




MEMORANDUM

TO: Zoning Board of Appeals
cc: Ms. Melissa Murphy-Rodrigues, Town Manager
Board of Selectmen
FROM: Barbara J. Saint André, Esq. 
DATE: April 25, 2016
RE: Sudbury Station – Response to Attorney Henchy’s Memorandum

I have reviewed a memorandum to the Board from attorney William Henchy dated April 19, 2016. In my opinion, it is not necessary or advisable to respond to each and every factual and inferential misstatement in the memorandum, but it should be noted that the memorandum unfortunately consists largely of self-serving, unsubstantiated statements that seem intended more to lay the ground work for future potential litigation than to address the merits of the proposed Chapter 40B development. I address some of Attorney Henchy’s comments below; please note that it is impractical to respond line-by-line to the memorandum, and therefore the fact that I do not comment on every allegation by Attorney Henchy does not mean I agree with any of the allegations.

On the first page of the memorandum, Attorney Henchy states, without any factual basis, that “Sudbury as a town has in the past largely opposed Chapter 40B development.” Attorney Henchy makes repeated similar statements throughout the memorandum, again without any factual basis. To the contrary, Sudbury currently is more than 50% toward its affordable housing goal (6.0% of Sudbury housing is affordable according to the state Subsidized Housing Index posted on the DHCD website), and since 2004 the Town has supported and approved the following Chapter 40B applications:

Constructed 40Bs

Carriage Lane (2004)	16 units	Boston Post Road
Sudbury Meadows (2006)	8 units	North Rd
Villages at Old County Road (2006)	37 units	Old County Road
Sudbury Housing Authority Duplex (2010)	9 units	Various addresses
Habitat for Humanity (2010)	2 units	Dutton/Pratts Mill Rd
278 Maynard Road (2012)	3 units	3 Marlboro Road
Landham Crossing (2012)	31 units	192 Boston Post Road
The Coolidge (2012)	64 units	189 Boston Post Road

Approved but not constructed 40Bs

Sudbury Village (2007)	73 units	Boston Post Road
Sudbury Commons (2008)	21 units	Hudson Road

In addition, the Town supported and approved other Chapter 40B developments prior to 2004. Attorney Henchy fails to identify any instances where the Town has disapproved a Chapter 40B application. Attorney Henchy's repeated statements throughout his memorandum that the Town has "thwarted" Chapter 40B developments are simply untrue and not supported by the facts.

Attorney Henchy's reference to an alleged statement by Selectman Simon is vehemently denied by him, and references to other alleged statements provide no support for Attorney Henchy's inflammatory statement that "Sudbury has a rich and demonstrated history of exclusionary practices". Attorney Henchy's reference to the Black Lives Matter banner seems intended to try to inject irrelevant issues into the Board's discussions of the merits of the proposed development. The Director of Planning and Community Development's husband does not have a "professional association with the Senior Vice President of Avalon Bay". I recommend that the Board not be drawn into a debate over these matters that are not relevant to the Board's deliberations.

With regard to the issue of density, Attorney Henchy cites a document on the Town website which he attributes to the Zoning Board of Appeals. The document, however, was prepared by Mr. Edward Marchant, an independent consultant, and submitted to the Town as general information and background on Chapter 40B. It was never adopted by the Zoning Board of Appeals and Attorney Henchy has misrepresented the document as being the Board's. The ZBA does have "Guidelines for Comprehensive Permit (40B) Developments", which attorney Henchy fails to reference. Those Guidelines include recommendations for density, height, setbacks, and other provisions.

Attorney Henchy claims that the Board of Selectmen's concerns as to the impact on the Historic District of the proposed buildings are evidence of discriminatory and prejudicial practice, or not applied equally to subsidized and non-subsidized housing. However, review of such matters is specifically within the jurisdiction of the ZBA:

(e) Site and Building Design. The Committee may receive evidence of the following matters:

1. Height, bulk, and placement of the proposed Project;
2. Physical characteristics of the proposed Project;
3. Height, bulk, and placement of surrounding structures and improvements;
4. Physical characteristics of the surrounding land;
5. Adequacy of parking arrangements; and
6. Adequacy of open areas, including outdoor recreational areas, proposed within the project site. 760 CMR 56.07(3)(e).

Further, the definition of Local Concern includes "to promote better site and building design in relation to the surroundings and municipal and regional planning." 760 CMR 56.02. Finally, the

project eligibility letter from MassHousing provides that the applicant should be prepared to address Town and abutter concerns relative to the size, scale and appearance of the multi-family housing, discuss appropriate measures to address potentially negative visual impacts, and address Town concerns regarding the project's potential impacts on the integrity of the Sudbury Center Historic District and area historic and cultural resources.

Attorney Henchy's statement that public safety concerns, including site access and egress, are discriminatory and pretextual does not deserve a response.

Attorney Henchy for the first time asserts that his client has information regarding whether there are any archaeological resources on the site. If the applicant wishes to assert that the Mass. Historical Commission has made findings in this regard, that information should be provided to the ZBA.

Attorney Henchy states that the Board of Selectmen's concerns regarding environmental impacts such as stormwater and wildlife habitat have been addressed; in fact, the applicant still has not submitted information to this Board regarding stormwater impacts or calculations, despite repeated requests. Environmental review is important for such a large development, and the failure to provide adequate information is precluding this Board from reviewing it in a timely fashion. It should also be noted that a "no take" determination by Fisheries and Wildlife does not mean no impact.

With respect to comments on wetlands impacts, the Conservation Commission may respond as necessary. Again, there are a number of statements that are not accurate. For example, the Town's Open Space Plan has not expired. The Commission stated that MEPA review is likely, a statement that is accurate since this project will require a state permit from DEP for the wastewater facility. Whether MEPA review is required or not, however, will be determined by the state, not this Board. In my opinion, this Board need not make a determination on whether MEPA review is likely.

Finally, with respect to the letter from the Historical Commission to the Massachusetts Historical Commission, Attorney Henchy alleges that various statements in the letter are false. The letter simply states that the Historical Commission has "anecdotal information"; it seems unlikely that Attorney Henchy could know that the Commission does not have anecdotal information.

As stated above, the memorandum from Attorney Henchy contains numerous inaccuracies and irrelevant information and detracts from the Board's statutory duty to review this application in accordance with G.L. c. 40B, state regulations, case law, and local concerns. I recommend that the Board continue to focus on the proposed development, rather than being drawn into a debate into unfounded accusations.