



# Town of Sudbury

## CONSERVATION

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Wetlands • Conservation Land Management • Land Protection • Stormwater

### *Memorandum*

To: Sudbury Zoning Board of Appeals  
From: Charles Russo  
Sudbury Conservation Commission (on behalf of the Commission)  
Date: March 8, 2016

Re: Village at Sudbury Station; Comments to Sudbury Zoning Board of Appeals

The Sudbury Conservation Commission offers comments on the Village at Sudbury Station M.G.L. Chapter 40b application for development in the Town Center. These comments are intended for your consideration in your deliberations as permitting agent for the local Sudbury Bylaws as well as more general comments on the overall development and its associated issues.

### Protection of Natural Resources

In addition to the narrowly-focused wetland issues, the Conservation Commission was established under M.G.L. Chapter 40 section 8C for the promotion and development of the natural resources and for the protection of watershed resources of the town. Although it has no regulatory authority beyond wetland and conservation land issues, the Commission is providing broader comments in this memorandum beyond these regulatory issues for consideration by the Board.

### Wetlands

Wetlands are located mostly on the property to the north of the proposed development. These wetlands include Mineway Brook and its tributaries, as well as a substantial area of bordering vegetated wetland and flood plain. On August 24, 2015, in a properly posted and advertised public hearing, the Commission issued an Order of Resource Area Delineation (ORAD) confirming most the state Wetlands Protection Act, M.G.L. Chapter 131 s. 40, wetland types and locations on the site.

What was not reviewed were the wetlands on site that are subject only to the local Wetlands Administration Bylaw, Article XXII of the Sudbury General Bylaws. There include at least two areas of isolated vegetated wetland at the intersection of Peter's Way and Concord Road as well as a probable area of isolated vegetated wetland at Hudson Road just east of the Ti Sales entrance and at the proposed entrance to the Sudbury Station development. *The applicant has requested a waiver of any provision of the Sudbury Wetlands Administration Bylaw covering*

these areas, however the applicant has failed to identify and confirm the boundaries of these bylaw-only wetland and upland jurisdictional areas.

Mineway Brook was deemed to be an intermittent stream (lacking a 200' riverfront area) from Concord Road west to approximately mid-way between Concord Rd. and the culvert under the proposed Bruce Freeman Rail Trail corridor. From this mid-way point west to the culvert, the ORAD did not include a determination on whether or not a riverfront area exists. This was not part of the scope of the Notice of Resource Area Delineation (NRAD) submitted by the applicant. The plans submitted to ZBA are misleading as the stream is indicated only as intermittent for the entire length from Concord Road to the railroad culvert. This is incorrect as the stream type has not been determined throughout this area. The application does not show work within 200' of the area of the stream in questions at this point. Should plans be revised and any alteration on the site occur within 200' of the undetermined portion of Mineway Brook, a new NRAD must be filed with the Commission.

The application states that "there are wetlands on the site which will be protected and the extensive walking trails on and off the site will become a true amenity". Overuse of these sensitive wetland and open space areas (all within rare species habitat) may have a serious detrimental impact on the ability of the open space to provide the current services of wildlife habitat and groundwater protection.

With a very dense clustering of units on the steeper areas of the site, detailed drainage and septage structures and areas should be included. Soils data and drainage mitigation is paramount to determining if the site can meet environmental constraints. As these critical items were not included in the initial filing, the timeframe for ZBA review is shortened.

### Open Space and Recreation

The project site is included in Sudbury's current Open Space and Recreation Plan (OSRP) and therefore benefits from a presumption that the site is needed to preserve Open Spaces unless the Applicant produces evidence to the contrary. No evidence to the contrary was produced.

The site is listed in the OSRP as it meets the criteria for multiple reasons for preservation in a natural state. The property is a greenfield site development, with no structures on the site. The site is circled on several sides by open space (e.g., Haynes Farm, Parkinson Parcel, Howe parcel), so large-scale development here would have a huge impact even beyond the boundaries of the site itself by fragmenting an existing unbroken habitat.

In addition, the project site is contained within an area identified by the MA Natural Heritage and Endangered Species Program with protected rare species habitat and priority habitat. Several certified and several confirmed vernal pools are located in very close proximity to the site. A full accounting of the wildlife species inventory should be conducted to understand the effects this development could have on these rare species populations and on the populations of the more common species using this area for breeding, feeding, overwintering, and migration. This site is basically an "oasis" for these species in this area of town. Although the applicant has obtained a "No Take" determination from the Natural Heritage and Endangered Species Program under the

MA Endangered Species Act, it is our understanding that NHESP did not visit the site and made this important determination based only on review of aerial photographs and information submitted by the applicant. It is important to note that a “no take” decision does not mean “no effect.” The local wetland bylaw requires mitigation for any negative impact. We hope the ZBA requires the necessary mitigation.

The application to MassHousing states that the project will create or preserve open space or passive recreational facilities for the residents. *In reality, these amenities already exist on this undeveloped site. The project will significantly reduce the current open space and allowing excessive passive recreation in this habitat is likely to reduce the value of the area overall for passive uses.*

The project also has the potential for increased pollution from stormwater runoff due to the excessive amount of proposed impervious surface. These issues have not been fully analyzed and it is very important to have the town’s stormwater peer reviewer involved in this aspect of the project.

The site is bound by wetlands on the north and northwest, with steeply sloping topography. Surface and groundwater quality concerns are paramount in Sudbury where we rely 100% on our groundwater for our potable water needs.

All developments seeking Chapter 40B site approval must demonstrate consistency with the Commonwealth’s May 2007 Sustainable Development Principles. Part of the criteria for demonstrating consistency includes showing proposed site grading (2’ contours) and schematic landscaping and screening. The final site concept plans are deceiving as the extent of disturbance is likely to be far greater than the areas shown once drainage structures and leaching fields are added to the existing grades of 20%+ in portions of the site. Uses of low impact development (LID) or other innovative techniques were not discussed in the application.

### MEPA

It appears that the project is likely to be subject to a MA Environmental Policy Act (MEPA) review. The creation of over nine acres of impervious surface should trigger the requirement for the filing of an Environmental Notification Form. MEPA input and decision on whether or not an Environmental Impact Report is required and the scope of this report should be known early in the process.

### Specific Issues:

- ConCom suggests, as supported by Mass Housing in its letter of Project Eligibility, that Sudbury Station identify specifically how its proposed plan diverges from local wetland bylaws, as well as from the Performance Standards of Town Bylaw 3400, and specifically why exemptions are required for these bylaws. Blanket statements of “inconsistent with local needs,” leaves town officials unable to weigh the impact or performance standards of the plan.

- ConCom suggests, as supported by Mass Housing in its letter of Project Eligibility, that Sudbury Station specify proposed details of the provisions to address stormwater run-off into nearby wetlands, even if those wetlands are off-site.
- ConCom suggests, as supported by Mass Housing in its letter of Project Eligibility, that Sudbury Station discuss its plans for Leadership in Energy and Environmental Design (LEED), Low impact Development (LID techniques), and other environmental and efficiency design standards in the site plan.
- ConCom suggests a wildlife inventory be taken to better understand the impacts of the development on wildlife and wildlife habitat.
- ConCom suggests the applicant be required to identify the two areas of isolated vegetated wetland at the intersection of Peter's Way and Concord Road as well as a probable area of isolated vegetated wetland at Hudson Road, just east of the Ti Sales entrance.
- Approximately half of the development site is within a priority area under the Natural Heritage Endangered Species Program (NHESP). While NHESP has determined in a letter dated October 29, 2015 that the proposed Project as currently proposed "will not result in a prohibited 'take' of state-listed rare species." ConCom notes a "no take" ruling is not the same as "no effect." ConCom suggests mitigation is appropriate for the loss of habitat for endangered species.
- The 40-acre site proposed for development by Sudbury Station is designated as part of Sudbury's Open Space and Recreation Plan (OSRP), and ConCom suggests mitigation would be appropriate to offset this loss to the community.
- The scale of the environmental effect is concerning, as Sudbury Station has submitted for the maximum number of units possible. A municipality that has between 5,000 and 7,500 housing units (Sudbury has 5,590 housing units), the largest allowable application for a Comprehensive Permit involves the construction of 250 housing units.
- ConCom requests additional information regarding how the clearing of 15+ acres of trees will affect hydrology, drainage, groundwater supplies, drinking water supplies, flooding, storm damage, wildlife, and water pollution in the immediate area and town as a whole.
- We ask that ConCom's standard orders of conditions be attached to any approvals, which include conditions regarding snow removal, de-icing chemicals, coal tar-based sealants, and more.
- ConCom requests that limits of work be defined for the entire site, as well as erosion control measures.
- ConCom requests calculation about how foundations for underground parking garage will affect hydrology, drainage, groundwater supplies, drinking water supplies, and water pollution.
- ConCom requests that calculations demonstrating that no resource areas outside the project site will be affected, especially considering that slopes of greater than 10 percent exist, will be affected by drainage or other site changes. This includes any loss of post-development drainage flow that currently supports wetland areas through surface runoff.
- ConCom requests calculation about how foundations for underground parking garage will affect wetlands, as well as the areas within the 100-year floodplain.
- ConCom requests calculations projecting the development's effects on the soil conditions, and drainage, to the existing agricultural land to the north.
- ConCom requests calculations showing the effect of site lighting on the surrounding natural habitat so as to limit light pollution for wildlife.

- ConCom requests to be copied on any additional information that results from the MEPA review of this project, triggered by the development of 5+ acres of impervious area (15.82 acres comprised of 9.12 of parking, 6.7 of buildings).
- ConCom suggests the applicant work with the community by providing an analysis of existing and expected post-development environmental conditions, including but not limited to measures proposed to prevent pollution of surface and ground water, erosion of soil, excessive runoff of precipitation, excessive raising or lowering of the water table, or flooding of other properties; measures to protect air quality, minimize noise levels, prevent harmful or noxious emissions, and damage or threat to wetlands, flood plain, wildlife habitat, and historical or archaeological resources, excessive light toward surrounding residential neighborhoods and natural environment, and the visual environment. Potential smoke, odors, vibration and electromagnetic radiation should be identified and addressed. The environmental impacts analysis should also describe proposed methods of waste disposal. This analysis should be prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. This analysis should assess the impact of the development on the environment within the development and on parcels adjacent to the site.

#### Zoning Board of Appeals Requirements

The Conservation Commission is available to meet with the ZBA to discuss the Sudbury Wetland Administration Bylaw issues and how, if applicable, they would be applied to this project. Although waivers have been requested, it is our understanding that the need for these waivers must be demonstrated. It is our hope that the ZBA will apply the most stringent scrutiny of this project to allow for the maximum application of local bylaws.

The Zoning Board of Appeals has an obligation to take into consideration the interests of future generations to ensure they are not compromised by today's decisions to the extent possible under the Regulations. Compact and/or clustered development so as to preserve undeveloped land is a goal of the 40b process. The Village at Sudbury Station does not in any way do so. The buildings and units are clustered only to the extent of the site constraints. The open space shown on the plan is already open agricultural space protected in perpetuity. The design of this development maximizes the number of units in buildings that do not fit with the character of the Sudbury Center area. Soil degradation, drainage, septage, traffic, and overuse of sensitive passive recreational areas will result from this project. We encourage the ZBA to require the developer to look at designs that are more sensitive to the environment and the rich history of the area to allow it blend into the current fabric and quality of life for existing residents and those residents seeking to occupy the new units.

Thank you for your consideration of our concerns.

CC: Sudbury Board of Selectmen  
Sudbury Planning and Development Office