1 Volume I
2 Pages 1-143
3
4 Brookline Zoning Board of Appeals Hearing
5 40 Centre Street Comprehensive Permit Application
6 Roth Family, LLC
7 May 23, 2016 at 7:00 p.m.
8 Brookline Town Hall
9 333 Washington Street, 6th Floor
10 Brookline, Massachusetts 02445
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15 Reporter: Kristen C. Krakofsky
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1 APPEARANCES

2 Board Members:

3 Jesse Geller, Chairman

4 Jonathan Book

5 Christopher Hussey

6 Kate Poverman

7 Steven Chiumenti

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9 Town Staff:

10 Alison Steinfeld, Planning Director

11 Maria Morelli, Senior Planner

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13 40B Consultant:

14 Judi Barrett, Director of Municipal Services

15 RKG Associates, Inc.

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17 Applicant:

18 Bob Roth, Roth Family, LLC

19 Geoff Engler, vice president, SEB

20 Peter W. Bartash, associate principal CUBE 3 Studio

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1 Members of the public:
2 Joyce Jozwicki, Town Meeting member Precinct 9
3 Don McNamara, 12 Wellman Street
4 Don Sherak, 50 Centre Street
5 Beth Kates, 105 Centre Street
6 Steven Alt, 19 Shailer Street
7 Chuck Schwartz, Centre Street, Town Meeting member
8 Precinct 9
9 Carol Edberg, 19 Winchester Street
10 George White, 143 Winchester Street, Town Meeting
11 member Precinct 9
12 A.E. Ryan, 12 Williams Street
13 Steven Pendery, 26 Winchester Street
14 Shelley Feldman, 41 Centre Street
15 David Lescohier, 50 Winchester Street, Town Meeting
16 member Precinct 11
17 Carol Murphy, 19 Winchester Street
18 Harriet Rosenstein, Town Meeting member 9,
19 Centre Street
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1 PROCEEDINGS:
2 7:06 p.m.
3 MR. GELLER: Good evening, everyone. We are
4 opening this hearing as an application for a
5 comprehensive permit to construct 45 rental units, 9 or
6 12 of which will be affordable, and 17 garage parking
7 spaces in a 6-story building. This is located at 40
8 Centre Street.
9 Sitting with me this evening to the furthest
10 left, Steve Chiumenti, Christopher Hussey, my name is
11 Jesse Geller, to my right is Kate Poverman and Jonathan
12 Book.
13 Tonight's hearing is being tape-recorded for
14 public record. I'm getting lots of vibration off of
15 the microphone. But if and when we ask for testimony,
16 if people want to offer testimony, we would ask that
17 you speak into the microphone at the dais. Start by
18 giving us your name, give us your address, speak
19 slowly, clearly, and then by all means give us your
20 information.
21 What I also ask is that people pay careful
22 attention to testimony that is provided at the hearing.
23 And if, for instance, there are people who have offered
24 similar information to what you would propose to give,

I would ask that you simply point to them and say, I agree with what they said. If everybody repeats the same information over and over again, that will make for an extremely long process.

And 40B is an unusual process. We're going to have a presentation shortly, but I want to note for everyone that we are, by statutory limits, restricted to 180 days, so we need to be quite conscious of the period of time in which we have from today until end.

I'll just read this. "The town has received a grant from the Mass Housing Partnership to engage a consultant who is an expert in 40B matters. Judi Barrett has been hired by the state on behalf of the town to serve as a 40B consultant to the ZBA on this case." I'd like to introduce Judi Barrett, and I'd like to thank Judi.

Judi is going to present for us this evening a presentation giving us a sense of 40B and its procedures.

MS. BARRETT: Okay. Hi, everyone. My name is Judi Barrett. I am the director of municipal services with a firm called RKG Associates. I'm a planner. I've been in the field for about 30 years.

I do a lot of work with affordable housing.

1 It isn't the only thing I do, but it is -- it takes up
2 a fair amount of my time, especially when there's a lot
3 of Chapter 40B activity as there has been lately
4 throughout Massachusetts and certainly in the eastern
5 part of the state.
6 So my purpose tonight is to give you an
7 overview of this law and how the process works. I'm
8 not going to talk about the application that's before
9 you. That's really for the board and you folks and the
10 applicant and the staff and so forth. But my goal is
11 just to kind of cover the process and give you a sense
12 of how this works.
13 So for anybody who is interested in getting
14 more information after tonight's hearing, there are
15 several sources on the web that you can consult:
16 CHAPA, Citizens Housing and Planning
17 Association, has quite a bit of information about 40B
18 on their website;
19 The Department of Housing and Community
20 Development, fondly known as DHCD, is the agency that
21 has an administrative authority over Chapter 40B, at
22 least at a policy level;
23 Mass Housing, which is one of the subsidizing
24 agencies, and I believe it's the subsidizing agency for

1 the project that's before the board this evening. They
2 all have a lot of information on their website;
3 And then, of course, Mass Housing Partnership,
4 which is the agency that provides grants to your town
5 and other communities to bring consultants on to help
6 really the board of appeals, for the board of appeals
7 to work through the process.
8 So the MHP grants are offered to communities
9 if they request the assistance. And what I would like
10 to do is talk to you a little bit about, you know, what
11 makes the project eligible and what the submission
12 requirements are for an application to the board. And
13 as I said, I'm here as a technical assistance
14 consultant. That's my role. So I'll just dispense of
15 this slide because you don't need me to go through that
16 again.
17 So first of all, let's sort of -- what brings
18 a project -- a Chapter 40B project to a community? The
19 statute provides some conditions under which, if a
20 community exceeds any of these thresholds, then a
21 developer could come to the town and request a
22 comprehensive permit, but the standards that the board
23 has to deal with are a little bit different.
24 There are also some regulatory provisions that

1 we call "safe harbors" that can help some communities
2 who have managed the flow or the number of Chapter 40B
3 applications that they receive. But the statutory
4 requirements, or the statutory thresholds, as we call
5 them, are the three that are on this slide.
6 The most commonly known one is if your
7 community has less than 10 percent of your year-round
8 housing stock as affordable housing, which has a very
9 specific meaning in the administration of Chapter 40B.
10 Essentially it's a unit that is subject to a deed
11 restriction to protect the long-term affordability of
12 the unit and that it is made available to all
13 income-eligible people on a fair and open basis and
14 overseen by a subsidizing agency. So when a unit meets
15 a series of administrative requirements, it counts as
16 affordable.
17 So if less than 10 percent of the year-round
18 units in your community are affordable housing,
19 eligible for what we call "the subsidized housing
20 inventory," a developer may come to the board of
21 appeals and apply for a comprehensive permit.
22 And then sort of the burden on the town is to
23 weigh or to balance local concerns, which I'll talk
24 about in a little bit, against a regional need for

1 affordable housing.
2 And the premise of the statute is that all
3 other things being equal, the need for affordable
4 housing will trump other issues. Now, that's not, you
5 know, uniform. There are a number of conditions that
6 have to be met. But the impetus of the law is to
7 create affordable housing, and I just want to make that
8 really clear. That's what Chapter 40B is about, is
9 getting affordable housing created in cities and towns
10 throughout the state.
11 There are other ways a community can satisfy a
12 threshold in the law in addition to or instead of the
13 10 percent. If 1.5 percent of the land area in your
14 community is zoned for residential, commercial, or
15 industrial development, if occupied by low- or
16 moderate-income housing, then that would position you
17 to be, in effect, the same as 10 percent of your
18 housing limit.
19 And then the third threshold, which is a
20 temporary one, is if you have a lot of construction of
21 new low- or moderate-income housing happen in your
22 community in a given year, essentially the, you know,
23 10 acres or .3 percent of the land area that's zoned
24 for residential, commercial, or industrial use, you

1 know, you get a sort of temporary reprieve while that's
2 going on. But the first two are really intended to
3 kind of be longer-term protections, if you will.
4 And so communities have had since 1969 to try
5 to address the requirements in the law. And like many
6 other communities in Massachusetts, you're not quite
7 there, which is why you have this and other Chapter 40B
8 applications in front of you at this time.
9 Now, in addition to those statutory
10 provisions, the state, over time, has created what we
11 call "safe harbors." And if a community meets one of
12 these thresholds -- these are in regulation. These are
13 not in the statute -- a board of appeals may have a
14 temporary reprieve from having to grant the
15 comprehensive permit. And so typically, you know,
16 there might be a year or two of sort of a stay.
17 And one is a housing production plan, which,
18 actually, the town is working on right now, hoping to
19 finish in the next, you know, month or six weeks or so.
20 I happen to be involved in that project.
21 If a town has a housing production plan that
22 the state has approved and the town produces a certain
23 number of units in a given calendar year and gets those
24 units -- or gets it in a status certified by DHCD that

1 the town is implementing its housing plan, then the
2 board of appeals could turn down comprehensive permit
3 applications without being concerned that its decisions
4 would be overturned by the Housing Appeals Committee,
5 which is what we refer to the administrative or
6 appeals -- administrative appellate agency that
7 developers can go to if they're not happy with the
8 decision from the board.
9 There's another standard called "the recent
10 progress rule" which is a somewhat higher number of
11 units that you would have to create in a given year.
12 But if you didn't have a housing production plan and
13 your board of appeals approved a lot of the units in
14 one or more projects in a given year, the board would
15 be able temporarily to turn down comprehensive permits
16 if it wished to do that.
17 There is also a standard called "the large
18 project rule" which was intended to buffer communities
19 from very large developments happening in a given year.
20 The standard is either 300 units -- you know, a project
21 with 300 units or more or 2 percent of your year-round
22 housing stock. And I think you guys have calculated
23 what that 2 percent number is, so you're not there.
24 And then there's a concept called "related

1 applications," which is an applicant has come to a town
2 board seeking approval for some project, they're turned
3 down, and out of spite they go to the subsidizing
4 agency and say, I want to have a project eligibility
5 letter so I can go apply for a comprehensive permit.
6 And generally the board of appeals would be
7 within its rights to say you need to go cool off. And,
8 frankly, the subsidizing agencies try to sort of manage
9 that and make sure it doesn't happen. But the argument
10 is that someone doesn't get to use Chapter 40B to get a
11 project through just because they didn't get something
12 else approved along the way. So that's a one-year kind
13 of window.
14 So these are regulatory provisions that allow
15 a board of appeals to turn down, if it wishes,
16 temporarily, comprehensive permits. But ultimately,
17 all of this is about getting to that 10 percent minimum
18 or the 1.5 percent, depending upon what standards you
19 happen to be following.
20 There are certain things about 40B
21 applications that we always try to make sure boards and
22 staff are aware of so that you don't end up in a
23 situation where you lose any control over the project.
24 And first of all, an applicant has to meet

1 certain requirements just to even be in front of the
2 board. And one is, what kind of applicant is it? Is
3 it a public agency, is it a nonprofit corporation, or
4 is it a for-profit that has agreed to limit their
5 profits under the development. It's called a limited
6 dividend organization. Many of the applications that
7 we see today, and really for the last probably 30
8 years, have been limited dividend organizations because
9 there's so little housing subsidy funding left.
10 The other thing the applicant has to do is
11 demonstrate that they actually have site control. They
12 own the site or they may have it under a purchase and
13 sale agreement, but there has to be some way to say,
14 I'm controlling this site. So I'm an eligible
15 applicant, I have site control.
16 And the third thing I have to have in order to
17 come to the board of appeals and request a
18 comprehensive permit is a project eligibility letter,
19 fondly known as a "PEL" -- there's too many acronyms in
20 this business -- a project eligibly letter from one of
21 the housing subsidizing agencies, which is often Mass
22 Housing, but not always. And in this case, I think it
23 is a Mass Housing PEL. So an applicant has to meet
24 those three requirements.

1 There are certain things that an applicant has
2 to provide the board in order to have a complete
3 application. Of course the board -- even if the
4 application isn't quite complete, it generally is a
5 good idea to at least open the public hearing, and I'll
6 talk about that more in a minute.
7 But first of all, the applicant has to submit
8 a preliminary plan. So these are not construction
9 drawings. Those come later. But a plan that
10 essentially establishes that what the applicant is
11 proposing to do is feasible to build. I think that's
12 probably the easiest way to understand the preliminary
13 plan. It's not drawn on the back of a napkin, but it's
14 not a fully engineered set of construction plans.
15 And those plans need to represent to the
16 board: This is the existing site conditions around,
17 here's what's on the property, here's some locus maps,
18 here's where the site is, preliminary scale of
19 architectural drawings, a tabulation of the proposed
20 buildings by type, by size, and coverage -- ground
21 coverage.
22 If the project involves a subdivision, then
23 the applicant is also supposed to submit a preliminary
24 subdivision plan, there should be a preliminary

1 utilities plan, and significantly a list of waivers.
2 And this is what makes Chapter 40B I think a little
3 unique from many other permitting procedures that you
4 might be familiar with the.
5 The law assumes that if an applicant is coming
6 to a board of appeals for a comprehensive permit, that
7 it's not really economic to develop affordable housing
8 under the regulations that are in place in the
9 community. And so the applicant, as part of an
10 application to the board, requests waivers from local
11 regulations that the applicant contends would make it
12 difficult -- in 40B language uneconomic -- to build the
13 project.
14 So part of what the board has to do is
15 consider the waivers the applicant's requested and
16 determine whether those, in fact, are needed to build
17 the proposed development.
18 The numbers that are up here, these are really
19 critical. The number 30 is in red for a reason. I'll
20 tell you what these numbers mean, and this will allow
21 me to skip over a slide in a minute.
22 Within seven days of receiving a comprehensive
23 permit application, the town department -- the board
24 technically, but it would be your planning

1 department -- distributes the application to all of the
2 boards and committees and departments that would
3 typically review any other building application.
4 Within seven days, all those folks are supposed to get
5 a copy of the application so they can review it.
6 Fourteen days before the hearing, there's
7 supposed to be a notice published in a newspaper of
8 general circulation and a notice posted at town hall.
9 And, of course, abutters, interested parties are
10 entitled to notice that the hearing is going to take
11 place.
12 The hearing must open within 30 days of the
13 receipt of the comprehensive permit application. And
14 the reason that that number is in red up there is that
15 often other types of applications that boards of appeal
16 deal with have a longer period of time before they have
17 to open the hearing.
18 And sometimes people forget that, oh, well,
19 one of the purposes of 40B is to kind of accelerate the
20 permitting process because, bear in mind, the purpose
21 of the statute is to create affordable housing. So if
22 you lose sight of that 30-day requirement -- and that
23 is in the statute -- then you unfortunately can end up
24 in a situation where the applicant is eligible for

1 what's known as "constructive approval," which is that
2 they basically get the permit that they've asked for.
3 So nobody ever wants to let that 30-day deadline slip.
4 If the board feels or has determined that the
5 town meets one of those safe harbor thresholds that I
6 mentioned earlier or it somehow complies with the
7 statute, within 15 days of opening the hearing, the
8 board has to notify the applicant: We think we can
9 turn your project down because we're at 10 percent, or
10 because we have a housing production plan that the
11 state has approved and the cumulative benefit of all
12 the other units we've permitted in the last 12 months
13 allows us to a temporary stay on approving additional
14 comprehensive permits. Whatever those beliefs are, the
15 board must notify the applicant within 15 days in
16 writing.
17 The applicant then has 15 days to grieve to
18 the Department of Housing and Community Development if
19 they wish, and the Department of Housing and Community
20 Development has 30 days to review the case. And they
21 then get to determine whether, in fact, the board is
22 justified in claiming what we call "safe harbor" or
23 not. So while that's all going on, the 180 days sort
24 of goes on hold.

1 But as soon as the hearing picks up again, the
2 board has 180 days from tonight to close the public
3 hearing. What happens when a board closes a public
4 hearing is they can't take any more testimony, and at
5 that point they have 40 days to deliberate and reach a
6 conclusion and file the decision with the town clerk.
7 As with any other type of development
8 approval, once the decision is filed with the town
9 clerk, there's a 20-day appeal period. And Chapter 40B
10 decisions could be appealed by interested parties to
11 the land court or superior court. The applicant has
12 the opportunity, if they're aggrieved, to appeal to the
13 entity called the Housing Appeals Committee.
14 So I just went over this. I don't need to
15 repeat it.
16 We always advise boards, no matter how well
17 you know your town, to go out and take a look at the
18 site. Conduct a site visit early in the process.
19 You know, it's very helpful to the board to
20 kind of see what they're seeing on the plan to be able
21 to appreciate what the neighborhood context is, to get
22 a sense of what is the building environment of this
23 neighborhood, and be able to kind of have plans in your
24 hands and say, well, this building is big. It's going

1 to be on this site. And does it fit, or does it not,
2 or how -- you know, what are the questions that perhaps
3 the board should be asking of the applicant as the
4 process goes forward.
5 And also to kind of be aware -- what you get
6 in the field, you never get on the plans. I'm on the
7 board of appeals in my own town, and you never concede
8 with the plans. You have to get out in the field and
9 look and get a sense of, well, what abutters really are
10 the most affected by this project. You get just a
11 sense of what you're talking about as you go through
12 this 180-day hearing process. So scheduling a site
13 visit is terribly important.
14 The board has the right, and most boards do,
15 to retain what we call "peer-review consultants." And
16 this is really important because if the board's
17 decision is appealed by anybody, whether it's the
18 applicant to the Housing Appeals Committee or to
19 neighbors who don't like the decision if it's an
20 approval, the board needs to be able to rely on expert
21 testimony. It's expert testimony that will carry the
22 day for the board. So hiring outside consultants, if
23 you don't have the staff in your town hall, is really
24 critical.

1 And typically what we see -- what I see in the
2 work that I do is that boards will hire an engineer, a
3 traffic consultant, and -- or traffic engineer, and an
4 architect. Sometimes there is also a need to hire a
5 financial consultant. That does not happen right away.
6 It happens later in the hearing, if at all.
7 But those are the three disciplines. Civil
8 engineering, traffic, and architecture are really key
9 because what those will help the board do is evaluate
10 the physical impact of the project, which is really
11 what all of this comes down to is what is the physical
12 impact of this project? So those are skill sets that
13 boards of appeals typically need.
14 In some communities, engineering review is
15 done by town staff; in other communities, it's hired
16 out, and so it varies. But the applicant pays for
17 this.
18 And the way this works is that the town
19 essentially requests quotes from qualified consultants,
20 they choose consultants, and then the applicant
21 provides money to the town which goes in an escrow
22 account and the board uses that account to pay the
23 consultants as the review process goes on. And if the
24 account needs to be replenished, it's up to the

1 applicant to replenish it. So it's something the
2 applicant has to do, but the consultants clearly work
3 for the board, for the town.
4 And anything that is provided to the board
5 becomes part of the record for the project, so there's
6 typically a very extensive record on these projects by
7 the time they are done.
8 I think one of the things that is very helpful
9 to a board is to try to focus on what I would call real
10 project issues as early as you can in the process.
11 Real issues in the context of Chapter 40B are really
12 around physical, environmental, and design
13 considerations.
14 If you can hold off a little bit on getting
15 the peer-review consultants going too much too fast, it
16 can be helpful because the board can have a chance to
17 talk and think about, you know, what issues are
18 particularly important to them.
19 My experience, however, is that you need to
20 get the peer-review consultants under contract as soon
21 as possible if you're going to hire from outside. And
22 the reason is that although it's nice to let the board
23 have a conversation with the applicant and listen to
24 all of you and maybe take three months to figure out

1 what the issues are, that 180-day clock is going to be
2 ticking from tonight.
3 So you get the peer-review consultants on, you
4 give the board and the public and the applicant a
5 chance to kind of talk about what the scope of the
6 issues would be, but get going on the review.
7 If you need additional information from the
8 applicant, you ask for it. The fact that the
9 application that's in front of you has a lot of
10 information and may fully comply with the regulations
11 doesn't mean that you can't ask for more information,
12 especially if you're trying to understand the visual
13 impact of a development on a neighborhood.
14 Don't hesitate to ask for graphics that might
15 help to clarify the height or massing or setbacks and
16 overall relationships with the neighborhood. Those are
17 valid concerns for boards to consider.
18 My experience is that it is possible to
19 negotiate with the developer. Work sessions can be
20 very helpful. I think Alison probably will want to
21 address that a little bit later.
22 But many towns I work in do have a sort of
23 work session approach where the -- between the public
24 hearing, there might be a staff -- staff members,

1 consultants, perhaps the applicant trying to work
2 through some specific issues that can come back to the
3 board at the next public hearing.
4 Obviously, no decisions can be made in work
5 sessions. You don't have the governing body convened.
6 But sometimes it's just helpful to be able to sort of
7 figure out, well, what issues do we need to discuss and
8 be able to bring recommendations back to the board.
9 It's a common way to manage the 180 days. Again, keep
10 coming back to what techniques do you need to do to
11 manage that 180-day period.
12 Of course any discussions that take place
13 outside the public hearing are advisory. This board is
14 the board that decides the comprehensive permit,
15 period. So it doesn't matter what happens outside this
16 hearing. Ultimately, it's what you guys decide and
17 what information you think is relevant to the process.
18 And I have just found that in some communities
19 town counsels think work sessions are great, and in
20 others they don't really care for them, so I always say
21 to consult with your town counsel.
22 Ultimately, when the board has received all
23 the evidence that can possibly be seen, there's a
24 balancing act. And, again, bear in mind that the

1 purpose of Chapter 40B is to get affordable housing
2 built. That's the purpose of the law. But the board
3 will find itself having to balance these kinds of
4 considerations against that regional need for housing.
5 And the considerations that the board can look
6 at are public health, public safety, environmental
7 impact, design, open space, planning. If you have a
8 recent master plan and it's actively being implemented
9 or you have a housing production plan that's actively
10 being implemented, planning can play a role in the
11 board's decision-making process and other local
12 concerns that relate to the physical impact of the
13 project.
14 So there are things that the board really
15 can't look at. But within that, which is pretty
16 typically what any board would look at for any type of
17 development application, these are the considerations
18 that the board can review. That is why it's so
19 important to have a civil engineer, a traffic
20 consultant, and an architect on board helping the
21 board -- pardon my redundancy -- review the application
22 because these are the considerations, this is the
23 window that you have for reviewing an application, and
24 having those experts available to you will be very

1 important.
2 The board ultimately will have to deliberate,
3 and this is handled in different ways in different
4 communities. What I often find is that it's helpful to
5 a board to at least be looking at a draft -- if the
6 board is going to approve the project, to be able to
7 review a draft set of conditions before the public
8 hearing is closed so that if there needs to be a
9 discussion about any of those conditions, you can do
10 it.
11 Because once the hearing closes, you can't
12 take any more information, so you want to have an
13 ability while the hearing is still open and the public
14 can comment and the applicant can weigh in to maybe
15 talk about what the conditions might be if you're going
16 to approve the project.
17 But in the end, when the hearing closes, the
18 board needs to deliberate. It's needs to be kind of
19 methodical. There's a structure to a comprehensive
20 permit decision. It's not magic. It's a review of the
21 procedures that the board followed, it's what the
22 governing law is, it's the findings of fact, it's a
23 decision and its conditions. That's the structure of
24 the board's decision. So to go sort of through that in

1 a methodical way is very helpful.
2 And certainly, of course, to make sure that
3 the board, before you close the public hearing, has
4 reviewed the waivers requested by the applicant and
5 sort of gone through those methodically and make sure
6 that you're either comfortable with those or not, or
7 request additional information from the applicant in
8 order to weigh the request for the waivers.
9 Under Chapter 40B, the board has three
10 options. The board can deny the comprehensive permit,
11 approve it as submitted -- I've never seen that. In 30
12 years, I've never seen a board of appeals, you know,
13 approve a comprehensive permit as submitted. Maybe
14 it's happened -- or approve with conditions. Those are
15 three options that the statute provides.
16 And, you know, for the most part, what I have
17 found -- and I think most people in this business would
18 probably agree -- that approval with conditions is
19 probably the safest way for the board to go. Because
20 if you deny and you end up at the Housing Appeals
21 Committee, the only issue on the table is did the local
22 concerns outweigh the regional need for affordable
23 housing if you're a community that's below 10 percent.
24 And it's a very difficult standard to meet.

1 So the better thing to do is to try to get the
2 best project that you can for your town and issue an
3 approval with conditions. Now, that's up to the board.
4 I'm not, you know, trying to steer anybody in any given
5 way. I'm just telling you what the law is.
6 You have to be careful that the conditions you
7 impose don't make the project uneconomic, because that
8 would be a basis for the applicant to challenge the
9 decision before the Housing Appeals Committee. The
10 conditions have to be kind of consistent with those
11 local needs that I reviewed before: environmental, you
12 know, physical, public health, public safety, those
13 kinds of valid local concerns the conditions can
14 address.
15 You can't, at least under the current
16 regulatory scheme and the current case law scheme, just
17 decide to reduce the number of units in a project
18 because you don't like the density. You have to sort
19 of tie the decision to those local concerns. And,
20 again, this is why it's so important for the board to
21 have expert testimony, expert consultants available to
22 advise the board as the process goes on.
23 As I said earlier, there is an appeal process
24 within 20 days of the board's decision being filed with

1 the town clerk. The applicant may appeal to the
2 Housing Appeals Committee. Any other aggrieved parties
3 can go to the superior court or the land court.
4 Just so you know, the Housing Appeals
5 Committee is sort of an administrative entity within
6 the Department of Housing and Community Development, or
7 it's tied to the DHCD, in any case. And they have
8 the -- it's not exactly court, but their purpose is to
9 provide kind of an expedited appeal. I don't know any
10 applicant who thinks that the Housing Appeals Committee
11 has expedited an appeal, but that was the intent, was
12 to try to create sort of an efficient framework.
13 Again, if you're wondering why we would make
14 it so easy for developers, it's because the purpose of
15 the law is to get affordable housing built. So that
16 agency is the one that receives an appeal from a
17 developer if the developer is unhappy.
18 To just underscore that there are limitations
19 on the matters that the board can consider in making a
20 decision, that list I showed you earlier: health,
21 safety, environmental, open space, planning, design.
22 You need to make sure that you stay within the scope of
23 your authority. There are things that you can't
24 consider in trying to decide what to do with a

1 comprehensive permit.
2 You can't, for example, decide who's going to
3 be the monitoring agent for a project. What happens
4 with affordable housing units is that once they're
5 built, somebody has to monitor to make sure that the
6 affordable housing restriction is being complied with.
7 Well, the subsidizing agency decides who's going to
8 handle the monitoring. The board doesn't have the
9 ability to sort of impose some monitoring agent on the
10 applicant.
11 The board can't limit in some way the
12 affirmative marketing requirements under fair housing.
13 That's handled by the subsidizing agencies. But you
14 can regulate and you should regulate public health,
15 public safety, environmental, design, open space,
16 et cetera.
17 So just being clear, you may hear me bring
18 this up from time to time over the next 180 days,
19 what's in your bucket versus what's in someone else's
20 bucket, just so to steer clear of treading into
21 territory that really is the subsidizing agency or
22 somebody else.
23 Once this is all over, the applicant still has
24 more work to do. They have to go to the subsidizing

1 agency and obtain what's called "final approval."
2 That's when the final construction plans are down in
3 anticipation of seeking a building permit.
4 The plans that are referred to in your permit
5 will be a final version of the applicant -- application
6 plans. And one of the factors in the decision will be
7 when it's time for the applicant to come to the
8 building department and seek a building permit, they'll
9 need to be reviewed to make sure that the construction
10 plans are substantially consistent with the plans that
11 are approved in the comprehensive permit.
12 Sometimes what happens, because these are
13 preliminary plans, is that an applicant will come back
14 to the board later and say, I need to make another
15 change to my application because I gave you this
16 preliminary plan but now we've had our engineer go to
17 the next level and we need to make some additional
18 changes.
19 The board has the authority to decide whether
20 a request from an applicant is a substantial change,
21 which would require reopening the public hearing
22 focused on those changes. You don't reopen the whole
23 case. You're just reopening it for the purpose of
24 considering the changes requested by the applicant. Or

1 the board can say, this is so minor, it's really
2 insubstantial and it can be just approved
3 administratively. So that's a determination that the
4 board makes if the applicant comes to you later and
5 says, I need to make additional changes.
6 And, again, just to sort of make sure
7 everybody understands, there's a lot of, dare I say,
8 bureaucracy involved in this. Ultimately there will be
9 a regulatory agreement that will be executed by the
10 applicant and the subsidizing agency that is recorded
11 with the Registry of Deeds to protect the affordability
12 of the affordable units. The affordable units must be
13 made available on a fair and open basis under the
14 federal Fair Housing Act, and there's a whole structure
15 for how that's done.
16 Essentially, the applicant has to prepare an
17 affirmative marketing plan. The subsidizing agency
18 will review that and determine whether it complies with
19 the state interpretation of the fair housing plan.
20 The people who want to live in the development
21 will need to demonstrate their eligibility for
22 affordable units. Market-rate units are a separate
23 issue.
24 If nothing happens on this project, they get

1 their comprehensive permit and they don't do anything
2 for three years, the permit would lapse unless the
3 applicant came back and, you know, demonstrated to the
4 board that there was a valid reason and requests an
5 extension.
6 The permit can be transferred if the
7 subsidizing agency approves. The board will be
8 notified but does not necessarily have any jurisdiction
9 over the transfer.
10 And then certainly, while the project is under
11 construction, there will be inspections by your staff.
12 If your building department and others need additional
13 assistance with the inspections during construction,
14 again, the applicant would be required to provide
15 funding to provide, you know, outside consultants to
16 your staff. That varies, again, by town.
17 That is all I have to say, so if you have any
18 questions for me or ...
19 MR. GELLER: Yes. I'm sure we will. Thank
20 you.
21 MS. BARRETT: Do you want me to stop now, or
22 do you want to take questions later?
23 MR. GELLER: No. I want to ask -- see if
24 anybody has questions for you now.

1 MS. BARRETT: Oh, absolutely.
2 MR. GELLER: Let's start with members of the
3 seated panel. Questions?
4 MR. CHIUMENTI: I notice that this particular
5 project is using the New England Fund Program for
6 funding. I wondering if there's anything unique about
7 that, what other funding mechanisms there are, if there
8 are different restrictions that result from using
9 whatever alternatives there are for funding the 40B
10 projects. And if that's a long story, we can handle it
11 otherwise.
12 MS. BARRETT: I'll give you a short answer.
13 There was a long story. Of course there always is with
14 40B.
15 The New England Fund has been useable by
16 developers since 1999 involving a case coming out of
17 the Town of Barnstable. It's is -- the requirements
18 that attend the New England Fund actually are not, for
19 your purposes, much different from many other programs.
20 The developer must provide either 25 percent
21 of the units as affordable to households with incomes
22 at or below 80 percent of median or 20 percent of the
23 units to households at or below 50 percent of median.
24 So that standard is not just unique to the New England

1 Fund. It's elsewhere as well.
2 Mass Housing is the administrative agency that
3 kind of oversees compliance with the New England Fund
4 requirements.
5 You know, prior to 1999, the New England Fund
6 was not recognized as a valid housing subsidy. The
7 Housing Appeals Committee changed its mind, and I think
8 that the reason for that is that 20 years earlier the
9 federal government advocated this responsibility for
10 affordable housing and there were no subsidies.
11 MR. CHIUMENTI: Well, is the funding tax
12 exempt? My impression with the 40B was -- generally
13 the funding was tax exempt to the --
14 MS. BARRETT: It depends on the program.
15 MR. CHIUMENTI: And is the New England -- you
16 mean it could vary --
17 MS. BARRETT: I don't think -- I'm not going
18 to comment on that. Good, bad, or otherwise, I'm not a
19 development consultant, so -- I work with you guys.
20 But I don't know the New England Fund requirements and
21 benefits enough to answer your question.
22 MR. GELLER: Steve, anything else?
23 MR. CHIUMENTI: That's, I think, all for her.
24 MR. GELLER: Okay. Anybody else? Kate?

MS. POVERMAN: Go ahead, sir. I'm all set.

MR. HUSSEY: Quick question.

MR. GELLER: Mr. Hussey.

MR. HUSSEY: Judi, one of the items that you indicated we should consider is design. Could you elaborate on that? Design covers a whole range of mischief.

MS. BARRETT: Yes, it does. You know, not every project you need an architect. I can just tell you my experience dealing with rental projects, especially of any sort of scale, is that an architect is really invaluable, and sometimes a landscape architect as well.

But the architects look at projects a little differently from engineering. First of all, they will review the project for how it fits within the neighborhood if you ask them that question. They'll look at how does it fit within its context. They'll look at the plans for potential problems with feasibility.

Remember I said earlier that really ultimately the part of what the peer-review consultants are looking for is if its feasible to build this project. So architects will kind of look at those preliminary

1 scale drawings and look for potential problems with
2 accessibility, with fire code, you know, access. They
3 will review the application for its liveability.
4 You know, in a public hearing process like
5 this, naturally the people who are -- we're more
6 concerned about are folks who live in the neighborhood
7 and live around the site where there's going to be some
8 kind of construction.
9 But, you know, another way to think about
10 these projects is thinking about who's going to live in
11 them. And my experience is that architects kind of
12 bring that sense of what is the human environment that
13 we're creating here, and they'll make recommendations,
14 if necessary, on ways to improve that aspect of the
15 project.
16 I've seen architects make wonderful
17 recommendations about how to perhaps mitigate the sense
18 of a big bulky building on a neighborhood by redesign
19 techniques with, you know, massing techniques and so
20 forth, so -- or reducing the height. If not
21 necessarily reducing the number of stories, then
22 perhaps think about a different roof form that might
23 bring the horizon of the building down. So I just
24 think that it's a really important skill set to have in

1 the review process.
2 I've also seen architects comment on things
3 that engineers don't bring up like just traffic
4 calming, you know, within the site, adequacy of open
5 space. It's one thing to have grassy areas on-site.
6 It's another thing to actually have them be usable by
7 people who live in the development. So those are the
8 kinds of things that architects are going to bring up.
9 MR. HUSSEY: Those are relatively hard issues
10 to define. What about something as simple as
11 architectural style?
12 MS. BARRETT: I don't think most architects go
13 there. I mean, I haven't seen that. Really, I
14 haven't. That's just not what it's about.
15 MR. HUSSEY: Okay. Good. That's all I need
16 to know. Thanks.
17 MR. GELLER: Anybody else?
18 No.
19 MR. GELLER: I'd like to open it -- does
20 anybody in the audience have questions? And I would
21 ask that these questions pertain to the topic for which
22 we have engaged Judi, which is the 40B process.
23 MS. JOZWICKI: My name is Joyce Jozwicki. I'm
24 a Town Meeting member from Precinct 9. My question is:

1 In this process, can you, our board, say adult housing
2 only?
3 MS. BARRETT: No.
4 MS. JOZWICKI: That was my important question.
5 I have others.
6 MR. GELLER: Thank you.
7 Sir?
8 MR. MCNAMARA: Hi. Don McNamara. 12 Wellman
9 Street -- (inaudible).
10 (Clarification requested by the court
11 reporter).
12 MR. GELLER: Can I just ask you to speak up.
13 MR. MCNAMARA: Can you go into a little more
14 detail on the one-year lock-out period after a previous
15 application, and does it apply to this particular --
16 MS. BARRETT: I'm not commenting on this
17 application. I can only tell you that the issue is if
18 someone has applied for approval to do something else
19 with the property and the town has turned it down --
20 MS. STEINFELD: Related to construction.
21 MS. BARRETT: Excuse me?
22 MS. STEINFELD: I think it's related to
23 construction.
24 MS. BARRETT: Yeah. But it's a development

application. They want to build something and the town turns them down. Then, you know, in theory the board can say, this is a related application and we're going to cool off for a year. Usually the housing subsidizing agencies try to get a handle on it.

It usually comes up during the comment period. If I could just go back and point out -- that project eligibility letter that the applicant gets and brings it to the board of appeals and says, hi, I'm eligible to be here, well, the town gets notified about that.

You guys probably all know this, but the town gets notified about the project eligibility application and then there's a comment period. And typically, that's when these kinds of issues come up because if the board of appeals doesn't know about a related application, the planning board might or the board of selectmen or somebody knows, and it gets brought up and the housing subsidizing agency will say either proceed at your own risk or come back in a year.

MR. GELLER: Anybody else?

Sir?

MR. SHERAK: Don Sherak, 50 Centre Street.

My question is: An architect is hired or a traffic consultant is hired; how and when are those

1 recommendations or findings known or disseminated to
2 the public?
3 MS. BARRETT: You mean the reviews by the --
4 MR. SHERAK: Yes.
5 MS. BARRETT: Really there's -- pretty early
6 on in this process the board should set a schedule for,
7 you know, on X night we're going to talk about traffic.
8 On some other night, we're going to talk about design.
9 On some other night we're going to talk about
10 stormwater.
11 And what typically -- the advantage to having
12 a schedule is everybody knows what the topic is going
13 to be and at that night that stormwater's coming up,
14 you would have the engineering review of the project,
15 and that's where you would find out.
16 MR. GELLER: Let me also say that -- and
17 Alison and Maria, you can correct me if I'm wrong --
18 but my experience is that we make those written
19 materials available on the town's website and it's
20 probably under a specific folder for this project.
21 MS. STEINFELD: Yes.
22 MR. GELLER: So that will be available to you.
23 Anybody else?
24 No.

1 Thank you, Judi.
2 MS. BARRETT: Thank you.
3 MR. GELLER: So I want to call on Alison
4 Steinfeld, who is director of planning for the Town of
5 Brookline. Alison?
6 MS. STEINFELD: Thank you very much.
7 First, I want to confirm that the Town of
8 Brookline has not met any of its 40B thresholds. The
9 planning department monitors that very carefully.
10 Secondly, I want to reinforce what I hope the
11 board already knows, and that is that the planning
12 department is here to assist you. At a minimum, we
13 will provide staff support to you in order to help
14 coordinate the process, arrange for technical analyses
15 by both municipal staff and peer reviewers, ensure that
16 this is a transparent process, provide timely public
17 input, respond to your questions and requests for
18 additional information, and serve as a conduit for
19 information between you and the public.
20 And I will confirm that we automatically place
21 everything online, so please monitor our website. We
22 will have a site specific to each of the 40B
23 applications, and the 40 Centre Street one is already
24 in place.

1 As you, of course, know, this is the second in
2 a series of 40B comprehensive permit applications that
3 we anticipate receiving within the next few months.
4 Based on our prior discussions with the entire ZBA,
5 it's been agreed that we will follow a uniform process
6 on all applications. And we will -- that process is
7 clearly consistent with the rules and regulations
8 promulgated by the state.
9 While I'm promoting efficiency as opposed to
10 expediency, we must consistently keep in mind that
11 there is a state-imposed deadline of November 21, 2016
12 to close this public hearing. In order to meet that
13 deadline, I strongly recommend that the board take the
14 following actions tonight:
15 One is to agree that both an urban design and
16 traffic peer reviews are, in fact, necessary and to
17 authorize my department to procure and engage qualified
18 peer-review consultants at the applicant's expense.
19 While we intend to have all these peer reviewers online
20 as soon as possible, our focus right now is on urban
21 design because that should be the first issue to
22 address because it has implications for civil
23 engineering and basically everything else.
24 And certainly consistent with Ms. Barrett's

1 comment, I suggest that you schedule a site visit
2 tonight.
3 And as we've discussed previously, I'd also
4 recommend that you agree to set up a working group.
5 And that working group will consist of one
6 representative of the ZBA, one representative of the
7 planning board, the building commissioner and/or his
8 designees, the planning director, the assistant
9 director for regulatory and planning and/or her
10 designees, our 40B consultant, the urban design peer
11 reviewer, and the developer's team.
12 Again, the working group's purposes are to
13 discuss and attempt to find answers and solutions to
14 the board's concerns and provide advice and
15 recommendations to the board during the entire public
16 hearings process. We have no authority to make
17 decisions or negotiate any agreements with the
18 applicant. As our consultant has indicated, that role
19 is strictly that of the zoning board of appeals.
20 So in summary, in terms of what we're looking
21 for tonight is to secure agreement from the applicant
22 to fund both the urban design peer reviewer and the
23 traffic peer reviewer and decide if there are any
24 stormwater issues -- we will do that in-house. I've

1 already checked with the town engineer -- schedule a
2 visit, and secure the applicant's agreement to
3 participate in a working group.
4 And we are prepared, on behalf of the planning
5 department, to proceed as soon as possible.
6 Immediately. We've already begun, quite honestly.
7 MR. GELLER: Thank you, Alison. Don't run
8 yet. I want to actualize your request.
9 Does anybody have questions at this moment for
10 Ms. Steinfeld?
11 MS. POVERMAN: At what point does one
12 determine whether or not a pro forma peer review
13 analysis is performed?
14 MS. STEINFELD: That's very late in the
15 process, and please jump in, Judi, if you want to.
16 But if, at any point, the board, for whatever
17 reason, decides that a certain -- that they want a
18 certain modification to the proposal and the developer
19 perceives that as onerous, the developer will say such.
20 He'll say, it's onerous, it's uneconomic, at which
21 point the ZBA will say, prove it. Provide us with a
22 pro forma, and we will then engage a financial
23 consultant to be paid for by the applicant to work for
24 the ZBA. But the goal is not to push for a pro forma.

1 MS. POVERMAN: No, no. I'm understanding
2 that. It's just that -- do we have to work months in
3 advance to retain somebody?
4 MS. STEINFELD: I will have, hopefully,
5 someone ready. That's part of my job. And I've been
6 advised by our consultants that that's going to be a
7 very difficult job.
8 MS. POVERMAN: Well, let's start. We've got
9 lots of projects coming up.
10 MR. CHIUMENTI: Actually, I do have a
11 question.
12 MR. GELLER: Yeah, sure.
13 MR. CHIUMENTI: You keep saying "peer review."
14 What's a peer review as opposed to a review?
15 MR. GELLER: Great question.
16 MR. CHIUMENTI: We're already doing a review.
17 Why are we -- what's peer review?
18 MS. STEINFELD: Your question is, how is a
19 peer review different than a consultant?
20 MR. CHIUMENTI: Yeah. How is it -- and it
21 seems to be rather limited compared to if you just
22 hired someone to examine the thing and comment in his
23 own judgment. Peer review seems to be more limited.
24 MS. STEINFELD: Well, a peer reviewer is hired

1 to review the proposal before him and within his
2 discipline.
3 A peer reviewer is not hired to redesign the
4 project or to expand the project beyond what the
5 developer has proposed.
6 MR. CHIUMENTI: Well, is he limited then --
7 let's say it's a traffic problem. I mean, is he
8 limited to say the traffic is intolerable or is he not
9 just able to say, you know, there are various aspects
10 of this that make it unacceptable. It can otherwise be
11 done differently and more effectively or --
12 MS. STEINFELD: The traffic peer reviewer will
13 draw upon his own expertise and the national standards
14 or whatever standards that he applies and he'll make
15 whatever recommendations he finds appropriate. They
16 are working for the town, and they're responsible for
17 analyzing carefully the applicant's proposal.
18 MR. CHIUMENTI: Why are we saying "peer
19 review" rather than just "review"?
20 MS. STEINFELD: Because that's what
21 Chapter 41, Section 53G proposes. I mean, that's the
22 law. Peer review is the term used --
23 MR. CHIUMENTI: Well, I understand that's the
24 term. Were they implying something? Did they indicate

1 a limitation?
2 MS. STEINFELD: Well, traffic -- the traffic
3 consultant -- quite honestly, Judi is my peer because
4 she's a planner.
5 MS. BARRETT: Right. It's almost -- a jury of
6 your peers is going to review your work. So if you've
7 provided a traffic report, the developer submitted a
8 traffic study, then a peer will review that traffic
9 study. And the issue is that the board should have the
10 same or greater qualified assistance that the applicant
11 has. So a traffic --
12 MR. HUSSEY: Let me try.
13 As I understand it, if the developer submits a
14 traffic study, then you're hiring a peer reviewer to
15 review that traffic study.
16 MS. BARRETT: That's correct.
17 MR. HUSSEY: If the developer does not hire a
18 traffic study at all, then we're not allowed to
19 initiate a separate and distinct study on traffic.
20 MS. BARRETT: That's correct. You can't get
21 the applicant --
22 MR. CHIUMENTI: So he's limited to reviewing
23 the study submitted to him as opposed to just doing a
24 traffic study. Maybe a traffic study would be better.

1 MR. GELLER: My understanding is you undertake
2 a holistic review.
3 MR. CHIUMENTI: I understand.
4 MS. STEINFELD: Except, for example, in terms
5 of a peer reviewer of a traffic study, I can tell you
6 from experience that the traffic reviewer can say --
7 can redefine the scope of the work, because we did that
8 on a prior 40B, and to say you have to expand your
9 geographic area. Include this intersection and this
10 intersection. So we can request additional changes to
11 the study.
12 You know, I don't know if a consultant did not
13 prepare a traffic study, if we couldn't require one.
14 I'm asking that of our consultant. It's sort of a moot
15 question.
16 MS. BARRETT: I think any developer with a
17 project of this scale would be a fool not to provide a
18 traffic study because traffic impact is one of the
19 considerations the board can weigh. So I've never
20 actually seen an applicant not submit a --
21 MR. CHIUMENTI: So we can have the applicant
22 pay to have his study peer reviewed.
23 MS. BARRETT: That's correct.
24 MR. CHIUMENTI: We would pay to have our own

1 basic study.
2 MS. STEINFELD: But our own basic study would
3 basically be doing the same work over again, would be
4 doing the same traffic counts or whatever.
5 MS. BARRETT: The traffic study isn't going to
6 be any different from the peer review consultant saying
7 why did you omit the following intersections? You
8 know, in order to do this -- in order to measure the
9 impact of this project, you need to scope your traffic
10 study the following ways. And whether somebody's doing
11 that de novo on a review basis, frankly, I don't think
12 there's any difference.
13 But I think the even more important point is
14 that your job as a board is to review an application
15 that's in front of you. That's the scope of your
16 authority here. So that's why a peer review is so
17 important, because in theory, you know, you may all be
18 traffic experts. I'm about to put my foot in my mouth.
19 But, you know, the idea is that the board needs
20 assistance reviewing that application. That's the
21 scope of your jurisdiction.
22 MS. STEINFELD: But in reviewing the
23 application, both the town and hopefully -- and we'll
24 insist our peer reviewers will examine the overall

1 scope of the study itself. And if we're not satisfied,
2 we will insist that further work be done and then we'll
3 review that work.
4 MS. BARRETT: I just saw this in another town,
5 so it works.
6 MR. HUSSEY: Let me get outside the standard
7 reports that come through. What about a density
8 analysis? In planning, that's a term that's used
9 generally as the criteria of number of units per acre.
10 If they did not -- the developer doesn't produce a
11 density report of any sort, which may be a report of
12 within two blocks around, maybe the entire town with a
13 comparison, can we insist on a density report or can we
14 provide one ourselves?
15 MS. BARRETT: Well, no. Because the issue --
16 I mean, again, your architect is going to help you, I
17 hope, review the impact of the project.
18 And, you know, I've been in this business for
19 30 years, and I can only tell you that the number of
20 units isn't as critical as the design of the project.
21 And I have seen fairly low-density projects that were
22 terrible, and I've seen fairly high-density projects
23 that looked great.
24 And it's -- design is the issue. You get to

1 look at the design of the project and the ways to
2 mitigate the impact of the project on surrounding
3 property. And sometimes you can do that and not change
4 the number of units at all and sometimes you have to
5 look at the density of the project.
6 But a density analysis is not a requirement
7 for a Chapter 40B application. It's what's the design
8 and what's the impact of that proposed design.
9 MS. POVERMAN: Judi, I was looking at some
10 cases today. I don't know if it was the Hanover case
11 or another one, but it was distinguishing between a
12 poorly done density analysis and an examination of
13 intensity. And it criticized the expert for not having
14 done a proper analysis when she analyzed the density of
15 a particular project by comparing it with other 40Bs
16 that had been approved statewide in terms of analyzing
17 how many units -- rental units there were per acre.
18 So that implies a different sort of density
19 analysis that you're talking about and more of one that
20 what Chris is talking about. I fully agree with what
21 you were saying in terms of the impact of the building
22 and that is --
23 MS. BARRETT: That's the issue.
24 MS. POVERMAN: -- critical. But it doesn't

1 obviate the need potentially for the type of density
2 analysis, whether in this case may be appropriate or in
3 another case.
4 MS. BARRETT: Okay. What I'm going to say is
5 there are local concerns that you are allowed to
6 consider. And if you ask for a density analysis and
7 the applicant says, I'm not doing that, I don't have to
8 do that, I can guarantee you that when you end up in an
9 appeal, the question you're going to be asked is what
10 was the local concern that you were trying to get at.
11 If the answer is, well, design, then the
12 question will be, well, did you have an architect
13 review the plan and what was the architect's
14 recommendation for that plan? How did you consider the
15 physical impact of the site, not the density. So you
16 have to -- you don't start at density. You may end up
17 there. But the issue is what is the physical impact of
18 that project, not the number of units.
19 MS. POVERMAN: Yeah. I don't recall if this
20 instance -- it was planning, that it was, you know,
21 urban planning, that it was in the context that I've
22 looked at. I just don't want anything to be off the
23 table, and maybe that is Mr. Hussey's concern as well.
24 MS. BARRETT: And I'm not saying we should

1 have something off the table. I'm saying focus on the
2 issues that you can focus on.
3 MS. POVERMAN: And I think that's an issue we
4 can focus on.
5 MS. BARRETT: Well, that's up to the board.
6 MR. CHIUMENTI: Well, I think that it may be a
7 matter of just expressing it in terms of what the
8 regulations say, traffic management and so on. Density
9 leads to other problems that are --
10 MS. BARRETT: But that's my point. Focus on
11 the issues --
12 MR. CHIUMENTI: We just have to use the
13 language in the regulations. That's all.
14 MS. POVERMAN: Got it.
15 MR. GELLER: Okay. Other questions?
16 MR. HUSSEY: No.
17 MR. GELLER: Okay. Let me first address --
18 MS. KATES: I have a question.
19 MR. GELLER: Yeah. Then I want to get to our
20 issues. Go ahead, ma'am.
21 MS. KATES: I have a question about the way
22 the peer review process might deal with, say, the
23 traffic study.
24 Now, this developer has submitted a traffic

1 study. This particular site, every Thursday for six
2 months between June and November, I would say peak
3 traffic is probably -- pedestrian and otherwise -- is
4 probably between 4:00 and 6:30 in the afternoon.
5 There's a farmer's market.
6 Can they conduct -- can the peer reviewer say,
7 okay, you have to go back and redo your traffic study
8 because -- during these hours -- because this is
9 actually when it's really going to be a big issue for
10 safety and otherwise?
11 MR. GELLER: So peak peer review is what she's
12 saying.
13 MS. BARRETT: The peer review consultant will
14 advise the board whether a traffic study adequately
15 accounts for the traffic conditions that the project
16 could impact.
17 MS. STEINFELD: And if I may note, don't
18 forget that municipal staff will also be involved in
19 this, and municipal staff, including our traffic
20 administrator, will be working with the peer reviewer,
21 and he is well aware of the farmer's market, of course.
22 MR. HUSSEY: Could we have your name, please.
23 MS. KATES: Oh, I'm sorry. My name is Beth
24 Kates, and I live at 105 Centre Street.

MR. GELLER: Thank you.

MS. STEINFELD: Just for everyone's -- we are having this transcribed at the applicant's expense.

MR. GELLER: Sir, in the back.

(Inaudible. Clarification requested by the court reporter.)

MR. GELLER: Loud.

MR. ALT: My name is Steven Alt. I live at 19 Shailer Street. And in light of the conversation, I'd like to know why the planning department is asking the board only to retain peer experts in urban design and traffic and not include an architect since that seems to be a very important component.

MS. STEINFELD: Actually, an urban designer can be considered either an architect or a landscape architect. And then one of the requirements in the RFQ, request for quotations, is, in fact, a registered landscape architect or architect.

MR. GELLER: Sir?

MR. SCHWARTZ: Yes. I'm Chuck Schwartz. I'm a Town Meeting member from Precinct 9, and I live on Centre Street also.

I just had a question when you were naming who would make up this review team. There was no mention

1 of a representative from the neighborhood. I wanted to
2 know if that might be possible.
3 MS. STEINFELD: We have, in fact, decided in
4 advance that this would be the select group to review.
5 First of all, it's very hard to select any one
6 individual to represent the neighborhoods. And
7 secondly, it just creates for greater efficiency --
8 we're going to be poring over plans. But the working
9 group is going to be coming back to the --
10 MS. POVERMAN: I don't recall any agreement as
11 to that, and I disagree based on our experience at
12 Crowninshield. I think that if the neighborhood is
13 able to come to an agreement as to a representative,
14 it's valuable to have a representative of the
15 neighborhood in on the design plan.
16 (Applause.)
17 MR. GELLER: I would please ask for people to
18 refrain from clapping. I know you're exuberant at
19 certain answers, but we've got to move things along.
20 MS. STEINFELD: And actually, we did have a
21 meet previously with the entire ZBA. As a matter of
22 fact, I think that was one meeting you missed.
23 MS. POVERMAN: No. I was there.
24 MS. STEINFELD: You were there? That's right.

1 You came -- yeah. But that was decided, and we have
2 determined that this is the working group that will
3 be -- that a different working group of the same
4 general makeup for each 40B application.
5 MS. POVERMAN: I don't understand what you
6 mean by a different group of --
7 MS. STEINFELD: Well, each 40B application
8 will have a different ZBA panel, so chances are we'll
9 have a different ZBA representative. And we'll
10 probably have a different planning board representative
11 as well.
12 MS. POVERMAN: I recommend that that be
13 rethought to include the neighborhood because these are
14 such sensitive issues that impact the whole town. And
15 I think that in the interest of transparency and good
16 relationships, it would be a wise thing to do.
17 MS. STEINFELD: This will be a very
18 transparent process in terms of give and take between
19 the working group and the ZBA, and there will be the
20 public at the public hearing.
21 MS. POVERMAN: But these hearings are not
22 public.
23 MS. STEINFELD: These hearings are public.
24 MR. GELLER: You've had your hand up three

1 times.
2 MS. EDBERG: My name is Carol Edberg, and I
3 live at 19 Winchester Street, and the back of this
4 proposed building is going to abut my property. One of
5 my questions is: Is the fire department involved in
6 any of this? There is going to be five feet, one
7 inch --
8 MR. GELLER: Let me -- so as Ms. Steinfeld
9 mentioned, there will be a number of hearings over a
10 course of time not to exceed 180 days. And the purpose
11 of tonight's hearing is to open the hearing, to go over
12 administrative details, to have a presentation about
13 the dos and don'ts for process under 40B. And the
14 lion's share of tonight's agenda is going to be to hear
15 the applicant's presentation.
16 There will be future hearings that we will
17 have, and we know the next one is scheduled for June
18 the 20th, same time, 7:00 p.m. And the purpose of
19 future hearings will include, okay, will include
20 testimony from peer reviewers, will include testimony
21 either in written form or in actual live presentation
22 of members of our town safety departments: fire,
23 police.
24 So absolutely excellent question. And I just

1 want to point out there will also be an opportunity for
2 there to be public testimony at one of these hearings
3 in the future. It won't happen tonight, but there will
4 be a hearing in which the neighborhood will have an
5 opportunity to give us their thoughts, suggestions,
6 comments.
7 MS. STEINFELD: And if I may, Mr. Chairman,
8 specific to fire, apart from public testimony you will
9 hear from the fire chief or his designee, the applicant
10 will be encouraged and the planning department will
11 arrange it, for them to meet directly with the fire
12 department. Fire safety is critical.
13 MR. GELLER: Sir?
14 MR. WHITE: George Everett White. I live at
15 143 Winchester Street, Town Meeting member 9.
16 Ms. Steinfeld, if I may ask you a question,
17 who's the "we" when you say "we have"?
18 I'm surrounded by building projects, and I'm
19 also receiving quite a few phone calls and
20 conversations regarding planning and zoning as a Town
21 Meeting member and as a neighbor.
22 And I'm very concerned about the "we" deciding
23 that people can kind of watch and they can make
24 comments as the thing goes along. But I have a concern

1 that -- it's seems to me they should be part of the
2 process. Someone from the community should always be
3 part of the process. Not listening, watching, waving
4 their hands, but as the process proceeds, that is to
5 say from the very beginning.
6 So could you tell me who the "we" is that's
7 making this decision, because I'm under the impression
8 that we're the "we."
9 MS. STEINFELD: Well, if you mean who is the
10 "we" who determines --
11 MR. WHITE: Who decides who sits at the table?
12 MS. STEINFELD: That was a discussion between
13 the planning department and the full ZBA.
14 MR. WHITE: How about the community?
15 UNIDENTIFIED AUDIENCE MEMBER: The taxpayers.
16 MR. WHITE: Yeah. The people -- no offense.
17 I was a teacher for 42 years. People reminded me
18 ad nauseam that they were paying my salary. You know,
19 not nasty about it, but who's the "we"?
20 MS. STEINFELD: The planning department and
21 the board of selectmen's ultimate responsibility is to
22 make sure that we abide by the statute and we meet the
23 180 deadline.
24 In order to achieve that, we've had to develop

1 a process, particularly in light of the fact that we
2 have at least five comprehensive permit applications
3 before us, or will in a few months. So there has to be
4 a uniform process to ensure efficiency, fair treatment
5 of all the neighborhoods, and to avoid at all cost any
6 constructive approval.
7 MR. WHITE: Efficiency. I would say it's very
8 efficient -- my humble judgement --
9 (Multiple parties speaking.)
10 MR. WHITE: We're going to keep coming back to
11 it. Okay?
12 MR. GELLER: Perfectly fine.
13 I think, at the end of the day, the
14 decision-making is in the hands of the ZBA, and that's
15 by statute. So I think -- that's the answer to the
16 question, the ZBA makes the decision. And the ZBA in
17 tonight's hearing, you see the members. So I think
18 that's the answer you're looking for.
19 Any other questions?
20 Yes.
21 MS. RYAN: Not a question, just a statement.
22 A.E. Ryan, 12 Williams Street. I would just
23 like to remind all of our town people here that of the
24 five applications that are present or going to be,

1 three of them are within a two-block radius of our
2 neighborhood, our neighborhood.
3 MS. STEINFELD: I'm very aware of that.
4 MR. GELLER: Sir?
5 UNIDENTIFIED AUDIENCE MEMBER:
6 (Indecipherable) -- Town Meeting member Precinct 9.
7 I'm sure you guys already know, this is one of the most
8 densest zoning tracts in the state, if not close to the
9 most density area. I hope you can consider that when
10 you deliberate.
11 MR. GELLER: Well, let me say that my intent
12 was not to provide the audience with an opportunity for
13 testimony at this moment. You will be given an
14 opportunity for testimony.
15 So let's get the hearing started and hear the
16 applicant's presentation, and then you'll have an
17 opportunity to speak at that point.
18 MR. HUSSEY: Tonight?
19 MR. GELLER: No. I think at this point it's
20 clearly going to be -- I think we plan on a June 20th
21 hearing? Is that when we will offer an opportunity for
22 the public testimony?
23 MS. MORELLI: Yes.
24 MR. GELLER: Let me start by -- who's here to

1 offer to give us the presentation.
2 MR. ROTH: I'm Bob Roth, and I'm the developer
3 and applicant.
4 MR. GELLER: Thank you. Bob, can you -- just
5 a question. On the PEL and on the application we seem
6 to have a different reference to affordable units in
7 the numbers. We've got 9 on one and 12 on the other.
8 Can you speak to that?
9 MR. ROTH: Well, I'll let our consultant, Jeff
10 Engler, speak to it. But I did contact town counsel
11 and told them that it was a mistake that was realized
12 early on. It was a mistake that was made back when the
13 application -- we actually applied for 9 units.
14 MR. CHIUMENTI: But doesn't the PEL say 12 at
15 this point? I mean, that Mass Housing thing says 12.
16 MR. ENGLER: For the record, Geoff Engler,
17 from SEB. We're affordable consultants for developers.
18 We reached out to Mass Housing after the
19 counsel alerted us to the issue. The genesis of it was
20 the original application was for 12 units of affordable
21 housing for households earning up to 80 percent of the
22 area median income.
23 It was our understanding the town was more --
24 and the people in the planning department were more

1 receptive to 9 units at 50 percent to hit a lower tier
2 of affordable. That was not reflected after discussion
3 with Mass Housing. For purposes of this application,
4 it should be treated as 12 units for households earning
5 up to 80 percent of area median income.
6 However, it's also important to note that this
7 is an issue for the subsidizing agency. The project
8 administrator in this case is Mass Housing.
9 Either program is compliant with the
10 regulation, either program is allowable. So whether
11 it's 9 at 50 or 12 up to 80, I understand the town
12 might opine on which it would prefer, but that's an
13 issue for the program administrator.
14 I think -- I don't speak exclusively for my
15 client, but we're certainly open to discussion to see
16 if the town has a strong preference one way or another.
17 Hopefully that does not muddy the already muddy waters.
18 MR. GELLER: Like everything with 40B, of
19 course it did.
20 Judi, can you sort of give us a little
21 additional information on this?
22 MS. BARRETT: Sure. It is true that the
23 subsidizing -- most of the subsidy programs, especially
24 for rental, will consider the affordable thresholds one

1 of two ways. Either 25 percent of the units have to be
2 affordable to households with incomes at or below 80
3 percent of the median for the Boston Metro area, or 50
4 percent of the units -- excuse me -- 20 percent of the
5 units affordable to households with incomes at or below
6 50.
7 And so if the board is concerned that the
8 application doesn't match the project eligibility
9 letter, really all you need to do is ask the
10 subsidizing agency to clarify or the applicant to
11 clarify. The subsidizing agency is simply going to say
12 it really doesn't matter. Either way is fine. I
13 suspect it was just a standard letter.
14 MR. CHIUMENTI: Well, it's jurisdictional.
15 They need to clear that up. That's why you're here.
16 It's needs to be something.
17 MS. BARRETT: Right. But I'm saying that
18 either way is going to qualify the application. So I
19 agree that you want to know what it should be. If I
20 were in your shoes, I would too. I'm just saying that
21 really, in the bigger scheme of things, from the
22 subsidizing agency's point of view it's not going to be
23 a big deal. They're going to say, do what you want.
24 That's really what's going to happen.

1 MR. GELLER: It's not fatal to the applicant.
2 MS. POVERMAN: That may be true, but I agree
3 with Steve that we need to know what we're talking
4 about. There's a difference between 12 and 9 and
5 that's --
6 MS. BARRETT: Right.
7 MR. CHIUMENTI: It needs to be --
8 MS. POVERMAN: -- precision records.
9 MR. ENGLER: I would consider this application
10 to be 12 affordable units for households earning up to
11 80 percent of area median income.
12 MR. GELLER: Thank you.
13 Mr. Roth, go ahead.
14 MR. ROTH: Okay. My name is Bob Roth. I'm a
15 developer. I'm the applicant. I've lived in Brookline
16 for 31 years, so I'm not a stranger to Brookline. I
17 started building here in Brookline in 1985, and I've
18 built a number of projects throughout the community.
19 This project, 40 Centre Street, which is
20 located just 300 feet or so from Beacon Street is
21 really a very ideal location, we believe, for an
22 affordable housing project.
23 The property right now is -- it sits on a lot
24 that's 10,889 square feet. Its footprint is about

1 3,500 square feet. It's a two-story building. It
2 houses two dentists and one single-family home, an
3 apartment upstairs. The project is -- the height of
4 this building is about 22 feet.
5 40 Centre Street, which is what I would
6 consider -- the location -- a transitional area, one
7 that is just very close to a very commercial center and
8 one through a multifamily housing area which goes all
9 the way down to Centre Street where we find ourselves
10 having a number of buildings, some as high as 150 feet
11 tall and thirteen stories, some having three-and-a-half
12 story buildings, three-family homes. It's a mixed
13 community, and it has all kinds of heights.
14 Another reason this is an ideal location is
15 that it's very close to the T station. You have a T
16 station right there, you have bus service on Harvard,
17 you have five Zipcars maybe 75 feet from this project.
18 So transportation is really at the fingertips of the
19 future residents.
20 This project is -- well, all 40B projects seem
21 to be controversial. It's just the nature of them.
22 But this project, we need to look at it as -- because
23 it's so close to a commercial center and it's not in
24 the heart of the residential community, we see it as it

1 should be less controversial. We understand that the
2 residents of Centre Street, you know, feel that they're
3 going to be impacted by this, but the truth is that it
4 edges towards a commercial center.
5 I think that one of the things that we've seen
6 tonight is that there are some very important questions
7 that have to be addressed. One of questions that has
8 to be addressed is, is it a safe location? Can it be
9 serviced? Can the fire department access this project?
10 We have met with the fire chief. We sat down
11 with our architect and we met with the fire chief. He
12 reviewed the site, site plan, and he felt very
13 comfortable with the setting of this building.
14 The other question we have to ask is of
15 traffic. Now, we know the site. The site has -- to
16 the right of it or to the east of it is a parking lot
17 right now. It's an open parking lot. Maybe it has,
18 you know, 30 or 40 cars in there.
19 To the left is a rooming house which is now
20 being used, I think, for dormitory use.
21 To the back of the property is a 10-story
22 building, which probably exceeds somewhere -- 110, 120
23 feet right behind the property.
24 And, of course, the front is the parking lot,

1 the municipal public parking spaces for the town for
2 the Coolidge Corner area. So the building is
3 relatively isolated.
4 Some of the other questions that have to be
5 addressed will be -- and tonight we'll address those --
6 are massing, the massing of this building. Is it
7 appropriate? This building, by right, is -- could be
8 built 40 feet in height. It's 22 now. So essentially
9 it's in an M1 zone, and what we're talking about here
10 tonight is two extra stories on top of this -- on top
11 of the normal zoning requirement.
12 The other thing we have to address is the
13 architecture of the building. Is the building
14 properly -- does it reflect the community? Does it
15 reflect the landscape of Centre Street or Coolidge
16 Corner?
17 I think that if you're aware of Centre Street,
18 you can drive down Centre Street, you see every kind of
19 dialogue of architecture. You have precast 1970s
20 buildings, you have the old three-family Victorian
21 buildings, you have brick buildings, you have, behind
22 us, the 12 Winchester building which is sort of a brick
23 and modern type of building. So the language of the
24 community is not a defined language.

1 The other thing to look at -- we've talked
2 about, is density. And the other ones are setbacks,
3 shading, and parking.
4 Parking is an issue that was brought up before
5 by the board of selectmen. This site has 17 parking
6 spaces. To talk about a traffic impact by this seems,
7 at least to me, a little far-fetched.
8 You know, we had a traffic study on this. We
9 have 250 cars across the street actively going in and
10 out onto Centre Street. We have next to us 40 spots
11 that are coming in and out. To the north of us, we
12 have on Centre Street an additional parking --
13 municipal area for parking. 17 cars in this -- coming
14 out of this building translates into 10 at peak hour.
15 And maybe peak hour is not the traditional
16 7:00 to 8:00. Maybe it's 6:00 to 7:00 or 7:00 -- I
17 don't know what it is. Someone has offered a
18 suggestion at a different time. I was there this
19 morning at 6:30, and I can tell you there were more
20 than ten cars on the street.
21 17 cars impacting this area I don't think is
22 going to be significant. And I think it proves it out
23 in the traffic study that there's 10 exits at peak hour
24 and three entry points.

1 So I think the best way to really take a look
2 at the site is visually. We have a presentation put on
3 by the architect here, Peter Bartash, CUBE 3, who will
4 walk us through the visuals so that you have a better
5 idea of what we're speaking about. Thank you.
6 MR. GELLER: Thank you.
7 MR. BARTASH: For the record, my name is Peter
8 Bartash. I represent CUBE 3 Studio. We are an
9 architecture and planning firm. We're working with
10 Mr. Roth here on the 40 Centre Street project.
11 I'm just waiting for the presentation to come
12 up here. And then what I'd like to do tonight is
13 illustrate and provide some visual examples that
14 support some of the opinions and claims that Mr. Roth
15 presented here and describe how we evaluated the
16 context of this project in order to really come up with
17 the project we're proposing here tonight.
18 (Brief pause)
19 MR. ENGLER: Mr. Chairman, rather than have a
20 little bit of dead air, I'll offer a few comments that
21 I would have made after the presentation. But in the
22 interest of time rather than waiting for a scroll ...
23 I think it's important for the neighborhood to
24 understand the nature of the peer review process. And

1 I would agree with what Judi said earlier, and to
2 answer a few of the questions.
3 One, don't take our word for the traffic. Use
4 your peer review consultant. Make sure he or she has
5 your concerns, has your questions. Have your --
6 identify the issue on Thursdays. Make sure that the
7 review is comprehensive.
8 To one of the member's points before, what you
9 can't do under 40B is say, you know what, we're having
10 a terrible time on Beacon Street. Can you give us --
11 review this or give us a traffic study. Well, that
12 scope is way beyond the 40B project that's before you.
13 So the scope has to be defined to what are the traffic
14 impacts related specifically to this project.
15 But to the extent there are certain things
16 that the board feels strongly about or the
17 neighborhood, I would advise that that gets reflected
18 in the analysis that this person does. And they'll
19 make a presentation and then there will be discussion
20 between our consultant and their consultant.
21 It's a very iterative process, and it's
22 important to understand that this is a detailed
23 process. There's a lot of input that we take very
24 seriously. There may be some comments or observations

1 made that we disagree with or we have a difference of
2 opinion with, and we will obviously make that known to
3 the peer reviewer and the board. But it's all part of
4 the process.
5 Likewise, with the -- it's my understanding
6 that your interest is in hiring more of an urban
7 planner. And one of the things that Brookline has,
8 which a lot of the towns do not have, is you have a lot
9 of what I would call in-house architectural expertise
10 than the previous 40Bs that I've been involved with.
11 You have a lot of, you know, very experienced,
12 well-versed architects that the zoning board can
13 leverage to review the plans here in addition to an
14 urban planner.
15 So there's going to be a lot of opportunity
16 for input. It's a long process. I don't want people
17 to think -- and I don't think they do -- next month
18 we're going to be filing for a building permit. It
19 doesn't work that way.
20 So we're here tonight. This is the first
21 night in a long process. There's going to be a lot of
22 exchange. There's going to be a lot of information.
23 Like Judi said, I've never seen a 40B project, after
24 the public hearing closes, look exactly as it did when

1 the public hearing opened. So that's a result of lots
2 of comments from the neighborhood, from the board, from
3 the peer reviewer consultants, internally from us
4 looking at the plan. So it's all part of the process.
5 And we looked forward to the peer review because
6 historically that makes for a better project.
7 So it looks like the presentation is ready to
8 go, so I will sit down.
9 MR. GELLER: Thank you.
10 MR. BARTASH: So here on this first slide,
11 Mr. Roth made a point of identifying several letters or
12 comments that we've received through some of the
13 preliminary reviews of the proposed project. And for
14 the purpose of the record and in case there is anyone
15 who has trouble seeing the text on the screen, I'm
16 going to violate presentation rules and read what's on
17 the slide in front of me.
18 The first quote we have up here states, "The
19 location of this project in the heart of Coolidge
20 Corner meets most of the tenets of Smart Growth. The
21 site is proximate to rapid transit on Beacon street and
22 bus service on Harvard Street and is on the cusp of the
23 largest commercial area in Brookline." And that came
24 from Neil A. Wishinsky, chairman of the board of

1 selectmen, in a letter dated March 8, 2016.
2 The second quote, "The proposed building meets
3 the fire department requirements for building access,
4 and we do not have any concerns at this time." And
5 that came from Deputy Chief Kyle McEachern of the
6 Brookline Fire Department in an email dated April 27,
7 2016.
8 The third and final quote, "Safe traffic
9 operations will exist at the new site driveway onto
10 Centre Street. Overall, the project can safely be
11 accommodated in the area." And that came from F. Giles
12 Ham, managing principal at Vanhasse & Associates in a
13 letter dated April 15, 2016.
14 And to clarify, Vanhasse & Associates is the
15 traffic review firm that's hired by the applicant to go
16 ahead and review the project.
17 So to speak briefly about the site context,
18 we're going to break this down into a number of areas
19 that are pertinent to the project and its design.
20 But broadly, in the center of the screen here
21 in yellow you will see this is our site at 40 Centre
22 Street. Running left to right up across the screen is
23 Beacon Street. Centre Street runs in a generally
24 north-to-south direction up towards the left-hand

1 corner of the screen here.
2 Then we have Wellman Street that borders a
3 parking lot and a multiple family home next to the
4 project site.
5 Then we have Winchester Street here, on which
6 sits the 10-story building that Mr. Roth spoke of
7 directly behind the project site and another taller
8 building at the corner of Beacon and Winchester. And
9 then we also have the neighboring two-and-a-half story
10 existing dorm house or rooming house that sits
11 immediately to the side of our project side.
12 Across the street, we do have the town public
13 parking lot which is behind a bunch of single-story
14 commercial uses that fronts on Harvard street.
15 So to look at what's there right now, right in
16 front of you, this here is the building that Mr. Roth
17 described as the existing mixed-use commercial and
18 residential building. As discussed, it's two dentists
19 on the first floor and a single apartment on the upper
20 floor. And in the back, this is the building on
21 Winchester Street that we keep referring to.
22 You'll see to the left here, this is an
23 existing drive access that does connect tenants of this
24 building to a parking lot at the rear of this building.

1 And to the immediate left of this drive aisle is
2 roughly the location of the property line that
3 separates this site from the rooming house next door.
4 To the right-hand side, you'll see there's a
5 fence or some kind of landscaped screened buffer
6 between the existing project site and the parking lot
7 next door. And in terms of the relationship between
8 the existing building and Centre Street, you'll see
9 there's a roughly eight- to ten-foot grassy area out in
10 the front of this existing building.
11 When we take a step back and we stand in the
12 parking lot that is directly across Centre Street, to
13 the left here you'll see the existing two-and-a-half
14 story dorm or rooming house that we were speaking of.
15 And what I'd like to point out, and we'll
16 address later on in the presentation, is that we do
17 have a significant cornice line on this project -- or
18 on this building. It is a pitched-roof building. And
19 the actual ridge line of this building is roughly 40 to
20 45 feet up from grade itself.
21 So that's a significant point for us because
22 we're looking very closely at the height of the nearby
23 building and also the height of the building behind us
24 and thinking about how this proposed project will fit

1 into its immediate surrounding context.
2 So here we have a diagram that talks a little
3 bit more closely about neighborhood building height.
4 And the heights that are identified on this slide are
5 approximate. We haven't gone and surveyed every single
6 building. What we've done is done a count of the
7 stories that are evident on each project and assumed a
8 floor-to-floor height that's consistent with the
9 project type or construction type based on the building
10 that we were identifying.
11 And so again, for kind of consistency sake,
12 here in the middle of the screen in this yellow
13 rectangle is our project site. Next door we're
14 identifying the ridge line of the nearby existing
15 building at 45 feet. We've given 100-foot height to
16 the building that's directly behind us on Winchester
17 Street.
18 This is Wellman Street here that my cursor is
19 sliding over the middle of the screen, and we have
20 existing 45-foot-tall, multi-family-use building here
21 sitting against Wellman Street.
22 And you also see -- there's another 45-foot
23 building here that sits -- it's actually an address
24 that is on Centre Street. It's 41 Centre Street, but

1 it does butt against Harvard Ave.
2 As you start to expand your view into the
3 greater context of this area or this transitional zone,
4 as Mr. Roth described it, you'll see that we do have
5 buildings that reach a height of 150 feet that sit on
6 Centre Street, further down at 70 Centre Street and
7 beyond. And if we look at the intersection where
8 Centre Street connects with Beacon Street, we do have
9 some existing buildings there as well that are up at
10 100 and 150 feet.
11 So in terms of looking for patterns, we try to
12 look at markers such as height or setback from the
13 street or other markers that would define an urban
14 fabric so that we could then draw upon those markers to
15 really drive the architecture or the urban design
16 behind the proposed project.
17 In this case, what we've found is that there
18 really is a true mix of heights, of styles. And I'll
19 talk a little bit more closely about the relationship
20 to the street edge on the next slide.
21 But I think it's important to consider that
22 really in order for us to define what's appropriate for
23 this site, we want to look at the examples that are
24 most closely related to and neighboring the project

1 itself and think about how the massing strategy would
2 correspond between these two buildings here because
3 there's no clear indication in this greater area of
4 what the true datum is.
5 If you were to look at the Back Bay, for
6 example, there's an existing height where you have the
7 row houses at a certain height and that creates that
8 street edge and that character that's very consistent.
9 And so we can look at that and identify characteristics
10 that are easy to draw upon. And here it's actually a
11 little bit more difficult to do.
12 So by looking at the site most closely and
13 thinking about this immediate area, we've started to
14 drive our actual strategy for massing the project and
15 the design of the proposed project.
16 So just elaborating a little bit more closely
17 on some of the other buildings I was identifying -- and
18 you can see even here the mix of architectural styles.
19 You know, here we have 30 to 34 Centre Street with the
20 existing building next door at 45 feet. Further down
21 we have 70 Centre Street at 80 feet, which is a brick
22 modern expression that we talked about earlier. 100
23 Centre Street is up at 150 feet. This is a precast
24 hypermodern example. And 112 Centre Street is at 150

1 feet, again, to its upper line here.
2 And now, you'll see in the very foreground of
3 this image here is an existing smaller-scale
4 residential home with pitched roofs, with a more
5 traditional New England style architecture and more
6 traditional materials. And even just in this image
7 alone, you can see how we have this juxtaposition of
8 styles and types and heights, really, that are kind of
9 scattered throughout this neighborhood.
10 So if we talk about neighborhood edge
11 conditions, what I mean specifically by that term is to
12 discuss the relationship between the front facade of a
13 building and the backage of the sidewalk up against a
14 public right-of-way or a street.
15 So we have three different categories here
16 that we're looking at. We're looking at buildings that
17 are right on the edge of the sidewalk or within five
18 feet of the sidewalk, we have buildings that fall
19 between five and ten feet from the edge of the
20 sidewalk, and then buildings that are greater than 10
21 feet back from the edge of the sidewalk.
22 And so to elaborate upon the earlier point
23 about the lack of consistency that's in this overall
24 fabric, you can see there's a very consistent language

1 of expression along Harvard Ave. and along Beacon
2 Street where we have primarily commercial uses that are
3 butted up against the back of the sidewalk and that
4 creates a certain character and rhythm and urban edge
5 to that fabric.
6 When we start to move along Centre Street, you
7 see that that fabric starts to break down. We have the
8 existing building next door that's more than 10 feet
9 setback from the road here.
10 And then we go across the street and we have a
11 building that's between zero and five feet from the
12 edge of the sidewalk here.
13 If we were to turn the corner and go down
14 Wellman Street, we can see we have a complete mix of
15 any of these three criteria.
16 And if we were to be on Winchester Street, you
17 can again see that even the existing condo project
18 behind is also set between zero and five feet from the
19 back edge of this sidewalk.
20 And so what's important about that is really
21 these setbacks allow for the opportunity to provide
22 landscaping or to provide some sort of plaza in front
23 of a building that are either an attempt to reduce or
24 soften the relationship between the building itself and

1 the street edge. Or they're meant to reinforce the
2 character of a street wall or a street corridor as it
3 were.
4 So one of the things that is not identified on
5 this slide but that is important to think about is the
6 notion that in this location here to the southeast of
7 the project, immediately to the northwest, and then to
8 the northeast are all parking lots that really surround
9 our immediate project area. And they don't really have
10 an identifiable relationship to this street in the way
11 that they would if they were all buildings. There's
12 not a specific setback from the front facade to your
13 street. So the nature of views, access to light, urban
14 space along this street is very undefined as a matter
15 of the built fabric along the street.
16 Here we talk about parking availability. And
17 so the notion of parking and capacity on this project
18 has been a point of discussion. I think it was at the
19 board of selectmen meeting we talked about it, and
20 we've also been aware of that concern through various
21 other comments that we've received.
22 And so what we want to do is talk a little bit
23 about what's available in the immediate context around
24 this project. It's not saying that any of this is

1 specifically deeded to or promised to this project, but
2 just identifying some of the other resources that are
3 in that immediate area.
4 It's important to note that with this project
5 being proposed as a Smart Growth development, the
6 notion of proposing less parking than would have
7 provided for, let's say, one space per unit, is
8 actually -- it's intentional, deliberate. It's meant
9 to be self-filtering in a way. You know, if I own a
10 car and I need to have a dedicated parking spot and the
11 site doesn't provide me one and I can't lease one from
12 any of these other surrounding resources, then this
13 project is not going to be a fit for me and I'm going
14 to be looking elsewhere for a place to live.
15 The idea of this project being in its
16 location, as Mr. Roth pointed out, is it's proximate to
17 commercial services, to public transportation that gets
18 access to the greater local area within Brookline but
19 also to the City of Boston, and is an ideal location
20 for residents who are seeking to have access to an
21 urban community like this where they have those
22 amenities and those resources at their disposal, and
23 they're built for those who are looking for that type
24 of access.

1 So here we're looking at the project site in a
2 little bit greater detail. And just to, again, cover
3 briefly, we have an existing building to the bottom of
4 the screen here. North is roughly in the upper right-
5 hand corner of the screen. And we'll talk about
6 shadows in a second, so I just wanted to start to make
7 a point of that.
8 Here 19 Winchester Street does sit behind us,
9 and you'll see there is an open space behind that
10 building with their existing pool that sits right up
11 against the property line that separates our project
12 from the neighboring project. To the immediate
13 northwest of the project is an existing parking lot.
14 And then you'll see there's some open space behind the
15 existing building to the southeast, and that existing
16 open space is a parking lot that serves the neighboring
17 building.
18 So here we're looking at a very rough proposed
19 building footprint. And by "rough," what I mean is
20 that it's just demonstrating the extent of the
21 footprint. We'll get into a little bit more detail
22 about what the project is made up of as we move through
23 the presentation.
24 But for the purposes of orienting everyone to

1 the site, if we start at Centre Street here, what
2 you'll note is that there is a vehicular access on the
3 northeastern corner of the property that enters a
4 parking level that is at grade.
5 All of the residential units for this project
6 are located on the second floor up to the sixth floor
7 above this parking area.
8 And in this condition, what we're describing,
9 you'll see here, this is -- I'm tracing the extent of
10 the property line itself. And so from the front, from
11 the rear, and side yards, we're proposing a
12 five-foot-one-inch setback. And so what that allows
13 for on this side of the property, which does face that
14 existing building, is for some low-scale landscaped
15 buffering between our proposed footprint and the
16 neighboring property.
17 It also provides us an opportunity to get
18 access and egress in the event of an emergency from one
19 of our emergency corps out along the building and back
20 to the public right-of-way out in front.
21 And again, we've reviewed all of this with the
22 fire department, we've started to review it with town
23 staff, and we noted their comments earlier on in the
24 presentation.

1 So jumping to shadow studies, because in
2 addition to talking about mass, I think, you know, as
3 we were discussing before, the terms "density" and
4 "mass" are really interchangeable in the sense that
5 we're trying to describe the size of the building and
6 the relationship of the building and its impact on the
7 surrounding community.
8 And so one of the things that we look to very
9 closely is the potential for the project to cast
10 shadows on existing structures or to limit access to
11 light for existing structures nearby. And we think
12 that's something that people in the surrounding
13 community really hold as important to their quality of
14 life and the conditions of the places where they live.
15 And so when we're looking at these slides,
16 what you'll see is we have the proposed project in
17 blue, this footprint here. The site boundaries are
18 indicated with this white dashed line. And then we
19 have two things to note: The existing shadows from the
20 existing building or any other existing structure
21 around the site are indicated with this darker black
22 rectangle; any new shadow is identified by the extent
23 of this red shape drawn here.
24 And we're going to look at four times

1 throughout the day during March, June, September, and
2 December, and so those times are at 9:00 a.m.,
3 12:00 p.m., 3:00 p.m., and 6:00 p.m.
4 So starting in the spring on March 21st at
5 9:00 a.m., you'll see that we cast a shadow across the
6 neighboring parking lot, and that shadow will run
7 partially up the face of the existing residential
8 property on the other side of the parking lot at
9 9:00 a.m. in the morning.
10 By the time we're at 12:00 p.m., you'll see
11 that that shadow has drawn in more closely to the
12 footprint of the building and is now extending across
13 Centre Street but falling short of the existing
14 structures across Centre Street.
15 As we move to 3:00 p.m., you'll see that the
16 new shadow falls across Centre Street and into the
17 existing parking lot across the street but does not
18 exacerbate or add to the impact of the shadows from the
19 existing building on the neighboring structure here at
20 39 Centre Street.
21 Here at 6:00 p.m. you'll see this rectangle
22 here in red is the area of shadow that is being added
23 by our project and falls within this otherwise small
24 area of light that was touching the existing parking

1 lot across the street.
2 When we look at June 21st when the sun is
3 highest in the sky, you'll see that at 9:00 a.m. the
4 shadow from this project does fall partially into the
5 open space on that -- that it belongs to the property
6 behind us at 19 Winchester. It does not impact the
7 pool and, actually, you'll notice in all of these
8 studies that the shadows from this building do not fall
9 on the pool, which we heard was a concern at one point.
10 It does fall into this existing parking lot but falls
11 short of the nearby structures to the northwest here.
12 As we get to 12 noon, you'll see that the
13 shadow contracts close to the building's footprint and
14 falls briefly onto Centre Street.
15 At 3:00 p.m. we are adding to the impact of
16 shadows on the existing structure here along Centre
17 Street, and those shadows are falling partially into
18 the parking lot, also onto the northwesterly facade of
19 that building, and then again to Centre Street.
20 And here you'll note that the new shadows
21 created by this building at 6:00 p.m. on June 21st are
22 falling around the boundaries of the shadows that are
23 already impacting the nearby building here, so they're
24 falling around and beyond what's already happening in

1 this location. So you see that right here. And the
2 areas where they are impacting are all open space at
3 the moment, whether it's the parking lot or the street
4 or it's the parking lot across the street.
5 So here's September 21st. There's --
6 MS. POVERMAN: I'm sorry. I didn't understand
7 that. Could you go back?
8 MR. BARTASH: Sure.
9 MS. POVERMAN: How does it impact the rooming
10 house next door?
11 MR. BARTASH: So what you'll note here is,
12 right where my cursor is tracing, the extent of this
13 black rectangle, those are the existing shadows today.
14 MS. POVERMAN: What are those cast by?
15 MR. BARTASH: So this shadow here in this kind
16 of close location is cast by the existing building at
17 40 Centre Street. All of the shadows you see here are
18 cast either by these taller structures here at 150 feet
19 down at 70 Centre Street or at 100 Centre Street or by
20 some of the other four-story structures that are
21 sitting on Wellman Street.
22 MS. POVERMAN: But those are like three
23 blocks -- how many blocks away are those?
24 MR. BARTASH: They're 300 to 400 feet away,

1 approximately, but the height of these buildings
2 actually leads to the extent of shadows you're seeing
3 here.
4 MS. POVERMAN: Thank you.
5 MR. BARTASH: Sure. And so now we're looking
6 at 9:00 a.m. on September 21st. The sun's getting a
7 little bit lower in the sky, and you'll see similar
8 shadow patterns to what we observed on March 21st.
9 I'm going to jump right ahead to December 21st
10 at 9:00 a.m. This is the time of year when the sun is
11 lowest in the sky, so you will see the longest shadows.
12 And so similar to the discussion we just had
13 about the slide we were looking at at 6:00 p.m., you'll
14 note that there's an existing shadow cast by these
15 existing structures. You'll have, you know,
16 19 Winchester Street casting a shadow all the way
17 across Wellman Street, you have this shadow which is
18 cast onto the nearby structure from the existing
19 building at 40 Centre Street, and these structures here
20 are actually casting these shadows all the way across
21 the intersection of Wellman and Centre Street. So here
22 we have the extent of the new shadow that's added by
23 this project and also here.
24 As we move to noon, middle of the day, we're

1 adding a small area of shadow across Centre Street onto
2 the two low structures that are directly across the
3 street, but we are not adding shadows in addition to
4 those already cast by 19 Winchester Street that are
5 impacting the nearby houses right here.
6 You can see at 3:00 p.m. there's no evident
7 addition of shadow beyond those that are already in
8 place, whether it's by a function of 19 Winchester
9 Street or some of the other taller structures that sit
10 further down Centre Street and even some of the
11 structures that are at the corner of Winchester Street
12 and Beacon Street.
13 And lastly, at 6:00 p.m. nothing is cast in
14 shadow because it's dark out.
15 So now here we look at a rendering of the
16 proposed building. So for all the points that we've
17 discussed leading up to this point, you do see the
18 existing building at 39 Centre Street next door here,
19 which, here again, looking at that very cornice line,
20 in the beginning of the sloped roof that leads up to
21 the 45-foot height, you're seeing the existing building
22 in the rear at 19 Winchester Street, you're seeing the
23 parking lot to the immediate side of the project site,
24 and you're seeing Centre Street in the foreground. So

1 we're imagining we're standing across the street from
2 this project looking back at it.
3 So the height of this project at six
4 stories -- again, we do have the parking level down at
5 grade and then five levels of residential above -- is
6 proposed at roughly 68 feet, 11 and 7/8 of an inch.
7 That number is actually to the upper-most line of the
8 parapet of the building.
9 And it's important to note that building
10 height is not measured to just the highest point that
11 you can see here. It's actually measured to the
12 average depth of the insulation on the roof structure
13 itself, which falls somewhere lower in this line here.
14 So for the purposes of being conservative and also
15 being transparent, we're trying to describe what that
16 tallest point is so that we can discuss exactly what
17 that height is that we're describing.
18 So without getting too far into the specifics
19 about the design or the aesthetics, what I'll point out
20 is that we're doing a series of different things with
21 materials: changes in plane, articulation and
22 fenestration to break up the apparent mass and scale of
23 this elevation using masonry materials at the very
24 front corner here to address Centre Street, projecting

1 a small volume out over the entry to the garage to
2 indicate that this is a primary point of entrance, and
3 to break down the length of this facade for people who
4 are driving or passing it on Centre Street and looking
5 back at the project. It breaks down the visual mass of
6 the building.
7 And so similarly, we're using balconies and
8 also other changes in plane and articulation as we move
9 along the longer elevations of the building to give
10 your eyes something to be drawn to.
11 So the idea here is to use materials, in the
12 way that they're detailed and applied, to allow the
13 viewer to be able choose any specific point on this
14 building at any given moment and have their eyes drawn
15 to those different pieces so that they're looking at
16 the whole but they're focusing on smaller elements as
17 well at the same time.
18 Here we're looking at the front facade of the
19 building. And again, we have the building next door to
20 the left of the project here and we have 19 Winchester
21 Street behind.
22 We'll move further on here. We're looking at
23 the elevation of the project that faces the parking
24 lot. That's the northwest of the project. So again,

1 Centre Street would be on the left-hand side of the
2 screen, and 19 Winchester Street is actually off the
3 screen to the right-hand side here.
4 This is the rear elevation of the project. It
5 does face 19 Winchester Street. We have an egress
6 stair tower proposed at the very rear of the site, so
7 these windows you see are actually into the stairwell
8 itself.
9 And these series of windows that you see on
10 the left-hand side of the screen are the only windows
11 that actually face into a residential unit within the
12 project facing the property immediately behind it, and
13 then furthest away from the location on their site
14 where they do have their outdoor pool.
15 Here we're looking at the elevation of the
16 building that faces the two-and-a-half-story building
17 immediately to the northeast of the project. And
18 again, we're using material and balconies and
19 fenestration and articulation, changes in plane to all
20 help breakdown the mass and visual appearance of the
21 facade.
22 This unit which -- what it describes from a
23 high level is the proposed density of the project and
24 also the size of the project. So we're talking 45

1 units here; we're talking about 45,269 gross square
2 feet of residential program which includes the lobby,
3 the ground floor that we'll talk about in a second; the
4 parking garage totals 6,714 square feet; and the total
5 proposed FAR for the project is 4.25.
6 Here I'm going to go quickly just through the
7 plans to help understand how the project is designed
8 from a layout standpoint. It is important to note, as
9 was discussed earlier, that we have vetted this project
10 to account for the incorporation of structure for
11 egress, for access, for accessibility, for code
12 compliance, for construction type, for
13 constructability.
14 Essentially what you're seeing here is a
15 slightly smaller version of the project that is
16 currently under construction at 45 Marion Street from a
17 code standpoint, from an egress and layout standpoint.
18 And so all of the decisions and information
19 that are baked into this plan have actually been vetted
20 as part of an earlier process when we designed and
21 reviewed that project with the town. We will be going
22 through the same review process again for this project,
23 but we have actually taken the feedback from that
24 review and thought about it and incorporated it into

1 our layout here to propose a project that meets all of
2 the standards and criteria that it's required to meet
3 by code.
4 So we're looking at the parking level. Centre
5 Street is on the right-hand side of the screen. We do
6 have our access into the garage. You'll note that one
7 of the earlier comments that we received as part of the
8 initial walkthrough with Mass Housing and also with
9 members of the planning department is that we wanted to
10 investigate the notion of safety and access at the
11 garage door here.
12 The traffic study did confirm that this would
13 be a safe condition, but based on the comments and
14 feedback we heard, we took -- you see the rendering of
15 the door is right up against the sidewalk here. We've
16 actually pushed that back by almost 15 feet to allow
17 for appropriate queuing and to allow for some buffering
18 time between vehicles that are exiting and entering and
19 pedestrian traffic out here along Centre Street.
20 Immediately above that in the plan, you'll see
21 a lobby. That does serve as the primary residential
22 entrance to the project. It provides access to a
23 self-contained mail room, also to an elevator that
24 would go up through the project. This is the only

1 elevator in the building. There is an egress stair
2 here as well that does serve the project.
3 And from within the garage itself, you'll note
4 that there's an egress here on the backside of the
5 plan. We do have bike parking proposed here as well as
6 the main utility rooms.
7 So looking at the residential building above,
8 this is what we call a "double-loaded corridor
9 configuration." There is a central corridor that runs
10 down the middle of the project, and then there are
11 units flanking either side. And so we're seeing a mix
12 of one-, two-, and three-bed units here and, actually,
13 some studios as well.
14 So here you'll see your trash shoot that does
15 run down to the lower level of the building and has
16 direct access out onto the walkway between the building
17 and the property line. And so that trash shoot is a
18 central point of collection for both trash and
19 recycling for residents of the project.
20 And you'll see that we have some other support
21 space and secondary mechanical and support rooms that
22 are located on the corridor itself. The corridor is
23 connected at two ends by these egress stairs which
24 serve as your egress points in the event of an

1 emergency.
2 So moving up, the change in plan here is
3 actually in the exterior wall, which you just noticed
4 as I flipped from one plan to the other, and that's to
5 allow us to start to integrate these balconies.
6 Because of the proximity to the property line, we're
7 required by code to do some specific things to the
8 outside wall of the project to be able to get the
9 balcony furthest enough away from the property line to
10 comply with the code requirements. So we started to
11 take the requirements and use them to help drive the
12 strategy of massing and design on the project itself.
13 When we get up to the roof level, what you're
14 seeing here is actually a flat roof condition, which
15 you'll notice from the rendering, but it allows us to
16 take all of our mechanical equipment and locate it on
17 the roof of the building itself.
18 Much of this equipment is, you know, three and
19 a half feet high by roughly three foot wide and three
20 foot long, so these are small units, and they're
21 centered over the corridor both for the comfort and
22 efficiency of the layout. "Comfort," meaning the
23 isolation of vibration or noise from the units below,
24 but also the efficiency of laying out the systems as

1 they tie into the building below, but also to ensure
2 that this equipment is screened from view from the
3 surrounding streetscape along the edge of the building.
4 Because of the height of the building and
5 because of the nature of where these pieces of
6 equipment are located on the building, there's no site
7 line from that sidewalk from the nearby area up to this
8 equipment. So we're using the cornice line of the
9 building to provide that screening for this equipment.
10 You will note that we have identified an
11 elevator over-run here at this location which is
12 extending roughly seven feet up from -- to its
13 upper-most edge from the roof of this building, the low
14 point of this. But again, that elevation is also
15 screened by nature of its location away from the
16 parapet of the roof itself.
17 Here the building is sectioned in very brief
18 detail. It describes the overall configuration of the
19 project. We've discussed previously that we do have a
20 parking level and a lobby down at the lower level.
21 There is a three-hour fire-rated separation. From a
22 code standpoint, these are classified as two separate
23 buildings, one of which is built upon the other. So
24 this is noncombustible construction. It's

1 fire-resistance graded at the lower level.
2 But it also provides wood-framed construction
3 above it built to the fire-resistance grade
4 requirements of Type 3A construction, so they're
5 enhanced safety requirements.
6 And the reason I point that out is the
7 building is protected throughout by an NFPA 13
8 sprinkler system. It is fully compliant with the
9 regulations of that statute. And in our review with
10 the fire department, the deputy chief did identify that
11 the nature of the construction type of this building
12 and the systems that are proposed for this building
13 provide a substantial increase in life safety over the
14 existing building that's there at the moment, which was
15 built to much lesser standards at a much earlier time
16 in history.
17 So that concludes an overview of the project
18 from an architecture and safety standpoint. I'd be
19 happy to answer any questions the board may have.
20 MR. GELLER: Questions?
21 MR. CHIUMENTI: I have a minor question, if
22 you don't mind. From the pictures, it's not easy to
23 tell. Your traffic expert mentioned that looking
24 north, the minimum site distance requirements are 200

1 feet, basically, for traffic exiting, and your building
2 can be obtained with the existing shrub cut back. The
3 shrub should be no more than three feet in height.
4 Who's shrub is it? Is it your shrub, or is it
5 your neighbor's shrub?
6 MR. BARTASH: That's a good question. I'm
7 unsure.
8 MS. POVERMAN: I think the shrub's going to be
9 gone, based on what I can tell on the plans.
10 MR. CHIUMENTI: Well, if it's his shrub, he
11 can make that happen. But if it's the neighbor's
12 shrub, it's another matter. It looks like it's pretty
13 far from the building.
14 MR. GELLER: Mr. Hussey?
15 MR. HUSSEY: No. I don't think so at this
16 time.
17 MS. POVERMAN: In the quote of Mr. Wishinsky's
18 approval of the project relating to Smart Growth, you
19 didn't mention the fact that the demolition of the
20 existing building was contrary to the principles of
21 Smart Growth.
22 And I'm wondering, was there any consideration
23 of incorporating the existing building, which was found
24 to be historically significant infrastructure? And if

1 not, why not?
2 MR. BARTASH: So the -- when we looked at the
3 project and we looked at the notion of trying to create
4 as much affordable housing on the site as we could, we
5 recognized that reusing the existing structure would
6 prove problematic both from a parking access and site
7 management standpoint, but also in terms of trying to
8 find a balance for the developer's goals in the
9 project.
10 So in short, we did look at it. We considered
11 it as a possible scenario. But based on the goals of
12 the project, it wasn't consistent with creating the
13 most affordable housing as we could on the site itself
14 in relation to the developer's goals.
15 MS. POVERMAN: The goals being what exactly?
16 MR. BARTASH: I would prefer not to speak on
17 behalf of my client, if possible.
18 MR. ROTH: I'd like to just address the
19 existing building. The existing building was built in
20 1922, '21, '22. The existing building was a two-family
21 house when built. The building, over the years, has
22 been modified a number of times. Tenants have moved
23 in, tenants have moved out. Bearing walls have changed
24 in the building dramatically. If you would go into the

1 basement, you'd see the whole shifting of the building,
2 of the columns in the lower basement.
3 The building is not earthquake proof. This
4 building -- I had lengthy discussions with the
5 structural engineer talking about how to make a
6 building like this earthquake resistant. This building
7 was built in 1922. It doesn't, you know, meet today's
8 codes in a lot of ways.
9 It houses one person, one family. You know,
10 trying to get this building to work in a scenario that
11 we can build more homes and more affordable housing is
12 not a likely scenario.
13 MS. POVERMAN: Thank you.
14 I know we're going to have greater discussions
15 about parking. It probably is not the time to discuss
16 this. Is that correct, Mr. Geller?
17 MR. GELLER: Yeah. I mean, let me say this:
18 I, like many of you, have a number of questions about
19 this project and the presentation both in terms of the
20 aesthetics, some of the choices that were made.
21 Parking is a similar question, but it seems to
22 me that to assess -- to help me assess -- make an
23 assessment and fine-tune my questions, it may be more
24 constructive for me to hear comments from peer review

1 and be able to ask questions at a peer review level and
2 then turn them back to the developer. I think my
3 questions will be more focused. I have broad questions
4 at this point, but I'm not sure that --
5 MS. POVERMAN: A parking peer review.
6 MR. GELLER: Traffic.
7 MS. POVERMAN: It would be in traffic? And
8 that would include the neighborhood density and --
9 MR. GELLER: Yes.
10 MS. POVERMAN: Oh, okay.
11 MR. GELLER: I'm not telling you not to ask
12 the question. I'm simply saying, from my own
13 perspective, I like to do it in a concise manner.
14 MS. POVERMAN: Because, as you say, we've
15 gotten the message from probably all sides that 17
16 parking spaces in Coolidge Corner is going to cause a
17 lot of pain on multiple levels and it's insufficient,
18 so that is something we'd be looking at. And -- I'll
19 see what Mr. Engler has to say.
20 Did you want to address that?
21 MR. ENGLER: No. I was just standing.
22 MR. GELLER: Okay. Other questions?
23 Mr. Book, anything?
24 MR. BOOK: No.

1 MR. GELLER: Okay. I'll take questions at the
2 end, but in the interim I'd like to get through the
3 applicant's presentation.
4 Is there anything further as a part of the
5 applicant's presentation? Mr. Roth?
6 MR. ROTH: No.
7 MR. GELLER: No. Okay. You're going to rest.
8 Thank you.
9 Before we do move on, I do want to go back to
10 Ms. Steinfeld's good pointers because we never actually
11 got to them. And I want to -- there are a number of
12 things that we need to focus on.
13 One is the desirability of engaging peer
14 review, and I know I phrased it in an odd way. I am on
15 board. I believe it would be highly desirable for us
16 to have assistance, technical assistance to assist us
17 to understand the technical aspects of this project.
18 Ms. Steinfeld has suggested to us that urban
19 design and traffic are two such topics that would
20 warrant, again, peer review. Mr. Chiumenti correctly
21 notes the distinction and limitations of peer review
22 versus a consultant. Ms. Steinfeld has recommended
23 peer review.
24 I also want to note that my understanding is

1 that stormwater -- the feeling is that that can be
2 handled in-house; correct?
3 MS. STEINFELD: Correct.
4 MR. GELLER: So I want to get some input from
5 board members.
6 MS. POVERMAN: Well, I would express my
7 opinion that in terms of an urban consultant, in this
8 particular instance it would be much more helpful to
9 have an architect rather than a landscape design
10 expert.
11 MR. GELLER: Okay. Mr. Hussey, our resident
12 architect?
13 MR. HUSSEY: I would agree. I think an
14 architect with planning capability on staff would be --
15 rather than just a planning consultant.
16 MR. GELLER: Mr. Chiumenti?
17 MR. CHIUMENTI: There are quite a number of
18 these projects floating around now, and my experience
19 has been that this -- the artificial limitations that
20 the reviewers seem to put on themselves are unhelpful
21 or less helpful than they could have been.
22 I would love to see the town hire experts for
23 the purpose of the five or six projects we have to
24 consider so that they know the town, they know what's

1 going on, and that they're consistent -- because,
2 basically, ultimately, they provide us with the
3 authority and the basis for making decisions -- as
4 opposed to getting the artificially limited comments
5 that I've heard them make in the past.
6 MS. POVERMAN: I'm not sure exactly what you
7 mean by that. Hire the same five or six people to give
8 global --
9 MR. CHIUMENTI: No, no. I'm thinking we don't
10 need to be going -- hiring a different team for each of
11 the five projects. Maybe hire the people we have
12 confidence in and let them consistently occur in these
13 projects.
14 MS. POVERMAN: I don't think they'd have time.
15 MS. STEINFELD: Mr. Chairman, just to explain
16 the process that we'll be undertaking, in light of the
17 fact that we anticipate five, and probably six or
18 seven, comprehensive permits to be before us
19 simultaneously, what we're proposing to do is hire one
20 peer reviewer for urban design, one peer reviewer for
21 traffic, and one peer reviewer for stormwater, although
22 there may only be one project that requires stormwater
23 peer review.
24 But we will enter into on-call contracts, keep

1 them distinct -- distinct scopes for each comprehensive
2 permit project because we'll need the approval of the
3 applicant. But it would be one peer reviewer per
4 discipline.
5 MS. POVERMAN: For the whole town, so that is
6 what Mr. Chiumenti is saying, or per project, one peer
7 reviewer.
8 MS. STEINFELD: No. One traffic peer reviewer
9 on an on-call basis and we will issue a call for a
10 specific project. That gives us the advantage of
11 hopefully hiring a particularly good peer reviewer
12 because we'll be offering more money -- potentially
13 more money. It's a complicated process, but basically
14 we're hiring someone on a retainer to call per project.
15 MR. CHIUMENTI: So we'll hire someone and
16 expect to repeat the hiring. Even though the hiring
17 decision isn't dependent project by project, we
18 expect --
19 MS. STEINFELD: No. We'll hire -- the person
20 will be under contract with the town, and it will be an
21 on-call contract, meaning we'll issue a call for a
22 specific permit.
23 MR. CHIUMENTI: Now, if I may ask, what do you
24 mean if the petitioner approves? I mean, we may feel

1 we need expert advise about traffic whether the
2 petitioner wants to pay for it or not.
3 MS. STEINFELD: Well, let's take one step at a
4 time. I would recommend that you ask the petitioner if
5 he is, in fact, willing to pay for an urban design peer
6 reviewer and traffic peer reviewer.
7 MR. GELLER: Let me also make clear on one
8 topic, and, Judi, this may run into your role. I don't
9 think the intent is that this is an -- even though they
10 hire one individual, this one individual is not -- for
11 the purposes of this application, their objective is to
12 review this project. They're not taking an overarching
13 look at the Town of Brookline.
14 MS. POVERMAN: Is that common? Have you seen
15 this happen before, Judi, where there's one person -- I
16 don't know if the situation has ever existed before
17 where a town gets an inflow like this.
18 MS. BARRETT: You're not alone right now.
19 MS. POVERMAN: Okay. So have you seen this
20 situation before?
21 MS. BARRETT: Well, a lot of towns have
22 on-call engineers. They'll do a procurement process
23 every two or three years, and they'll have a group of
24 two or three engineering consultants that they call on.

1 And so when a 40B application or something else comes
2 in, they'll write up a scope for this project, and then
3 for the next project there's a scope.
4 So they're basically individual contracts, but
5 the consultants are on the list. Do you follow what
6 I'm saying? You have a list of consultants that you're
7 calling on, and it might be two or three experts, and
8 they're just on a project-by-project basis. There's a
9 scope written for that review. It's actually pretty
10 common.
11 MR. CHIUMENTI: That's all I meant to suggest,
12 actually.
13 MS. BARRETT: Yes, that's pretty common.
14 MS. POVERMAN: Is a conflict-of-interest
15 review done periodically?
16 MS. STEINFELD: Oh, we would check to make
17 sure that the applicant has no conflict. As a matter
18 of fact, that's identified in the RFQ.
19 MS. BARRETT: That's one of the -- it's a very
20 good question because it does happen.
21 MS. STEINFELD: It does happen. It has
22 happened.
23 MS. BARRETT: And it's probably a good reason
24 to have a couple of consultants that you can call on in

case someone doesn't --

MS. STEINFELD: And we're prepared to enter into two contracts.

MR. GELLER: Okay. So I would like to ask the board to agree that we should engage peer review for purposes of urban design and traffic as recommended by the planning director.

Yes, Mr. Hussey?

MR. HUSSEY: I'd like to get clarification. So for all the projects, there's going to be an urban designer without architectural skills? What's the difference between an architect and an urban designer?

MS. STEINFELD: The RFQ currently reads, "a registered landscape architect or architect." What I will do now is eliminate "landscape architect" and just go with "architect."

MS. BARRETT: Well, you may want to keep that in as a companion discipline. Sometimes you really want both, so you could put the scope out or request the qualifications and, as I said, have a list so if -- on one of the projects, if you need a landscape architect, you've done the procurement. But you may not need it for this one. I can help you with it.

MR. HUSSEY: Okay. I'm satisfied.

1 MR. GELLER: I'd like to ask the applicant,
2 will you agree to pay for peer review for purposes of
3 an architect -- thank you, Mr. Hussey -- and traffic?
4 MR. ROTH: I would agree to it. I'd like to
5 see the contract, the agreement, the scope of the work,
6 and the limitations of -- you know, in terms of the
7 cost of it. I'd like to have the opportunity to review
8 it.
9 MS. BARRETT: Reviewing scope is not uncommon.
10 I mean, people need to know what they're paying for.
11 So, you know, that's pretty common for the applicant to
12 review the scope.
13 But you're the ones hiring the consultant, so
14 you're not turning over to the applicant the ability to
15 veto who you want to hire. But certainly sharing the
16 scope would be appropriate.
17 MS. POVERMAN: I think if there's any
18 disagreement about the nature of the scope, then the
19 ZBA needs to be informed.
20 MR. GELLER: Well, it's our peer reviewer.
21 MS. POVERMAN: True. But I also just want to
22 say that I want to make sure that we are not foreclosed
23 in the future from saying we also need peer review on
24 X, Y, Z.

1 MR. GELLER: No. But we're constrained by
2 time, which is why it's important to make the ask now
3 because we can identify these needs.
4 So we'll show you the scope, but I want to be
5 clear, are you agreeing to pay for it?
6 MR. ROTH: Yes.
7 MR. GELLER: Thank you.
8 Okay. A secondary issue is: Will you agree
9 to participate in working sessions?
10 MR. ROTH: Yes.
11 MR. GELLER: Okay. And, Alison, you'll take
12 charge of scheduling that?
13 MS. STEINFELD: Yes.
14 MR. GELLER: Thank you.
15 MS. STEINFELD: Let me just make -- we will
16 not schedule it until we have direction from the ZBA in
17 terms of providing guidelines, so it won't be for a
18 while.
19 MR. GELLER: Fine. Well, for a while within
20 the constraints.
21 MS. STEINFELD: Right.
22 MR. GELLER: Lastly, I'd like to schedule a
23 time for a site visit. Calendar? Availability?
24 Mr. Roth?

1 MR. ROTH: You call out a date, and we'll work
2 around it.
3 MR. GELLER: Well, our next hearing in this
4 case is scheduled for June 20th. I think it would be
5 particularly helpful if we could meet -- if we could
6 have a site visit before then.
7 Does anybody have any broad limitations?
8 MS. POVERMAN: I cannot do it basically the
9 first week in June, or the first --
10 MR. GELLER: Full week.
11 MS. POVERMAN: That week. The 1st through the
12 4th, I can't do it.
13 MR. GELLER: Mr. Hussey, anything?
14 MR. HUSSEY: Only if it's during the day. The
15 first thing in the morning, I don't have any problems.
16 MR. GELLER: So why don't we -- Alison, what's
17 available for you?
18 MS. STEINFELD: During the week of the 6th,
19 anything.
20 MR. GELLER: Okay.
21 MR. BARTASH: Does June 9th work for
22 everybody?
23 MR. GELLER: Works for me.
24 Steve?

1 MR. CHIUMENTI: I'm fine.
2 MR. GELLER: Chris?
3 MR. HUSSEY: 9?
4 MR. GELLER: Yes, 9.
5 MR. HUSSEY: What day of the week is it?
6 MR. GELLER: It's Thursday.
7 MR. HUSSEY: Thank you.
8 MR. GELLER: If you're lucky, you'll get to
9 sit on hearings at night too.
10 Kate?
11 MS. POVERMAN: I'm all set.
12 MR. GELLER: Mr. Book?
13 MR. BOOK: Yes.
14 MR. GELLER: Time?
15 MR. BARTASH: You said you'd prefer the
16 morning?
17 MR. GELLER: Yes.
18 MR. BARTASH: As early as you want.
19 MR. GELLER: 8:30?
20 MR. BARTASH: Perfect.
21 MR. GELLER: Okay. So we are having a site
22 visit June 9th starting at 8:30.
23 Yes, the public is invited to attend the site
24 visit. But I want to be clear. The purpose of the

1 site visit is not for giving us testimony. It's to
2 give the board an opportunity to actually walk the
3 site, see it, rather than look at these fine pictures.
4 So, again, while we appreciate, or will
5 appreciate the comments that you have, this is not an
6 opportunity for us to take testimony. It's just an
7 opportunity for us to walk the site. And as you'll
8 see, we may have questions, or we likely will have
9 questions for the applicant just based on what we see.
10 MS. POVERMAN: Could you put stakes on the
11 edges where the actual building is going to be so we
12 can see how much of the lot it actually is going to
13 take up, which I believe is common practice? Just
14 stake it out? I'm not seeing any nods.
15 MR. ROTH: Absolutely.
16 MS. POVERMAN: Thank you. Stake all of it.
17 MR. GELLER: Okay. Before we move on to --
18 I'm going to get to you. Before we move on to
19 continuing this to the next hearing, I want to give an
20 opportunity for questions that pertain to --
21 MS. STEINFELD: Determination of completeness.
22 MR. GELLER: Ah, yes. Do you want to --
23 Maria?
24 MS. MORELLI: Maria Morelli, planner,

1 Brookline Planning Department. The implementing regs
2 at the state level, they list the required elements of
3 a comprehensive permit application, and I looked at
4 this application against those regs.
5 Brookline, the ZBA regs also have a list of
6 requirements for a complete application, and they are
7 pretty much consistent with the state regs. There may
8 be one or two places where the local regs ask for
9 additional information, in particular, that surround
10 stormwater management. We have a town bylaw 8.26, and
11 one of the required components of the application is
12 the applicant needs to show their project is in
13 compliance with that bylaw.
14 Now, that is one of the outstanding items, but
15 the applicant is working with Peter Ditto, director of
16 engineering and transportation to provide the material
17 that is required to show compliance.
18 So as of today, the application is not
19 complete. I've listed some outstanding elements.
20 That's in a letter before you. I will post that online
21 and distribute it to the community. I talked to
22 Mr. Engler, and I understand that within two weeks
23 that's a reasonable time frame to submit the required
24 materials and we should have them and distribute them

1 to you and the community.
2 MR. HUSSEY: I've got a question on the list.
3 MS. MORELLI: Sure.
4 MR. HUSSEY: At the end, additional material
5 that you're talking about, a digital 3D model of the
6 structure and site in context with surrounding
7 building.
8 MS. MORELLI: Right.
9 MR. HUSSEY: In my day, we used to do what's
10 called a "massing model," a real model without detail
11 but showing the size and the shape of all the buildings
12 around it. And I'd like to see that, rather than the
13 digital. The digital --
14 MS. MORELLI: That does come up. And I'll
15 tell you, one of the disadvantages to the physical
16 model as opposed to the digital is that you are looking
17 down, kind of like King Kong looking down.
18 Really, we want a perspective from a
19 pedestrian level. We want perspectives from first and
20 second stories in the surrounding neighborhood. And
21 the digital model really gives you that perspective
22 where you're just not looking down at that site.
23 So it's important to get different
24 perspectives from people at different levels above

1 grade, and that's really primarily why we find that
2 more useful.
3 If I can, I just wanted to say that we often
4 ask for additional materials, and we've started doing
5 that -- at the second hearing, we will be providing
6 testimony, that is, departments, boards, and
7 commissions, and each of those groups are going to be
8 asking for additional materials. This particular
9 review is just confined to what's required per the
10 implementing regulations.
11 And so in terms of visuals, Mr. Hussey, part
12 of the peer review and the working group, there are
13 going to be a lot of, I think, needs for additional
14 visuals. That certainly will come out of the process.
15 It's not listed in this letter, but we certainly want
16 to be responsive to any request to help you understand
17 the physical impact of this project.
18 Any other questions?
19 MR. CHIUMENTI: Yeah. Maria, do the
20 regulations specify a computer model?
21 MS. MORELLI: No. The regulations don't
22 specify a model at all.
23 MR. CHIUMENTI: Okay.
24 MR. GELLER: And, Maria, you'll obviously be

1 tracking those outstanding items?
2 MS. MORELLI: Absolutely, yes.
3 MR. GELLER: Thank you.
4 Questions? Sir, you've had your hand up a
5 number of times.
6 MR. SCHWARTZ: Thank you. Again, Chuck
7 Schwartz, Town Meeting member and Centre Street
8 resident.
9 I just wanted to make a couple corrections to
10 the presentation. The first one that -- is Chairman
11 Wishinsky had many, many things to say about this
12 project when this was presented to the board of
13 selectmen meeting, and most of them were not
14 complimentary or favorable. I invite you to check the
15 minutes or transcripts and see exactly what he did say.
16 The second thing is your characterization of
17 the Centre Street neighborhood. It's not just entirely
18 a mishmash of different designs. When you do your site
19 visit, I invite you to look down the street. You will
20 see, particularly on the odd side of the street, there
21 are many remaining Victorian homes, and it does really
22 lend to the character of the neighborhood.
23 It's unfortunate that some of the Victorian
24 homes on the even side have been sacrificed over the

1 years and replaced with these buildings, but because
2 mistakes have been made in the past, that does not mean
3 we have to make them in the future.
4 MR. GELLER: Let me -- I appreciate what
5 you're saying, and there's going to be an opportunity
6 for plenty of testimony.
7 MR. SCHWARTZ: This is just corrections.
8 MR. GELLER: What I'd like to limit people to
9 right now is if you have questions specific to process
10 or to hearings generally, that's really what I'd like
11 to do. I don't want to cut you short in your
12 testimony, but I think we would like to get that
13 together at another time.
14 Ma'am?
15 MS. KATES: My name is Beth Kates, and I'm a
16 Centre Street resident.
17 I have a question about the proceedings and
18 how they would go. Am I clear that each ZBA meeting
19 sort of deals with a different subject, like whether
20 it's traffic or architecture, and every meeting will
21 have a different focus? Is that correct?
22 MR. GELLER: Let me distinguish between a
23 meeting versus a hearing. These are hearings. So what
24 will happen is hearings will not be dedicated -- at

1 least I hope not -- to a single topic. So, for
2 instance, on June 20th I hope that entire hearing isn't
3 taken up by, for instance, traffic. I don't even think
4 it's on the schedule for the June 20th hearing.
5 MS. STEINFELD: It's testimony.
6 MR. GELLER: It's testimony.
7 So the notion is that subcategories will exist
8 and we will cover several of those subcategories within
9 a hearing, keeping in mind the time constraints. So
10 we're going to schedule this out in what we hope is a
11 coherent fashion, but one in which a number of topics
12 are addressed at each hearing.
13 And again, I want to be clear. The reason
14 that we are obtaining a transcript is so that what goes
15 on in these hearings, should some of you not be
16 available to attend any one of them, you would be able
17 to access the transcript and see what has happened. So
18 I want to be clear about that. Does that answer your
19 question?##
20 MS. KATES: Half of my question.
21 Now, the other half of my question has to do
22 with public testimony. Now, is there only going to be
23 one hearing dedicated to public testimony, or will
24 there be public testimony that will pertain to what's

1 been discussed in that particular hearing at the end of
2 each hearing?
3 MR. GELLER: Yeah. I think -- we haven't
4 talked about it yet. My sense is that what we are more
5 likely to do is not necessarily have public testimony
6 at the end of every single hearing, but rather try and
7 consolidate it at multiple appropriate times after a
8 certain amount of information has been set forth. But
9 that is one of those things that we will have to see
10 how much time we have in the process.
11 Mr. Hussey?
12 MR. HUSSEY: I've got a question.
13 Alison, is there an agenda, then, set for each
14 of our hearings, and isn't that agenda available on the
15 Internet site so the people can see what's going to be
16 discussed in general -- what's going to be discussed at
17 each hearing?
18 MS. BARRETT: That's typically how it's done.
19 MS. STEINFELD: We are, in-house and in
20 consultation with both the chair and our consultant,
21 trying to figure out a schedule for the full 180 days
22 with specific topics. And we have to be somewhat
23 flexible, but that's what we're geared toward.
24 In terms of the agenda, at a minimum, the

1 chair will know a month prior to the subsequent public
2 hearing what the subject of the next public hearing is,
3 but we still have a lot of details to work out.
4 MR. HUSSEY: Well, what you do -- when you do
5 set the agenda, it'll be on the Internet, on your site,
6 so that the people in the audience --
7 MS. STEINFELD: A general agenda, sure.
8 MR. HUSSEY: There will be a general. Okay,
9 good. Thank you.
10 MR. GELLER: Anybody else?
11 MR. PENDERY: My name is Steven Pendery of
12 26 Winchester Street, and my concern is with the lack
13 of any discussion about preservation other than the
14 comments made by the applicant tonight.
15 MR. GELLER: Well, again, what I'd like -- do
16 you have a question?
17 MR. PENDERY: Yeah. That, in fact, the staff
18 of the Brookline Preservation Commission pursued this
19 question and came up with an initial determination that
20 this property may be eligible for listing on the
21 national register.
22 Now, I know -- and please excuse the term
23 "trump." I know that 40B may trump a property that's
24 listed on the national register or on the state

1 register. However, as you're probably aware, by virtue
2 of being listed on the national register, then that
3 sets up another question of the use of federal or state
4 funds for any part of the 40B project itself.
5 So there are some implications here. So my
6 question is: Why didn't the town pursue this? I know
7 there was a staffing change in the preservation
8 commission during the same period. The first staff
9 prepared, you know, at our expense, a study report on
10 this that came up with this determination. And there's
11 no -- it basically hasn't been pursued by anybody.
12 And, you know, the other response I received
13 from the building department was, well, it's a 40B
14 project, that even if it was found to be eligible for
15 listing, that that wouldn't affect the course of this
16 project.
17 Well, I'm not convinced by that and I'd just
18 like to raise that as a question perhaps as -- maybe we
19 need to hire -- or the "we" needs to hire a
20 preservation consultant to look into this matter and to
21 also look into the matter of how the town handled this
22 question last year.
23 MR. GELLER: Okay. Let me -- Alison, I see
24 you standing there, but let me say this:

1 So at the June 20th hearing, town boards and
2 departments are invited to submit in either written
3 fashion or actually come here and offer testimony,
4 comments on the project, and obviously preservation
5 would be one of those town boards that would have an
6 opportunity to speak or to write us their thoughts.
7 Okay?
8 In terms of applications to state departments,
9 I'll let Alison speak to it, but that's independent of
10 us.
11 MS. STEINFELD: I can, however, tell you,
12 eligibility or actual listing in the National Register
13 of Historical Places does not supersede 40B.
14 MR. CHIUMENTI: It's not that simple, but --
15 MS. POVERMAN: Does it require a finding by
16 the -- what is the required finding by the Mass
17 Historical Commission of no address impact, though?
18 MS. MORELLI: Okay. So we've had a number of
19 cases. Crowninshield was an example of a parcel that's
20 in a local historical district. Hancock Village is
21 actually eligible for listing in the national register.
22 So let's just say that we have a property
23 that's eligible for listing in the national register.
24 If it's eligible, then it's automatically listed in the

1 state register.
2 So how does that review with Mass Historical
3 jive with the ZBA's review? So we had Jonathan
4 Simpson, associate town counsel speak with Mass
5 Historical. And so what goes on is any time a project
6 is going to get state funding, for instance, the
7 subsidizing agency needs to send a project notification
8 form to Mass Historical to let them -- to figure out
9 what kind of impact would there be on state register
10 property. That's actually conducted after the
11 comprehensive permit is issued.
12 MS. POVERMAN: I understand that. But this is
13 really important, because I was looking at it in terms
14 of the Crowninshield. The adverse impact review
15 requires the Massachusetts Historical Commission to
16 determine whether or not the project will have an
17 adverse impact on the property.
18 MS. MORELLI: On state-registered properties,
19 which could be in the surrounding -- not just that one
20 particular property.
21 MS. POVERMAN: Right. But if you have a
22 property that's going to be raised, presumably that is
23 an adverse impact. And the process doesn't necessarily
24 trump 40B at all, but it requires a conversation

1 between the Mass Historical Commission and the
2 developer to see if any accommodations can be made.
3 And what I'm getting to is what use is that if every --
4 MS. MORELLI: I can explain, because we've
5 gone through this process before, Ms. Poverman. And
6 the way it's done is that Mass Historical, of course,
7 is technically notified after a comprehensive permit is
8 issued.
9 Now, keep in mind that Mass Historical does
10 defer to the Town of Brookline. They want to know what
11 the town has done to review design, what kind of design
12 review process you had. They're going to be looking
13 for information, and you're coming out of the working
14 groups and the ZBA discussions, and that's going to
15 inform the decision they make.
16 The fact that there is a property listed in a
17 state -- in the state register or the national register
18 does not mean that it trumps our local affordable
19 housing need.
20 MS. POVERMAN: I fully agree with that. I
21 think, you know, the frustration is, as you and I have
22 discussed, you know, the issue that the town does have
23 a local concern of preservation, which the preservation
24 commission discusses, and often some people would say

1 that's trampled by 40B and other considerations of
2 affordable housing or is not given the sufficient level
3 of concern that it should be.
4 So what I'm wondering is whether or not the
5 Town of Brookline, in ensuring that its own local
6 concerns related to preservation are properly
7 addressed, should submit the application to the Mass
8 Historical division before it's all over because
9 there's nothing preventing it from doing so.
10 MS. MORELLI: You can do that, but the way
11 it's done is Mass Historical will turn back to the
12 town -- excuse me, excuse me.
13 Okay. The preservation planners and the
14 preservation commission have an opportunity to weigh
15 in. Mass Historical traditionally looks to what the
16 preservation commission advises, and that's going to
17 inform the decision.
18 I think what will help you is if we give you
19 the document, a letter that summarizes Jonathan
20 Simpson's conversation with Mass Historical. We have
21 done this in the past. We have given stuff to Mass
22 Historical, and they will turn it back to the Town of
23 Brookline.
24 MS. POVERMAN: I believe I have seen the

letter. I also talked to Dennis Dewitt, who's on the Mass Historical Commission, and he -- you know, he may be forgetful, but he said he's never seen anybody submit such a letter.

MS. MORELLI: Preservation -- the preservation planners talk to Mass Historical. They have a very close relationship, and they talk to Mass Historical all the time. We would never leave any stone unturned. You know, Mass Historical is not going to come in and give you information that's going to go above and beyond the preservation commission.

MS. POVERMAN: But doesn't this give more teeth to the preservation commission? And what is wrong with doing it at this stage?

MS. MORELLI: We can have them -- they're going to be providing testimony on June 20th, and they can explain how they work with the Mass Historical Commission. I think your questions are better directed to the preservation commission in hearing No. 2.

MS. POVERMAN: Okay. Thank you. Great.

MS. STEINFELD: I would just like to say one thing. The planning department shares your frustration with 40B. It's very difficult, very frustrating from a professional planner's point of view, but it's the law.

1 MS. POVERMAN: Thank you.
2 MR. GELLER: Thank you.
3 MR. SHERAK: Don Sherak, again, 50 Centre
4 Street.
5 If I understand correctly what I learned
6 tonight, that with the shadow studies, they cast
7 shadows on my single-family dwelling, which is my
8 bedroom, my living room, my dining room. And because
9 of the design of my house, technically a condex, these
10 are the only windows in those rooms that -- it would
11 cast a shadow for a significant part of the day.
12 So I'm asking if it's possible to have a much
13 more detailed shadow analysis so I understand exactly
14 what the impact is.
15 MR. GELLER: Is it possible? I guess I'll ask
16 the applicant. Is it possible to have a more
17 detailed -- is it possible to -- were you able to tell
18 from the shadowing presentation whether there were
19 shadows on your house? It sounds like you were.
20 MR. SHERAK: Oh, absolutely.
21 MR. GELLER: So what would additional
22 shadowing studies indicate to you?
23 MR. SHERAK: I want to know how many hours of
24 the day, for approximately how many months, the sun

1 will be blocked in the morning; you know, the times of
2 the day that I'm home Monday through Friday and there
3 will be no sun shining on my house.
4 MR. GELLER: Okay. Is it possible to
5 undertake that based on the studies that you've done?
6 MR. ROTH: I really don't know the details of
7 it. You know, I think what was given is a standard
8 program that was -- that satisfies most ZBA boards. To
9 go into a more detailed for one particular house, I
10 don't know what it means, I don't know what it costs, I
11 don't know how much -- what we would get out of it, and
12 so I'm not inclined to do it.
13 MS. POVERMAN: Is it a computer program that
14 runs those analyses? So if someone knew what the
15 computer program was --
16 MR. BARTASH: Yes, it is a program that runs
17 those analyses. The project is geolocated on the site
18 and then the sun is mapped based on the time or day,
19 which is what -- you were seeing those snapshots here.
20 Effectively, I think one of the things that we
21 discussed, and the question, at least in my mind, maybe
22 for the board or for the consultant to answer, is the
23 shadow studies will say -- maybe they say, okay,
24 there's shadows on the windows of that home from

9:00 a.m. until 11:43 a.m. But in relation to the area's need for affordable housing and the purpose of this project, how does that relate --

MR. GELLER: With all due respect, I think the board will make that analysis. That wasn't the question.

MR. BARTASH: Okay. No, I'm sorry. I'm asking for my clarification.

I mean, effectively, it's something the computer program does provide and it is possible, as a direct response to that question.

MR. GELLER: Okay. Thank you. That, I appreciate.

Ma'am?

UNIDENTIFIED AUDIENCE MEMBER: Tacking onto what he's saying -- I'm from 19 Winchester Street.

MR. GELLER: Is your question the same one, what's the duration of shadowing?

UNIDENTIFIED AUDIENCE MEMBER: My question is -- I would also like a better shadow report because I find it very hard -- I think -- we have 12 people here from 19 Winchester, and I think we all find it very hard to believe that our pool is not going to be totally overshadowed, not to mention the views.

1 MR. GELLER: Okay. Thank you.
2 Anybody else? Questions about process?
3 UNIDENTIFIED AUDIENCE MEMBER: We're from
4 12 Wellman Street, and we would like to participate in
5 that shadow study.
6 MR. GELLER: We're not excluding anybody.
7 MS. POVERMAN: Do they have peer reviews of
8 shadow analyses?
9 MR. GELLER: The architect.
10 Ma'am?
11 MS. FELDMAN: Shelley Feldman, 41 Centre
12 Street. I have two questions.
13 One, we we're talking about the group and sort
14 of -- they were saying a neighborhood representative
15 should be on that -- part of that process. So how can
16 we efficiently get -- and could we get a person from
17 the neighborhood --
18 MR. GELLER: Well, it's up to the ZBA to
19 ultimately decide constituency on the working group
20 based on recommendations that are made. And the
21 consideration that the ZBA makes is what is the most
22 efficient model. The notion is not to block anybody
23 out so much as to get efficient responses that we can
24 take back to these hearings and disclose, talk about,

1 and then work towards hopefully fine-tuning and moving
2 it in a direction that is more acceptable to ultimately
3 the ZBA that makes the decisions.
4 In terms of the constituency of the working
5 sessions, Alison is correct. There was a decision that
6 was made by the ZBA as a global process question, so it
7 was nonspecific to this case or any other case. It was
8 simply a notion that the most efficient model for
9 working sessions was to try and keep that group fairly
10 tight. And you gave a list of those people.
11 And then they have no power to make decisions.
12 All they can do is have a discussion and bring it back
13 here, at which that will be discussed by the ZBA
14 members, and the public, obviously, will have an
15 opportunity for testimony, and then we would filter
16 that through the process.
17 And my sense is that's probably a good way to
18 do it. It is the way we've done it in the past. And
19 I've heard Kate Poverman disagrees with me, but my
20 sense is that's a good, efficient model.
21 So that's a sort of roundabout way of saying
22 my view is I think the method that was previously voted
23 on and what has been recommended is a good method of
24 doing it.

1 MS. FELDMAN: My second question is the
2 parking spots. How are they in terms of the affordable
3 housing, and how -- who determines who gets the parking
4 spots? Is it the same percentage? There's only 17
5 spots.
6 MR. GELLER: It's a great question.
7 Obviously, this was a preliminary brush stroke. I
8 suspect that that will get asked later on as part of
9 our closer review of all things parking.
10 Sir?
11 MR. LESCOHIER: David Lescohier, Town Meeting
12 member Precinct 11. I live on Winchester Street.
13 Respecting your way of working, are these
14 public meetings, and could members of the neighborhood
15 come and observe those work sessions?
16 MR. GELLER: Again, let's -- you know, there's
17 magic in the language for all of these terms. So this
18 is a hearing. What I assume you're referring to are
19 the working sessions.
20 MR. LESCOHIER: Right.
21 MR. GELLER: The working sessions are closed,
22 and there's a purpose to it. The purpose to it is to
23 try and arrive at a streamlining of, first of all --
24 refer to counsel?

1 MS. BARRETT: I would refer to town counsel.
2 MR. GELLER: For which part?
3 MS. BARRETT: The question about open to the
4 neighborhood.
5 MR. GELLER: Okay.
6 MS. STEINFELD: It has been. You're welcome
7 to do it.
8 MR. CHIUMENTI: Can I make a suggestion about
9 that, though? The problem of these closed working
10 sessions, they engender distrust, and they have in the
11 past.
12 And part of the problem is that the ZBA
13 generally has allowed people, the applicants, to
14 basically describe what somebody else said. I mean,
15 the applicant was telling us what the fire chief said.
16 I mean, this is a preliminary meeting, but I've heard
17 this happen over and over again. They really have no
18 business telling us what the fire chief said. The fire
19 chief should be telling us what the fire chief said.
20 Just as the member of the public said Neil Wishinsky's
21 comments were taken out of context.
22 People should speak for themselves and they
23 shouldn't be saying what other people said. And the
24 working groups being closed tends to add to that sense

1 that people are -- we're being told things that other
2 people said and someone else was okay with something.
3 We have no idea what the person really said.
4 So I'm agreeing with -- given the fact that
5 this happened, that people say what other people said
6 to us, it would be a good thing as far as the
7 confidence of the public to have a member of the
8 community on this -- in the working group, at least to
9 be there.
10 And actually, there are going to be 15 Town
11 Meeting members from the precinct tomorrow night all in
12 one place, and they might talk about who they would
13 propose for that role.
14 MR. LESCOHIER: Well, following that,
15 actually, Coolidge Corner is at the center of a pie and
16 we have a slice of six town precincts impinging on
17 exactly this area, so you're really talking about 90
18 pairs of eyes.
19 MR. CHIUMENTI: Well, I mean, obviously --
20 maybe one or two people at the most.
21 MR. LESCOHIER: As observers. Maybe, you
22 know, not allowed to speak but, as you're saying, the
23 people who can hear what was actually said.
24 MR. GELLER: We'll raise it with town counsel.

1 MS. ROSENSTEIN: I just want to add a
2 footnote. I'm Harriet Rosenstein, Town Meeting member
3 9. I live on Centre Street. This has been a very
4 interesting experience, I think, for most of us this
5 evening.
6 I want to ask this: That in addition to the
7 discussion about the trustworthiness of closed
8 sessions, I have found, and maybe also my colleagues
9 have, that it's very insulting to us to suggest that
10 our presence would somehow diminish the efficiency of
11 the meetings, that our remarks and our questions would
12 not indeed amplify the quality of the meetings from
13 which thus far we are being excluded.
14 MR. GELLER: As I've noted, you have a right
15 to come and offer testimony and will have that right,
16 so the intent is certainly not to exclude you from the
17 process.
18 UNIDENTIFIED AUDIENCE MEMBER: It's not the
19 same thing.
20 MR. GELLER: Any other questions? Ma'am?
21 UNIDENTIFIED AUDIENCE MEMBER: One more
22 comment on that. For what it's worth, a number of us
23 have formed a group, and it would be very beneficial if
24 one of the people or leaders of that group could be

1 meeting with you. In other words, they would help you
2 out --
3 MR. GELLER: You mean the working sessions.
4 UNIDENTIFIED AUDIENCE MEMBER: The working
5 sessions. We would have -- you would have much more
6 knowledge about what the community feels, and it would
7 be easy for us to select someone.
8 MR. GELLER: Thank you. Anybody else? Ma'am?
9 MS. MURPHY: Carol Murphy, 19 Winchester
10 Street.
11 I noticed on the sunlight setting -- we abut
12 the building. 19 Winchester abuts this proposed new
13 building. And the sunlight was over there, to the
14 west, and it showed it to the north, and it showed it
15 to the south, and there wasn't one shadow on our
16 building. And I wonder -- the sun is going to affect
17 our building and our views from all of our back
18 terraces. And I wonder, again, on the sun study, if it
19 can include 19 Winchester Street.
20 MR. GELLER: Well, it's not a sun study. It's
21 a shadow study.
22 MS. MURPHY: I meant to say shadow study.
23 Thank you. You knew what I meant.
24 MR. GELLER: I did. Nobody really gets upset

1 at too much sun on their building.
2 MS. MURPHY: But we won't have any.
3 MR. GELLER: Well, as it's been pointed out,
4 one of the things we would hope that the architect
5 would help us with is getting a better sense of the
6 shadow studies.
7 MR. MURPHY: Thank you.
8 MR. GELLER: Thank you.
9 Anybody else?
10 (No audible response.)
11 MR. GELLER: So our next hearing -- we're
12 going to continue this to our next hearing, which is
13 scheduled for June 20th at 7:00 p.m. So same time we
14 started tonight. The intent is that at that hearing we
15 will receive testimony from various municipal
16 departments, boards, and commissions, and the public
17 will be invited to offer its testimony as well. So
18 hope to see you then and there. Thank you, everyone.
19 (Proceedings adjourned at 9:54 p.m.)
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24

I, Kristen C. Krakofsky, court reporter and notary public in and for the Commonwealth of Massachusetts, certify:

That the foregoing proceedings were taken before me at the time and place herein set forth and that the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any of the parties, nor am I financially interested in the action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3rd day of June, 2016.

Kristen C. Krakofsky

Kristen Krakofsky, Notary Public
My commission expires November 3, 2017.

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