

May 9, 2011

BY HAND

Littleton Board of Selectmen
Littleton Town Offices
37 Shattuck St.
PO Box 1305
Littleton, MA 01460

Re: Proposed Chapter 40B Project at 15 Great Road, Littleton

Dear Members of the Board of Selectmen:

This firm represents a group of neighbors and abutters to a proposed 200-unit apartment complex off Great Road and Grist Mill Road in Littleton, sponsored by Omni Properties, LLC (“Omni” and the “Project”). This Project is before the Board of Selectmen pursuant to the public comment provisions of 760 CMR 56.04(3); the Project is currently pending review by MassDevelopment, a quasi-state agency, under an application by Omni for “project eligibility” pursuant to General Laws Chapter 40B and 760 CMR 56.04. The purpose of this comment letter is to bring certain jurisdictional and design concerns to your attention, and to request that you ask MassDevelopment to deny Omni’s project eligibility application.

A. Jurisdictional Issues

1. *Site Control - §56.04(1)(c)*

Every applicant for a comprehensive permit under Chapter 40B must demonstrate that it has the legal right to acquire title to the project site. This is referred to as “site control,” and such evidence is a prerequisite to obtaining project eligibility. Omni’s evidence of site control is a purchase and sale agreement between one entity it controls (Fifteen Great Road, LLC) and a second entity it controls (Fifteen Great Road II, LLC), for consideration of ten dollars. The current record title owner of the Project site is Mayel Development, Inc., a Canadian corporation that appears to be owned by Thomas Ellis of Wenham, MA and Betty Ellis of Gloucester, MA. A search of the records of Middlesex South District Registry of Deeds fails to reveal any instruments of title held by either of Omni’s entities. In fact, these entities do not legally exist according to the Secretary of the Commonwealth’s website.

On this ground alone, MassDevelopment should deny project eligibility. Omni cannot get past first base without showing that it has some legal right to acquire the Project site from Mayel Development, Inc.. Furthermore, MassDevelopment cannot grant a project eligibility determination to an entity that does not legally exist.

2. *General Housing Unit Minimum Threshold*

Under Chapter 40B, Section 20, a decision to deny a comprehensive permit application is deemed “consistent with local needs” and is therefore immune from appeal if at least 10% of the municipality’s housing stock is already qualified as “low or moderate income housing” as defined by the statute. In a letter dated May 6, 2011, your Town Counsel advised that the Town has not met the 10% threshold according to the Department of Housing and Community Development (“DHCD”), but noted that he was studying whether at least one development excluded from the Town’s subsidized housing inventory (“SHI”) should actually be on the inventory (Littleton Green – 24 affordable units).

He also referenced a Chapter 40B development originally named “Village on the Common,” which was issued a permit in 2006, was dormant for 4 years, and was modified by a new owner with the approval of the Zoning Board of Appeals on March 11, 2011, re-styled as “Kimball Farm Village on the Common.” In his letter, Town Counsel states that adding this project to the SHI would be premature until occupancy permits are issued for the affordable units in the project. The regulation governing the counting of units on the SHI is far from clear on this question, and a reasonable interpretation of this regulation would count these units on the SHI as soon as building permits are re-issued. See, 760 CMR 56.03(2). If this project and the Littleton Green project were on the SHI, the Town would surpass the 10% threshold under Chapter 40B.¹ While this milestone does not preclude a developer from obtaining project eligibility, or from obtaining a comprehensive permit, it dramatically changes the standards of review.

B. *Design Issues/Concerns*

Chapter 40B project eligibility regulations require subsidizing agencies to consider whether the project design is “appropriate for the site on which it is located, taking into consideration factors that may include... building massing, topography, environmental resources, and integration into existing development patterns.” 760 CMR 56.04(4)(c). These concepts are discussed in greater detail in a new document published by DHCD entitled “Handbook: Approach to Chapter 40B Design Reviews,” dated January, 2011. MassDevelopment is a collaborator on these guidelines, which are intended to provide appropriateness standards for Chapter 40B projects. As a co-sponsor, MassDevelopment is expected to apply these standards during the project eligibility review stage.

¹ Other affordable units in town are eligible for immediate inclusion in the SHI, and presumably will be added soon.

1. *Environmental Issues*

Omni is proposing a significant amount of work within the 100-foot jurisdictional buffer zone to bordering vegetated wetlands on the Project Site. It appears that the wetland boundaries shown on the conceptual plans have not yet been approved by the Conservation Commission; Omni references the need to file an application for delineation approval.

Conspicuously missing from Omni's application materials is any reference to the fact that, according to the latest information available from MassGIS, a large portion of the Site is within the mapped Priority Habitat area for rare species under the Natural Heritage program of the state Endangered Species Act ("MESA"). Work within a mapped priority habitat requires a state "taking" permit from MassWildlife. Omni is familiar with this requirement since it had to file with MassWildlife when it developed the "Laurel Hill" rental development (now owned by Avalon Bay) in nearby Nagog Park. The same rare species habitat is at issue here.

The Project will also require at least some wetland alteration, and will undoubtedly alter the hydrologic regime of the Site and abutting land given the proposed discharge of treated wastewater from the proposed treatment plant. Notably, the sole leaching field for this plant is approximately 75 feet from a proposed stormwater basin.² Department of Environmental Protection ("DEP") regulations require a minimum 50-foot setback between septic systems and infiltration basins. If this basin will be an *infiltration* basin, it is perilously close to the septic system, which is designed to infiltrate 55,000 gallons of water per day into the ground. The DEP standard is generic, and applies to all systems regardless of size – from a septic system serving one house (330 gpd) to a project of this size or greater. A hydrogeologic study is absolutely necessary given the presumed high groundwater levels (due to proximate wetlands) to ensure that the septic system and drainage systems will be able to store the anticipated volume of water generated by this Project.

Further, the conceptual plans do not provide any stormwater management details (all that is shown are outlines of potential locations of detention ponds). This is a critical component of any project of this size, and is especially important given the proximity of wetlands and presumed high water table. Omni will have to comply with the most recent changes to the state stormwater standards, adopted under the Wetland Protection Act.

2. *Planning Concerns*

The two easternmost buildings are aligned such that they face the back yards of the abutting properties on Grist Mill Road. A large parking lot is proposed between those buildings and the abutters. Another large parking lot is just 25 feet off the property line of an abutter on Grist Mill Road. These are unfortunate examples of haphazard, thoughtless site design, failing to take into account the surrounding land uses.

² The conceptual plan lacks a scale, and therefore the setback measurements in this memo are merely estimates.

There are some relatively steep grade changes on the Site, particularly in the location of the roadway and buildings. This will require significant cuts and fills and large retaining walls, which will dramatically alter the topography of the Site. It is difficult to imagine how Omni can represent with a straight face that this Project will “integrate with the surrounding land uses.” The size and scale of the Project, and its inevitable physical alteration of the landscape, is completely incongruous with the abutting single-family neighborhood on Grist Mill Road.

The Developer has stated the Project will trigger review under the Massachusetts Environmental Policy Act (“MEPA”). Segmentation of development is prohibited under MEPA rules, yet Omni has not disclosed its intentions for the remainder of the Project Site, most of which lies within the mapped priority habitat of rare species.

Finally, town staff (planning, fire) has already raised concerns with the adequacy of sight distances on Great Road at the Project driveway’s entrance. This critical public safety issue should be address up front, before any more time and money is invested by interested parties and stakeholders on a Project that could be a non-starter.

3. *Vehicular Access*

The property description attached to the Purchase and Sale Agreement (included in the project eligibility application) suggests that Omni has the legal right and easement to access the Site from Nagog Park Drive. My research on this is inconclusive, but there are recorded plans indicating access easements from eastern section of the Site (“Parcel 2A”) to Nagog Park Drive. See, Plan 167 of 1989 and Plan 1349 of 2003. These easement areas are also marked on the Developer’s conceptual 4-lot subdivision plan, submitted with its project eligibility application. If Omni truly needs secondary access for public safety purposes (which we question), using Nagog Park Drive would be significantly less intrusive on the Grist Mill Road neighborhood, and less intrusive on the mapped rare species habitat. It would also significantly reduce road construction costs.

If MassDevelopment approves this application, it should eliminate any access to the Site from Grist Mill Road.

C. **Conclusion**

The neighbors have only begun to review the details of this proposed Project, but have learned enough to know that it does not comport with DHCD’s design appropriateness standards, and suffers from various legal and design maladies. We ask that the selectmen absorb all of the constructive comments from municipal staff and neighbors and request that MassDevelopment deny project eligibility approval for this Project. Perhaps a smaller, less intrusively-designed project could be suitable on this site; the flaws with this application, however, vastly outweigh any perceived benefit in providing low or moderate income housing.

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Thank you for the opportunity to comment.

Very truly yours,



Daniel C. Hill

Enc. (mapped priority habitat)
cc: Omni Properties, LLC
Clients

