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Volume II
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Brookline Zoning Board of Appeals Hearing
Application for a Comprehensive Permit
By Chestnut Hill Realty
Puddingstone at Chestnut Hill
June 6, 2016 at 7:00 p.m.
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

1 APPEARANCES

2

3 Board Members:

4 Mark Zuroff, Chairman

5 Jonathan Book

6 Christopher Hussey

7 Lark Palermo

8

9 Town Staff:

10 Alison Steinfeld, Planning Director

11 Maria Morelli, Senior Planner

12 Peter Ditto, Town Engineer, DPW

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14 40B Consultant:

15 Judi Barrett, Director of Municipal Services

16 RKG Associates, Inc.

17

18 Applicant:

19 Marc Levin, Director of Development, Chestnut Hill

20 Realty

21 Steven Schwartz, Esquire, Goulston & Storrs

22 Theo Kindermans, Stantec

23

24

1 Boards:

2 Robin Koocher, Neighborhood Conservation District

3 Commission

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5 Members of the public:

6 Stephen Chiumenti, Town Meeting member, Precinct 16

7 Judi Leichtner, Town Meeting member, Precinct 16

8 William Varrell, 45 Asheville Road

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1 PROCEEDINGS

2 7:08 p.m.

3 MR. ZUROFF: Good evening, ladies and
4 gentlemen. I'm calling to order this meeting of the
5 Zoning Board of Appeals. On the agenda tonight is the
6 project we call "Puddingstone at Chestnut Hill."

7 My name is Mark Zuroff. I'm sitting as
8 chairman. And to my left is Christopher Hussey, to my
9 right is Jonathan Book. Lark Palermo is sitting as a
10 member of the board, and we have up here with us Judi
11 Barrett, who is our 40B expert.

12 Let me go over some preliminaries. The
13 purpose of tonight's hearing is to hear from some of
14 the town boards that are involved in this process and
15 to give the -- some of the public opportunity to be
16 heard on the project, and then the applicant can
17 respond to the public.

18 The meeting will go as follows: We will call
19 on the town boards that are here to give their
20 testimony, and we will then hear from the public.

21 For all members of the public who are going to
22 address the board, first of all, I remind you all that
23 this is a public hearing and it's being transcribed and
24 a record is being kept. So each of you who wishes to

1 speak to the board should approach the podium and speak
2 clearly into the microphone and make sure that we have
3 your name and address for the public record.

4 I urge everyone who wants to speak to the
5 board to make sure that you try to be as concise and
6 direct as possible. We are interested in what you have
7 to say, but we're not interested in hearing it 10
8 times, so hopefully you will confine your testimony to
9 what has not already been presented to the board.

10 So again, this is a public hearing, and it is
11 being recorded, so be mindful of the fact that you have
12 to be heard and understood. There is a public recorder
13 hear as well as a taped record, so we want to make sure
14 that we get an accurate record.

15 So that being said, I'll call upon those
16 boards. Maria, if you'd like to step up.

17 MS. MORELLI: I'm Maria Morelli. I'm a
18 planner with the Town of Brookline.

19 I first want to respond -- if you noticed, at
20 the first public hearing I commented on the
21 completeness of the application. And I did receive all
22 of the materials requested in my letter on May 23rd.
23 There was one aspect of the local regs -- so Brookline
24 has ZBA regs and also has requirements for a complete

1 application. And one of those requirements is actually
2 that the applicant must show compliance with our
3 stormwater bylaw Section 8.26. This is a general --
4 this is a town bylaw.

5 And the applicant's response was that they're
6 not obligated to meet requirements that are more
7 restrictive than what the state requires. And so Peter
8 Ditto is here tonight to address that if you'd like him
9 to.

10 I'll just quickly say that 8.26 is consistent
11 with the federal permit process NPDES. That's really
12 all that is. And so because it is a federal process,
13 we would expect that the applicant would be interested
14 in getting a federal permit and therefore show
15 compliance with Article 8.26.

16 So that is the only matter that's outstanding.
17 And if you have any other further questions about that,
18 the director of transportation and engineering can
19 address it.

20 MR. ZUROFF: Would you like him to address it
21 now?

22 Mr. Ditto?

23 MR. DITTO: About eight years ago, the town
24 had to comply with what they call the "Phase II NPDES

1 permit." That was a federal permit, and that basically
2 tells the town how to treat the stormwater. Part of
3 the requirements per that NPDES permit was to establish
4 a bylaw that would address basically three issues in
5 stormwater. The first one was illicit connections were
6 illegal, obviously, erosion and sediment controls, and
7 postconstruction managed -- stormwater management.

8 So we took those three categories and
9 developed a bylaw that was basically compliant with all
10 the requirements of the NPDES permit. So as Maria
11 said, there is two sections of this permit that -- you
12 know, we would expect to get a plan on it anyway.

13 And so the first one, the erosion and sediment
14 control, that's basically making sure that there's no
15 solids or silt or sand that run off the site, get into
16 the town storage draining system, and clogs -- reduces
17 the capacity and clogs the system. So that's a
18 standard on any site plan that we get in the
19 engineering office.

20 The second parcel, the postconstruction
21 stormwater management, that's the nitty-gritty. That's
22 when, you know, the developer or applicant has to
23 prepare a site plan that addresses all the outstanding
24 issues that are cited in, actually, the Massachusetts

1 Stormwater Handbook.

2 And that's things like, how are you going to
3 reduce the off-site runoff of the predeveloped site?
4 How are you going to reduce the total suspended solid
5 by 80 percent? And so there's a lot of stormwater
6 issues, but there's also a lot of engineering technical
7 issues, like what's the slope of the storage -- the
8 sewer pipe? What's the make of the sewer pipe?

9 And again, that's standard operating procedure
10 for us, so I wouldn't -- I wouldn't anticipate there
11 should be an issue on this, because it's basically
12 business as usual.

13 MR. ZUROFF: Any questions from the board?

14 MR. HUSSEY: Yes.

15 Peter, does that mean it would be required as
16 part of the building permit application process?

17 MR. DITTO: That's correct.

18 MR. HUSSEY: So is it necessary to address it
19 here, then, do you think, or ...

20 MR. DITTO: You know, again, I wouldn't expect
21 that to be an issue, so I don't know if it has to be
22 addressed here.

23 MR. HUSSEY: Okay. But it will be addressed
24 at one point.

1 MR. DITTO: It has to be in order to get a
2 building permit.

3 MR. HUSSEY: Okay. Thank you.

4 MR. ZUROFF: Jonathan?

5 MR. BOOK: Well, I guess I'm a little
6 confused. If it's a requirement of the building -- to
7 obtain a building permit, I'm not sure -- this isn't
8 really a question for you, Peter, but I'm not sure I
9 understand the applicant's resistance to providing that
10 information. Is it a matter of providing it now rather
11 than later or ...

12 MR. ZUROFF: We're not 100 percent sure that
13 the applicant is committed to opposing it, but I
14 understand that there is some resistance because our
15 code is a little bit more restrictive than the state
16 requirement, but we're governed by the federal
17 requirement as well.

18 So I think that I'll leave it to the applicant
19 to address that, but my belief is that they will
20 comply.

21 MS. MORELLI: I just want to -- I did get a
22 very complete response to my letter about application
23 completeness. But in the letter, which you have, the
24 last two pages of the 8 1/2-by-11 packet that you

1 received is Stantec's response to that issue saying
2 that if they were required to show compliance with
3 8.26, they would ask for a waiver.

4 And I just want to be clear that they know the
5 content of Section 8.26 and they still feel that way,
6 because it was stated in writing that they would ask
7 for a waiver from that bylaw.

8 MR. ZUROFF: Okay. So it's still up in the
9 air, as I understand it.

10 MS. MORELLI: As far as I'm concerned --
11 you've heard Peter say that it's something they would
12 want to -- information they would provide, but I do
13 have something in writing that says if they are pressed
14 to, they would formally request a waiver from 8.26.

15 MR. ZUROFF: Okay. Anything else, Maria?

16 MS. MORELLI: Not on application completeness.

17 You have received letters from the
18 Conservation Commission; members of the public; the
19 Brookline Preservation Commission; the Neighborhood
20 Conservation Commission; DPW in regards to engineering,
21 stormwater, and traffic; and also the planning board.
22 And Deputy Superintendent Kyle McEachern from the fire
23 department is here.

24 What I thought I might do is just provide some

1 comments on behalf of the planning board. And just
2 because everything seems to flow from site design, it
3 might make sense to actually just revisit what the
4 proposal is and go through and highlight from the
5 planning board's letter. And then if you want to
6 consult with Deputy Superintendent McEachern or Peter
7 Ditto further, it would make sense to do that after the
8 site plan overview.

9 So since it's been a month before we actually
10 looked at the proposal, I thought I'd just take a step
11 back and have us look at the site overall.

12 To put it in context, Hancock Village is a
13 70-acre site that straddles Brookline and Boston. Most
14 of the units, 530, are on the Brookline side, and
15 that's what you see in the darkened outline. The
16 Boston line is right here, and the complex -- the
17 Hancock Village continues into Boston there. To the
18 left is the Hoar Sanctuary. That is town owned. It's
19 about 100 acres. The Baker School is up here.

20 And the -- as you know, the ZBA did grant a
21 comprehensive permit for 161 units. That was last
22 year. And that's situated or proposed along the upper
23 edge of that site, of the complex boundary. This is
24 Beverly Road here, Russet Road here, Independence Drive

1 here. All together, there are 11 units in that
2 existing green space. And then here there is a
3 four-story apartment building, about 109 units with two
4 levels of parking off Asheville Road.

5 So that's the proposal. It's not built yet.
6 It was part of the last comprehensive permit
7 application.

8 The site that's proposed for Puddingstone is
9 delineated by this light blue. This is an apartment
10 building, about six stories over two levels of parking,
11 about 186 units and 230-some-odd parking spaces.
12 There's 67 surface parking.

13 These three town homes would have about four
14 units each. They're about three stories.

15 And then there are -- you see the E1, 2 and 3.
16 These are existing townhomes, about two stories at 28
17 units, and those would be renovated.

18 What's also new is this drive that would come
19 off -- I should actually point out, this is Gerry.
20 Sherman Road would actually -- you enter here through
21 Sherman. It's a one-way road that empties onto
22 Independence here and the direction of traffic is down
23 and up. What the applicant is proposing is to enter
24 through Gerry, keep it one-way, and then exit here.

1 From this -- I guess, the flat part of the
2 U-shape would be here and extend all the way to the end
3 of that lot. There is a cul-de-sac, and there is some
4 surface parking here and here.

5 The entrances to the lower level of the garage
6 are here and up here, and if you need to get to the
7 upper or lower level, you have to go outside of the
8 building itself.

9 Okay. Just one more thing about the zoning.
10 This is a multifamily district. This is in M-0.5
11 district and the one that's up here is actually the
12 S-7.

13 I actually went through that. We look at a
14 small -- so I won't spend time here.

15 One thing that I just wanted to get out of the
16 way: The planning board had a little bit of an issue
17 with the lot delineation. In most 40Bs you see, the
18 boundaries of the lot are pretty much defined. Here,
19 this is a 70-acre site. And we certainly understand
20 what the applicant is up against. They don't want to
21 create zoning nonconformities on the 40A side.

22 But I think the planning board felt a little
23 constrained by these limits and questioned why the lot
24 was configured in this fashion. And as we'll see,

1 because there were some, I guess, inadequacies with the
2 plan, there were some concerns with the plan, that the
3 lot delineation was an issue for the planning board.

4 And just, again, not to repeat what I just
5 told you, I'm just going to go over some of the things
6 that I missed. 20 percent of the 226 total units will
7 be affordable, and that's 46.

8 The FAR: There's over 300,000 square feet of
9 living area that would yield an FAR of 1.31. There was
10 a mistake in the planning board letter, that last
11 paragraph toward the end about the testimony that
12 Mr. Levin had provided about FAR. And after we got the
13 transcripts, we looked at that. Mr. Levin was correct.
14 He was talking about the entire site if both projects
15 were built and talking about FAR for the entire site.
16 I just want to make it clear, the application was
17 correct regarding the proposed FAR at 1.31.

18 The usable open space is a percentage. It's
19 30 percent of the GFA, and what's proposed there is a
20 little over 20,000: 430 bedrooms, mostly 1, 2, and 3
21 beds.

22 Okay. Just a little bit about the existing
23 development plan. So this is based on a garden village
24 model. This was constructed in the mid-40s. And what

1 was significant about this pattern is that you have
2 this U-shaped configuration which allows you to have
3 the courtyards with pedestrian pathways that lead to
4 these roads like Gerry Road.

5 You also have some more private areas, these
6 rear yards in the darker grayish/green which connect to
7 open space. You see it here as well, which is that
8 lower left-hand quadrant, which is the site of the
9 proposed project.

10 Just a couple of key points about this. In
11 2011, you might very well be aware that the town did
12 propose a neighborhood conservation district for all of
13 Hancock Village in Brookline, and the attorney general
14 did approve that, so that is established.

15 There's also been a nomination form for
16 national register status, which was given to not only
17 the Mass Historical Commission, but the National Park
18 Service. We recently received, at the beginning of
19 June, a response from Mass Historical to the National
20 Park Service saying it is their policy not to process
21 an NR nomination without the support of the applicant.
22 And the applicant, for the record, was not on board
23 with the status of the NCD or the national register
24 status.

1 A little bit more about what's going on here
2 with the Hoar Sanctuary. You might see these dashed
3 lines. So the state has a 100-foot wetlands buffer,
4 which is established here. Brookline has a more
5 restrictive 150-foot buffer. This site is not going to
6 be on the buffer itself, so therefore, the conservation
7 commission, which is charged by the state to have
8 jurisdiction, doesn't have jurisdiction.

9 However, as you'll read in the conservation
10 commission's letter, there might be some stormwater
11 runoff that does go through a culvert in the wetlands
12 area. And furthermore, I think the primary concern is
13 what impact blasting would have on any wildlife that
14 exists in the 100-acre sanctuary.

15 A little note about Boston, too. They also
16 have urban wild and conservation protection
17 subdistricts. They're certainly aware of the project.
18 And technically, again, they don't have jurisdiction
19 because this project is outside of that 100-foot
20 buffer.

21 Okay. This is just another view just showing
22 you where the project is situated, where the Hoar
23 Sanctuary is, and that driveway entrance.

24 Another -- just because the topography is very

1 unique here, it is undulating, I wanted just to show
2 you this is -- Asheville Road would be about here, and
3 this is the site of the first -- the apartment building
4 from the first proposal, the 109-unit apartment
5 building here. The Puddingstone apartment building
6 would be about here. These are generally the highest
7 elevations in that complex area. You see the elevation
8 probably -- it varies from 195 to about 174 this way.

9 Okay. Just speaking about existing conditions
10 and natural resources that do exist, this is showing
11 the extent of the Puddingstone that's in this area. If
12 you did go on the site visit, you'll see that it takes
13 up the expanse of that corridor, and you've gotten a
14 sense of height above grade. It could be about 20 feet
15 at various points.

16 Again, this is a true survey that we did ask
17 for. This is showing the trees that are existing and
18 would be removed. And from the plantings plan, we see
19 maybe just some buffering at the edge but nothing
20 that's really going to be as extensive or any
21 replacement of the existing trees that you see here.

22 Okay. So just a little bit about how the
23 current architecture works. We talked about how the
24 contours changed. So these two-story townhomes,

1 they're often connected and they're segmented so that
2 as the topography changed, these segments of townhomes
3 follow the topography.

4 As you turn on Sherman Road, this is the flat
5 part of that U-shaped road. You see the Hoar Sanctuary
6 to the left, and to the right is the beginning of the
7 entrance to the site, just to give you a sense of the
8 streetscape. And this is actually -- with the Hoar
9 Sanctuary behind you facing the Puddingstone, you sort
10 of get a sense of how that topography works.

11 Okay. Just to situate us, we're going to be
12 looking at the site plan. This is an elevation that
13 shows this building, the apartment building from this
14 side where the garage entrances are.

15 Just a few specs: This is about a
16 457-foot-long building. It's about -- according to the
17 height methodology, it's about 62 feet from natural
18 grade. But what we're going to be looking at is what
19 the planning board considered, and that's really the
20 perspectives from people who are on grade in the
21 surrounding townhomes. So at some point, as I will
22 show you, you are going to be looking at this building
23 and seeing maybe a 78 or 82 expanse.

24 This is -- right here, we have new townhomes,

1 about three stories. They're about 35 by 75 by -- 35
2 feet high and 45 by 75 feet for their footprint.

3 When you're coming along Sherman Road, this is
4 one perspective. This is a rendering that was captured
5 on the 3D model that was supplied.

6 Okay. And this is another perspective with
7 the Hoar Sanctuary on the right. So what you'll see
8 here -- and this is a point that the applicant was
9 making -- that when you start to see the building, it's
10 going to be nestled somewhat by that topography, by the
11 contours, and by the building itself.

12 And I think the planning board would --
13 strongly made this argument that the townhomes that are
14 existing here really don't serve as buffers because,
15 you know, people live there. These are Brookline
16 residents. So they were very concerned about what
17 their experience was going to be maybe 30, 40 feet away
18 from this building, and so they did give a lot of
19 attention to that. And as I go through the slides, I
20 will just explain what that -- illustrate some of the
21 points that they were making in their letter, why this
22 really matters.

23 This is another perspective just to show you
24 how close and how the contours change. It actually

1 declines about 10 or so feet from here towards the
2 existing townhomes. And as we go through and look at
3 some site sections that we asked for, you'll actually
4 get to see how those contours change and that even
5 though this is -- the Hoar Sanctuary is on the other
6 side. We don't have single-family homes. We are
7 actually concerned about the experience of the
8 residents who are going to be around this site.

9 MR. HUSSEY: Maria?

10 MS. MORELLI: Yes.

11 MR. HUSSEY: I have a question. Can you go
12 back to the previous -- those trees that seem to be
13 shielding a lot of things, are those existing trees to
14 remain?

15 MS. MORELLI: You know, it looked like, from
16 what I can see from the plan, that they are going to be
17 putting new plantings in, but honestly, I don't know
18 their landscaping plan necessarily backwards and
19 forward. It just -- it seemed as though they were
20 going to be removing quite a bit from the tree survey,
21 which you have before you. And so these could be new
22 plantings. So I'd have you ask the applicant directly.

23 MR. HUSSEY: Okay. Thank you.

24 MS. MORELLI: Okay. So this was the

1 overall -- this is just a peek at the site plan, and
2 these lines here where we have them lettered are just
3 showing you some site sections that we asked for. And
4 I'm going to go through that just to show you what some
5 of this means.

6 So the first thing we're going to be looking
7 at is a site section going through here. We've got it
8 from this existing building on the Boston side. But
9 what I'm showing you here is actually from this
10 building, from the bottom up.

11 Okay. And what a site section is, it's just
12 basically like cutting through layer cake and you get
13 to see how the grade changes and the comparative
14 heights of the buildings and the surrounding
15 structures.

16 So here, again, I'm just showing you what I'm
17 measuring from. There's a person standing here at this
18 building. And you basically get to see -- what I've
19 measured here is a 78-foot height, and the proximity is
20 about maybe 35 or 40 feet away. There's not much in
21 the way of buffering. There is a road that goes
22 through here, so it is pretty much fully exposed.

23 Here's another section. It's cutting through
24 this way, so it's along the length of the building.

1 And what we're going to be starting with is this
2 building here, which is E2 here, and this existing
3 building -- you sort of can't see with the sun, but
4 it's about here. So this is an existing building
5 that's outside of the lot area, and we wanted to just
6 point the relative change in grade. So it's about 20
7 feet -- a 20-foot change or so.

8 And, again, there's not much in the way of
9 buffering from the open space areas that are going to
10 soften that edge. And, again, the proximity of the
11 existing buildings -- again, these are two-story
12 townhomes in relation to the building -- was a concern
13 to the planning board.

14 Okay. Another perspective -- actually, the
15 sun is right where I need it to be.

16 So this is actually right here along this
17 L-shaped portion of the building going right through
18 here, so you're going to be looking at -- this building
19 here is actually this building here. And, again, this
20 is actually one of the more -- one of the taller or
21 more expansive exposures of the building is actually in
22 relation to here where we have, like, a little bit of a
23 pitch point. As you can see, it's relatively narrow
24 here.

1 And, again, there not much in the way of
2 existing buffering. In fact, this 10-foot drop --
3 there's a wall here. That 10-foot drop emphasizes the
4 expanse of that building.

5 One of the goals in integrating a project with
6 more density is to actually look at the natural
7 resources. How much are they being used to mitigate
8 the impact, the visual impact of that building? Or
9 what allowances are there for open space or new
10 plantings, again, to mitigate that effect?

11 And one thing we wanted to show here, so this
12 length here is about 225 feet. That's that L-shaped
13 leg of the building. And so that's -- we can't
14 effectively show that, so that's why there is a break
15 here. But if you were in this corridor, that's the
16 experience you would have looking at the building with
17 the existing building to the left and then this leg of
18 the proposed apartment building there.

19 So overall the footprint of this building in
20 combination with the height and in combination with the
21 relatively shallow setbacks -- so you have setbacks in
22 this configuration here which are comparable to the
23 setbacks that you have with this very -- as the
24 planning board puts it -- foreign building typology.

1 So there are greater expectations for deeper setbacks
2 to mitigate the expanse of height and footprint.

3 Okay. So this is just to show you some
4 renderings we've been looking at, the 2D plans, and
5 this is from the 3D model. Just going down the
6 driveway, the Hoar Sanctuary is behind you, and you're
7 moving toward that cul-de-sac. The existing townhomes
8 are here that would be renovated.

9 You'll see here -- one of the concerns the
10 planning board had were these garage entrances, garage
11 doors that were, again, so close to the existing
12 townhomes. Again, there's nothing that's really
13 buffering that noise.

14 Again, this is what it looks like when you
15 move out of the cul-de-sac and then turn back. This is
16 just another perspective of the relative change in
17 contours and the proximity of those buildings.

18 We talked a little bit -- I alluded to how are
19 existing resources used to mitigate the increased
20 density? And this is just an example that shows --
21 this is from the applicant showing where they have
22 usable open space.

23 Now, our bylaw has several criteria so that
24 you technically remit to why you need at least a 15-by-

1 15-foot dimension to qualify as usable open space and a
2 slope not greater than 8 percent. And, of course, this
3 is a very slopy site. So what was circled here are
4 where there is that functional, usable open space.

5 And the planning board feels that this is, you
6 know, really an afterthought. This is just an example
7 of a project being shoe-horned rather than having
8 usable open space or open space areas identified and
9 designated as play areas or outdoor seating areas,
10 certainly amenities for future tenants.

11 One thing that you will note in this plan
12 is -- if you can remember that this is how the lot, the
13 lease lot was delineated. Now, when I described the
14 existing development pattern, these pockets here were
15 actually rear yards that are open space amenities for
16 people who are living here. So as this is delineated,
17 they're actually diminishing the open space amenities
18 from the 40A side.

19 Okay. A few more other things that I wanted
20 to point out. You might say that there is a passive
21 recreation area that is right across the street.
22 There's the Baker School and the tennis courts.

23 Now, the planning board wanted to make it
24 really clear that there really -- I think a

1 well-designed plan actually has a balance of paved
2 areas with open-space areas. This is a five-
3 and-a-half-acre site, and perhaps there's about 48
4 percent, according to the applicant, of lot coverage in
5 terms of building footprints and the paved drives and
6 surface parking. Yet you don't see two, two-and-a-half
7 acres of open space. You certainly don't see it
8 distributed throughout this plan in a way that kind of
9 reinforces the development pattern of the existing
10 townhomes.

11 We're not suggesting that there should be a
12 garden village model here. We understand the
13 constraints that the applicant has and certainly be
14 wanting to expand their development. However, it was
15 just really hard to reconcile the fact that so much of
16 this is devoted toward the actual built-up environment
17 and no visible open-space amenities.

18 Okay. We're not going to go through waivers,
19 but I did want to point out, if you can read it, just
20 some of the selected land use metrics. So these
21 categories here indicate areas in the bylaws from which
22 this project would need relief in order to be built.

23 Number 1 would be lot size. So in our bylaw
24 for this M-0.5 district, you would give 3,000 -- or

1 allot 3,000 square feet of surface area for the first
2 unit and 2,000 for the subsequent. So just doing a
3 back-of-the-envelope, for 226 units with the as-of-
4 right rule of thumb, you'd need a lot area of over
5 450,000 square feet. The existing lot area would
6 support about 118 units as of right.

7 The project requires relief from .5 ratio for
8 FAR. What's proposed is 1.3. Again, we alluded to how
9 is the massing distributed on the project site. So
10 we're not really interested in what the overall FAR is
11 for the site. We're really looking at, again, those
12 relative setbacks in relation to the height and also
13 the open-space amenities that are provided.

14 The building height -- because of this
15 footprint, this is a 457-foot-long building that ranges
16 from 65 to 250 feet wide at its thickest. And in
17 proximity, you have two and two-and-a-half-story
18 townhomes maybe 30 to 40 feet, 45 feet away. That
19 seemed to create a really oppressive barrier.

20 One of the things that the planning board was
21 asking and why they were so frustrated with this
22 delineation of the lot is: Could something have
23 allowed for maybe demolition of existing buildings that
24 would allow for larger buildings -- existing buildings,

1 or maybe apartment buildings that were two, just to
2 break up that really oppressive barrier and wall. They
3 were concerned about view sheds, light and air
4 resources. Even from a building code point of view,
5 you know, even if that is met, it just seemed to be a
6 really oppressive proposal.

7 The minimum yard setback I already went over.

8 And, again I talked about usable open space.
9 Again, for this five-and-a-half-acre site, it is
10 relatively little. About 7 percent of the gross floor
11 area is proposed for usable open space.

12 That's just the traffic.

13 So the issues that were to be addressed -- and
14 I understand that Mr. Levin did respond to the planning
15 board's letter. You do have that copy in the packet.
16 And I just wanted to briefly respond and say the
17 planning board is not opposed to development on this
18 site. Certainly not opposed to affordable housing on
19 this site.

20 I think they had mentioned Independence Drive.
21 Just to get it on record, because they are design
22 professionals, if they had the opportunity, they
23 probably would propose density at the edge where you
24 have a public way. They understand what is before the

1 ZBA, and therefore they confined their comments to the
2 site itself.

3 But some of the things they were thinking
4 about, is there any flexibility with the lot
5 delineation, and certainly that apartment building, and
6 maybe even a number of buildings. There's just so much
7 lot coverage. That barrier is really oppressive to the
8 existing townhomes. If there's some way to break up
9 that massing, certainly more than articulation, but
10 actually, the footprint itself and the height and
11 length of the building.

12 The Hoar Sanctuary, just to note about that,
13 it's important from the -- the town is exactly a direct
14 abutter in the sense that the boundary of the Hoar
15 Sanctuary doesn't come up against the lease lot line.
16 The lease lot line runs through the center of Gerry
17 Road.

18 But it's an abutter in the sense that there is
19 going to be some visual impact. And I showed you what
20 that streetscape looks like. The town would be
21 interested in having a deeper setback so that the --
22 that apartment building might be so-called nestled, but
23 it's still -- there is going to be a visual impact on a
24 lot of those natural resources like the puddingstone.

1 And, as you can see from the tree survey, all of those
2 trees being cut down certainly changes that
3 streetscape.

4 So unless you have any questions, that really
5 concludes my comments from the planning board.

6 MR. HUSSEY: I've got just one, I guess.
7 Could you go back to the slide that showed the
8 delineation of the property? And you said that the
9 planning board had a couple of issues with that
10 delineation --

11 MS. MORELLI: Yes.

12 MR. HUSSEY: -- including reducing the open
13 space of existing residences, which I understand.

14 I'm not sure I quite understand the demolition
15 of existing buildings.

16 And then you mentioned a third concern they
17 had. Was there anything else?

18 MS. MORELLI: Well, I think what they were
19 just mentioning about demolition -- you know, it just
20 seemed like a contrived delineation. I mean, could it
21 have been expanded? Could there have been more density
22 along the legs of Gerry and Sherman Road?

23 So if this lot delineation had been expanded
24 to maybe this quadrant to allow for reasonable density

1 and height along Gerry -- the legs of Gerry and Sherman
2 rather than right through the center where you can see
3 there is -- there used to -- there is an existing
4 visual link, a physical connection to the Hoar
5 Sanctuary. Right now you have to go through a more
6 convoluted way to get there. There's a viewshed that
7 visually connects this open space to the Hoar
8 Sanctuary.

9 And certainly, you know, the board wanted to
10 make it very clear that this was not a
11 passive-aggressive attempt to thwart any construction
12 on the site. Just have it be done in a way that makes
13 more sense, abides by more universal design principles
14 for accommodating density.

15 MR. HUSSEY: Good. Thank you.

16 MR. ZUROFF: Jonathan?

17 MR. BOOK: No.

18 MR. ZUROFF: Lark?

19 MS. PALERMO: No.

20 MR. ZUROFF: Anything else, Maria?

21 MS. MORELLI: That would be it.

22 MR. ZUROFF: Any other members of the town
23 boards that want to address -- town boards?

24 MS. KOOCHER: Yes. I serve on the NCD.

1 MR. ZUROFF: You may approach, then.

2 MS. KOOCHEER: My name is Robin Koocher, and
3 I'm a member of the NCDC.

4 I don't know if you've gotten around to
5 looking at the letter from Katelyn, but I would like to
6 go over it. I will do that as expediently as I can.

7 MR. ZUROFF: Let me just interrupt you by
8 telling the audience that these letters have been
9 submitted. They are on the site now and available for
10 your review, so I would encourage every member of the
11 public to access the site and read all of the
12 submissions.

13 MS. KOOCHEER: The NCDC Commission has
14 evaluated the present Puddingstone at Chestnut Hill 40B
15 proposal, employing the Hancock Village NCD guidelines
16 as its analytic framework.

17 It also, more generally, considered the
18 proposed development's appropriateness for the site
19 with particular reference to the site's existing
20 development pattern, which Maria had mentioned.

21 The Chestnut Hill proposal disrupts the
22 carefully designed layout of open spaces and the
23 interface of the residential units to each other. The
24 apartment house structure with its parking completely

1 obliterates the characteristic natural landscape
2 feature of the area by blasting away the large
3 Puddingstone outcrop from which, ironically, the
4 project seems to have derived its name.

5 The siting, regrading, and scale of the
6 proposed apartment building and townhouses are
7 incongruous with the scale and massing as well as the
8 architecture of the two-and-a-half story predominantly
9 brick, U-shaped apartment blocks.

10 The proposed plan destroys the predominantly
11 significant aspects of this historically important
12 garden city/garden apartment block project and its
13 separation of pedestrian and vehicular circulation
14 paths.

15 The architecture of the proposed new buildings
16 overshadow the existing buildings, both figuratively
17 and literally, as it would be on a high point on the
18 south edge of the property. It bears no relationship
19 to the intimate and cohesive original design. The
20 introduction of so much impervious surfaces also
21 contradicts the area's signature element: green open
22 spaces.

23 If some version of this proposal is to go
24 forward, more attention should be paid to harmonizing

1 the scale and details of the existing structures.

2 The original 1947 project included buildings
3 in a continuous, almost flowing character surrounded by
4 open space courtyards. The new construction interrupts
5 this flow with additional parking, out-of-scale
6 townhouses, the introduction of a new road and rotary,
7 and a massive apartment building that is more suitable
8 in an industrial office park than a garden apartment
9 complex setting. The proposed new buildings could be
10 less complex in massing and detailing and be more in
11 scale with the existing Hancock Village complex.

12 Hancock Village is an intact, highly
13 successful planned development embodying well-thought-
14 out relationships among its structures, the site's
15 natural contours, and its adjacent neighborhood of
16 single-family homes.

17 And you know this, you've heard it before:
18 Developed between 1946 and '49, it was undertaken by
19 the John Hancock Mutual Life insurance Company to meet
20 the area's critical need to provide affordable housing
21 for returning war veterans.

22 In consideration for a zoning change from
23 single- to multi-family housing granted by the town,
24 the company proposed a development that would be more

1 affordable than contemporary single-family homes in
2 neighborhoods but would embody the best thinking about
3 residential development of its time, as indicated in
4 historical documents.

5 Laid out by Olmsted Associates of Brookline,
6 Hancock Village represents the culmination of an
7 evolving strand of American, automobile-age residential
8 development that had its beginning in the mid-1930s as
9 the garden village model, which is distinct from the
10 earlier English garden city model. Its hallmarks are
11 respect for the natural and topographical character of
12 its site, separation of pedestrians from automobile
13 traffic, and the orientation of the living space away
14 from the street and towards common green space.

15 Each of the Hancock Village dwelling units
16 occupies a townhouse of two stories, most topped by a
17 peaked roof. Each unit has its own separate entrance,
18 the front door of which characteristically opens into a
19 green courtyard providing pedestrian access to the
20 village streets.

21 At the rear, each has a patio within a
22 sheltered hierarchical system of green spaces
23 consisting of a communal open space overlooked and
24 bounded on three sides by its townhouse rows and, at

1 its open end, connecting to a network of rustic green
2 corridors that filter through the development.

3 In designing these open space sequences,
4 Olmsted Associates, rather than being daunted by the
5 site's genius loci, its rising and falling terrain, and
6 its prominent rock outcroppings, used them to provide
7 the development's visual interest. One such corridor,
8 running north-south through the village, incorporates
9 the area's highest point, crowned with puddingstone
10 outcropping, to form a small urban wild.

11 In addition to weaving the village together
12 with internal, more rustic green corridors, Olmsted
13 Associates laid out a more urbane greenbelt of linear
14 parkland along its northern edge. This undulating
15 greensward framed by mature trees simultaneously
16 provides the green space into which the communal
17 green spaces and patios of the northernmost townhouses
18 open and a recreation zone for perhaps a quarter of the
19 site's Brookline residents.

20 The plan's circulation system is an integral
21 complement to the village's open-space layout. The
22 green zones between the townhouse clusters organize
23 paths and spaces that separate pedestrians from
24 automobiles. Cars are accommodated by a logically

1 coherent roadway system consisting of a central street,
2 Independence Drive, which connects Hancock Village to
3 surrounding communities, and off of which run looped
4 local roadways that provide parking for the apartments
5 and access to two original parking garages.

6 It is important to note that none of the
7 original roads are dead ends and that the proposed new
8 road with rotary creates a new circulation pattern.
9 Overall, the Olmsted Associates' plan is a logically
10 coherent system of residences situated within a green,
11 undulating natural setting.

12 The integrated design of townhouses, open
13 spaces, paths, and roadways that provide Hancock
14 Village's distinctive character remain intact today,
15 nearly 70 years after its development.

16 In recognition of its importance as a
17 culminating example of the garden village movement, in
18 2011 the Town of Brookline and the City of Boston, both
19 in their roles as Mass Historical Commission certified
20 local governments, declared it to be eligible for
21 listing in the National Register of Historic Places.

22 And I understand what's occurred in terms of
23 the letter from the MHC back to the Department of
24 Interior. However, this is the letter that was sent

1 prior to that.

2 Such CLG opinions are presumptively
3 dispositive. Among the defining features mentioned in
4 their opinions was the greenbelt. In a concurrence
5 dated June 22, 2012, the Mass Historical Commission
6 agreed with the CLG opinion that Hancock Village meets
7 national register criteria A and C and possibly B for
8 listing at the state and local levels. Meeting only
9 one criterion is required.

10 The three pertinent criteria are:

11 Associated with events that have made a
12 significant contribution to the broad patterns of our
13 history;

14 Associated with the lives of persons
15 significant in our past;

16 Embodies distinctive characteristics of a
17 type, period, or method of construction, or that would
18 represent the work of a master, or that possess high
19 artistic values, or that represents a significant and
20 distinguishable entity whose components may lack
21 individual distinction.

22 In recognition of Hancock Village's historic
23 distinction, the Town of Brookline considered giving it
24 further protection by establishing the property as a

1 local historic district. It determined, however, that
2 such a designation would be inadequate in that LHDs do
3 not address landscape features, paving, and areas not
4 visible from a public way.

5 Accordingly, the town established the property
6 as its first neighborhood conservation district, which,
7 in the form adopted, is the strongest tool available to
8 it to preserve not only the village's built character,
9 but also that of its encompassing landscape.

10 The district's guidelines, which is town bylaw
11 Section 5.10.3.d.1 in the attachment, identify the
12 elements of the site plan that are to be preserved:
13 its architectural style and character; its building
14 size, height, and massing.

15 Significant negative impacts pertain to
16 removal or alteration of outcroppings, alteration of
17 the existing grades, removal of existing pedestrian
18 paths, addition of new impervious surfaces, and loss of
19 open space or the greenbelt buffer.

20 The commission has reviewed the proposed
21 project in the context of the Hancock Village
22 guidelines in making its determination as to the
23 appropriateness of the conceptual project design. The
24 commission is cognizant of the fact that the local

1 guidelines are local requirements and regulations
2 within the meaning of the 40B regs. The commission's
3 findings follow:

4 The commission finds that the proposed
5 conceptual site plan is inappropriate to the existing
6 context of Hancock Village in the following important
7 respects:

8 First, it violates the hierarchical system of
9 open spaces that form the basis for the village's
10 layout, specifically the introduction of
11 two-and-a-half-story flats, their service road, and
12 accessory parking which is being forced into the open
13 space courtyards for the existing townhouses.

14 In addition, the green space, with its mature
15 vegetation and puddingstone outcropping, will be
16 obliterated to accommodate the new large apartment
17 building -- which Maria was talking about that the
18 planning department was concerned about -- thus
19 destroying the site's undulating character and genius
20 loci. It would obliterate the ledge and eliminate it
21 as an open space by siting a six-story apartment
22 building in its place. And these elements of the
23 design place it in direct conflict with the Hancock
24 Village NDCDC guideline Section 5.10.3.d.1 (v)(a)

1 through (e).

2 The proposal is inconsistent with Hancock
3 Village's defining scale and architecture and focus of
4 Sections 1 through 5 of the Hancock Village
5 Neighborhood Conservation District guidelines.

6 As is set forth more fully under the 40B
7 design review criterion "Building Massing," the
8 proposed 77-foot-high and 457-foot-long apartment
9 building consumes the expanse of the sight line
10 corridor. The relatively shallow setback of the new
11 apartment building, along with its massive bulk,
12 overshadows and imposes a wall-like effect on the 20
13 existing two-story townhouses.

14 The Neighborhood Conservation District
15 Commission believes that a more appropriate plan and
16 design could be developed which would respect and
17 retain the historic and architectural qualities of
18 Hancock Village.

19 This plan would involve applying the universal
20 design principle of locating increased density at the
21 edge of the site, in this case along Independence
22 Drive. This would allow the project to achieve several
23 important goals of developing more affordable housing,
24 maintaining the community standards of the nearby

1 single-family neighborhood, and most importantly,
2 conserving the character-defining qualities of the
3 historically significant Hancock Village site and
4 nearby conservation areas.

5 The commission has carefully considered the
6 Puddingstone at Chestnut Hill 2016 Chapter 40B proposal
7 within the framework of the Hancock Village NCD
8 guidelines. In doing so, it focused particularly on
9 the features that distinguish the village's
10 historically significant design and on its relationship
11 to the abutting neighborhood as well as on the NCD
12 guidelines adopted to conserve Hancock Village's
13 design. The commission finds that the proposal, in its
14 current iteration, is not appropriate for the reasons
15 set forth. Thank you.

16 MR. ZUROFF: Thank you.

17 Are there any other boards or commissions that
18 want to be heard?

19 (No audible response.)

20 MR. ZUROFF: Then at this point I'm going to
21 call on the public. And if you want to speak, I'm
22 going to ask that you line up. And you can choose your
23 own order, first come, first served. And I remind you
24 that we want to hear from you, but we want to hear your

1 opinion and your new testimony as opposed to what we've
2 already heard.

3 Mr. Chiumentì, you can start us off.

4 MR. CHIUMENTI: My name is Steve Chiumentì. I
5 live at 262 Russett Road, and I'm a Town Meeting member
6 for Precinct 16.

7 This hearing is directed by the Housing
8 Appeals Committee regulations. And as one-sided as
9 that process is, the regulations do give this board
10 discretion to deny or downsize this project based on
11 the criteria set out in the regulations.

12 Having been through the hearings on the first
13 project, it appeared that certain regulations that bear
14 on this process deserve particular additional
15 attention. I would like to comment on why those
16 provisions deserve careful consideration.

17 The simplest statement of the board's mission
18 is to review the project and either deny the project or
19 approve the project subject to conditions -- for
20 example, downsizing the project -- in a way that
21 balances local concern with local need for affordable
22 housing. Both "local concern" and "local need" are
23 defined terms in the regulation. We'll get to them in
24 due course.

1 Before considering what those terms mean in
2 this context, however, the regulations provide specific
3 guidance as to the conduct of this board's hearing.

4 Now, the first point is that the town boards
5 matter. Section 56.05 prescribes rules pertaining to
6 the conduct of the local hearing. That is this ZBA
7 hearing process. Under paragraph 8, the regulation
8 provides that, "In making the board's decision, the
9 board shall take into consideration the recommendations
10 of local boards but shall not be required to adopt
11 same." Thus the permitting authority of the town
12 boards is consolidated in the local zoning board, but
13 the zoning board is directed to consider the input of
14 the other town boards.

15 Law and regulation consolidates permitting
16 this board, but it does not otherwise dispense with the
17 role of the town boards. The regulation stipulates
18 that this board shall consider the input of town boards
19 in arriving at its decision.

20 The regulation defines "local boards" to
21 include any local board or official, including but not
22 limited to any board or survey, board of health,
23 planning board, conservation commission, historical
24 commission, water, sewer, or other commission or

1 district, fire, police, traffic, or other department,
2 building inspector, or similar official or board, city
3 council, or board of selectmen.

4 Having been present for all hearings of the
5 developer's first project, I'm not able to identify any
6 concerns expressed by the town boards that had a
7 discernable impact on the outcome. It seems as though
8 the ZBA believed "comprehensive permit" meant that the
9 concerns expressed by other town boards were not an
10 essential part of the process, as was, for example, the
11 testimony of other experts.

12 The regulation indicates, on the contrary,
13 that the ZBA is to consider such input in weighing
14 local concerns. The other board input is comprehensive
15 here, but not ignored. And as I say, it's hard to
16 recognize what impact they had on the first outcome.

17 The second point is that -- I want to make is
18 that peer review in a complex case like this is
19 insufficient. The regulation provides that the board
20 may rely upon peer reviewers for testimony regarding
21 various technical aspects of the project. Peer
22 reviewers are reviewers who are hired by the town who
23 are paid by the applicant. Matters for expert review
24 would include at least, water control, traffic,

1 building and site design, and so on.

2 The town, I feel, was not well served by the
3 peer review process in the prior project, and it was
4 explained at the time on the ground that the reviewers
5 were restricted to commenting on the studies presented
6 by the developer. This does correctly reflect
7 regulatory restriction for peer review and the problem.

8 The regulation provides that -- this is
9 56.05 -- "if the board determines that in order to
10 review the application, it requires technical advice in
11 such areas as civil engineering, transportation,
12 environmental resources, design review of buildings and
13 sites that is unavailable from municipal employees, it
14 may employ outside consultants. The board may, by
15 majority vote, require that the applicant pay a
16 reasonable review fee for the employment of outside
17 consultants chosen by the board alone."

18 It goes on to provide that the review fee may
19 be imposed only if the work of the consultant consists
20 of review of studies prepared on behalf of the
21 applicant and not the independent studies on behalf of
22 the board. Therefore, it's a correct statement of the
23 regulation that peer review paid for by the developer
24 is limited to review of studies provided by the

1 developer. That's a quote from Edie Netter.

2 As a result, the review of issues related to
3 the first project were limited to evidence or tests
4 presented by the applicant. Issues about timing of
5 water tests, intersections chosen for examination for
6 traffic and for parking seemed calculated to direct
7 peer review to the applicant's desired results.

8 I've asked and asked again that the town take
9 the role of independent expert testimony seriously in
10 complex projects such as this. The expert review is
11 the wrong material for your decision to deny or limit
12 the size of the project. We need independent
13 examination of the local concern issues, especially
14 with respect to traffic and water.

15 Peer reviewers, even though chosen by the
16 board, are not adequate since the review is limited to
17 studies provided by the developer. As a general
18 matter, it may be appropriate to rely on peer review in
19 a straightforward case, but in complex cases, the town
20 should not rely on studies procured on behalf of the
21 applicant instead of independent studies on behalf of
22 the board.

23 The Housing Appeals Committee regulations go
24 on to basically describe your role, the role of this

1 board, essentially describing it as, in effect, being
2 the same as the Housing Appeals Committee role in
3 reviewing the decision in that they're directed to look
4 to their regs, to their rules about how they conduct
5 their review in conducting yours.

6 It has been stated often that 40B trumps local
7 rules and regulations, which is a reference to the
8 zoning bylaws. However, regulations direct this board
9 to follow the specific elements of review which the
10 Housing Appeals Committee would apply to its review of
11 an appeal of this board's decision. The elements
12 include many of the issues that dealt with our zoning
13 bylaws.

14 In particular, the Housing Appeals Committee,
15 and therefore this board, would review the factors
16 which comprise the assessment of local concerns in
17 light of local need for housing as set out in 56.07,
18 which applies to Housing Appeals Committee review.
19 These provisions apply to the board here as well.

20 Under 56.05, the local hearings, it specifies
21 that -- regarding the scope of the board hearing and
22 commentary in its conduct of a hearing, the board
23 should make itself aware of the detailed provisions for
24 burden of proof and evidence set forth in 56.07 that

1 the Housing Appeals Committee would apply to the appeal
2 of a board's decision.

3 The regulations direct this board to follow
4 the specific elements of review the Housing Appeals
5 Committee would apply to its review of an appeal of the
6 board's decision, in particular, the Housing Appeals
7 Committee, and therefore this board, to review the
8 factors which comprise an assessment of, quote,
9 consistency with local needs as set out in detail in
10 56.07.

11 That's paragraphs 2 and 3 of 56.07.
12 Paragraph 2 pertains to burden of proof, and paragraph
13 3 describes the elements that are often repeated: site
14 design and open space and safety and so on. But I want
15 to first deal with paragraph 2 because there are a few
16 elements of burden of proof that I think are important
17 here.

18 First and foremost is the issue of financial
19 feasibility. Financial feasibility is a valid local
20 concern. It has been stated repeatedly, particularly
21 in the hearing for the prior project, that no
22 considerations regarding the project's burden on the
23 town's duty to provide services are allowed. That's
24 not exactly what the regulation states.

1 In 56.07, paragraph 2, burden of proof, it
2 states the board's case -- regarding the board's case,
3 "In the case of either a denial or an approval with
4 conditions, if a denial or conditions are based upon
5 inadequacy of existing municipal services or
6 infrastructure, the board shall have the burden of
7 proving that the installation of services adequate to
8 meet local needs is not technically or financially
9 feasible." And they go on to define what they mean by
10 "financially feasible."

11 "Financial feasibility may be considered only
12 where there is evidence of unusual, topographical,
13 environmental, or other physical circumstances which
14 make the installation of a needed service prohibitively
15 costly."

16 In this regard, the financial feasibility of
17 accommodating the project, particularly with respect to
18 construction of a school, for example, is a valid local
19 concern in light of the unavailability of developable
20 usable space in Brookline.

21 The town has recognized that all of its
22 primary schools are overcrowded. The Baker School is
23 the most overcrowded with 20 percent higher enrollment
24 than planned, and this is before the developer has

1 added a single additional student from its first
2 proposed project.

3 There has been a community process for several
4 years now trying to plan for an additional 9th primary
5 school. Despite the time and energy spent by parent
6 committees, town staff, and boards, there's still no
7 decision on where a school should be located, or could
8 be located. The delay has been the unavailability of
9 suitable land on which to put a school. And even if a
10 location were resolved tomorrow, it would be several
11 years before an additional school would be available.

12 Here, the fact of cost of services, including
13 an appending override, even before we consider what
14 this project will do to the town, is not an issue we
15 are raising. The specific problem which is a valid
16 local concern is the unavailability of buildable land
17 to accommodate additional schools, et cetera.

18 It was suggested at the board's hearing on
19 November 24th that the ZBA of Sunderland versus
20 Sugarbush Meadow means financial feasibility may not be
21 considered by this board. A reading of the actual
22 regulations quoted above and a reading of the case
23 shows that is not accurate. At least the regulation
24 states more than that.

1 In the Sunderland case, among the concerns
2 raised in objection to the project under consideration,
3 the ZBA of Sunderland had pointed to the expense the
4 town would face and that there would be a need for an
5 additional school, a fire truck, and other public
6 service costs. Sunderland objected that the expense of
7 providing the necessary services was a problem.

8 Sunderland did not base the lack of financial
9 feasibility on the topographical, environmental, or
10 physical constraints that faced the town in attempting
11 to provide such facilities. In fact, topographically,
12 environmentally, and physically speaking, Sunderland is
13 substantially far worse.

14 Sunderland describes itself on the
15 Massachusetts website under community profile. "The
16 Town of Sunderland is a rural, residential community in
17 the southeast corner of Franklin County. Sunderland
18 has a long history of agricultural operations, many of
19 which continue today, including several active dairy
20 farms, tobacco farms, produce farms, and maple sugaring
21 businesses."

22 The issue for Sunderland was the expense of
23 providing necessary public services. Sunderland's
24 local concerns were not based on the topographical,

1 environmental, or physical limitations which would have
2 made the expense of the project unfeasible. And on
3 that basis, the SJC upheld the Housing Appeals
4 Committee's decision to ignore the cost of additional
5 municipal services as a local concern to Sunderland.

6 The topographical, environmental, and other
7 physical circumstances of Sunderland have nothing in
8 common with Brookline. With respect to Brookline, the
9 applicant's project is not financially feasible. Not
10 because of the necessary additional public services as
11 such, but due to the topographical, environmental, and
12 physical constraints which Brookline faces in finding
13 space for additional schools and so on which makes
14 accommodation of a substantial increase in population
15 in this area of town financially unfeasible.

16 Brookline is not farmland. It is effectively
17 built out. That is the topographical, environmental,
18 physical constraint that we face even now before the
19 addition of hundreds of apartments to the area and that
20 constitutes a legitimate local concern improper for
21 consideration under the regulation. Compared to
22 Brookline, Sunderland is the wrong facts. I don't
23 doubt that some people are going to mention the
24 schools. I think in this context, Sunderland is not

1 the point and it was mentioned many times in the prior
2 hearing.

3 Evidence to be heard: This is paragraph 3 of
4 how to conduct the hearings. "The committee will hear
5 evidence only as to matters actually in dispute, and
6 below are examples of factual areas of local concern in
7 which evidence may be heard if they are relevant to
8 issues in dispute. These examples are not all
9 inclusive." And then basically this lists the usual
10 list that you've heard over and over again: health,
11 safety, and environment; site and building design; and
12 open space.

13 Town boards, citizens, and I expect expert
14 reviewers, peer or otherwise, have and will comment on
15 the first two areas: health, safety; and site and
16 building design. I'd like to add a comment on a third
17 item of local concern: open space.

18 The regulations define "open space" for its
19 purpose. "Open space means land areas, including
20 parks, park land, and other areas which contain no
21 infrastructures and are reserved for outdoor,
22 recreational, conservation, scenic, or other similar
23 use by the general public through public acquisition,
24 easements, long-term lease, trusteeship, and other

1 title restrictions which run with the land."

2 I understand Brookline has a definition of
3 open space, but this is the definition of open space
4 that the regulation is referring to where it discusses
5 the need for open space.

6 I'd like to point out that this is a
7 neighborhood of young children, including Hancock
8 Village, which, overall, is an 800-unit apartment
9 complex. There is no recreational park in Brookline in
10 Precinct 16.

11 As the developer has pointed out in the past
12 in the context of the first project, there is a
13 cemetery, there is a school yard, and, of course, there
14 is the Putterham Golf Course. Well, I wrote it down
15 and I'll read it. There are not many 8 years olds who
16 own golf clubs and 50 bucks to pay for a round of golf.
17 None of this is open space as defined in the
18 regulation.

19 The nearest recreational open space is in
20 West Roxbury, Boston across a four-lane divided
21 highway. As a result, there was a moderator's
22 committee to study the advisability of taking part of
23 Hancock Village traditionally used as a park primarily
24 by Hancock Village residents. That issue is still

1 open.

2 With regard to open space and the proposed
3 project, the regulation provides that the committee may
4 receive evidence of the following matters: the
5 availability of the existing open spaces to current and
6 projected utilization of existing open spaces and
7 consequent need, if any, for additional open spaces by
8 a municipality's population including occupants of the
9 proposed housing.

10 Of course, this project, like the first
11 project, makes no provision for open space other than
12 landscaping or parking lots.

13 The regulatory paragraph also makes clear that
14 the impact on the renters of Hancock Village should be
15 taken into account as well, the relationship of the
16 proposed site to any municipal open space or outdoor
17 recreation plan officially adopted by the planning
18 board into any official actions to preserve open space
19 taken with respect to the proposed site by the Town
20 Meeting or city council prior to the date of the
21 applicant's initial submission. The inclusion of the
22 proposed site in any such open space or outdoor
23 recreation plan shall create a presumption that the
24 site is needed to preserve open space.

1 The history of the plan for Hancock Village is
2 long and complex. The open space at Hancock Village is
3 specifically referenced in the 2010 Brookline open
4 space plan as a large and significant parcel that
5 should have priority for open space protection.

6 The 2005, 2015 comprehensive plan set a goal
7 of net loss of open space. And in November 2011, Town
8 Meeting overwhelmingly voted to form a neighborhood
9 conservation district at Hancock Village. This NCD
10 preserves the site design as garden apartments with
11 landscaping that preserves the character of front and
12 backyards, garden village style. NCD provisions were
13 adopted by Town Meeting by a vote of 200 to 24 and
14 approved by the attorney general.

15 The regulations therefore stipulate that these
16 official actions create a presumption that the site is
17 needed to preserve open space.

18 My last point: Do local concerns outweigh the
19 local need for affordable housing? I've been
20 discussing local concerns. I'm going to discuss what
21 the definition of "local need" means for the purpose of
22 comparing local need and local concerns.

23 In balancing local concern against local need
24 for affordable housing, it is necessary to consider the

1 effect of the project to provide for local need. By
2 definition, local need is a reference not to housing
3 units, but the subsidized housing index, to the number
4 of persons in Brookline who would be eligible for
5 subsidized housing, persons who live in households with
6 less than 80 percent of the area median income.

7 The funny math that counts 100 percent of a
8 project towards the subsidized housing index when only
9 25 percent, or in this case 20 percent, of the
10 apartments are affordable pertains only to the
11 calculation of subsidized housing units. Only
12 apartments which actually provide affordable housing
13 address local needs. We are not directed to pretend
14 that local need is addressed by 100 percent of the
15 project. That fake math applies only in calculating
16 the subsidized housing index for purposes of
17 determining the developer's ability to seek a PEL.
18 It's got nothing to do with this hearing.

19 Local need is the percent of the households
20 below 80 percent of the area median income. Only
21 apartments rented to households with less than
22 80 percent of area median income actually address the
23 need for affordable housing. In fact, Brookline's need
24 for local -- local need for affordable housing is

1 actually somewhat less than the regional needs.

2 More affordable housing is always welcome, and
3 Brookline has consistently welcomed it. Originally,
4 all of Hancock Village was intended as well as
5 considered affordable housing in 1946. The rezoning
6 that was necessary to change a golf course into over
7 500 affordable apartments on the Brookline side that
8 bordered with Boston was passed by Town Meeting in 1946
9 by a vote of 192 to 3. Brookline does promote various
10 effective programs to add to the town's stock of
11 affordable housing.

12 Adding affordable housing under the
13 circumstances prescribed by 40B seriously restricts the
14 ability of the town to manage the nature of such
15 projects. We are permitted to control such projects to
16 the extent that local concerns outweigh the local need
17 for the affordable housing as defined in the
18 regulation.

19 Under the provision for evidence, which this
20 board may consider in achieving that balance, the
21 regulation provides that -- and this is 56.07,
22 paragraph 3, Balancing -- "If a municipality attempts
23 to rebut the presumption that there's a substantial
24 housing need which outweighs local concerns, the weight

1 of the housing need will be commensurate with the
2 regional need for low or moderate income housing
3 considered with the proportion of the municipality's
4 population that consists of low income persons. In
5 this regard, housing need is defined to mean the
6 regional need for low and moderate income housing
7 considered with the number of low income persons in the
8 municipality affected."

9 As I noted, this definition of housing need is
10 a reference not to a number of apartments, like the
11 subsidized housing index, but to the number of
12 households in Brookline that could be eligible for
13 subsidized housing, households with less than
14 80 percent of the area median income. The percentage
15 of households with income less than 80 percent of the
16 area median income in the Boston metropolitan area is
17 45 percent. The percentage of households in Brookline
18 is less than 30 percent.

19 In the context of 40B's definition of
20 affordable housing, our local need is two-thirds of the
21 regional need. That is 30 percent versus 45 percent.
22 Therefore, local concerns should be subject to a lower
23 threshold to outweigh our local need.

24 The board's task, which can be simply stated

1 but is not simple, is that the board is to compare the
2 town's local need for affordable housing to the local
3 concerns that arise from the applicant's project, as
4 the project may be modified in the hearing process.

5 It's not clear from the regulations or cases
6 exactly how you are to compare weightless,
7 dimensionless concepts, but that's the task. We
8 believe that the local needs and the regulations
9 properly understood and applied do not justify anything
10 remotely like the size and scope of the applicants's
11 proposed project. Thank you.

12 MR. ZUROFF: Thank you.

13 Just one note, and without being critical of
14 anyone in particular, but the prior project has no
15 relevance to this project, so ...

16 MS. LEICHTNER: I'm Judi Leichtner, and I'm a
17 Town Meeting member in Precinct 16. And I understand
18 what you said. I just -- I do think there is a slight
19 overlap, and I thought I would just kind of acknowledge
20 the elephant in the room that it's no secret that the
21 first project and the decision of the ZBA is being
22 challenged in land court and that the judge has set a
23 court date for November and also a date where he's
24 going to conduct a site visit so he can come to his own

1 conclusion about the project. And we're very hopeful
2 that these procedures will have a better outcome.

3 But first of all, there is the question of
4 whether MassDevelopment has the statutory authority to
5 issue a 40B eligibility letter for a residential
6 development on a property that's not blighted. This is
7 an open question in the active lawsuit over the first
8 Hancock Village 40B project. And if they don't have
9 the statutory authority to issue that PEL, then we're
10 getting involved in a long process of hearings that
11 probably never should have been started.

12 Because Steve covered a lot of what I said,
13 I'm going to try to skip, so forgive me if I just go
14 through some stuff.

15 As Steve mentioned, there are many areas of
16 local concerns that you can investigate. And I did
17 want to just emphasize the fact that the ZBA was only
18 permitted to consider peer review.

19 And we urged the ZBA -- and I'll second what
20 Steve said -- to request funds for independent review
21 of the effects of traffic, stormwater, fire, safety,
22 open space, including that for the residents of Hancock
23 Village for the reasons that -- the obvious optics of
24 impartiality, but also because the peer reviews are

1 limited to a review of the procedures that developers'
2 consultants -- to assure that they meet industry
3 standard practices.

4 And independent reviews could possibly
5 critique and find out if we could get the best and most
6 appropriate project, and that way the ZBA will know
7 what to aspire towards when trying to shape and
8 evaluate the proposal. And these consultants could be
9 used for other 40B projects that are now coming before
10 the town.

11 We also hope that the consideration of this
12 project will reflect the cumulative impact of the two
13 developments going from 530 existing units to close to
14 900 units in Brookline alone, remembering that Hancock
15 Village is already one of the two largest housing
16 complexes in all of Brookline.

17 Although there are some aspects of this
18 project that are better than project one. For
19 instance, all the traffic going onto Independence Drive
20 is quite an improvement, refurbishing some existing
21 buildings, and clearly not being in the greenbelt.

22 But this project has some significant issues
23 that need to be addressed, and Maria talked about many
24 of those things. But the ideas presented in the first

1 paragraph of the planning board letter, using a
2 conceptual design principle that increased density is
3 more efficiently situated at the edge of a site on a
4 public way -- in this case, Independence Drive -- is
5 one that many of us have supported since this process
6 began almost seven and a half years ago. And we would
7 love to see something like that pursued.

8 There are the local concerns Steve mentioned:
9 safety. And I will remind you that last time Chief
10 Ford said at the beginning of the last hearing that
11 Hancock Village is at the far end of the community.
12 And he stated that the department cannot make a full
13 first alarm assignment anywhere down there in the eight
14 minutes, which is the safety standard that they use.
15 He also stated that the existing residents would endure
16 more safety issues because of the density increase.
17 And I hope that that will be considered this time.

18 The site's building design, the physical
19 characteristics of the land also need to be considered.
20 As you saw by the drawing that Maria showed, and all of
21 you, as did I, saw on the site visit, that close to 200
22 trees are going to be cut down. Green areas are going
23 to be covered with pavement, there will be significant
24 blasting, and the total decimation of puddingstone, at

1 least 20,000 tons, according to what the developer
2 reported at the February selectman's hearing, although
3 at least one planning board member stated that he
4 thought it would be much more.

5 And as you heard, the planning board letter
6 lists many specific details about the design. It's one
7 that basically shoehorns the building into this site.

8 Also, as noted, this is a historic property,
9 eligible for the national register. We hope that the
10 historic nature of the property will be considered.

11 The scope of this project, just like the
12 first, is manifest by scale, and the massing is a major
13 concern. That concern was expressed in project one,
14 and I'm not speaking to that. The ZBA did consider
15 that issue but did not consider the key question of how
16 much the project could feasibly be scaled back to best
17 balance this local concern, rather they considered
18 where the units should be put without dealing with the
19 key question of massing and scale. Although I do
20 remember, Mr. Zuroff, you tried many times to have that
21 discussed.

22 If the ZBA had truly addressed this question
23 the first time, they would have scaled back the project
24 until the developer felt the need to request a

1 pro forma review of the project financials. That the
2 developer did not request pro forma review seems to be
3 strong evidence that the project could have feasibly
4 been scaled back further.

5 The regulations specify exactly what criteria
6 you can use, and Steve has gone into that in great
7 detail. I hope that you are going to use every
8 opportunity to use these criteria: the site, the open
9 space, and environment, to alter this project so that
10 it makes the smallest possible negative impact on
11 Brookline and this neighborhood, including our Hancock
12 Village neighbors, while still addressing the local
13 need for affordable housing.

14 We believe that a crucial measure of whether
15 or not we will have succeeded in adequately minimizing
16 the negative impact of the project is whether or not
17 the developer requests that pro forma review. This
18 request should be considered almost a threshold
19 criteria to whether or not the ZBA has fulfilled its
20 responsibility to Brookline in properly balancing local
21 concerns to local needs.

22 I must say, we respect the time and effort
23 that the ZBA members volunteer in the service of our
24 town. At the same time, we depend on the ZBA to do the

1 right thing: protect the interest of all of Brookline
2 and our neighborhood.

3 As we proceed with the ZBA hearing on Hancock
4 Village project two at Puddingstone, we look forward to
5 a process that reflects and incorporates these
6 legitimate local concerns. Thank you very much.

7 MR. ZUROFF: Thank you.

8 MR. VARRELL: Good evening. My name is
9 William Varrell. I live at 45 Asheville Road in
10 Brookline.

11 Before I start, I apologize, I don't have any
12 visuals, but I do reference the documents, so I was
13 wondering if you guy had copies of the stormwater
14 report. I'm going to address mostly stormwater tonight
15 up there.

16 MR. ZUROFF: We do.

17 MR. VARRELL: You do. And I'm not sure whose
18 computer, but is it possible to go back to the image?

19 MR. ZUROFF: I think it's on the site,
20 stormwater. Well, I've seen it.

21 MR. VARRELL: Okay. I'm just wondering if I
22 could -- this computer, is it possible to page up?

23 MR. ZUROFF: Excuse me one minute.

24 MS. BARRETT: Do you want to entertain this

1 this evening, or when you have the site civil review of
2 the project, which would be taking up stormwater at
3 that time?

4 MR. ZUROFF: It probably would be more
5 appropriate. You're addressing something that we
6 haven't had a chance to review.

7 MR. VARRELL: I understand. But I think this
8 goes to the point that the others have made before
9 about independent engineering analysis rather than
10 review.

11 MR. ZUROFF: Then why don't I suggest that if
12 you want to address that particular issue, that you do
13 that without getting into specifics about the
14 stormwater because we need time to hear about the
15 provisions that the developer has made for that and to
16 hear --

17 MS. BARRETT: That hasn't even been presented
18 yet.

19 MR. ZUROFF: Right. It hasn't been presented.

20 MS. BARRETT: That's the problem.

21 MR. VARRELL: Well, okay. That's fair enough.
22 But the documents are on the site, and you've had a
23 chance to review them.

24 MR. ZUROFF: All right. So I'm going to ask

1 that you confine your comments to the issue that you
2 just raised, which is, you know, whether we should
3 review it, how you want us to review it. That's fine.
4 But to get into the specifics of the science is
5 premature.

6 MR. VARRELL: Okay. Fair enough.

7 So, again, my name is William Varrell. I am a
8 professional engineer, certified in Massachusetts. I'm
9 a lead AP, and I also design drainage as my
10 professional career, and review plans by other
11 engineers, including Stantec.

12 And I think the important part about having
13 the independent engineering analysis rather than peer
14 review is you're getting someone that's not just
15 looking at their information and determining if the
16 decisions they made met some basic criteria, but it's
17 looking at it from an independent point of view for the
18 entire site and making sure it works.

19 One of the critical things that are identified
20 in the stormwater drainage thing is -- let me just read
21 Standard 1, which says, "No new stormwater conveyance,
22 eg outfalls, may discharge untreated stormwater
23 directly or cause erosion in wetlands or waters of the
24 Commonwealth."

1 If that is not met, then the project cannot go
2 forward. And it is my view, very strongly, that not
3 only is this not met, that the applicant has done one
4 of two things. He's either misled the Town of
5 Brookline with this report, or prepared a report that
6 was so incompetently prepared that the results find in
7 favor that it works when it actually doesn't.

8 Now, I won't go into specifics if you want,
9 but I will tell you that that first criteria was not
10 met whatsoever. And when you're looking to this
11 report, the smoking gun, for instance, what you want to
12 focus on, whether it's your engineer or yourself, is
13 this subsurface basin D1C.

14 MR. ZUROFF: All right. You're getting into
15 specifics.

16 MR. VARRELL: I'm not getting into specifics.
17 I'm just showing you. So without explaining to you --
18 and you guys obviously don't want to hear exactly why
19 it fails. So I can wait for them to explain how their
20 system works and then explain how it doesn't.

21 MR. ZUROFF: And the process will require
22 us -- we will require a peer review of that study and
23 that -- as presented by the developer.

24 Before we have that peer review, it's

1 inappropriate for us to hear your opinion about it
2 because we don't have any opinion about it yet. So I
3 understand your perspective, but this is -- the timing
4 is not proper at this point.

5 MS. BARRETT: Mr. Chairman, might you
6 encourage him to submit written comments so that you
7 have them on file when the matter of stormwater comes
8 up?

9 MR. ZUROFF: I think that's a fine suggestion.

10 MR. SCHWARTZ: Mr. Chairman, if I might, I'm
11 not going to address what Mr. Varrell just said, but
12 this is not the first time that he's cast aspersions on
13 the applicant and its consultants, and I just want to
14 go on the record saying that it's entirely
15 inappropriate in our view.

16 MR. ZUROFF: Thank you.

17 Is there anyone else in the public that would
18 like to address us with their concerns?

19 (No audible response.)

20 MR. ZUROFF: Then at this point, seeing none,
21 the developer may respond as you wish.

22 MR. LEVIN: Good evening, Chairman, board
23 members. I'm Marc Levin, Chestnut Hill Realty.

24 I think we would prefer to defer to a future

1 meeting, having gotten most of these reports just today
2 in the afternoon.

3 I would like to just comment on the planning
4 board memo that we did get earlier. As I mentioned in
5 my letter, we find it a bit ironic that their first
6 letter in response to the conceptual design of the
7 Residences of South Brookline suggested that we place
8 the building in the southwest corner of the property,
9 which is exactly what we did.

10 Secondly, I'd like to -- what I heard a lot of
11 is about the visual impacts on the abutting buildings.
12 I want to point out first that there are di minimis
13 impacts and virtually none, if not no, visual impacts
14 on any of the abutters. That's, I think, very
15 important to keep in mind. It will, in fact, obviously
16 have impact on those buildings that were pointed out.

17 And I do want to say that during construction,
18 because of the blasting, those units will be vacant.
19 And the people who move in -- subsequently move in --
20 and they will be renovated during that process. And
21 residents who move in subsequently will be doing so by
22 choice with that building clearly where it will be
23 located and presumably comfortable with the decision
24 that they make.

1 One of the overriding motives for our
2 development at Hancock Village is to provide a
3 diversity of housing choices. And I'm sure that there
4 are -- we believe firmly -- and we've been good
5 stewards of the property until now and I suspect we
6 will be long into the future -- that the considerations
7 that we're giving to those buildings that would be most
8 directly affected is done with due consideration.

9 Once again, I just want to emphasize that
10 there are no impacts on the -- minimal, di minimis
11 impacts on the actual abutters.

12 MR. SCHWARTZ: I just want to make one other
13 comment that came up in Maria's presentation of the
14 planning board's point of view of the project, which is
15 the lot line for this project.

16 As I think we have explained to the planning
17 staff -- and I'm sure Maria knows and Alison knows and
18 the board -- and we're happy to present it to the
19 board -- that is a function of what we can do in order
20 to not create any zoning nonconformities on the 40A
21 lot. So it's not as though that was chosen randomly.
22 That's what we need to do in order to preserve the 40A
23 lot from zoning nonconformities. And we're happy to
24 get into as much detail as the board would like on

1 that.

2 MR. ZUROFF: Thank you.

3 I have a question. Mr. Levin, during our site
4 visit I had asked you for some conceptual sights on the
5 height of the building standing from certain
6 perspectives. Do you recall?

7 MR. LEVIN: My recollection was your request
8 was the view from a couple of specific locations that
9 the residents of the renovated units would be looking
10 at.

11 MR. ZUROFF: Actually, Maria pointed out some
12 of them in the cross-sections, but since you have the
13 ability to generate a computer-generated view and, you
14 know, I know you have the road and the access, I asked
15 if you would do that from a pedestrian standpoint.

16 MR. LEVIN: That is certainly within our
17 capability. We have developed a model, a drive-around
18 model similar to what we did --

19 MR. ZUROFF: Which is posted, I believe.

20 MS. MORELLI: It is.

21 MR. ZUROFF: I watched it today.

22 MR. LEVIN: Okay. Very good. And we can take
23 still -- we can then -- it takes some work, but the
24 computer geniuses over at Stantec can identify spots

1 and then create stills from those spots. And I
2 committed to doing that, and we will.

3 MR. ZUROFF: I appreciate that.

4 MR. LEVIN: Sure.

5 MR. ZUROFF: Anything else from the applicant?
6 (No audible response.)

7 MR. ZUROFF: Then at this point I will let
8 everyone know that at our next hearing we will address
9 the urban design characteristics of the project and we
10 hope to have an urban design review from the town.

11 Are there any comments or questions from the
12 board?

13 MR. HUSSEY: I've got some questions. So,
14 Alison, where do we stand with the architectural
15 planning peer review? Do we have a consultant on
16 board, or are we still ...

17 MS. STEINFELD: Alison Steinfeld, planning
18 director.

19 The town issued an RFQ for urban design
20 consultants, and we received two responses. We
21 selected one. I hope to go to the board of selectmen
22 on Tuesday night to execute a contract.

23 MR. HUSSEY: Okay. And where do we stand --

24 MS. STEINFELD: I'm sorry. A week from

1 tomorrow night.

2 MR. HUSSEY: A week from tomorrow night,
3 right.

4 Where do we stand on traffic and stormwater
5 peer review? It's down for us authorizing it at the
6 next meeting, which has now been pushed back a week,
7 and I wonder if we can't authorize you to proceed with
8 getting those peer reviews lined up.

9 MS. STEINFELD: I'm already in the process of
10 drafting RFQs and working with the chief procurement
11 officer to release them.

12 MR. HUSSEY: Okay. Do we need to give
13 authorization? We gave authorization last time for the
14 architectural peer review.

15 MS. STEINFELD: As I recall, the developer
16 agreed to fund an urban design peer reviewer, a traffic
17 peer reviewer, and a stormwater peer reviewer, so I
18 have authorization to proceed.

19 MR. ZUROFF: I think we've already done it.

20 MS. STEINFELD: Right. So thank you.

21 MR. BOOK: When is our next hearing?

22 MR. ZUROFF: The next hearing is July 18th.

23 MR. BOOK: So for that hearing, we will have
24 the urban -- we will have the urban peer review and

1 maybe some others. We'll see what actually develops.

2 MR. SCHWARTZ: Mr. Chairman, if I could --

3 MS. PALERMO: I have a question.

4 MR. ZUROFF: Yes.

5 MS. PALERMO: It is a question for the
6 developer, and you might be able to answer it.

7 You reference the creation of a lot that
8 complies -- you called it the "40A lot." And the 40A
9 lot --

10 MR. SCHWARTZ: That would be the bounds of
11 Hancock Village outside -- this is -- the lot that
12 you're looking at, the subject of the project, is the
13 subject of the 40B application. The rest of Hancock
14 Village is not subject to 40B application.

15 And under zoning rules, by virtue of creating
16 a 40B lot, we can deal within that lot and get whatever
17 waivers we need. What we can't do is create a new
18 zoning nonconformity on the rest of Hancock Village.
19 And that's how we create -- that's the reason for the
20 creation of this lot.

21 MS. PALERMO: I understand that. My question
22 is: Is this the only way you can create a lot in all
23 of Hancock Village that will preserve zoning compliance
24 with a portion of Hancock Village and allow you to seek

1 an approval of a 40B lot?

2 In other words, is there any other possible
3 way to configure the lot at Hancock Village that would
4 permit you to seek 40B approval for a portion of the
5 site and maintain zoning compliance with another
6 portion?

7 MR. GELLER: There are probably small -- very
8 small areas within some of the courtyard spaces that
9 you could create a lot with. The problem would be you
10 couldn't get access to those lots because you would
11 either be removing parking or doing something else that
12 created another nonconformity.

13 So we looked at a number of different areas.
14 The lots that we created in the first -- I'm not
15 supposed to talk about the first 40B -- but the first
16 40B were lots that we felt we could create that. This
17 was the only other place that we could find that can
18 create a lot to create any scale that you could build
19 anything of any substance.

20 I mean, there are, I suppose, small areas, but
21 nothing of substance.

22 MS. PALERMO: So you're qualifying it to a lot
23 that would be of any scale or anything of substance.
24 In other words, you could create --

1 MR. GELLER: That you could build units on.

2 MS. PALERMO: That you could build any units
3 on or a particular number?

4 MR. GELLER: Not that we could figure out,
5 honestly. I mean --

6 MS. PALERMO: So did you direct -- was your
7 plan to have a certain number of units to build and
8 then find a lot that would accommodate that number?

9 MR. GELLER: It was to figure out what area
10 you could get that would be a lot and figure out -- and
11 then see what you could fit on that lot afterwards. So
12 we figured out the area that -- all of these, like,
13 weird little curves there are setbacks from the
14 existing buildings, and so we figured out that area
15 first and then determined what we could do with that
16 area.

17 MS. PALERMO: So is it fair to say -- and,
18 again, I admit I don't know the answer to this -- that
19 all of Hancock Village, without that 40B lot, if you
20 had not created a 40B lot, is it in compliance with
21 zoning requirements right now?

22 MR. GELLER: No, it's not. But we're not
23 creating any more nonconformity.

24 MS. PALERMO: Okay. So you do have

1 grandfathering for the entire project?

2 MR. GELLER: Yes.

3 MR. SCHWARTZ: It complies in some respects,
4 in some respects it doesn't.

5 MS. PALERMO: Okay. I would just go on
6 record. I'd like to learn more about this. I'd like
7 to understand what your zoning analysis was, what
8 brought you to this conclusion. I'm not on the
9 planning board I'm on the ZBA, but I do have an
10 interest in the analysis that went into creating what
11 is admittedly a very strange lot.

12 MR. GELLER: It is a very strange lot.

13 MS. PALERMO: Yes. And it seems to me that
14 logically there had to have been other factors involved
15 in creating that lot than simply telling an architect,
16 I want a lot that I can build on that will allow the
17 rest of the site to remain in compliance with what
18 already is a lot that doesn't completely comply because
19 you're grandfathered in. So it's a pretty complicated
20 analysis, and I'd like to understand it.

21 MR. GELLER: But what I would say is that your
22 analysis just now is pretty much the direction we would
23 use. You know, the problem is that between the NCD and
24 the nonconformance, you really have to look at those

1 considerations that you pointed out to determine where
2 the buildable area is and to create the 40B lot. So
3 that is what we did.

4 MS. PALERMO: Right. And the other thing you
5 would be looking at is the cost of construction. And
6 you've obviously chosen the most expensive place to
7 build a building, which is where you have to blast the
8 puddingstone. So there's many thoughts that go into
9 determining where to locate something, and it's -- you
10 can't single one out. I'm trying to understand that.

11 MR. GELLER: We're happy to explain that at
12 the point in the process where we talk about the site
13 planning and the zoning.

14 MR. HUSSEY: I want pick up on this a little
15 bit, though, because the question's been bothering me
16 for some time.

17 So what you're saying is that this here is
18 based on the setback from these buildings?

19 MR. GELLER: Yes.

20 MR. SCHWARTZ: Correct.

21 MR. HUSSEY: And you've got these -- you
22 included this building because you could do it without
23 having a setback?

24 MR. LEVIN: That's part of the 40A.

1 MR. HUSSEY: Well, I know it's part of the
2 40B, but why? Why is it part of the 40B? Why don't
3 you just do it here? And could you -- could you not
4 just include the whole block as part of the 40B
5 package?

6 MR. SCHWARTZ: We could. We could. And we
7 would be required to renovate all of those buildings
8 and make 25 percent of them affordable.

9 MR. HUSSEY: That's right.

10 MR. SCHWARTZ: And that's something we chose
11 not to.

12 MR. GELLER: That gets to the question that
13 was just raised about affordability, the cost, all of
14 those things, which becomes unreasonable at that point.

15 MS. PALERMO: And so your position is that you
16 have carved out a lot that would allow you to avoid
17 renovating existing units?

18 MR. SCHWARTZ: I wouldn't characterize it that
19 way. I realize that's the way you just put it. I
20 would say we carved out a lot that allows us to build a
21 project which we believe is economically viable and a
22 good project that doesn't require -- you know, we are
23 taking three of those buildings and renovating them and
24 making what is now 100 percent market rate into 25

1 percent affordable. At a certain point, it doesn't
2 become viable anymore.

3 MR. HUSSEY: We might want to look at that
4 further, actually. So why do you have to renovate this
5 building, for instance? I mean, why couldn't you
6 include some of these other buildings but not renovate
7 them? What does the renovation --

8 MR. SCHWARTZ: I think that there needs to be
9 a project associated with those. There needs to be --
10 under the 40B rules, at least as I understand them, and
11 it's the way DHCD interprets them, you can't just
12 include existing units without any substantial
13 renovation and include those as part of a 40B project.
14 There needs to be a development project associated with
15 every aspect of the development.

16 MR. HUSSEY: So who defines "substantial"?

17 MR. SCHWARTZ: That's a good question.

18 MS. BARRETT: The subsidizing agency.

19 MR. SCHWARTZ: I believe ultimately --

20 MR. HUSSEY: Who, Judi?

21 MS. BARRETT: The subsidizing agency would
22 review that and determine --

23 MR. HUSSEY: And who --

24 MS. BARRETT: Well, it depends on whether it's

1 Mass Housing or MassDevelopment or -- whoever they're
2 going to for a project eligibility letter would review
3 the project, which would include X number of units and
4 determine whether there's actually a development
5 project there. There may or may not -- would not issue
6 a PEL if there wasn't a project.

7 MR. HUSSEY: Okay. But this doesn't
8 justify -- you know, there's plenty of project going on
9 in this lot, so why is it you can't leave these alone
10 and still have in the lot --

11 MS. BARRETT: Well, once you include them, it
12 affects the calculus for the number of affordable units
13 you have to provide.

14 MR. HUSSEY: That's right. I don't see
15 anything wrong with that.

16 MS. BARRETT: And I'm not saying that there
17 is. All I'm commenting on in response to what the
18 applicant is saying is that the subsidizing agency
19 would review that and determine whether there's a
20 project. And if there's no substantial investments
21 going on to improve those other buildings, I don't know
22 why they would approve them. I can't imagine why the
23 subsidizing agency would do that. I'm not speaking for
24 them. I'm just commenting on my experience.

1 MS. PALERMO: I think it depends on how you
2 define "substantial investment." And I think that my
3 colleagues and I see other ways to get at this that
4 could create some really nice affordable units, more
5 affordable units than the developer is proposing,
6 frankly, and make a much better project overall for
7 the community and address some of our concerns.

8 MS. BARRETT: That would be a question to
9 present to the subsidizing agency.

10 MR. HUSSEY: To the subsidizing agency?

11 MS. BARRETT: Yes.

12 MR. HUSSEY: Us or the developer?

13 MS. BARRETT: If the board has a question
14 for the subsidizing agency, you may ask them.

15 MS. PALERMO: I think -- aren't we taking
16 issue with whether the subsidizing agency has the
17 authority to subsidize this project?

18 MS. BARRETT: Well, you may be, but that's
19 the subsidizing agency. I mean --

20 MS. PALERMO: So I think if we take issue
21 with whether they have the authority to subsidize the
22 project, I wouldn't look to them to advise us as to
23 whether their interpretation of the statute is
24 correct.

1 MS. BARRETT: Okay. I just don't know who
2 else to send you to.

3 MS. PALERMO: I think we can make our own
4 decision on this.

5 MR. HUSSEY: We can revisit this later.

6 MS. PALERMO: Yes.

7 MR. SCHWARTZ: May I just make one request,
8 which is as it relates to the peer review for the
9 design, which is that we get at least a week in order
10 to receive that before the next hearing? Because,
11 you know, I think that to receive it, you know, the
12 day of, a day before is just -- does not give us
13 enough time to respond.

14 MR. ZUROFF: Alison, do you have a response
15 to that?

16 MS. STEINFELD: It's a very tight schedule.

17 MR. ZUROFF: Don't forget, we're bound by a
18 time schedule too.

19 MR. SCHWARTZ: One of the reasons why we --
20 we just -- we got a slew of letters today, the day of
21 the hearing.

22 MR. ZUROFF: Well, so did we.

23 MR. SCHWARTZ: I realize you did. It
24 wasn't your doing. But design is clearly a critical

1 element of this project. I think everybody can agree
2 on that. And really, I think there's an element of
3 fairness to be able to hear -- to be able to respond
4 in a cogent way to what the peer reviewer has to say.

5 MR. ZUROFF: That's a reasonable comment.
6 We will make every effort to get it to you as soon as
7 possible. When it's ready you'll have it, and then
8 we'll see what time frame we're operating under.
9 That's all I can say.

10 MS. BARRETT: That's all you can do.

11 MR. VARRELL: I'd like to make a comment.

12 MR. ZUROFF: I think we've heard from the
13 public. Thank you.

14 So this meeting is now continued to July
15 18th. Thank you for coming. I appreciate your
16 input.

17 (Proceedings adjourned at 8:53 p.m.)

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

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

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

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

13 Dated this 15th day of June, 2016.

14
15 
16

17 _____
18 Kristen Krakofsky, Notary Public

19 My commission expires November 3, 2017.

20

21

22

23

24

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