

**STURBRIDGE ZONING BOARD OF APPEALS**  
MINUTES OF  
WEDNESDAY, November 17, 2004

**Present:** Theophile Beaudry  
Mary Blanchard  
Marge Cooney  
Robert Cornoni  
Pat Jeffries  
Ginger Peabody, Chairman  
Bruce Sutter

**Also in Attendance** Attorney Mark Bobrowski, Chapter 40B Facilitator  
Lawrence Adams, Town Planner  
Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda.

**CORRESPONDENCE**

Memo – N. Campbell – dated 11-16-04 – requesting payment on invoice #0017869 from Judith Nitsch Engineering, Inc., in the amount of \$1,000.00 for services rendered by Douglas Prentiss for the traffic peer review of Windgate at Sturbridge from the Outside Consultant Review Fee Account # 89760-52000.

**Motion:** to approve the payment of invoice #0017869 for \$1,000.00 to Judith Nitsch Engineering, Inc., from the Outside Consultant Review Fee Account for Windgate at Sturbridge, by M. Cooney  
**2<sup>nd</sup>:** M. Blanchard  
**Discussion:** None  
**Vote:** All in favor

Memo – N. Campbell – 10-27-04 – requesting payment on invoice #0005783 from CME Associates, Inc. in the amount of \$3,156.25 for the professional services of Town Engineering Review (10-01-04 to 10-31-04) of Windgate at Sturbridge from the Outside Consultant Review Fee account # 89760-52000.

**Motion:** to approve the payment of invoice #0005783 for \$3,156.25 for the professional services of Town Engineering Review (10-01-04 to 10-31-04) from the Outside Consultant Review Fee for Windgate at Sturbridge, by M. Cooney  
**2<sup>nd</sup>:** M. Blanchard  
**Discussion:** None  
**Vote:** All in favor

The minutes of November 10, 2004 were reviewed.

**Motion:** to approve the minutes of November 10, 2004, as written, by M. Blanchard  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** All in favor

**WINDGATE AT STURBRIDGE – REVIEW AND DISCUSSION – Draft Decisions (with Conditions) prepared by Attorney Mark Bobrowski**

G. Peabody noted that the Board had before it two draft decisions prepared by Attorney Mark Bobrowski, one an approval with conditions the other a denial of the Windgate at Sturbridge project. She recognized Attorney Bobrowski who reviewed Draft #3 Findings and Decision Approval with Conditions as follows – Procedural History – introduction to the project, list of documents;

- Property location would be noted as 450A Main Street;
- Project name would be referred to as “Windgate at Sturbridge” striking the words “Active Adult Community”;

Findings – outlined the salient points about the project based on information from CME Associates (engineering review) and Edward Marchant (financial review).

Decision – For discussion purposes Attorney Bobrowski reviewed and explained the draft conditions -

1. Final revised architectural and engineering plans – Chapter 40B allowed for major (Public Hearing) and minor (Old Business/New Business) changes to these plans (760 CMR 31.03). Such changes should be done by letter with a certificate of change completed and filed with the Town Clerk for each change;
2. stated the number of units at 69 dwelling units;
3. noted there would be 57 dwelling units in the villa and 12 cottage style structures;
4. *For Board discussion* – Would provide the Town with payment of the 50% waived sewer privilege fee from the owner if a cottage style unit was converted from a one bedroom unit to a two bedroom unit. M. Blanchard noted the Sewer Commissioners had not yet agreed to the 50% waiver. AB clarified that this waiver was subject to the confirmation of the Commissioners and that fee waivers should be cleared from the respective Boards/Committees and in writing to the Board. The Board agreed that the cottage units shall not be converted to a two bedroom unit without its approval;
5. No #5 listed;
6. Addressed the affordable units in the form of formulas – 25% of the dwelling units or 18 units, would be reserved in perpetuity for sale to households earning no more than 80 % of the median household income, price to be set at 70% of the median family income, change the words “Worcester Metropolitan Statistical Area” to “Worcester MA-CT PMSA”;
7. Designated Affordable Units on the final plans;
8. Addressed the 70% local preference and the Lottery – The Board discussed preferences for eligibility with Attorney Bobrowski. It agreed to include: veterans, residents of Sturbridge, parents and children of current Sturbridge residents; and employees of the Town of Sturbridge or the Tantasqua Regional School District. The Board discussed including retired employees. Attorney Bobrowski advised the Town to hire a Lottery Agent (Judy Epstein) to conduct the Lottery which would be held only once. All costs would be paid by the Applicant.
9. Regulatory Agreement and Deed Rider - this item made the Applicant a limited dividend corporation allowing for a 20% maximum profit on the unit sales and this would be verified by an audit. The Board agreed that there should be no reference to rental units (d). Any unusual circumstances could come before the Board as provided for under Chapter 40B regulations.
10. Monitoring Agreement – provided an agent - Citizens Housing and Planning Association (CHAPA) – to 1) conduct the audit at the end of the first round of sales and 2) monitor the resale of the Affordable Units. The Applicant would pay all costs for the monitoring through the first round only.
11. Affordable units should not be segregated from market units.
12. Bound the Applicant to the applicable local, state and federal regulations. Attorney Bobrowski noted CME Associates, Inc. had requested construction not continue past 5:00 PM as opposed to

the draft's time of 7:00 PM. After discussion the Board agreed that the construction activity shall be conducted in accordance with the Town's General Bylaws.

13. Listed all items (including those suggested by CME Associates, Inc.) which shall remain private – roadways, trash removal, open space, snow plowing, street lighting, gasoline sand trap, etc.
14. Stated that the roadway shall not be dedicated or accepted by the Town.
15. Made the Applicant responsible for all aspects of the common facilities until the sale of the last condominium at which time the responsibility may go to a Unit Owners Association and the Board should be given a copy of the contract.
16. Made the Applicant fund two months operating expenses to the Association, provide a proposed condominium budget along with a copy of the most recent condominium budget for the Applicant's age-restricted development in Salisbury.
17. Provided the Board with a copy of the deed and organizational documents establishing the Unit Owners Association for review by Town Counsel and the Board's approval. Attorney Bobrowski would change Condition #12 to read #13. Allowed for at least one of the trustees of the Association to be the owner of an affordable unit if one were willing to serve.
18. Operation and maintenance for the stormwater management system was subject to the Board's approval and must comply with DEP Stormwater Management Guidelines.
19. Allowed the Town or its agent to enter the project and conduct emergency maintenance or repairs in the event that the guidelines in #18 were not followed and a problem arose which affected Town property. All cost would be paid by the Applicant or the Town could place a lien on the Development.
20. List of final engineered plans to be approved by the Board, CME Associates, Inc. or Doug Prentiss within 45 days of receipt (or approval thereof shall be deemed) before the issuance of a building permit.
21. Landscaping would be maintained in perpetuity by the Applicant.
22. Americans with Disabilities Act/Massachusetts Architectural Access Board – If an affordable unit is initially sold to a buyer with a disability, the Applicant would modify the unit to conform, if requested, at no additional cost to the buyer.
23. Escrow Account – Upon the certificate of no appeal the original escrow account balance must be paid back to the Applicant. A new escrow account with an initial deposit from the Applicant of \$10,000.00 would be established to provide payment for reasonable fees from consulting engineers for post-permit review of the final plans and legal counsel to review documents and plans.
24. Inspection fees would be paid from the above account.
25. Addressed the request for waivers for sewer privilege fees – Attorney Bobrowski strongly suggested that the Board have the Sewer Commissioners signoff on granted waivers and accessed sewer privilege fees to avoid future conflict.
26. Addressed the order of sale for affordable units and that the certificate of occupancies would be withheld on the final four market rate units until all affordable units were sold.
27. Certificate of Occupancy would not be issued on the villa building until it was completed.
28. Set a bond for the remaining work – Bond rate set at - margin of error plus 15% plus the appropriate rate of inflation.
29. Standard bond provision – held the Applicant's bond company responsible in the event that the bond premium was not paid.
30. CME Associates, Inc recommended conditions -
  - A. Outlet control structure on basin 10 must should agree with plan detail;
  - B. Sight line easement west of the intersection of Route 10 should be documented and executed;
  - C. Addressed the gasoline and sand trap – pumping after the trap and metering of the pump to provide quarterly readings to the Town;
  - D. Provided for an Operation and Maintenance plan for the gasoline and sand trap;

- E. A preconstruction meeting must be conducted for a construction vehicle/equipment maintenance plan, erosion and sedimentation plan for stock piles, construction sequencing and other conditions as indicated in the Orders of Conditions.

Judith Nitsch Engineering, Inc. recommended conditions –

- A. Addressed sidewalk, crosswalk and stop sign and line placements;
- B. Addressed the 90-degree angle intersection at the proposed site drive and Autumn Ridge roadway;
- C. Striping on the Site Access Roadway easement to channel traffic;
- D. Existing stop sign on Site Access Roadway should be moved closer to Route 20 and a stop line added;
- E. Consult Fire Department for access/maneuverability of emergency vehicle throughout the site.

Additional comments from L. Adams –

- L. Adams stated that items in CME Associates, Inc.’s item “E” recommendation should be depicted on the finalized plan. Attorney Bobrowski suggested inserting the words – “within 60 days after the expiration of the appeal period there will be a preconstruction meeting.
  - Housing Plan - #10 – “Applicant shall ... a Fair Housing Plan” – Attorney Bobrowski stated it prevented the Applicant from violating HUD policies. L. Adams noted the Town did not have such a Plan. Attorney Bobrowski said a DHCD approved “Plan for Housing Productions” would identify Town owned parcels for the purpose of building LIP projects or Town built projects. If the units within the plan were produced at the rate of  $\frac{3}{4}$ 's of 1% per year (approximately 24 units per year vs. 68 units without a plan), then the Town would not be required to accept additional 40B projects. Such a plan could be prepared by a consultant at a cost to the Town of between \$15,000 and \$25,000. He suggested that the Board approach the Applicant for funds to prepare a Housing Plan.
31. Attorney Bobrowski to remove #31- Planning Board issues were addressed within the previous proposed conditions.
  32. If any Conservation Commission’s conditions were incorporated by reference into for the Board’s approval and there were differences, those differences must be reconciled.
  33. Pedestrian egress must be shown on plan – Attorney Bobrowski would delete as egress has been added to the plan;
  34. Backup generator to be provided by Applicant per Fire Chief’s recommendation – Attorney Bobrowski stated the cost would be approximately \$45,000 to provide backup emergency lighting. L. Adams understood that the Fire Chief requested the generator to provide "sheltering in place" instead of relocating residents and that a \$45,000 generator would not accomplish this. Since the proposed battery backup system could provide emergency lighting, he asked the Board if it felt this was money well spent. Attorney Bobrowski suggested the Board consider using these funds to establish a Housing Plan for the Town. G. Peabody recalled the emergency power source would also operate the pump in the underground garage. L. Adams recommended the Board clarify with the Fire Chief as to his opinion and needs.
  35. Addressed the screening on the HVAC system.
  36. Description of appliances – standard size washer/dryers in affordable units.
  37. Provided a landscaping sketch of the wall at the project’s entry.
  38. See notes.
  39. List of revised waivers – Board should review the list to be sure it accurately reflected those agreed upon.

Additional comments from G. Peabody – did not want to allow for any rental options – the Board discussed its options and agreed there would be no rentals and a one year time frame should be allowed for the sale of units to an age qualified owner.

Attorney Bobrowski discussed the denial draft decision with the Board. He had included what he felt the issues were -

16. The emergency access for fire, police and emergency vehicles and the Applicant's lack of ability to lay the roadway outside of the easement;
17. The lack of a secondary access and the serviceability of fire, police and emergency vehicles;
18. Discussed the traffic situation onto Route 20 as reported by the Peer Traffic Review Engineer;
19. Discussed Stormwater Management system – did it conform to the regulations;
20. Design of the villa building – was it in scale with the surrounding buildings;
21. Would allow the Board to argue that the plan was not consistent with the Town's Master Plan.

Attorney Bobrowski stated that the Applicant must show that they complied with federal and state standards. In order for a denial to be sustained by the Housing Appeals Committee, the Board must prove that the project –

- Endangered the environment
- Imperiled public health and safety
- Impaired critically need open space
- Was seriously deficient with regard to design or
- Was inconsistent with the regulations.

He added that over the past thirty-five years approximately fifteen projects had been denied and he gave the Board examples of some cases. He offered options for acquiring more affordable housing when working with developers constructing projects within the Town. The Board discussed the issues of traffic, the emergency access and the Master Plan as grounds for a denial. It agreed that based on the facts a denial would not be sustained and that the project provided much needed affordable housing to the Town.

**Motion:** to deny the application of Main Street Senior Housing LLC for a comprehensive permit, by G. Peabody  
**2<sup>nd</sup>:** M. Cooney

**Discussion:** M. Cooney had not been clear on the motion and rescinded her second. G. Peabody asked if there was another second to the motion. There was none, so motion failed.

The Board agreed to have the draft approval decision reworked by Attorney Bobrowski to reflect the changes necessary. It would review and possibly vote at its next meeting. L. Adams recommended that the Board resolve the issues of the Fire Chief's request for a the generator, the sight line easement, an Affordable Housing Plan in lieu of a generator and put more information on the finalized plans in place of a preconstruction meeting. G. Peabody added that at a work session it was agreed that the information would be put on the plans and not left to a preconstruction meeting. M. Blanchard mentioned that the fee waivers needed to be put in writing.

The Board discussed the figures and facts regarding the sewer privilege fee to determine if it would agree to the waiver requested by the Applicant. It agreed to waive the sewer fee on the affordable units. G. Peabody referenced James Malloy's memorandum of 07-20-04 and SPL Developments letter dated 11-10-04. M. Cooney asked Steven Paquette for the percentage of profit to date on the project's pro forma. He

stated it was approximately 11.8%. Attorney Bobrowski would revise the decision and forward it to the Board with the changes highlighted.

Attorney Bobrowski left the meeting and the Board took a ten minute recess.

P. Jeffries suggested the Board charge the Applicant a flat rate of \$200,000 and request \$25,000 for a housing study. M. Cooney asked to qualify the recommendation requesting a contribution of \$25,000 for an Affordable Housing Plan under the DHCD guidelines and set the sewer and water privilege fee at \$200,000. M. Blanchard noted this would be a savings of \$220,000 to the Applicant. M. Cooney remembered the cost without the 18 affordable units as approximately \$206,000.

**Motion:** to set the sewer and water privilege fee at \$200,000 plus a \$25,000 contribution for an Affordable Housing Plan under the DHCD guidelines, by M. Cooney

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** L. Adams explained the importance of the Town having a DHCD Housing Plan as a means of leveraging funds for public infrastructure improvement funds and that there would be added benefits to the Town. G. Peabody would like to base the fee on a formula that would apply in the future to other comprehensive permit applications. B. Sutter concurred, but agreed that the project was good for the Town and that the Applicant was not making a large profit even with the sewer fee waiver requested. He supported obtaining the Board of Selectmen's thoughts and endorsement and felt M. Cooney's motion was fair. It was agreed for the purpose of calculations that the cottage units were one bedroom units. B. Cornoni felt that having defined the cottages as a one bedroom unit would base the figures on a process. M. Blanchard was in favor of waiving the fee on the affordable units (\$110,319). L. Adams recommended that the Board agree on a ballpark figure and then apply its own discretion as to the benefits this project could give to the Town. In using such a process, the Board could be flexible with each new project. Also, the Board could request the Applicant provide a revised pro forma which could be submitted to the Board of Selectmen along with its proposed sewer privilege fee. After the discussion, G. Peabody was comfortable with the motion. R. Cornoni had no problem with the amount, but wanted to tie the fee to a formula. B. Sutter noted that in taking the sewer fee amount submitted by SPL Development at \$193,044 and adding the cost of the water fee at \$5,530, the amount proposed in M. Cooney's motion was "there". All members agreed that they would waive the sewer fee for the 18 affordable units.

**Vote:** All in favor

G. Peabody requested that the Applicant submit a revised pro forma. She would ask the Board of Selectmen at its next scheduled meeting on December 6<sup>th</sup> to review the Board's recommendation.

**Motion:** to allow the Chairman and another member to draft a memorandum stating its recommended sewer privilege fee of \$200,000 to the Board of Selectmen for their review and endorsement, by M. Blanchard

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** All in favor

**Motion:** to adjourn, by M. Blanchard

**2<sup>nd</sup>:** T. Beaudry

**Discussion:** None

**Vote:** All in favor

**Adjournment at 9:25 PM**