

In The Matter Of:

BROOKLINE ZONING BOARD OF APPEALS HEARING

PROCEEDINGS - Vol. 20

December 22, 2014

MERRILL CORPORATION

LegalLink, Inc.

101 Arch Street
3rd Floor
Boston, MA 02110
Phone: 617.542.0039
Fax: 617.542.2119

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Brookline Zoning Board of Appeals Hearing

Case Number 20130094

40B Application by Chestnut Hill Realty

The Residences of South Brookline

December 22, 2014 at 7:00 p.m.

Office of Town Counsel

333 Washington Street, 6th floor

Brookline, Massachusetts 02445

Merrill Corporation LegaLink, Inc.

179 Lincoln Street, Suite 401

Boston, Massachusetts 02111

(617) 542-0039 Fax (617) 542-2119

Reporter: Kristen C. Krakofsky

1 PROCEEDINGS

2 7:11 p.m.

3 MR. JESSE GELLER: Good evening, everyone. We
4 are calling the continued hearing on the Residences of
5 Chestnut Hill. Tonight is December 22nd. The
6 applicant has provided us with an extension through
7 this evening, which begs a request for a further
8 extension through January 5th.

9 Will your client grant a further extension?
10 The basis is that I understand that later this week we
11 will be receiving final corrected plans. Is that a
12 correct --

13 MR. LEVIN: I believe they've been submitted.

14 MR. SCHWARTZ: All submitted.

15 MS. STEINFELD: Not hard copies yet, as far as
16 we know.

17 MR. JESSE GELLER: Hard copies?

18 MR. LEVIN: Well, electronically it's been
19 received. I think that we can -- when do you need it?
20 Tomorrow? Tomorrow.

21 MS. NETTER: This is my understanding. May I
22 supplement, please?

23 MR. JESSE GELLER: Please.

24 MS. NETTER: My understanding is that the

1 applicant submitted a fairly complete set of plans. I
2 don't know what date it was. I'll let Maria update --
3 Ms. Morelli. And then the town sent back to the
4 applicant a very long checklist of things that needed
5 to be done to the plans and the applicant, it's my
6 understanding, has responded electronically and will
7 respond with hard copy. But at this juncture, the town
8 has to review all those plans to make sure whether they
9 comply with the requests, so that will take some time
10 to do that; correct? Have I gotten the full story?

11 MS. MORELLI: Yes.

12 MS. NETTER: And you believe that, given the
13 holidays, you need an extension until January 5th is
14 what the request is.

15 I'm seeing an affirmative nod, Mr. Levin.
16 Does that mean yes?

17 MR. LEVIN: Well, assuming that that is the
18 sole purpose for the extension as opposed to getting a
19 list of comments back again and then submitting again
20 and then asking for another extension to review those
21 comments, then --

22 MS. NETTER: I'm hoping this is the final
23 request, but it's really -- assuming the plans that
24 have been submitted meet the checklist, then there will

1 be no other requests for extensions. And if they
2 don't, then we have to proceed from there.

3 MR. SCHWARTZ: Well, it was a nine-page
4 letter. But for the most part, the changes that were
5 requested were fairly, you know, in a -- almost in the
6 nature of, you know, errors or corrections more so than
7 real substantive changes to the plan.

8 So it's been my experience, at least at some
9 point, the board closes the hearing and says we have
10 all the plans we need. And to the extent that there
11 needs to be further corrections or amendments, those
12 can be in the conditions, either specifically or
13 generically.

14 So the concern is, you know, we're obviously
15 not going to, you know, hold things up over a two-week
16 extension, but the concern is you can always have
17 further comments on plans, and so at some point the
18 process really, in fairness, ought to end where we've
19 said we've submitted what we're submitting.

20 MS. NETTER: Some of your comments were --
21 some of the issues were more than ministerial. If
22 you'd like, Maria can articulate some of those, but
23 let's just perhaps move on and not belabor how we
24 characterize the changes on the checklist. But the

1 idea is to close the hearing, assuming the substantive
2 issues have been addressed.

3 Does that work for you, Mr. Levin?

4 MR. LEVIN: Yes, it does.

5 MR. JESSE GELLER: Do we have an answer?

6 MS. NETTER: I heard a yes.

7 MR. JESSE GELLER: Yes? Thank you.

8 Just to make clear to everyone, CHR has
9 submitted a full set of plans in electronic format, and
10 what the ask is is that a hard set of the plans with
11 some corrections based on notes -- on a review -- the
12 list was already provided, and that's what we are
13 waiting on.

14 Do I need to say that planning will review
15 them once they're submitted?

16 MS. NETTER: No. But they will do that.

17 MR. JESSE GELLER: I think that's obvious.

18 MR. BOOK: May I ask a question?

19 MR. JESSE GELLER: Sure.

20 MR. BOOK: Are we then -- is there a
21 hearing -- a continued hearing scheduled for that
22 extension?

23 MR. JESSE GELLER: Yes. It raises, of
24 course -- it begs the question of when's the next

1 hearing. The next hearing will be January 5th at the
2 same time, 7:00 p.m., and the notion is that when those
3 questions have been responded to and essentially the
4 checklist is completed, the hearing will, at that
5 point, be closed.

6 MR. HUSSEY: Do I understand from the
7 applicant, though, that he has already made those
8 corrections?

9 MR. JESSE GELLER: I believe he's saying
10 they've done it in electronic format.

11 MR. HUSSEY: Okay.

12 MR. SCHWARTZ: The letter that was submitted
13 by Stantec today indicating -- in which there's a
14 handful of items that we said that we were not doing
15 and it explained why. There were four or five items.
16 But other than that ...

17 MR. HUSSEY: There was one question I had that
18 I'd like to -- pertains to the drawings, actually, and
19 that is, there were certain sections which showed the
20 sections through the buildings and it showed the height
21 from the first floor to the peak of the roof. And I
22 was wondering if those could show the height from the
23 grade to the peak of the roof. Is that possible? From
24 the grade around the -- I know some of the sections

1 apply to a lot of different buildings, so maybe it's
2 not possible.

3 MR. JOE GELLER: Joe Geller from Stantec.

4 I think that what the challenge would be is
5 that if you take -- that's why you take the section,
6 because the grades go differently all the way around
7 the building and that's the point of the whole height
8 calculation --

9 MR. HUSSEY: Right.

10 MR. JOE GELLER: -- is that you see that based
11 on the calculation all the way around the building. So
12 that's a better place to try to understand that.

13 MR. HUSSEY: I noticed it is in the
14 calculations for height that's in the waiver request.
15 So that's where it shows --

16 MR. JOE GELLER: Yeah. It shows, as you go
17 around each building, what the average grade is.

18 MR. HUSSEY: Okay. I'll back off.

19 MR. JOE GELLER: You want to see that from
20 point to point? Is that what you're asking?

21 MR. HUSSEY: Well, I'd like to see a graph.
22 I'm a graphic kind of guy, but I'll back off because I
23 know it's complicated.

24 MR. JESSE GELLER: Okay. I'd like to call on

1 the building commissioner to speak to one particular
2 issue, which is height.

3 MR. BENNETT. Good evening, Dan Bennett
4 Building Commissioner.

5 The issue of height has come up by some
6 residents in the last few weeks, and I'll just
7 reiterate what I said a few weeks ago when we discussed
8 waivers briefly, that I did review -- Building
9 Department and Planning Department staff reviewed the
10 list of waivers and the method by which the applicant
11 used to determine height, and we find that is it
12 consistent with the bylaw and is properly applied.

13 I would further ask that the applicant -- I
14 think what might confuse some of the issue is they --
15 for the midrise building, they keep providing an
16 alternative calculation that shows a distance of 176
17 feet or so to an abutting lot line and they back into a
18 formula where they indicate that the waiver may not be
19 required. And we had set that issue aside a while
20 back. We didn't agree with that calculation for using
21 that lot line.

22 So going forward, if they would just -- if
23 they do the new waiver list, that alternate calc, I
24 think, does confuse the issue. And if they just stick

1 with the table they've got that shows Building 12 ten
2 feet from the lot line and then use some of the mean
3 grade and record grade, that would be helpful and, I
4 think, clarify some of the situation which results in a
5 21.66 height waiver for the tall building. Thank you.

6 MR. JESSE GELLER: Thank you very much.

7 Anybody have questions?

8 Mr. Schwartz?

9 MR. SCHWARTZ: I think what we did there is we
10 asked for the waiver and we said, in the alternative,
11 here's a calculation we believe is accurate where the
12 waiver wasn't required. But if the building inspector
13 disagrees with that, I think the waiver request is
14 there and so I don't think a new waiver list is
15 required for that specific purpose.

16 MR. JESSE GELLER: Right. And at the end of
17 the day, it's a waiver request.

18 MS. NETTER: Since I don't have -- I mean, I
19 could skim, but I don't want to skim and not think
20 about things, so I wanted to discuss quickly, in a
21 public forum, those issues that you feel you can
22 address through the plans just so that we can have
23 staff's response and the board understands what's
24 remaining.

1 So if it's okay, can we find out what they're
2 not going to present?

3 MR. JESSE GELLER: Sure.

4 MR. JOE GELLER: So there was a -- basically,
5 we did all of the changes that were requested between
6 last Thursday and today. And there was one request
7 that we provide the location of the affordable units on
8 the plans, but that's not going to be decided until
9 later, so -- it would be decided with the subsidizing
10 agency, so that's not something that we can put on the
11 plans.

12 MS. NETTER: Can I ask a question? Because I
13 have been meaning to ask this all along.

14 Are you going to have separate affordable
15 units, or are these affordable units going to flow and
16 you're just going to -- I don't know how you're doing
17 it.

18 And if the board members -- if I'm not being
19 clear, I'm glad to --

20 MR. SCHWARTZ: We'll do whatever the
21 subsidizing agency wants us to do. So if they -- I
22 think the preference would be to have floating units --
23 by the developer -- but if they're going to require set
24 units, we'll do that. But that's their decision,

1 ultimately.

2 MR. JOE GELLER: There was a request that, if
3 possible, could we not break Lot E2 across two sheets.
4 And the problem is that the whole set was set up at a
5 scale, so if we start to try to put them on one sheet,
6 it just gets too small in scale, so we decided not to.

7 MS. NETTER: Let me just get -- okay.

8 MS. MORELLI: It's up to Dan.

9 MS. NETTER: Mr. Bennett?

10 MS. MORELLI: Lot E2 on two sheets?

11 MR. JESSE GELLER: I think it's two of them
12 that are on two sheets.

13 MR. BENNETT: It would just make for an easier
14 review when you're looking at one whole lot, but if
15 it's trouble for them to do that, if it would be too
16 small to read it, then we can work with what we have.

17 MR. JOE GELLER: There was a request that we
18 delineate the do-not-disturb zone, trees, and
19 outcropping to be preserved on the existing conditions
20 plan. The existing conditions plan is just that. It's
21 the existing conditions plan. But we indicate a
22 limit-of-work line on the drawings, on a number of the
23 drawings, but specifically on the erosion and
24 sedimentation control plan. So that is the limit of

1 work. That's the limit of any exposure in those areas
2 of trees and rock outcropping. Plus that plan also
3 shows all of the trees to be preserved, so we felt like
4 we've already accomplished that.

5 MS. NETTER: Let me check it out.

6 MS. MORELLI: Dan, just one question about the
7 do not disturb, delineating those areas.

8 MR. BENNETT: In past dealings that I've had
9 with 40B, I've always -- when an applicant indicates
10 that they will preserve certain aspects of the site --
11 ledge, outcroppings, trees -- we would get a specific
12 plan that shows and identifies that and not mix it in
13 with any other specific plan. It just makes it easier
14 for us to delineate and see, going out on the site,
15 where these areas are. And I think it would be clearer
16 for us to make that determination going on-site and
17 looking -- having the plan with us without having other
18 layers or other issues on the plan.

19 MS. NETTER: Is that a problem? Is that
20 difficult to do, Mr. Geller?

21 MR. JOE GELLER: Of course we can do what you
22 want us to do.

23 MS. NETTER: We're trying to really separate
24 out the wheat from the chaff, so that would be

1 helpful.

2 MR. JOE GELLER: You requested separate
3 legends for the six-foot screen fence and the
4 seven-foot solid fence, the solid board fences.

5 We changed the legend to make it clearer, and
6 we also changed the detail to show the seven-foot fence
7 and the six-foot fence, the same detail. And it is
8 opaque -- it specifically says "opaque" now, so it's
9 clear that that's what it is. So I think that
10 addressed the issue. It was a little unclear what
11 exactly you were looking for, but I think that's what
12 you were looking for.

13 MS. MORELLI: Well, the six-foot fence looked
14 like it had a lattice on it.

15 MR. JOE GELLER: We took that off. It's all a
16 solid board fence.

17 On the landscape plan, you asked that we
18 clarify in a chart that heights provided are that of
19 new trees when first planted. We indicated on the
20 chart -- what's typically included for standard nursery
21 stock delineation of trees is not by height for
22 deciduous trees. It's by caliber size. And so that's
23 what we put in there. It is height on the evergreen
24 trees. But I don't know any other way to do that

1 because that's how the nurseries sell trees and that's
2 how you identify the trees.

3 MS. NETTER: You okay?

4 MS. MORELLI: That's up to Dan.

5 MR. BENNETT: I guess I would just like one
6 clarification. In some of the elevations that you've
7 shown when you're walking down some of the streets and
8 looking through the properties with trees, without
9 trees, they showed a number of those plantings and I
10 didn't know if those plantings were -- or the proposed
11 landscaping was at the time of planting, that was the
12 height that they would be, or if it's in five years or
13 ten years. And that was the reason for that
14 specificity.

15 MR. JOE GELLER: The renderings don't show the
16 exact planting. That's the point of a planting plan.
17 It shows the size and scale of the plans on the
18 planting plans. So --

19 MS. NETTER: So the renderings are showing
20 like five years out, or do you have some ideas of --

21 MR. JOE GELLER: They're fairly close to the
22 sizes, depending on the trees, but it's kind of hard to
23 say just generically. I would say five years out is
24 probably the longest out that it would be.

1 MS. NETTER: Is that what you need,
2 Mr. Bennett?

3 MR. BENNETT: That's fine for me. It's just a
4 matter of what the board -- when making their
5 determination of that screening, if that's sufficient
6 or if they want to indicate a more mature tree down the
7 road. That's all.

8 MR. JOE GELLER: The sizes I've shown on the
9 planting plan is what the size will be when planted, so
10 it's pretty clear to show -- if you're looking at what
11 the screening is, you can look at that and it tells you
12 what it is because all those evergreens are sized by
13 height.

14 MS. NETTER: Is that acceptable?

15 MR. HUSSEY: I think so. So the height that's
16 indicated on the plan -- what the height will be in
17 five years, then?

18 MR. JOE GELLER: On the planting plan, the
19 height is what it will be when planted.

20 MR. HUSSEY: Okay, thanks.

21 MS. NETTER: For the evergreens.

22 MR. JOE GELLER: For the evergreens, right.

23 There were a number of comments about
24 lighting. This is the first time we heard about the

1 town's interpretation of the light poles as a structure
2 and that it would be subject to the height limitations
3 of the bylaw. We've shown a 16-foot light pole, and I
4 guess anything in that area would be -- 15 foot would
5 be the maximum height per the zoning. So if you want
6 to put a condition in there for 15 feet, we'd be fine
7 with that but we didn't change all those poles on the
8 drawings because we just weren't sure if that was
9 important enough.

10 MS. NETTER: Let me just double check. I
11 don't know who requested that.

12 MR. BENNETT: That was me. That's fine, as
13 long as they understand that 15 feet is typically the
14 max that we allow.

15 MS. NETTER: Without getting a waiver.

16 MR. BENNETT: Correct, yes.

17 MR. JOE GELLER: And there was one light pole
18 that was in a front yard setback, and we moved that
19 pole back.

20 Other than that, I think we did everything
21 that was indicated.

22 MS. NETTER: Okay. Thank you.

23 MR. JESSE GELLER: Thank you.

24 Anybody have questions at this point? I

1 assume not.

2 (No audible response.)

3 MR. JESSE GELLER: What I'd like to do now is
4 I'd like to offer an opportunity for members of the
5 public to come up, as we've done in the past, and offer
6 their comments. Tonights comments are limited to the
7 proposed conditions or suggested conditions should this
8 application be approved.

9 Just generally, by a show of hands, how many
10 people have comments?

11 Okay. Great. As Edie reminds me, I do want
12 to mention that we have had a number of letters
13 offering proposed conditions, comments on conditions,
14 and I want to thank those who have submitted them.

15 I also want to note that we will -- you would
16 be encouraged and you certainly can continue to submit
17 your comments up until January 5th. So should you have
18 any further comments, again, that relate to conditions,
19 we can certainly welcome them -- written comments.

20 MR. HUSSEY: Can we amend that a little bit?
21 I mean, we got a whole slew of stuff today, including
22 some that I haven't even read, evidently. It came in
23 after 5:00. Can we have a deadline a little bit
24 earlier on getting these written comments because that

1 next meeting is supposed to be the end meeting, so
2 we're supposed to be fully prepared. We need to get
3 this stuff in a timely manner. I know it has to go
4 through the Planning Department, so there may be a
5 delay there.

6 MR. JESSE GELLER: Right.

7 MR. HUSSEY: If we could set a deadline --

8 MR. JESSE GELLER: Do you want to set it for
9 Friday at --

10 MR. HUSSEY: Let's see. The Thursday is
11 New Year's Day.

12 MR. JESSE GELLER: Are you doing something for
13 New Year's?

14 MR. HUSSEY: No, as a matter of fact. But
15 nevertheless, I would say the 4th. I would say the
16 Wednesday, the day before New Year's, to get them in
17 time.

18 MR. JESSE GELLER: I'm okay with that. Are
19 you okay with that?

20 MR. BOOK: I agree.

21 MR. ZUROFF: Yes.

22 MR. HUSSEY: That works out for the Planning
23 Department.

24 MS. STEINFELD: We're happy to do what the

1 board requests, but if the public hearing is open to
2 the 5th and we still continue to get comments, we'll
3 still relay them.

4 MS. NETTER: You can accept them, but I think
5 what the board is saying is that for you to have your
6 comments fully and carefully considered, and if the
7 board members have questions, they need to be able to
8 have read them to ask you questions before the hearing
9 is closed.

10 MR. JESSE GELLER: Okay? So if your concern
11 is that we will have a full opportunity to review what
12 it is you submit, please submit them by next Wednesday
13 at 5:00 p.m. Thank you.

14 Why don't people line up.

15 MS. STEINFELD: 5:00 New Year's Eve. Thank
16 you.

17 MR. JESSE GELLER: We'll be around.

18 MS. STEINFELD: Of course.

19 MR. PU: I'm Bill Pu. I'm at 249 Beverly
20 Road. I'm an abutter and a Town Meeting member. I
21 apologize for having been one of the people to have
22 submitted my comments at the last minute, and I hope
23 that you all later have time to review them more
24 fully. I'll just try to go through the highlights.

1 First, Steve -- this letter was written by
2 Steve Chiumenti and I. We wanted to first indicate
3 that we felt that this project should be denied, as we
4 said all along. We wanted to point out that after a
5 year of going back and forth about this plan, that the
6 amount that the plan has decreased is really quite
7 small, 11.8 percent in square feet, 16 percent in
8 units, 20 percent in bedrooms, 6.3 percent in parking.
9 I think that's really a quite modest reduction for what
10 could have been done.

11 Almost all of the town boards and other
12 stakeholders in Brookline decried this proposal. They
13 asked that it go through a pro forma review so that we
14 would have a minimal sized project, but the ZBA did not
15 see fit to do that.

16 The conceptual site design does not differ
17 substantially from the one that MassDevelopment
18 outright rejected in 2011, which, as you know, is a
19 quite rare occurrence.

20 So seeing that the board has decided instead
21 to approve the project with conditions, we feel that a
22 far better project still could have been produced under
23 40B and that this current project does not reflect the
24 best interest of the town, nor does it best serve the

1 local need for affordable housing.

2 So now we get to the specific conditions,
3 which is what I really want to spend the time on. We
4 have a number of concerns about the conditions and the
5 details of the conditions that we think may benefit the
6 decision.

7 So the first is that the board knows that
8 there's a lawsuit going on between the town with
9 several abutters as co-plaintiffs, including myself and
10 MassDevelopment and Chestnut Hill Realty. Now, we
11 don't really want the board to have to weigh in on
12 that, but we feel that the board should make the
13 conditions -- the go-ahead with the project contingent
14 upon this lawsuit being settled with finality. That
15 does not require any opinion of the board of whether
16 there's validity or not to the lawsuit, simply that it
17 should be allowed to reach finality in the courts
18 before the project goes ahead.

19 The second point is about VFW Parkway access.
20 Now, the draft decision, point number 22, asks that
21 Chestnut Hill Realty try to get access to VFW Parkway,
22 but there's nothing that happens if no access is
23 obtained other than they lose 10 parking spots -- or
24 they don't gain 10 parking spots.

1 Now, one of the most pressing problems of this
2 proposal is the large apartment building and the
3 increase of traffic on the local roads, particularly
4 Russett Road. And this board discussed this quite a
5 bit, so I think you recognize that problem or potential
6 problem. But the solution was a reduction of parking
7 by 6.3 percent. I don't think that really counts as
8 sufficient mitigation.

9 It's fully within this board's power to
10 require that VFW access be a condition for proceeding
11 with development. Now, this board discussed that
12 briefly and said that it was unfair. Now, where did
13 this subjective standard come from, and why is it
14 unfair? I know of many instances of this -- in this --
15 well, to me that seem unfair, so I don't see why this
16 decision should be based on what's fair or not fair.
17 Or at least that needs to be defined more carefully.

18 It's the state's mandated need for local
19 affordable housing that's driving this project. If the
20 state really wants it, wouldn't they grant VFW Parkway
21 access? I think that that decision should be left up
22 to the state. If they really want it, then open up
23 VFW. Why should the local neighborhood pay for that, I
24 guess, two-facedness of the state?

1 A third point, I think has been addressed, is
2 that we did not have any of the final dimensional
3 plans, and I hope that the latest plans are made
4 available. As abutters, we would like to know just how
5 close this parking is going to get, which trees are
6 going to be cut down, where will the blasting occur. I
7 think that these things all need to be provided to the
8 public so that we could make some intelligent comments
9 about them, and I see that hopefully that has been
10 remedied now.

11 I was concerned by a lack of specifics in the
12 draft decision, and I'll just list a few examples, but
13 this is not a comprehensive list.

14 So point number 9 says that all leases for
15 units in the project shall include language stating
16 that tenants may not use any rooms other than bedrooms
17 for sleeping purposes. Living rooms or dining rooms
18 may not be used as bedrooms.

19 First of all, I think lofts should be included
20 in there; secondly, there's no consequences specified,
21 so this is a toothless condition; third, this condition
22 is impossible to enforce, and so it's also toothless.

23 So I understand the purpose of the condition, but I
24 would hope that something better could be put in place

1 with specifics, with penalties, and with enforcement
2 procedures. I don't know the law, but I wonder if it
3 can be specified if a maximum number of unrelated
4 individuals that can cohabit a unit can be specified
5 based on the number of bedrooms. Can the number of
6 people per bedroom be specified?

7 I had some comments in my written comments
8 about open space and landscaping but I will just, for
9 the sake of time, not go into those.

10 Regarding traffic, number 21, transportation
11 access plan, .4, expanding existing shuttle service,
12 the decision asks for more shuttle service, but it does
13 not indicate by how much. How will the adequacy of
14 shuttle service be measured? How often will it be
15 measured? What will be the penalty for not providing
16 adequate shuttle service?

17 So the same section, .6, charging a fee for
18 each parking space. I'm guessing you are asking for a
19 fee per parking space to make it a disincentive to have
20 a car, which I applaud that. But if that's your goal,
21 then you need to specify the fee. What's the minimum
22 fee? How will the fee -- the levy of the fee -- be
23 enforced? What's the penalty for not levying the fee?
24 The fee could be used to support expanded shuttle

1 service. Maybe it should be restricted to the use for
2 shuttle service.

3 Stormwater, number 33. The applicant shall
4 take water quality samples. When will they take them?
5 How often? Will the results be public? Who will pay
6 for mitigation if the water quality is inadequate?

7 Infrastructure, number 37. Here the board
8 says that basically the town is not responsible for the
9 infrastructure of the project, basically absolving the
10 town of any -- washing the hands of the town of any
11 responsibility.

12 We've indicated a lot of skepticism about the
13 stormwater management plan. The stormwater management
14 plan requires ongoing maintenance. Its function is to
15 prevent excessive runoff into abutting properties and
16 the Hoar Sanctuary. The developer, therefore, has an
17 obligation to maintain that system. But if it doesn't,
18 then it's everyone holding the bag. Therefore, the
19 town must play a role in enforcement and monitoring to
20 make sure that the system performs adequately and that
21 maintenance is performed, and this had to occur in
22 perpetuity. The town can't wash its hands of this
23 after it places the burden on the neighborhood.

24 Another public health issue is trash. Now,

1 we've shown the board the pictures of the trash at
2 Hancock Village and trash -- it may not sound like it's
3 important, but it's a chronic issue. There's always
4 trash overflowing the trash bins. There have been
5 public health citations about the trash, but the trash
6 is still there, so the board should stipulate the trash
7 pickup, how it would be handled. And there should be
8 penalties for failure to adequately deal with trash.
9 It should be punitive, and it should escalate with
10 repeated infractions.

11 Traffic: One point is, I think the
12 transportation board was left out of all the traffic
13 decisions, so I think the transportation board should
14 be included in decisions that affect public ways.

15 We felt that the left turn from the driveways
16 onto Independence Drive should not be allowed. That's
17 dangerous for both pedestrians and motorists, so the
18 board could consider either totally blocking left turns
19 or perhaps during peak traffic hours preventing left
20 turns.

21 Back to the stormwater. So as I mentioned,
22 the stormwater management plan was, in our minds,
23 highly controversial and we're skeptical it's going to
24 work. Now, the board, I think, was very good in asking

1 for postconstruction assessment of traffic, so what I
2 would request is a pre- and postconstruction analysis
3 of stormwater drainage. And if the system does not
4 function according to specifications, then there should
5 be penalties and corrective action should be mandated.
6 This study should be done by an independent consultant
7 hired by the town and granted full access to the
8 development now and after construction.

9 Furthermore, the stormwater management plan,
10 as I mentioned, requires maintenance, so we need to
11 have a plan in place to monitor maintenance to make
12 sure it's adequate. The plan should include ongoing
13 measurements of stormwater runoff to make sure the
14 system is performing as it should. There should be
15 specifics about the penalties that will occur if the
16 system does not work. This should occur in perpetuity.

17 Historic preservation is another point.
18 Hancock Village is acknowledged as a valuable historic
19 resource. This was not listed in the findings,
20 although it should be considered in the balancing.

21 Point number 36 about historic preservation
22 simply says that any correspondence with Mass
23 Historical Commission needs to be copied to Brookline.
24 That, essentially, has no impact. This condition needs

1 to be strengthened. It should say something like no
2 site work or construction may commence, no building
3 permits may be issued unless and until the applicant
4 provides evidence of all necessary filings and
5 approvals with MEPA and MHC. These filings include a
6 project notification form with MHC as required by
7 applicable law and with MEPA as so required.

8 I hope the ZBA will consider these
9 recommendations, and I do hope that you might
10 reconsider your overall decision. Thank you.

11 MR. JESSE GELLER: Thank you.

12 MR. CHIUMENTI: I'm Steve Chiumentti,
13 Precinct 16 and Town Meeting member. I just want to
14 add maybe two minutes to this and, of course, these
15 comments are in writing.

16 And I think unless you condition this on the
17 resolution of the lawsuit that's pending and so on,
18 there could be confusion about when permits need to be
19 issued and there could be arguments about that and
20 confusion about when building can begin and so on
21 because things don't automatically necessarily stop.
22 That would make it clear that nothing is to happen
23 until everything's resolved including the lawsuit
24 itself.

1 We earlier submitted a thorough analysis,
2 really as prescribed by the Housing Appeals Committee.
3 The Housing Appeals Committee's regulations set out in
4 detail that a Zoning Board of Appeals is supposed to
5 follow the same line-by-line items that the Housing
6 Appeals Committee follows when it reviews a decision of
7 the Zoning Board, and we went basically line by line
8 with safety and the site planning and the green space
9 and so on and I don't see a lot of evidence of that in
10 the conditions. And I really would recommend that you
11 look at that because the Housing Appeals Committee
12 specifies in the regulations what the Zoning Board is
13 supposed to do.

14 Of course, we maintain that this project
15 should be denied or very strenuously conditioned, as
16 we've discussed over the previous months, and I've been
17 struck by what I can only characterize as what seems to
18 be timidity in applying conditions on this project.
19 And the Zoning Board has extraordinary discretion and
20 power in limiting this project and placing conditions
21 on it.

22 And I just wanted to mention the Groton case,
23 a case I've come across in reading all of these cases,
24 because -- and citing for other reasons usually -- but

1 the Groton case involved an undeveloped parcel in
2 Groton that abutted a major road in Groton. It was
3 surrounded -- not only was it undeveloped, it was
4 surrounded by actual property that was undeveloped. It
5 belonged to the town. The developer proposed to build
6 44 apartments and about 13 buildings and they were
7 going to be scattered along an 800-foot roadway,
8 driveway, whatever you want to call it. It sounded a
9 little familiar when I was reading it, frankly.

10 Fundamentally, the Zoning Board objected. The
11 problems were safety and traffic related. They didn't
12 like that there was this long, 800-foot road. It was
13 the only way in, the only way out, and you merged onto
14 the roadway and so on with limited visibility. They
15 basically had safety concerns about traffic, about
16 access of emergency vehicles. They denied the project
17 outright.

18 And what's interesting about this case --
19 there's other things I'll mention in a second -- but
20 what's interesting about this case is that they denied
21 it outright and they were upheld in the denial. They
22 didn't have flooding problems. They didn't have
23 building height problems. They didn't have half the
24 problems that we have in this case. It was just an

1 800-foot road, one way in, one way out. Basically, it
2 was not surrounded by tight neighborhoods or that sort
3 of thing. In fact, along the roadway is a 10-foot
4 strip of property that belonged to the town and was
5 undeveloped.

6 The Supreme Judicial Court upheld the denial.
7 The reason it got -- and basically that was one of the
8 two holdings. And the significant thing here is that
9 that was all that was involved in that project. It was
10 denied, and the Supreme Judicial Court upheld it for
11 safety concerns.

12 The reason this case is usually discussed is
13 not because of that. That isn't particularly
14 interesting for most other people. It seems to me like
15 it was a simple case for us. Seems like a much easier
16 case to approve rather than to be denied.

17 The thing is that this 10-foot strip of
18 property that belonged to the town was one of the
19 important causes for their concern about safety. It
20 basically had -- not outcroppings, not buildings,
21 not -- grass. The grass was tall. And basically it
22 got to the Supreme Judicial Court because the Housing
23 Appeals Court decided that, well, they could basically
24 give the developer authority to go on the town's

1 property and mow the grass.

2 Well, of course, if someone's telling you you
3 can go on someone else's property and do something,
4 they're giving you an easement. And the Housing
5 Appeals Committee doesn't have any business or
6 authority to grant easements. That's why it got up to
7 the Supreme Judicial Court. It took the Supreme
8 Judicial Court to explain to the Housing Appeals
9 Committee it didn't have the authority to grant
10 easements.

11 But fundamentally, what was basic --
12 basically, this case was that the Supreme Judicial
13 Court upheld the denial and that basically their
14 finding that this was -- their safety concerns were
15 sufficient to deny the project, and that's why I wanted
16 to mention that case. And I'll give you the case. I
17 printed it out.

18 But otherwise, as I said, I recommend the two
19 things in writing that have already been submitted,
20 particularly the regulation-by-regulation review of
21 this project. Thank you.

22 MR. JESSE GELLER: Thank you.

23 MS. COX: My name is Abby Cox. I'm a Town
24 Meeting member of Precinct 8, and I'm also a member of

1 the school committee. And I'm speaking on behalf of a
2 very concerned school committee about how the proposed
3 Hancock Village 40B project is likely to affect the
4 long-term capital expansion plan for the public schools
5 of Brookline.

6 The public schools of Brookline embraces our
7 mission of providing a high quality education for all
8 of our students no matter where in the town they live
9 or how long they've lived there. A large number of new
10 students coming into a very densely populated school
11 system would be a formidable challenge.

12 As we've discussed with the ZBA in the past,
13 the Brookline elementary population has grown since
14 2005 by over 1,500 students, or 40 percent. Since 2007
15 when the first enrollment projection suggested a much
16 smaller growth pattern, we have followed consultants'
17 advice to either build a 9th K to 8 school or, barring
18 the ability to do that, move expeditiously to expand
19 all of our elementary schools.

20 Through repurposing space in some buildings
21 and moving pre-K classrooms into rental spaces and the
22 renovations of the Runkle and Heath Schools, we
23 successfully added 50 class sections in the elementary
24 schools. We're currently building an addition at the

1 Lawrence School with four new classrooms, and Devotion
2 School will be renovated and expanded in the next
3 several years to accommodate over 1,000 students.

4 Even with these efforts, we face immediate
5 overcrowding and insufficient space for our anticipated
6 enrollments at the Baker School next fall and at the
7 Pierce School the following year. Expenditures for
8 rental spaces for portable classrooms and for
9 enrollment accommodations are increasing annually.
10 We're also working with consultants to see if a site
11 can be found or purchased for a ninth elementary school
12 or for other expansions. Another consultant is helping
13 us anticipate an expansion for Brookline High School.
14 More on that in a minute.

15 In order to finance this necessary expansion
16 of our school's facilities, the Town of Brookline will
17 likely face a vote on the capital debt exclusion next
18 May to finance the renovation and expansion project at
19 the Devotion School and to provide some funding so that
20 we can move expeditiously on the planning for the
21 projects described before. Other projects, such as
22 those I just mentioned for the high school or a
23 potential ninth elementary school will likely require
24 additional requests to the tax payers.

1 What I want to emphasize tonight is that none
2 of the growth or the plans I've just described
3 incorporate enrollment growth from the 40B project now
4 contemplated at Hancock Village. The proposed
5 development falls squarely within the Baker School's
6 attendance district, but its impact will be felt across
7 the town.

8 Baker now serves 824 students, approximately
9 one-third of whom come from Hancock Village. It's
10 already well in excess of its built capacity at 679
11 students. At 127 square feet of building space per
12 student, Baker is one of the two most crowded K to 8
13 schools in the system. We're already looking at
14 options for Baker next year that include bringing in
15 portable classrooms or even sending some kindergartners
16 to a different site.

17 As proposed, the new family-sized units at
18 Hancock Village alone could add as many as 200 more
19 students to Baker. In practice, a far higher number is
20 likely, as one-bedroom apartments and even some studios
21 or lofts sometimes house families with children. We
22 appreciate that this is reflected in the conditions set
23 forth in the ZBA's draft decision. You suggest that
24 language be included in the rental agreements that only

1 true bedrooms be used for sleeping purposes, but we
2 wonder how and if this will be enforced. I think
3 Mr. Pu addressed some of our concerns as some kind of
4 ideas of how those conditions might be tightened.

5 This proposed development will, in short,
6 simply overwhelm Baker and our schools in South
7 Brookline, requiring shifting of students to Lincoln,
8 Health, and Runkle Schools, none of which have extra
9 capacity.

10 Of equal concern is the potential impact of
11 these additional students on the future of Brookline
12 High School. Our long-term space plan anticipates the
13 same 40 percent growth and enrollment at BHS as the
14 larger grades at the elementary schools matriculate
15 upward. With our current enrollment, we know that BHS
16 will grow from today's 1,800 students to a school with
17 at least 2,600 by 2024.

18 As with the elementary school planning, we
19 have been considering different solutions for the high
20 school for some years. In the last two years, we've
21 engaged two architectural firms to present us with some
22 concepts for how the BHS site could be expanded. Their
23 analyses suggest that the BHS campus could be rebuilt
24 to handle 2,600 students, but those consultants have

1 warned that any more than that may be impossible to
2 absorb at BHS's single location. Should this Hancock
3 Village development go forward as currently planned,
4 our estimate of 2,600 will almost certainly be too low.
5 That will fundamentally change the conversation about
6 how Brookline can or would respond.

7 Any of the options that would have to be
8 considered for an addition to Baker, a new school, or
9 even larger BHS come with significant costs to the town
10 and the taxpayers. What is the financial impact to the
11 schools? An additional 200 to 250 students -- and,
12 again, that may be a low estimate -- at an average cost
13 of \$16,000 per pupil -- which is the figure that was
14 used in the Override Study Committee's work -- would
15 mean an additional \$3.2- to \$4 million in operating
16 costs. Clearly, the cost of this enrollment-driven
17 expansion would far outstrip any new revenues generated
18 from the 40B project's residential property.

19 More important, however, it would force
20 dramatic changes in the configuration of and local
21 access to our public schools; changes that will touch
22 families across the public schools, not just those in
23 the Baker district, as well as the neighborhoods in
24 which they reside.

1 On behalf of the Brookline School Committee,
2 our students, and our community, I urge you to consider
3 the impact on the school system before allowing this
4 proposal to move forward.

5 MS. WONG: Good evening. My name is Joyce
6 Wong. I'm a resident of Brookline. I've been a
7 resident for 17 years, and I'm also a parent of two
8 children, one at the high school and one at Baker
9 School.

10 So actually, I have several points to make
11 and, actually, one question I'd like to actually pose
12 to the board is -- what I have yet to hear is, what is
13 actually the benefit of such a project? It's obvious
14 that Chestnut Hill Realty has a great deal to benefit,
15 but in terms of the town as a whole, I'd like to hear
16 from you what you see as the benefit.

17 Because as we just heard from -- and I
18 completely agree with what's been said so far -- is
19 there's a lot of kind of negative impact in terms of
20 the schools and things, so I was wondering if -- in
21 terms of the decision-making process, I'm wondering if
22 I can hear -- and, I mean, because when I look on the
23 Internet and everything, there's nothing about anything
24 positive. Obviously, like I said, they clearly have a

1 lot of financial benefits, but I'd like to hear, what
2 does the town have to benefit from this project?

3 (Brief pause.)

4 Well, okay. If you don't want to answer the
5 question, that's fine. But all I'm saying, somebody
6 needs to raise this question because it seems really
7 unfair, I think, to have -- for the entire town -- if
8 we're talking about overrides and things, to really
9 increase our taxes and everything and then to have one
10 institution, the CHR, benefit.

11 And then the other thing you're talking about,
12 40B, we have to remember that when the owner purchased
13 this he converted everything that was affordable
14 housing to market value. So really what the point --
15 really what you should consider is, why don't they
16 convert some of those back to affordable housing? And
17 the point is, as it's been done in the past, what's to
18 stop them in the future from converting back to market
19 value?

20 I mean, those are the points I'd like to make
21 and also kind of a final thing, because I think this
22 is -- requires vision from the entire town. I think
23 that you really have the power to make a decision here
24 that really can impact negatively on the entire town.

1 Right?

2 I mean, so I think -- I understand how you
3 make decisions that are separate from the school
4 because I have had discussions with Superintendent
5 Lupini and it's beyond my -- I don't quite understand
6 how this could happen, but I know that decisions that
7 are made for the school are separate from development.
8 But thinking from a holistic -- especially in the
9 financial times that we are now, it just simply isn't
10 financially responsible to make these kinds of
11 decisions where we're going to have to either make a
12 new elementary school or a new high school. I think it
13 just has so much negative impact on the entire rest of
14 the town when you just have only one institution here
15 that's benefiting from this.

16 And so just like how you have escrow --
17 because I did read the draft. I read it today and I
18 actually sent this email earlier this morning. I think
19 how they put into escrow -- really modest amount, I
20 think it was, in terms of looking at parking -- they
21 should do similar things for schools. Right? So in
22 terms of, like, either they contribute somehow -- I
23 mean, I know they're contributing to the circle in
24 front of Baker. I mean, that's nice and all, but

1 that's really not going to fix our problems. I mean,
2 I'd like to see more kind of faith and commitment.
3 Right? If they're really committed to the town, that
4 they really should be playing some role in terms of
5 community and actually helping with the problem. You
6 know, I think that --

7 MR. JESSE GELLER: Ms. Wong, we're here
8 tonight to discuss conditions. I would strongly urge
9 you -- these hearings have gone on for a year, and
10 there has been a significant amount of testimony that's
11 been offered. And I'm happy to hear what you have to
12 say. I know you submitted some of this in written
13 fashion, which is excellent. But I think many of these
14 questions that you are asking are answered within
15 testimony that we heard over a long, long period of
16 time. So my intention is not to cut you off, but --

17 MS. WONG: I appreciate that, because I know
18 you're supposed to focus on conditions. All I -- just
19 one last thing. I would just also say, I think it's
20 important, too -- just from a due diligence, I think
21 it's important to understand who stands to benefit from
22 this and just to make sure that all the kind of
23 conflict of interest is kind of done. That's all I
24 would ask. But thank you for clarifying, and thank you

1 for letting me speak.

2 MR. JESSE GELLER: Thank you.

3 MR. WISHINSKY: Neil Wishinsky. I'm on the
4 Board of Selectmen, though I'm speaking for myself. I
5 don't have anything profound to say that hasn't been
6 said, so I'll just offer some probably relatively minor
7 comments on the conditions.

8 So in number 8 of the procedural history, you
9 state that all the boards and commissions were
10 notified. But then there's no recognition anywhere in
11 the draft decision that all of the boards and
12 commissions that so offered opinions, including the
13 Board of Selectmen, Planning, Conservation, Schools,
14 Preservation, all had negative comments about the
15 project, as did all -- I can't recall any positive
16 testimony from any citizen. And I think that's an
17 important thing to put in the findings. It's just a
18 statement of fact as to the nature of the proceedings.

19 I would also suggest that number 10 -- finding
20 number 10 is entirely appropriate and that you should
21 resist any pressure to remove number 10 which states
22 that conceptual project design is not generally
23 appropriate for the site. And I think that's an
24 important finding.

1 In condition number 5 -- I think the intent of
2 condition number 5 -- and that has to do with the
3 parking on the 40B part of the site -- be limited to
4 the 40B tenets. To me, the language is a little
5 unclear, and maybe you can try sharpening the language
6 a little bit. I would also suggest that there be
7 provisions for town verification of that being
8 followed. And I don't know if it's appropriate for
9 penalties for not being followed in here, but if it is,
10 I would suggest you put that in there. That's pretty
11 much all I have to say.

12 MR. JESSE GELLER: Thank you.

13 MS. LEICHTNER: My name is Judith Leichtner.
14 I'm a Town Meeting member from Precinct 16. And I did
15 put this in writing, but I did want to mention this.

16 As this long hearing comes to a close, I'd
17 like to add a comment about this process. While I
18 appreciate the many hours that have been spent, I'm
19 also disappointed, as I feel that not everything was
20 done that was allowed under the 40B process to do
21 what's in the best interest for Brookline.

22 Having attended every ZBA meeting, I do
23 realize there are many constraints the 40B law places
24 on this board. But at the very first meeting of this

1 group last January, lawyers Kathy Murphy and Sam Nagler
2 described the process to you as the ZBA as well as to
3 the citizens in attendance, and at that time they
4 discussed the idea of conditions being placed on the
5 project and that the applicant could claim that the
6 conditions were uneconomic.

7 Mr. Liss then asked what I thought was a very
8 good question. "Doesn't the applicant always say the
9 conditions are uneconomic?"

10 Ms. Murphy replied that then the developer
11 bears the burden of proof to show that the conditions
12 render the project uneconomic.

13 What's disappointing to me, the neighbors, the
14 many people from all over town who wrote to you, as
15 well as the selectmen that commented on this issue is
16 that this developer did say many times during the
17 hearing that the suggested conditions about less
18 parking, fewer and smaller units, or the conditions of
19 Mr. Hussey -- the only member of the board with design
20 experience -- to remove an entire floor and an entire
21 level of parking would be uneconomic, but the board
22 never asked the developer to prove that.

23 Even if one accepts Ms. Netter's statement on
24 November 3rd that 40B is about getting the least worst

1 project, in this case, how can we know that, since the
2 developer never had to prove that a significantly
3 smaller project would be uneconomic, a project with
4 less parking, less destruction of green space, less
5 blasting, less impact on the small roads surrounding
6 the area, and most importantly, less negative long-term
7 impact on the entire town? We will never know if this
8 is the least worst project. Thank you.

9 MR. JESSE GELLER: Thank you.

10 MR. POLLARD: My name is Ruben Pollard. I
11 live at 243 Beverly Road, which abuts this project, and
12 I would just like to make one last appeal to the Zoning
13 Board of Appeals to protect the integrity of our
14 neighborhood.

15 Our neighborhood was set up as a residential
16 neighborhood in Brookline with backyards -- abutting
17 backyards. They provide space between buildings and
18 privacy between houses. And for this reason, when the
19 backyards of Beverly Road abutted the golf course that
20 preceded the development of Hancock Village, that
21 wasn't an issue. But when Hancock Village was
22 developed, they created a buffer space to protect the
23 distance to our backyards. And that distance isn't
24 great. I mean, the buildings that are behind our house

1 are a comfortable distance away, but no more distant
2 than another house if that was developed as a
3 residential neighborhood with backyards abutting.

4 So then Ed Zucker and his crew come and say,
5 well, we're going to turn houses sideways and those are
6 going to be side yards and we can put those right up
7 against your fence, and all the machinations that have
8 been listened to and have influenced this project. Now
9 it has buildings right up against the property line,
10 which just becomes our -- they're taking our space.
11 They're taking our privacy because they can.

12 When the -- I'm sure -- the Zoning Board of
13 Appeals agreed to allow houses to be built within four
14 feet, ten feet of the Hoar Sanctuary on the Rangeley
15 Road, they didn't consider that that was taking away
16 from the privacy of the sanctuary by moving
17 6,000-square-foot houses to right up against the
18 sanctuary property. But it did. That ceded the
19 privacy of the sanctuary over to these homeowners on
20 Rangeley Road, and I don't want to see the same thing
21 happen on Beverly Road. I don't want to see houses
22 built up against our property lines. And so consider
23 our privacy and protect our neighborhood. Thank you.

24 MR. JESSE GELLER: Thank you.

1 Anybody else?

2 (No audible response.)

3 MR. JESSE GELLER: What I'd like to do now
4 is -- we have all received a draft of the decisions.
5 And in order to start the process of reviewing the
6 content of that draft, we need to start going through
7 the various items and run through comments, questions,
8 thoughts, changes. It's clearly going to be a lengthy
9 process, but I don't have a better way of doing this,
10 so I think we're simply going to have to do it on a
11 page-by-page basis. I'm pleased to see that you've
12 marked up your various versions. I saw notes.

13 MR. HUSSEY: Well, they were different. I'll
14 mention -- when you get down, I'll --

15 MR. JESSE GELLER: Okay. So what I would ask
16 is that people turn to the condition section, and we'll
17 just start to run through those.

18 Mr Hussey, do you have something you want
19 to --

20 MR. HUSSEY: Well, only that I wanted to
21 mention to our consultants that I hope -- we received a
22 number of letters in the past week which have
23 recommendations, and I would hope that in the review
24 and amendments to the conditions you would take those

1 requests into consideration.

2 MS. NETTER: This is only the beginning of a
3 process. And we can take those into consideration, but
4 I hope you will also because now is the time for you to
5 give us your direction. So I certainly will do that,
6 but more importantly, you let us know which of those
7 comments or how those comments affect your thinking.
8 Not right now necessarily, but -- yeah. Because we --

9 MR. HUSSEY: Oh, it's the neighborhood
10 comments.

11 MS. NETTER: Yes. Oh, absolutely, anything
12 you choose. I mean, this, as we said before, is
13 largely a compilation of all the evidence that's been
14 submitted to date, but now we move it forward.

15 MR. HUSSEY: Okay.

16 MR. JESSE GELLER: It's essentially a
17 reduction of -- every time, over the course of this
18 matter, in which people have -- whether it be peer
19 reviewers, whether it be suggestions from the
20 neighborhood or from our consultants of conditions,
21 it's basically a list and it's been reduced into a
22 written decision format.

23 MR. HUSSEY: Okay. Well, I have it marked up,
24 but I'd like to review them further myself before I

1 pass these on to the consultants.

2 MS. NETTER: Well, what I'm hoping to have
3 happen -- and I heard what you're saying -- but at some
4 point we need to have a discussion amongst the three of
5 you with all of your comments together because what I
6 just --

7 MR. JESSE GELLER: Four.

8 MS. NETTER: Four of you, excuse me. Maybe I
9 was skipping you, Mr. Geller.

10 MR. JESSE GELLER: I should be so lucky.

11 MS. NETTER: But I would like to have all of
12 you, you know, as opposed to us looking at your written
13 comments, because where you may disagree amongst
14 yourselves, that's a conversation for you to have.

15 MR. JESSE GELLER: Mr. Schwartz, you're
16 standing up.

17 MR. SCHWARTZ: Yeah. I just -- I want to -- I
18 was not -- I don't think we were aware that there would
19 be a discussion of conditions this evening, which is
20 fine. As the board may know, we submitted detailed
21 comments on the conditions, and I suspect, because of
22 the time, that you haven't had a chance to incorporate
23 those. And I just want to make sure that those are
24 taken into account.

1 And my only thought or concern or whatever is
2 that if you have that discussion without having an
3 opportunity to properly consider those, respectfully, I
4 don't think that's a fully -- and discuss it with your
5 counsel -- respectfully, I don't think that's the best
6 way to go about it. So, you know, it's your hearing
7 and it's your call, but I would just ask you to
8 consider that.

9 MS. NETTER: Our thinking, Mr. Schwartz and
10 members of the public, is this draft has been done
11 without input from the board, other than their input
12 over the last year. And so the thought is that we
13 would just like to have a preliminary -- begin a
14 preliminary discussion with them and they will take
15 into account your thoughts and the additional letters
16 that have been given. But this is just trying to get
17 an idea of what their thinking is.

18 MR. HUSSEY: We have not received yet the
19 letter --

20 MS. NETTER: No.

21 MR. JESSE GELLER: It came this evening.

22 MR. HUSSEY: Oh.

23 MR. JESSE GELLER: Was it circulated to
24 everybody, or --

1 MS. STEINFELD: I don't know. We got a 609 on
2 our phones.

3 MR. JESSE GELLER: Okay. So I'm sure that
4 will get circulated this evening or tomorrow.

5 MR. SCHWARTZ: Again, we were not aware of the
6 fact that there would be a discussion of conditions.
7 We did our best to get it to you as soon as possible.
8 As the board knows -- and I think, you know, your
9 counsel and advisors will tell you -- the discussions
10 of the conditions can take place either during the
11 public hearing or after the public hearing as the board
12 chooses. I'm just concerned that there not be, you
13 know, a prejudicial effect, frankly, as a result of
14 your discussion here this evening, because you are
15 making several points in broad categories as to these
16 conditions. And I think, totally understandably, you
17 have not yet had an opportunity to consider those.

18 MR. JESSE GELLER: Do you have any further
19 thoughts on that?

20 MS. NETTER: I don't want to kind of take
21 over, but I'm trying to get your thoughts on general
22 planning issues, you know, if we're kind of in the
23 right direction or the wrong direction on some issues.
24 I mean, certainly you can defer, but I think it would

1 be a productive -- could be a productive conversation.

2 But your thoughts?

3 MR. BOOK: I just -- I'm wondering -- you
4 know, we haven't seen the applicant's comments. I
5 haven't had an opportunity to review many of the
6 neighborhood's comments. Anything that came in today,
7 I just did not have an opportunity to look at. And I
8 think a lot of the -- some of those comments are going
9 to have an affect of formulating the conditions and my
10 comments on the conditions that have been presented in
11 this draft. And so I don't know. I have a little bit
12 of a concern about -- maybe this is premature.

13 MR. HUSSEY: That goes along with my concerns
14 as well, so my tendency is to hold off until the next
15 meeting. We've got a two-week break here, almost a
16 two-week break, and we need it.

17 MR. JESSE GELLER: Mr. Zuroff?

18 MR. ZUROFF: Given the fact that Mr. Schwartz
19 has made it clear that our responding to his responses
20 prejudices him --

21 MR. JESSE GELLER: May.

22 MR. ZUROFF: -- may prejudice him, it seems
23 like his complaints bear up fruit here because we
24 haven't had a chance to respond to his responses.

1 And I understand what you're trying to do,
2 Ms. Netter, to generate some discussion about what we
3 have before us, but I echo Chris. I didn't have time
4 to read all of this today, and maybe it would be more
5 productive if we had a chance to overview all of the
6 comments and incorporate them. And maybe what we can
7 do is -- because we have the ability to actually have
8 some time, maybe we can all prepare our comments in
9 writing and we can share them before we next discuss?
10 I don't know if that's appropriate.

11 MS. NETTER: Yeah. I think the better thing
12 is to do it at the hearing.

13 MR. HUSSEY: I think the one thing I would be
14 willing to say, I think, is that I think you're in the
15 right general direction.

16 MS. NETTER: That's sort of what I'm --

17 MR. HUSSEY: I don't see -- I didn't see
18 anything. And even -- I did go through most of the
19 neighborhood stuff. I didn't see anything there that I
20 thought really was going to upset the entire draft.

21 MS. NETTER: That's kind of the stuff I'm
22 looking for. Or, oh, my God, you absolutely missed
23 these 17 different -- I mean, it's not just me. It's
24 all of us.

1 MR. ZUROFF: I think you have a fine skeleton.

2 MR. JESSE GELLER: That was Mark Zuroff,
3 folks.

4 I hear your comments. The only one that I
5 think -- in which I disagree with you -- and hopefully
6 Mr. Schwartz will not be offended by this comment --
7 but I don't think that we would be prejudiced by a
8 discussion, notwithstanding that we have not seen his
9 comments. So that's -- I agree with -- in general with
10 everything else you gentlemen have said, but I think we
11 are capable of having a discussion.

12 MR. SCHWARTZ: I'll withdraw the use of the
13 word "prejudiced."

14 What I really meant to say, in all
15 seriousness, is I don't think you can have, really, a
16 complete informed discussion, in my opinion, my
17 judgment, without considering some of the issues that
18 we've raised. And we totally understand that you
19 haven't had that --

20 MR. JESSE GELLER: And as I think Mr. Hussey
21 has said and Mr. Book has said and Mr. Zuroff has said,
22 I think that works equally true of comments we've
23 received from the neighborhood too.

24 MS. NETTER: Let me add one thing, which is

1 just for the record. The intention here was -- because
2 of the complexity of this project and the voluminous
3 input into it from the community, the various boards,
4 the consultants -- that we were trying -- because that
5 40 days is going to go extremely quickly -- to expedite
6 the process as much as possible. So I hear your
7 concerns, and we'll just move forward as best we can.

8 MR. JESSE GELLER: Any other agenda items for
9 this evening?

10 Mr. Hussey, I know you want to say something.

11 MR. HUSSEY: No.

12 MR. JESSE GELLER: Okay. So our next hearing
13 will be January 5, 2015 where we pick up a discussion
14 of the conditions. And at that point, hopefully
15 everybody will have reviewed all of the materials.

16 Edie Netter has something to say.

17 MS. NETTER: Let's just play this out. Let's
18 assume the hearing closes on the 5th. I just wanted to
19 generally have a sense -- don't fall off your seat, but
20 I'm thinking you might need to meet, just on this,
21 probably every week.

22 MR. HUSSEY: I would assume so myself.

23 MR. JESSE GELLER: You mean until we retire?

24 MS. NETTER: No. But I'm checking this out

1 because in making this decision, you're also saying
2 we're going to get this done to your satisfaction in 40
3 days.

4 MR. BOOK: I assumed we would be meeting every
5 week in the 40-day period.

6 MR. JESSE GELLER: Mr. Zuroff, you look shell
7 shocked.

8 MR. ZUROFF: No. 40 days and 40 nights.

9 MR. JESSE GELLER: I want to wish everyone a
10 happy New Year and happy holiday.

11 MR. GLADSTONE: I have a process suggestion.

12 MR. JESSE GELLER: Suggestion or question?

13 MR. GLADSTONE: Suggestion. It's going to go
14 to the staff, though.

15 Perhaps -- now, I know that when I submitted
16 my written comments, I did it on a numbered paragraph-
17 by-paragraph basis. Assuming others did similarly,
18 perhaps it would be useful if the staff would compile a
19 paragraph-by-paragraph compilation of the comments so
20 you don't just have running comments from each person,
21 but for each item that has a comment, that you have all
22 the comments in one place.

23 MS. STEINFELD: That's in process on an
24 ongoing basis.

1 MR. GLADSTONE: Fabulous. I hope you're
2 describing them, these other comments.

3 MR. JESSE GELLER: Thank you, Mr. Gladstone.
4 Thank you, everyone.

5 (Proceedings suspended at 8:28 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 therein set forth and
6 that the foregoing is a true and correct transcript of
7 my shorthand notes so taken.

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

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

13 Dated this 5th day of January, 2015.

14 _____

15 Kristen Krakofsky, Notary Public

16 My commission expires November 3, 2017.

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