

SUDBURY PLANNING BOARD

MINUTES

NOVEMBER 13, 2018

SILVA ROOM, FLYNN BUILDING, 278 OLD SUDBURY ROAD

**Members Present:** Chairman Stephen Garvin, Vice-Chairman Peter Abair, John Hincks, Nancy Kilcoyne, and Associate Member Justin Finnicum,

**Members Absent:** Charles Karustis

**Others Present:** Attorney Jonathan Silverstein of KP Law, Attorney William Henchy, and Environmental Planner Beth Suedmeyer

Chairman Garvin opened the meeting at 7:00 p.m.

**Review and discuss draft zoning amendments including the creation of the North Road Residential Overlay District and potential vote to recommend for Special Town Meeting**

Chairman Garvin stated there would be a related public hearing tentatively scheduled for November 29, 2018. He indicated the Planning Board would be able to comment and review the provided draft Zoning Bylaw amendments at tonight's meeting. Chairman Garvin referred to the 4700B – Melone Smart Growth Overlay District document dated November 11, 2018, the Melone Smart Growth Overlay District graph dated November 13, 2018, and the Town of Sudbury – Official Warrant for Special Town Meeting on December 11, 2018.

He described the process involved in submitting a Quarry North 4700R application to the Massachusetts Department of Housing and Community Development (DHCD) by the end of the month.

Ms. Suedmeyer stated Article 1 (the North Road Residential Overlay District (NRROD)) would require a vote to include Zoning Bylaw 4700A and Article 3 (the Master Plan for Quarry North). She noted the Planning Board did not have the Article 3 document yet.

Chairman Garvin stated Article 1 – North Road Residential Overlay District (NRROD) would be within the current Research District, which will allow for residential use that is not currently allowed. He added the process would be very similar to the Mixed-Use Overlay District (MUOD) and the Meadow Walk zoning plan. He detailed the Quarry North Master Plan to be presented at Town Meeting. He stated, like the MUOD, the plan required a Master Plan and a development agreement to move forward to obtain the required two-thirds vote at Town Meeting.

Ms. Suedmeyer noted additional Warrant Articles regarding the actual transfer of land and repurposing of a stabilization fund.

Mr. Hincks inquired if Articles 1, 2, 3, 4, 5, and 6 had to pass at Town Meeting. Chairman Garvin replied Article 2 did not necessarily have to pass at Town Meeting, as there would be other processes which could be utilized such as a Local Initiative Program (LIP) process. Mr. Hincks affirmed that Article 1 must pass at Town Meeting and questioned the appropriate timing for feedback. He noted that tonight the

Planning Board was being asked to approve the language of Articles 1 and 3. Chairman Garvin agreed with Mr. Hincks' assessment. Ms. Suedmeyer noted at Town Meeting there would be a different motion and there could be amendments to warrants. She stated the articles would be available for public review when the hearing notice was published in the paper and also on the website in draft form, with further consideration and discussion at the Town Forum.

Chairman Garvin stated the Planning Board wanted to examine the warrant to see if any members had comments or issues. The Board members then reviewed Article 1 – Amend Zoning – North Road Residential Overlay District.

Vice-Chairman Abair questioned the presence of “affordable housing” language in Article 1.

Ms. Kilcoyne presented some semantics issues regarding a screening/berm aspect. Chairman Garvin stated a landscaped berm could present a more attractive streetscape than a dirt gravel pit. Ms. Kilcoyne then raised questions regarding the existing businesses on Route 117. Chairman Garvin stated a key component was the suggestion of a bus shuttle from the Quarry North senior housing units to the existing businesses in Sudbury.

Vice-Chairman Abair asked about the Master Plan and questioned the super majority vote needed.

Quarry North Attorney, Mr. Henchy, asked if it would be helpful to the Planning Board if he presented how the developer arrived at this point or if the Board preferred to wait for Attorney Silverstein. Chairman Garvin stated there was some obvious wordsmithing which the Planning Board wanted on the Warrant before sending the text along to the Board of Selectmen.

Mr. Hincks inquired if the Warrant is designed to inform the public before Town Meeting and to kick-off the conversation at Town Meeting. He added he thought Articles 1 and 3 were in good shape.

Mr. Finnicum provided comments regarding the language around “improved streetscape.” Chairman Garvin suggested that “active streetscape” might replace the “improved or enhanced streetscape” language. Mr. Finnicum was in agreement.

Attorney Henchy provided a summary of the two zoning articles adding his client initially proposed a Chapter 40B LIP development per the recommendation of the Board of Selectmen. He stated his client had proposed a development with 333 units and entered into negotiations with the Town, and in the last ten days had agreed to reduce the number of units to 274. He added the Quarry North group was working on a site plan which reflected the newly agreed upon number of units.

Attorney Henchy indicated 101 of the 274 units will either be included in a Chapter 40B LIP or a Chapter 40R Smart Growth Development Plan if approved by the Town. He added that 80 of the total number of units will be age-restricted and the remaining 173 units will be primarily townhouse, with some apartment flats.

Attorney Henchy stated negotiations suggested his clients would abandon the proposed Sudbury Station development, which was a central objective for the Board of Selectmen. He noted Chairman Garvin suggested the negotiating team review the Meadow Walk development. Attorney Henchy concluded these actions were reflective of how the Quarry North development arrived at this point. He assured the

Planning Board the Quarry North team had been working on addressing the existing capacity in the Town schools and the traffic issues on Route 117; and the two zoning articles were a byproduct of those considerations. Attorney Henchy detailed that his clients had agreed to fund the capacity study for the Town schools, as well as funding a traffic study for Route 117. He noted his clients were currently negotiating traffic mitigation for Route 117 and will provide more related information in the next week or so for the Public Forum presentation.

In regard to the active streetscape, Attorney Henchy stated the developer's mission was to preserve the existing bucolic views from Route 117 and they were not attempting to create an active streetscape on roadway. Instead, Attorney Henchy indicated his client was working on matters of scale to work on an internal streetscape that was pleasant and created a community for residents.

Chairman Garvin began the discussion regarding Article 3 and asked if the Planning Board had any questions. Mr. Finnicum asked about the 2,500 square feet of commercial space. Chairman Garvin stated a plan for the commercial space had not been presented yet and the plans would probably be reflective of one building for that commercial space.

Mr. Hincks noted the property included land in the Town of Concord. Chairman Garvin confirmed the statement stating the Town of Sudbury did not control that aspect.

Vice-Chairman Abair inquired about the Master Plan for the property. Chairman Garvin replied the Master Plan was being worked on and the hope was to a draft of that plan by the November 28<sup>th</sup> or 29<sup>th</sup> of 2018.

At this time Attorney Silverstein arrived at the meeting.

Chairman Garvin told Attorney Silverstein the Planning Board was suggesting some changes be made in Article 1 by changing the wording "active streetscape" to "enhanced streetscape." Attorney Silverstein indicated the Board of Selectmen had just voted to approve the Warrant. Chairman Garvin suggested the proposed language be included in the Master Plan for the property. Attorney Silverstein stated the recent activities had been reflective of a "fire drill - type process," and had been wordsmithing since late afternoon, with many moving parts. Ms. Suedmeyer indicated there was still room for this aspect in the final Quarry North Master Plan.

Vice-Chairman Abair queried about the possibility of Article 3 not passing at Town Meeting. Attorney Silverstein noted the question would then be what caused the defeat of the article and what could be addressed and brought back to a subsequent Town Meeting; or to go forward with Sudbury Station development. He added that if Article 1 passed and 3 did not, then that piece would have to go before the Zoning Board of Appeals as a friendly Chapter 40B development. He provided further details on Article 2, including the requirement for the approving the Chapter 40R zoning.

Vice-Chairman Abair asked why this process appeared to be a fire drill type of exercise. Attorney Silverstein responded that because the Sudbury Station trial was scheduled for the next day, and the Quarry North Developers wanted to know if the proposal for Sudbury Station would be abandoned or not, and the developer had agreed to push the trial date to the first week in February. Attorney Henchy agreed with the statement.

Vice-Chairman Abair stated the Master Plan not being reviewed by the Planning Board was not common practice and he had concerns. Attorney Silverstein noted the planning review process was not so uncommon and that other towns had something along these lines. However, he did note that having Town Meeting weigh in on development proposals was rather unique.

Chairman Garvin stated he agreed the process was the opposite of the MUOD, but it did provide the shell of the plan that gets approved by the Town. He said he believed the developer's risk was greater in this scenario as they did not have the certainty of the Planning Board approving a project before they move forward.

Attorney Henchy commented the Board of Selectmen were not going to convey the property if the Planning Board or the Zoning Board of Appeals had concerns. Therefore, he believed there was more of a leap of faith by the developer. He added his expectation was the Master Plan for the development would be very detailed, and engineering, stormwater design, lot coverage, architectural aspects, wastewater, Route 117 considerations, etc. would all be addressed with design standards being met. Attorney Henchy added he did not see possible litigation and the recourse of the developers was to go back to the Sudbury Station development.

Vice-Chairman Abair asked if the articles were going to be voted upon that night before reviewing the bylaw in further detail. Chairman Garvin responded the Planning Board was going to be endorsing the article for publication. Attorney Silverstein added that if the Article recommendations were not made at this meeting, then they would have to be made after the Public Hearing. Chairman Garvin noted the Planning Board had until November 29, 2018 to have a comfort level with the recommendations as stated and the public would have the opportunity to ask questions, as well. He pointed out the public would ultimately decide if this went forward or not.

Mr. Finnicum stated he wanted to review the Articles a bit more.

Mr. Hincks indicated he had not read the Warrant Articles currently in front of the Planning Board and wanted to discuss them further.

Attorney Silverstein led a discussion regarding the overlay district and the research district. He stated a major change from the MUOD was the Zoning Board of Appeals process. Attorney Silverstein indicated that because this project was originally proposed as a Chapter 40B development, the Zoning Board of Appeals would hold its own public hearing and would provide recommendations to the Planning Board, which could include recommended conditions. He added Mr. Henchy was taking credit for the idea of a separate Zoning Board of Appeals hearing. Chairman Garvin stated the Planning Board valued the experience and input of Zoning Board of Appeals in this process.

Attorney Henchy stated the concern was the Master Plan as the developer did not have detailed information regarding soils, groundwater levels, or leaching areas. He indicated they were anticipating certain areas might be variable and the developer did not want to handcuff the Planning Board in anyway. Attorney Henchy noted the developer did not want the Planning Board to say this was not the same plan as presented at Town Meeting and then not approve it. Vice-Chairman Abair stated the plan at Town Meeting might not have the landscape plan, for example, and other details the Planning Board typically

reviewed as this was a substantial project. He noted the Planning Board wanted the language to indicate these areas were still within the Planning Board's purview and review of the Master Plan.

Mr. Hincks stated that upon a first read, he found the plan to be the same as what was approved at Town Meeting and subsequently, by the Planning Board, it will have evolved. He said there was a process where the Zoning Board of Appeals does their part in the review and then comes back to the Planning Board. Mr. Hincks acknowledged time will elapse between Town Meeting and final Master Plan. Vice-Chairman Abair indicated his final question pertained to the Planning Board's decision and the need for a super majority. Attorney Silverstein commented it was the call of the Planning Board. Mr. Hincks stated the Planning Board did that in the MUOD to assure the voters at Town Meeting there would be adequate controls. Attorney Henchy indicated he did not think there would be any problem with that concept. Mr. Hincks stated the Planning Board would probably have no problem with it either, but this process was somewhat different because the Town would have already done its voting. Chairman Garvin stated it was more of an assurance in general and even though the Town voted for it, the Planning Board was looking at it in consideration of a super majority. He affirmed it was a Special Permit and noted all Special Permits required that type of a vote.

Ms. Kilcoyne commented the Town was going to approve the Master Development Plan and quoted from the document: "The Planning Board can approve minor modifications, increase 5%," and she questioned if the 5% was an arbitrary number. Chairman Garvin responded that was a number the Planning Board had voted on and it allowed for a very small change if any had to be made. Attorney Silverstein noted the number appeared to be appropriate as a minor change. Chairman Garvin added the 5% figure reflected a number which could be handled by staff rather than going back to the Planning Board and this was the number used to define a minor change. If the change was greater than 5%, the Planning Board would want it to go back to the Town.

Ms. Kilcoyne questioned the plan's ability to change gross square footage. Attorney Silverstein stated this appealed to anything which exceeded those enumerated limitations in 4751A and a more detailed process would be required if anything should exceed those limitations. Thus, minor modifications would not require a public hearing. Attorney Silverstein stated a minor modification could be approved by the Planning Board at a meeting and this did not require a public hearing. He noted a major change, as discussed, would require a public hearing but not a Town Meeting vote. Attorney Silverstein also noted the project modification section stated the Planning Board had the ability to impose additional conditions as the Planning Board deemed appropriate. He stated he would add that language to the document.

Chairman Garvin mentioned that Meadow Walk was a phased development and came before the Planning Board as such. Mr. Hincks agreed with the statement and added the Planning Board did have some guidelines.

Attorney Silverstein noted the proposal had a five-year lapse clause, which was very generous, and he did not imagine the Quarry North project would wait five years to commence with the development.

The "usage" section was noted by Attorney Silverstein. Along those lines, Chairman Garvin stated the Planning Board might prefer to consider a three-year lapse clause rather than a five-year lapse clause, considering the design and approval standards could change in a longer lapse time. Attorney Silverstein stated a two-year lapse clause was standard in 40R zoning.

Attorney Henchy commented the state and federal water-related regulations could take a certain period of time and asked the Planning Board take that aspect into consideration. Chairman Garvin stated three years would probably be a reasonable time frame and experience had proven that.

Ms. Kilcoyne asked if there was a definition for “personal service establishment.” Attorney Silverstein stated the only thing he would point out regarding the “usage” section was that it prescribed many more permitted commercial uses. He indicated the intent was for the commercial piece to be accessory in support of the residential usages. Attorney Silverstein noted the hope was there would be some sort of connectivity with North Woods and Frost Farm, and potentially for the project to include an ice cream shop, coffee shop, or a dry cleaner (as examples), which could be amenities the entire neighborhood. Attorney Silverstein also indicated large scale retail was not allowed, such as larger restaurants, to discourage the public from coming to this site. He mentioned the provision for signage and how there could not be any offsite advertising.

Resident and Chairman of the Zoning Board of Appeals, John Riordan, stated beauty parlors and nail salons fell into that category as well.

Attorney Silverstein indicated he would look up the “personal service establishment” definition in the bylaw, but thought a nail salon or drycleaner would fall into that category.

Attorney Silverstein stated that in terms of residential uses, there would be up to 80 age-restricted residential units and non-age restricted units as well. Chairman Garvin pointed out 80 units was in the current development agreement and noted the question was if a memory type unit would be sought. He recommended some alteration to the document. Attorney Silverstein stated he would make the change and noted the applicant had indicated they might be interested in considering including an assisted living facility/retirement community. Mr. Hincks stated that aspect made sense, but the document runs with the overlay, not with the particular project.

Discussion followed in regard to the 2,500 square foot limitation.

Attorney Silverstein stated that items 1 and 2 would be replaced with multi-family, and three for assisted living, would now be item 2.

Vice-Chairman Abair stated that with regard to housing, if Article 2 did not pass, the Melone Smart Growth Overlay District would be a LIP process, and there was no requirement for the developer to pursue a LIP process. Attorney Silverstein indicated the development agreement would speak to this and Town Meeting will have development agreement. Vice-Chairman Abair reiterated the development agreement presented at Town Meeting will not be without the affordable housing component. Attorney Silverstein confirmed the statement.

Attorney Silverstein reviewed the unit approval process in relation to a proposed 40R zoning development. Vice-Chairman Abair maintained that the affordability unit aspect was critical to this project, Sudbury Station was not an affordable housing project, and the Town wanted to make sure the Quarry North included an affordability component. Attorney Henchy commented his client had a very strong commitment to building affordable housing at the site, which was how the project was considered in the initial stages. He stressed there were numerous assurances for the Town built into this development plan.

Attorney Silverstein added he suspected the motion under Article 4, the disposition article, was going to authorize the Board of Selectmen to convey the land pursuant to the terms of the land disposition development agreement. The Town Meeting vote would be explicit it was giving the Board of Selectmen the authorization to only convey per the terms of the agreement.

Mr. Hincks stated the zoning agreement covered the whole research district, not just the Melone property. Attorney Silverstein confirmed that was correct. Mr. Hincks felt properties not owned by the Town which sought to take advantage of this zoning should have to go before Town Meeting. Chairman Garvin agreed and added that approval by the Board of Selectmen would also be necessary.

Ms. Kilcoyne asked if the uses under the assisted living aspect were within the 2,500 square foot requirement. Attorney Silverstein replied that would reflect a different use, so that would be independent. He stated that if the developer chose to include some assisted living, the Town must determine if and how limits are to be presented without going back to Town Meeting. Discussion followed regarding the assisted living consideration. Mr. Hincks suggested calling out potential uses the Planning Board might like to see.

Attorney Silverstein asked Attorney Henchy how he would feel about the assisted living aspect if it meant going back to Town Meeting. Attorney Henchy responded his client would probably not want to go before Town Meeting in this regard. Attorney Silverstein commented that aspect could be left to the discretion of the Planning Board and suggested a conditional approval of such. Attorney Henchy agreed.

Mr. Riordan asked if this circumstance applied to the assisted living element only. Attorney Silverstein replied in the affirmative. Ms. Kilcoyne mentioned part of that would include medical offices and clinic-type set-ups. Attorney Silverstein asked Attorney Henchy if this aspect was just added today. Attorney Henchy said it was and that his client has done this type of service elsewhere, however, he would be happy to review all of the prescribed language.

Chairman Garvin stated some of the ancillary uses might require review and flexibility.

Attorney Silverstein noted the Town was already allowing "personal service establishments," so this aspect would need to be amended. Chairman Garvin suggested it be offset by decreasing the commercial space to allow for the inclusion of a coffee shop or something along those lines.

Mr. Hincks noted this was a good catch by Ms. Kilcoyne and could be viewed as a loop hole. He pointed out the commercial space and visibility would grow considerably under this aspect. Attorney Silverstein stated Attorney Henchy had added this provision, but realized the Planning Board was going to have the ability to tweak it. Attorney Silverstein also noted there would be a public hearing involved, this was at the Planning Board's discretion, and they could limit the ancillary uses. Mr. Henchy agreed to condition it. Chairman Garvin stated the discretion would involve the commercial space and the number of units.

Ms. Kilcoyne indicated she had a problem with the medical space and the professional office as these uses were usually confined to medical centers with nurses on call. Mr. Hincks added that some of these facilities have small hospital set-ups. Attorney Silverstein stated this could reflect a condition of approval or it could be stated in the zoning. He also added there might be circumstances where you do not want to limit it in that fashion.

Chairman Garvin remarked the senior center might go right next to something like this with a shuttle. Ms. Kilcoyne affirmed she did not want a mini-clinic here. Mr. Hincks stated all of this was designed to serve the residents and these services must be designed to do so. Chairman Garvin indicated there had to be interconnectivity. Mr. Hincks stated discussions would be coming up regarding the aging of Sudbury.

Attorney Silverstein asked if the Planning Board had any other comments. He spoke of the height aspect and stated three or four stories would be possible with a setback of 500 feet from the street. He noted the Planning Board had agreed on three stories or the Planning Board having the discretion to increase it to four stories.

Attorney Henchy noted the way this aspect was written, as originally proposed, four stories would be allowed within a certain distance of North Road – Route 117. Attorney Silverstein inquired about allowing four stories by right beyond 500 feet and Attorney Henchy responded in the affirmative. Attorney Silverstein stated he understood that a tradeoff was made. Attorney Henchy replied that was true, but some of the building heights on two of the buildings were still in flux and this may have to be revisited. The intention was the streetscape from Route 117 was going to remain essentially as it currently was. The berm adjacent to North Road would be maintained, there would be no construction within the first 100 feet, and the front yard setback would be 100 feet. Attorney Silverstein pointed out the MUOD setback was 20 feet and this proposal was superior.

Some discussion regarding the surrounding area took place.

Attorney Henchy stated he would like to speak further with the Planning Board when the Master Plan was presented and if there was an issue he preferred to address it sooner, rather than later.

Chairman Garvin then asked if anyone from the public wanted to speak.

Ms. Suedmeyer mentioned that customarily the Planning Board has shown this has been signed.

Ms. Kilcoyne asked about the timing for providing comments. Attorney Silverstein replied comments could be made up to, and including at, the public hearing, or they could be directed to Ms. Suedmeyer and himself prior to the public hearing.

Ms. Suedmeyer stated there would be a Planning Board meeting on November 28, 2018. Chairman Garvin recommended the Planning Board have a related discussion before the public hearing on November 28, 2018.

Attorney Silverstein stated he would be providing an updated draft by November 26, 2018.

The Planning Board raised questions regarding the Chapter 40R application process. Ms. Kilcoyne asked if “development” was defined as above ground and Attorney Silverstein replied in the affirmative.

The meeting was adjourned at 9:10 p.m. on a motion by Chairman Garvin, seconded by Vice-Chairman Abair, with all members voting in favor.