchy addressed the concerns about the Town witnessing the percolation tests, and to his knowledge the Board of Health agent was given notice and believed they were present when DEP witnessed the tests. Mr. O'Brien requested that the perc test results be delivered to the Board.

Mr. Henchy stated that an early issue from his client was to avoid wetland and wildlife impact. A large portion of the site is mapped as priority habitat from MA Natural Heritage Program, and they have mapped the wetland resources on the property. Because of this knowledge Mr. Claussen engaged Diane Boretos from Call of the Wild Consulting to complete a study to identify areas of high and low wildlife habitats. LEC Environmental was contracted by Diane's office to document wetlands and resources.

Mr. Boretos explained that a stream called Mineway Brook transverses the property. On the north side the wetland system is either intermittent or perennial. Under a Request for Determination information was submitted to the Sudbury Conservation Commission on the brook in the summer of 2015. The Sudbury Conservation Commission has reviewed the delineations submitted and found them all to be correct for the southern portion of the site. They did not seek a determination on the stream in the western portion of the parcel because this wasn't necessary for their project and the commission had many questions. It was agreed that there would be no activity within 200 feet of the stream without going back to the Commission.

Ms. Boretos found two types of wildlife habitat present at the site; an upland habitat and forward forested wetland habitat. The upland habitat where the project will be constructed was determined to be a low wildlife habitat. The under story is relatively open, there is little cover for birds or animals and it lacks a horizontal structure. The forested wetland habitat is different and has water, vegetation, horizontal cover and does provide cover for the native habitat. This area will not be touched at all. The main area of the project, the access roads and the storm-water drainage system was designed to not impact the wetlands.

In regard to the rare species question, assessment was submitted on the habitat types to the Natural Heritage program and Oct 26, 2015 a "No-Take Determination" was made by the MA Division of Fisheries and Wildlife pursuant to the MA Endangered species act, meaning there is a permit for 5 years to construct the project and the National Heritage has determined there will not be any taking of any rare species habitat by development of the site.

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Mr. Henchy turned it over to Mr. Carr to discuss the architectural drawings. He is a Principal at CUBE 3 Architects out of Lawrence, MA. CUBE 3 has completed several thousand units in MA in the last 5-10 years. CUBE 3's design is tailored to the community, specific site, and importance of the historic district. The town houses will be 3 floors, with the garages built into slope under the first floor. The largest buildings will be four stories. Parking will not be visible from street view. The units will be 1, 2, and 3 bedroom apartments. All are potentially accessible units by code and 5% will have to be group 2 accessible. The town homes will be in clusters of 7 and one cluster of 8. They will be 2-stories plus garage below. Elevators are proposed in the 4 story buildings. The elevations are conceptual and are used as a starting point for the design of buildings.

Mr. Robert Michaud, MDM Transportation Consultants, was introduced to discuss site access. He has worked on behalf of the Town in a review capacity in the past. His firm was established in 2003 and have permitted in excess of 20 40B communities and the average size in line with this project. They have completed a traffic and access study which will be peer reviewed by the Town.

They looked at impacted locations, including the westerly intersection at Peakham Road. The site is specifically designed to rely on Hudson Road as the main access point. Industry standards have been used to determine the direction and number of vehicle trips. He believes protocols used to make estimates are conservatively based on similar projects in their database. They have found that the industry standards overstate the trip generation by 20%. They found that any road in Sudbury will have a fairly modest impact, with between a 2-3% change in the town center intersection. There will be less of an impact heading west due to fewer employment centers, or about a 20 cars/hour increase. The same is expected for the south and north. A higher percentage of cars will travel on Route 27 to the east and west during commuter time, but Mr. Carr qualified this as modest impact. This will not impact the quality of traffic flow on Route 27 in the Town Center or Concord Road.

He emphasized that in 2008 the Town undertook the Town Center Improvement initiative. The outcome was geometric and safety based improvements to a signalized intersection in Town Center. The improvements are nearly complete. This project will add no material change to or impact on the new improvements.

From an access perspective they spent time looking at the safety characteristic of the two access points. Access just east of Peakham Rd involves a standard curb cut (radii of 30 feet), separate left and right turn lanes and layout that allows for proper visibility. They studied the viewpoint from either direction and measured travel speeds and sight-lines and found it fully complies and exceeds requirements. They are very cognizant of Bruce Freeman Rail Trail and its proximity to the main access.

The Peter's Way access will not be the primary means of entry/egress. It meets all applicable requirements for sight-lines in both travel lanes. A new sidewalk that connects to the existing sidewalk is proposed. There will be modest impacts and it will not change how traffic flows in the Town Center area and the Town Center improvements have the capacity to handle the increase.

Mr. Henchy addressed the issue of waivers. He stated that he submitted a detailed list of waivers in the application and believes it to be extremely conservative. In regards to Ms. Kablack's memo they are amendable to pairing down the waivers and adding detail.

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Mr. O'Brien began a discussion about experts. Traffic and stormwater experts are needed. Ms. Kablack added that she recommends an archaeological review as well. She is in receipt of a scope of service from one traffic engineer, Vanasse & Associates, which the Town has previously worked with. Their price for peer review is approximately \$6,500. The Town has Horsley and Witten Group on contract for stormwater services but Mr. Henchy identified a conflict between his firm and Horsley and Witten. Ms. Kablack proposed the firm of Schofield Brothers for stormwater peer review. Time is of the essence for hiring peer reviewers so they have the time to review without impeding the 180 days. If the board decides the Town doesn't have the capacity to review these topics, they will ask the applicant to pay for these consultant. There is \$10,000 in escrow for these fees but will most likely need more. The money is required by the Town prior to the signing of the contract by the Town Manager.

Ms. Kablack also recommended an archaeological expert due to concerns raised by the Town Historian. Ms. Kablack stated that she did not see anything in the application that addressed or mitigated this concern, and this was a condition of the MassHousing Site Eligibility Letter, so she requests an archaeological survey be complete.

Mr. O'Brien asked if the archaeological survey would include digging. Ms. Kablack stated that a locational survey would include some digging. She contacted the Public Archaeological Lab (PAL), who has worked on other projects in the Town Center, and they have given a price of approximately \$20,000. They also recommended a Visual Effects Assessment which would determine if the project had an impact on the Historic District, but no scope or price has been prepared. The Visual Effects Assessment would be similar to the what the Cecil Group presented. It would include cross sectional analysis.

Mr. O'Brien asked for information about how the Town is going to pay for it. Ms. Kablack stated that the developer must deposit funds to the Town based on the estimates received. The money would go into an escrow account and any unused money would be returned.

Mr. Gossels asked who was responsible for paying for the legal fees of Town Counsel. Ms. Saint Andre responded and said under the state regulation for the Housing Appeals Committee, the cost for legal consultation is born by the Town. Other tasks that the Town doesn't have ability to do, like traffic review, the applicant must pay for.

Mr. O'Brien requested that the applicant pay for the traffic study by Vanasse & Associates and the stormwater review by Schofield Brothers using the funds in escrow.

Mr. Henchy agreed to pay for the traffic study by Vanasse & Associates. He had concerns over the other requests. Mr. Henchy clarified that he did not reject Horsley and Witten as stated in Ms. Kablack's memo. Mr. Henchy raised an issue with Horsley and Witten because this firm had done prior work for the applicant and the applicant needed to disclose this relationship to the Board and Town Manager. He suggested Tetra Tech and Ms. Rodriguez said that was acceptable by phone. Today he was informed that the Town wanted to hire Schofield Brothers. He prefers to stick with Tetra Tech because they have been vetted. He also stated that he needs more information on scope and price before they can approve the price.

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Mr. O'Brien and Mr. Gossels stated they don't have an issue with Tetra Tech. Mr. Kablack said Tetra Tech is fine and she will request a statement of scope of services.

Mr. Henchy believes that the applicant is not required to pay for an archeological study per 40B regulations.

Mr. O'Brien responded by saying the Board takes the place of the Historic Districts Commission on this proposal, and believes the Board needs to understand the visual impact on the historical designations. He asked Ms. Kablack to get a quote.

Mr. Henchy requests to reserve all the applicant's rights and suggests they are in no way agreeing to it.

Mr. Engler stated that the applicant is only required to pay for the peer review on items the applicant submits and recommends the Town pay for that study on their own.

Mr. O'Brien stated that this is an important issue and the Board is bringing it up.

Mr. Kloft asked for clarification on the agricultural restriction on a large portion of the parcel. It was confirmed that the land under the restriction couldn't be built on. He also asked if the development in Concord was similar in size and it was confirmed that the Sudbury development is smaller.

The Board then asked the other sitting members if they had any further questions. Mr. Palmer had no questions at this time. Mr. Riordan had no questions at this time.

The meeting was then opened up for public comment.

Bob Stein, 7 Thompson Drive: Requested the Town Counsel look into the legality of the Peter's Way land swap transaction at Town Meeting, how it was presented at Town Meeting, was it done in an ethical way, and is there any way to nullify or revote.

Mr. Gossels agreed with Mr. Stein and stated he too voted at Town Meeting to swap the land based on what was presented, which was the development of 1 single family lot. The Town Meeting vote created an access point to the applicant's property.

Mr. O'Brien stated that reviewing the land swap raised a legal issue that seemed out of this Board's ability to determine on its own.

Mr. Henchy suggested that the sentiment is misplaced and not appropriate here and the development's eligibility had already been decided by Mass Housing.

Mr. Kloft agrees with the legality of the statement but logically disagrees.

Mr. O'Brien stated that this was a decision made by the Town and that although this point could be moot, it should be tabled for discussion later.

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David Hornstein 22 Candy Hill Road: Concerned that Candy Hill Road is not included in any of the traffic studies. He believed the sight lines used in applicant's proposal are inaccurate and encourages him to recheck. He is concerned that the cross sections used in study are not parallel to the ground, that the Hudson Road view is not shown, and the trees shown in the diagrams are not accurate because they will be cut down. He requested that the Town select the sections and that this be re-studied.

Beau Boyle, 799 Concord Road: Supports Mr. Claussen.

Scot Smigler, 125 Plympton Road: Has concerns about traffic safety on Plympton Road. He asked if this is a suitable space for this bigger development, what the impact will be on property taxes and schools, and if the Town does a budget analysis?

Dan Titus, 102 Belcher Drive: Has complete confidence in Mr. Claussen.

Kevin Tighe: Owns commercial property adjacent to project to west. Believes that the upland habitat shouldn't be dismissed in the study because there is more wildlife than just salamanders.

Mr. Kloft asked about the potential connection of his driveway to the new development.

Mr. Tighe said this was not discussed with him but with one of his employees.

Taryn Trexler, 253 Concord Road: Has concerns for the density of the development and the sight lines, and is in favor of an archeological study. She is concerned that the traffic study did not include traffic counts when school was in session.

Greg Crescenzi, 40 Clark Road: Is in favor of affordable housing but doesn't think the historic center of town is place for it.

Lyn MacLean, 209 Water Row: Is in favor of an archeology study.

Shirley Huettig, 54 Wake Robin Road: Asked if the schools have the capacity for increase in students?

Mr. Kloft stated that they can't consider school issues.

Lee Swanson, 55 Hudson Road: Stated that in a report from 2000/2001 there was an archeological site in this general area.

Rob Smith, 294 Old Lancaster Road: Stated Mr. Claussen has a lot of integrity.

Jason Bernard, 35 Wake Robin Road: Concerned that the traffic improvements agreed to at Town Meeting were not implemented and noted that the Cecil Group was involved in those improvements.

Ms. Kablack stated that The Cecil Group was involved in the original planning but not the design of the intersection and that she believes the proposal for two southbound lanes at Concord Road was never presented, but she will look into it.

Peter Gimber, 377 Concord Road: Has concerns about the traffic study and would like to include the high school and Sudbury Farms. He also noted that it was interesting that the experts were from out of state.

Comments from Board:

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Mr. Kloft appreciates the efforts of the developer but his principal concern is size and massing. He noted that they were using all the developable area and even though the buildings are attractive they are massive for a historical district.

Ms. Kablack requested the following information from the applicant for further review of the project.

- 1) Full grading at 2ft contours and profile of roadways
- 2) Description of materials for drives, streets, and paved areas.
- 3) Details on exterior finishes and construction types
- 4) Type of drainage and wastewater
- 5) Plan including boundary dimensions, setbacks, grade lines, stormwater, and lighting
- 6) Anticipated limit of clearing and existing vegetation
- 7) Height of retaining walls
- 8) Fiscal impact analysis
- 9) Emergency access provision to buildings
- 10) Water impact report
- 11) Final height of all buildings

Mr. O'Brien suggests amending the hearing schedule to and the Board agreed:

- Hearing 2, March 21 - Access; traffic; circulation
- Hearing 3, April 25 - Building Massing/Density; Architectural Design/Landscaping
- Hearing 4, May 23 - Physical constraints of the site – stormwater, wastewater, clearing & grading
- Hearing 5, June 20 - Other site impacts – visual, fiscal, historic impacts; Mitigation/Community Need
- Hearing 6, July 25 - Additional information

The applicant is amendable to changing the hearing schedule.

Mr. Henchy addressed Ms. Kablack's concerns about a fiscal impact study and suggests the Town talk to Town Counsel about the legal issues of discussing educational costs in a fiscal impact study.

Mr. O'Brien called a close to the hearing this evening, and a motion was made, seconded and voted to continue the hearing to Monday, March 21, 2016 at 7:30 pm.

Approval of Meeting Minutes – February 1, 2016.

Motion was made, seconded and voted to approve Minutes from the February 1, 2016 meeting.

There being no further business, the meeting was adjourned at 10:10 p.m.

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