

*Town of Norwell*  
**BOARD OF APPEALS**  
**PUBLIC HEARING of June 19, 2013**  
**Meeting Minutes**

MEETING DATE: June 19, 1013  
TIME SCHEDULED: 7:30 P.M.  
MEETING LOCATION: Norwell Town Hall, Gym

MEMBERS PRESENT: Lois S. Barbour, Chair  
Ralph J. Rivkind  
Patrick J. Haraden

OTHERS PRESENT  
on behalf of the Board: R. W. Galvin, Town Counsel  
John C. Chessia, P.E., Chessia Consulting Services, LLC,

DEVELOPER'S TEAM: Warren F. Baker; Baker, Braverman & Barbadoro  
John J. Sullivan, Manager; Simon Hill LLC  
Brian Murphy; Unicorn Realty  
Bradley McKenzie, McKenzie Engineering Group

PURPOSE: Continued Public Hearing on amended 40B Application  
APPLICANT: SIMON HILL LLC  
PROPERTY LOCATION: Off Prospect Street



Following an earlier public hearing that ran late, the Chair called the public hearing to order at approximately 7:50 p.m. with reading of the public notice.

The evening's agenda is proposed to include discussion of the following:

- Police Chief presentation
- Public comment emails
- Abutter comments presentation by Jon Witten
- Work Session on 6/14/13
- Engineering Work Session on 6/18/13
- Applicant's team status report
- Peer review status report
- Peer review completed to enable discussion of pro forma
- Discussion of conditions
- Close of public hearing not likely



**Police Chief:** The Norwell Police Chief appeared before the Board to address public safety concerns of traffic, increased staffing level requirements for law enforcement and emergencies, project density and increase in crime, as detailed in his letter of 6/13/13.

In response to Member Rivkind's question which Prospect intersection is "more in need of work"—Grove or Maine, Chief Ross responded Grove and Prospect.

Following the police chief's presentation, Mr. Baker declined further comment as he indicated the infrastructure of the Town has already been discussed.

**Frances Clairmont (237 Prospect Street)** asked whether a traffic light were needed at the Prospect and Main Street intersection to which the chief responded such would be helpful at both Main and Prospect Streets, as well as at the Main and South Street intersections.

**Kim Lemman (75 Simon Hill Road)** asked about the level of additional staffing needed to which the chief responded a total of 24 is needed for full staffing, but the department has only 22.

**WORK SESSION of 6/14/13:** Member Haraden reported on the 6/14/13 work session at Town Hall at which the applicant's team met with Member Haraden, Mr. Chessia, Mr. Galvin, and the Town's conservation agent for the Board. That session resulted in revision of Town Counsel's draft conditions dated 5/29/13 with revisions dated 6/17/13. Member Haraden stated the group came to consensus on some issues on the proposed conditions, while the Board is waiting to hear whether others make the project uneconomic.

Mr. Baker concurred some agreements had been reached about certain changes and this evening's submitted plans reflect those changes, as well as prior agreements. Mr. Sullivan further indicated he thinks ten conditions may need to be discussed with the ZBA, while the others have been worked out at prior meetings and during the work session. He indicated the work session was productive and mostly technical in nature.

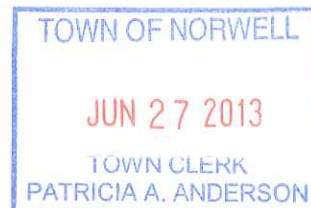
Mr. Chessia stated he went through the plans and draft conditions. Many are minor that he can decide such as cross sections of the roadway. However, the Board should review fencing and plantings. Others have no direct engineering solutions. He noted he may not have seen all information to be presented by Mr. Sullivan and Mr. McKenzie at this evening's meeting.

Mr. McKenzie stated the revised plans submitted are in response to Mr. Chessia's comments on MEG's 5/29/13 letter relating to buffering and landscaping, as well as minor changes arising out of the prior day's engineering work session on 6/18. He stated enhanced buffers and fences have been added and the final landscape plan is to be developed by a registered landscape architect. Additional fencing has been added around the Molla property to prevent headlights from shining onto adjacent property. There have been some changes in dumpster locations, but Mr. McKenzie acknowledged concerns stated by Mr. Chessia about the proximity of dumpsters to catch basins, which he is willing to address in the final definitive plans. Bike racks have been added. There is some concern by the applicant about compliance with the Planning Board subdivision rules. However, they will follow the roadway cross sections and sidewalk asphalt layers. All of these changes are included in the plan sets submitted this evening. The architectural show the height of the building as 44' from the slab to the top.

Member Rivkind questioned whether the height of the building was above grade at the current level with added fill plus the building, to which Mr. McKenzie responded the height was above the grade at the property line. A further discussion of the height ensued with Mr. Sullivan to clarify the building height.

Member Rivkind then requested architectural that include the proposed 3-bedroom units and stated his concern that the unit numbers in the application might not fit within the proposed development.

Mr. Sullivan responded the plans do not show the final layouts and the "buildings are not designed yet," as previously stated.



Member Rivkind wants plans that show 3-bedroom units no later than next Monday, prior to the 6/26/13 scheduled continued public hearing in order for abutters and members of the public to see information before the night of that meeting.

Mr. Sullivan submitted a photo of a basin at the Wildcat subdivision, which he indicated is similar to that proposed for the Simon Hill project, to address the condition requiring fencing. He noted the basin is shallow and contains no stones (rip-rap). He feels the photo will give everyone a better understanding of what the proposed basins will look like.

Mr. Sullivan provided wording requested at the 6/14 work session to address Condition 43, relating to building materials to be used.

Mr. Sullivan then moved on to a discussion of the proposed wastewater treatment plant, showing a photograph taken of the equipment building (12' x 24') at 239 Washington Street that houses the above-ground components of the Amphidrome® system designed to serve the 39 condo units under development at that location, which is the type to be constructed for the proposed development. He stated he does not use the older style, which is based on 1960's technology known as RBC (rotating biological contact), that would require a much larger building and with which there were stated concerns relating to odor and noise.

Mr. Sullivan discussed roadway issues relating to the fire chief's comments with whom the applicant will again be meeting. He stated there has been significant litigation over the site at both the HAC and the Superior Court. He claimed the project development is to be based upon DEP and other state regulations and not local.

Mr. Baker indicated he would develop a list of the ten conditions at issue with numbers in response to a request by Member Barbour. He stated Mr. Galvin's recent draft, dated 6/17/13, is "true to the issues". The applicant will provide a pro forma but cautioned it is a "moving target" and "very preliminary".

Member Barbour stated the conditions under discussion are available electronically or paper copies may be obtained through the Zoning Office, although there could be some delay associated with paper requests.

Member Haraden suggested Mr. Chessia should comment on the MEG presentation.

Member Barbour noted that Mr. Chessia's comment letter closes out the peer review comments on information submitted.

Mr., Chessia noted his 6/17/13 comments are an update of prior letters and noted information that has now been submitted. He suggested the Board review the fencing locations and determine whether the height and lengths are sufficient along the parking lots and property lines.

Member Rivkind wanted clarification as to the grade change from the new elevation to which Mr. Chessia responded there is a 3:1 slope coming up to grade level. Essentially the whole property will be filled up and then graded to the property edge some 3-6'. The fences will be close to the top of the elevation.

Member Rivkind noted the plans still show a dead-end roadway, one of his previously stated concerns, as well as no fire lanes.



Member Barbour noted as with all town board and department comments, the fire chief's comments are advisory and it is the Board's responsibility to determine how to write its decision and condition the project.

**ABUTTER'S ATTORNEY:** Jon Witten stated the proposed project is "cynical in a decidedly historic residential neighborhood, especially after litigation where the applicant lost the ability to develop the upper portion." He noted dead-end roads cannot be longer than 550', but those proposed are twice if not three times greater in length and violates a condition on which the Board was upheld. He recommends a strong buffer of no less than a 100' no-touch zone, which he stated would still allow a project with slightly less density and follow upheld conditions. Critical to the Board's consideration is Neal Price's expert testimony at the HAC that the wastewater treatment system proposed would increase groundwater levels and render the Title 5 systems of abutters non-compliant. A condition stating the wastewater treatment system will not raise the seasonal groundwater higher than it already is should be imposed. He also noted the Board has the authority to impose local conditions if it has the authority to do so per the HAC's Amesbury decision for off-site, down-gradient trespass. He noted the height of the development is more than the finished grade and there is no rationale why the applicant cannot comply with the Norwell Zoning Bylaw height restriction of 35' (sic s/b 34') at finished grade. In closing, Mr. Witten stated as respects groundwater mounding, 40B does not abrogate the law of trespass; further, the height of the development should be consistent with neighborhood. He provided paper copies of his 19-page recommended conditions and will provide same in electronic format per the Board's request.

Member Haraden requested clarification as to the identity of the abutters represented by Mr. Witten to which he responded Kim Leman of 75 Simon Hill Road and Tom and Nel Graefe of 69 Simon Hill Road.

Mr. Baker had no questions or comments but will review Mr. Witten's conditions.

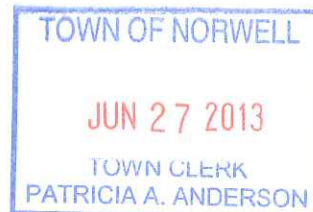
Member Barbour noted the Board is very aware of the height, traffic, groundwater, stormwater, and wetlands issues and state level requirements, such as fire lanes, affirmed by panel members.

#### **PUBLIC COMMENTS:**

**Marie Molla (88 Prospect Street)** requested that fencing be extended at the northeasterly edge of the proposed project location to screen her property in the area of the "neck".

**Paul McGloin (58 Prospect Street)** requested clarification of the size of the wastewater treatment building, which at 239 Washington Street is 12' x 24', while according to Mr. Sullivan that proposed for the Simon Hill development is twice the size or 24' x 24'. Mr. Sullivan stated most of the work for the Amphidrome® system is underground and at Simon Hill will require a bigger system than currently at 239 Washington Street.

**Christine White (45 Simon Hill Road)** asked about the fence construction, which Mr. Sullivan clarified to be one of the two designs submitted; specifically, the vinyl ultra-privacy fence with the Mt. Vernon topper or the diagonal lattice topper. The total fence height will be about 5 ½' of which 4-4 ½' is opaque with one of the 18" toppers above. In response to Member Rivkind's question about whether the two designs are something people can expect, Mr. Sullivan stated the fence style would be one of the two shown in the information submitted. He has used both at other project sites.



**Robin Billings (143 Parker Street)** noted the plan includes landscaping inside the fence, but wanted clarification about the exterior of the proposed fence and whether the abutters would be looking at piles of dirt with a fence on top.

Member Rivkind stated the Board is very cognizant of establishing a tree line for visual and sound buffering for neighbors and expects that a good tree buffer will be evergreen and not deciduous. (Mr. Rivkind later noted the current condition relating to landscape buffering is #58.)

**Marie Molla (88 Prospect Street)** asked whether the fence will be soundproof to which Mr. Sullivan responded it will not be like those on Route 128 and reasserted his claim that the project will not develop “a lot of traffic”.

The sign-in sheet was located and audience members were asked to come forward to sign, if they had not already, which was accomplished.

**Frances Clairmont (237 Prospect Street)** stated she moved into Norwell because it is the community it is today and that we must look at the cost benefit of the proposed development. She further asked about enforcement to which members responded a variety of Town boards and departments and state, if necessary would provide enforcement in accordance with rules and regulations.

Member Barbour again indicated that the Board is limited in its ability to deny the project and to do so would be suicidal for the Town, as those with prior 40B experience could tell her. It was suggested that members of the public review prior 40B decisions, which are posted on the Board’s website.

Member Haraden asked whether some combination of the buffer proposed by Mr. Witten and reduction of the building height to 34’ could be agreed upon by the applicant to which Mr. Sullivan responded “a lot of time and money has already been spent on development of the project”.

Mr. Baker provided a hand-written list of conditions in question per the Board’s request and also submitted a 1-page “very preliminary pro forma”.

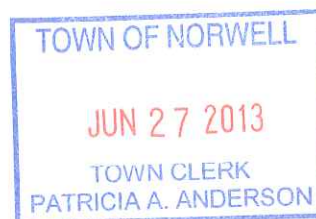
**Penny Wilson (120 Prospect Street)** again stated the Town must do something about affordable housing so that inappropriate applications can be rejected. She also expressed concern about handicapped parking, clarified by both Mr. McKenzie and Mr. Chessia that compliant parking is shown on the latest plans.

**Marian Reed (79 Prospect Street)** inquired about a sidewalk at the entrance of the development on Prospect Street to which Member Barbour noted a feasibility study for a sidewalk is currently included as a condition but the Board cannot require off-site remediation, which was affirmed.

**Marie Molla (88 Prospect Street)** specified an insurance policy similar to that required for the Tiffany Road 40B project should be provided at the applicant’s expense to cover liability/damage to abutting properties.

**Kenneth Muha (34 Prospect Street)** expressed concern about sidewalk construction on this property, which was clarified as not a decision condition.

**Barbara Vasiluskas (226 High Street)** expressed concern about ceiling heights in the rental units and whether smoke alarms would go off unnecessarily and require emergency response to which Member Rivkind noted the fire chief could respond.



Member Barbour noted many emails and comments have been received from members of the public and the Board will ensure all are forwarded to the applicant.

**WORK SESSION:** Member Barbour offered her availability for another work session on Tuesday afternoon or Wednesday, prior to the scheduled meeting on 6/26, to further discuss conditions. Tuesday, 6/25/13, at 1:00 P.M. at Town Hall in the Osborne Room was agreed upon by the applicant and the Board. The public will be allowed to observe as at the previous work session on 6/14 and the session will be posted.

**Tom Graefe (69 Simon Hill Road)** asked whether a further revision of proposed conditions might be available before or after the work session. Any revisions will be available through the ZBA's office and the chair will ask the administrative assistant to notify key people when such might be available.

Member Barbour indicated the agenda for next Wednesday's meeting on 6/26/13 will be a discussion and vote on conditions and waivers with some work anticipated on the decision, although it will not be in final form. The Board noted its key issues and made special note of the building height and massing. Member Barbour recommended that the DHCD's January 2011 *Handbook: Approach to Chapter 40B Design Review* be consulted and noted it is available on line. If anyone has difficulty locating that document the Board's administrative assistant can help them locate it.

Upon a motion duly made and seconded, members **VOTED** to continue the public hearing to Wednesday, June 26, 2013, at 7:00 P.M.

The meeting was adjourned at approximately 9:25 P.M.

*These minutes have been approved with reading of the minutes waived by unanimous vote of the Board of Appeals at a meeting duly held on \_\_\_\_\_ in accordance with M.G.L. c. 40A, Section 11, and the Massachusetts Open Meeting Law.*

Signed: \_\_\_\_\_

As Clerk/Assistant Clerk

Date: \_\_\_\_\_

6/26/13

Copy filed with: Office of the Town Clerk

