

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
January 31, 2008**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; Eric Levitt, Member; Carol Zimmerman, Associate Member; John Oliveiri, Jr., Associate Member

Others present:

Rita Garbitt, Town Administrator; Nancy Yeatts, Chuck Evirs, and Derek Maksy, Board of Selectmen; David Varga, BSC Engineering; Richard Heaton, H & H Associates; Atty. Laura Pawle, Atty. Robert Mather, Atty. Peter Freeman, Ed Fish, and F. Will were also present

Regular Meeting:

Mr. Foster opened the regular meeting at 7:30 p.m.

Roll called. Bills signed.

LeBaron Residential LLC hearing -continued:

Mr. Foster reopened the LeBaron Residential LLC hearing at 7:31. Mr. Foster asked that the key points in the modification be outlined.

Atty. Freeman responded that the present requirement calls for ten affordable units in the first Phase. They are asking that they be able to modify the permit to have no more than the six already built or under construction. The second request is that they be allowed to catch up in Phase II, a 56-unit, 100% affordable rent development plan which will be presented in detail tonight.

Mr. Foster said that it appeared that there was also some confusion regarding the possibility of the age restriction being lifted. Atty. Freeman said that the proposed building is still intended to be a 55 and over age restricted project. An abutter present noted that they were under the impression that the age for the apartments was 62. Atty. Freeman said that some age restricted units are 62 but this one would be 55 and over.

Atty. Mather said that at the last meeting they had been charged to do the following five things by the Board: show a detailed plan of Phase I, present a plan to the Board of Selectmen of the Phase II proposal, to check with the DHCD to see if they could still get

credit for the units in Phase I if they were postponed to Phase II, and meet with the residents. The Board would review the financial data. Atty. Friedman said that he had spoken with DHCD and they did not agree and would not allow the units not built to count.

Mr. Foster asked Mr. Varga if he had anything significant to discuss. Mr. Varga replied that there are some ongoing things about site maintenance but he did not feel it was anything super critical at this point.

Mr. Heaton, of H & H Associates, then began a presentation on his financial review. Mr. Heaton said that he would be covering three areas, the market study, the LeBaron Finances, and the Rental Project. He advised that there was a market study done by Cushman and Wakefield of the Boston area. It was weak in that it lacked specificity and conclusions for the Lakeville market. He advised that between the four towns of Lakeville, Middleboro, Rochester, and Freetown there are 15,000 housing units and 764 affordable units. There are 1,500 units that are planned to be produced within the four communities that are either permitted or in the process. That is a significant increase of units that will become available. However, LeBaron is a unique project and it attracts a different clientele.

Mr. Heaton advised at the last meeting the applicant had provided them with three scenarios. The first, the way the project is running right now, with 34 market and 6 affordable units, it has a debt of \$3.7 million dollars. The second if they build out to 45 market units and 17 affordable units, the debt increases to \$3.9 million dollars. The third proposal to go to 56 market units with 6 affordable units would reduce the debt to \$1.9 million dollars. The Profit and Loss Statement shows the project at a loss of -25%. If they build out to the third scenario the loss would be at -9%.

Mr. Heaton has looked at some of the key ratios to try to understand if the numbers presented were reasonable. The sales price is at approximately \$250 per square foot. Although some projects sell below that, he has accepted this price to be reasonable for this project. The marketing costs carried are at about 1.3%. These typically run at about 4%. The group that is marketing, Peabody Properties, has actually turned back sales commission because the project is under funded. The construction costs did concern him. These are at \$190 a square foot where you could expect them to be between \$120 and \$100. He found that when he looked at the unit prices, the cost to build the units was \$431,000 and they were sold at \$355,000 which is a loss of \$76,000. The affordable units were sold at \$155,000 a loss of \$276,000 per unit.

Mr. Heaton advised that 66% of the costs are with related entities. These are entities related to the project, such as business partners, family members, etc. \$11 million dollars was spent on related entities. This always raises a red flag with the Inspector General because there is an opportunity for 'games to be played.' He did some testing on these expenses and he did not find that this was the case here. All these expenses seem to be reasonable. The applicant has offered to open up the books on these related entities but he did not think that was necessary. He also did not feel that there had been excessive

overhead or profit that had been taken. The project has also incurred huge infrastructure costs which should not be the case for the balance of the project.

Mr. Varga said that once they had two more units beyond Phase I, the requirements of the groundwater discharge permit would be triggered which means that they would have to construct the on-site treatment plant and also double the size of the leaching field. Mr. Foster asked if any of the duplex condos would ever be in the black as it appeared that infrastructure costs will continue to be incurred. Mr. Fish replied that they anticipated being able to use a bio-clear system and not having to build a new treatment plant. Their engineering firm says that this will work. When they go beyond the 56 units they will have to build a million dollar plant. Their hope is that by that time, the market will have turned around so that they can afford to do that. They want to keep the viability of the project as well as to create something the Town does not have. They are in a bad fiscal position but they are taking the risk to go forward.

Mr. Heaton said that in regards to the rental project. Depending on how they work this with DHCD, the Town did have the opportunity to get to their 10% number. The low income tax credit is an idea that has a lot of merit. It is a method to fund a significant portion of the construction costs. The developer could receive a considerable amount of funds that do not have to be repaid. There are certain requirements that are imposed such as the percentage of units that must be offered below the AMI. Mr. Heaton then briefly described how the program worked. The process is very competitive and competitions are usually held twice a year. Community support is critical to the process. Mr. Fish wanted to note that they have never had to submit an application twice. They are known as a developer that does what they say they are going to do.

Mr. Heaton said that the following were the four alternatives that they could consider: they could deny the request, they could defer action for six months, they could approve and defer the affordable units to a later phase or they could approve the request for rental units. Mr. Foster said that they have to keep in mind that they have to act in a way to guarantee the success of the project, and also in the interests of the residents in the project.

Mr. Foster said that at this point he would like the input of the Selectmen. Ms. Yeatts replied that they did like what they saw in Mashpee and that although there are still points that will need to be ironed out, they did like the concept and they would in fact give a letter in support of the concept. They did feel that the affordable status should remain in perpetuity. Mr. Maksy said that he liked the idea that all the apartments were one bedroom and there was a need for that. He wanted to make sure that there was a local preference for rentals. Mr. Evirs agreed. He noted that if the project was built out as expected that would be an additional \$1 million in revenue. He felt that they owed it to the citizens to move this along in order to generate that revenue.

Atty. Mather then displayed what the proposal would look like. There will be one building with 56 units, all of which would be affordable for age 55+. If they are allowed to proceed as requested, they will have finished Phase I with only six affordable units

which gives them only 9.7% affordable units. This would increase to 62 affordable units or 53% with the completion of the next proposed phase. The units are very attractive. There are already 27 on the waiting list for Mashpee, so they don't expect to have a problem renting them. Mr. Foster asked if they expected this project to be economically viable. Mr. Fish replied that it would and they will propose to be the non-profit and with that they will get a tremendous amount of resources. Mr. Foster said that he would like some assurance that if they agree to go in this direction with this project that the developer, even in these times, would find it viable. He thought this was very important and that they would not want them to be back here in a year. Atty. Freeman said that the only way this can get done is with tax credits. To keep the rents low and keep it affordable, you need that subsidy.

Mr. Foster asked how did they see the project continuing? Atty. Mather said that right now they are not looking beyond this but it would depend on the economy at that time. They may be able to go back to the original Phase II or they may decide they want to do another project like this, but it is difficult for them to commit for the whole remaining part of the project. He imagines they will do this project and then come back to the Board for the proposal of where they go from there. Atty. Mather said that for this project in order to qualify for the tax credit program, there would be 50 units that would rent below the 60% of the AMI or for \$828 which would include all utilities and 6 of those units that qualify for the program would rent below 30% of the AMI and that rent would be \$414 including all utilities.

Atty. Mather then displayed a site plan for the project and where the proposed Phase II would be. It is separate from the other community. Mr. Foster asked what they thought might be reasonable for the next Phase. Mr. Fish thought the assisted listing was still a possibility or some form of duplex or condo. It would depend on the economy although he did think that there were already a lot of duplexes. Atty. Mather said that they did meet with the residents who had formulated some questions which were included in the packet distributed.

Mr. Foster said that one issue that has come up is the issue of if the affordable units are postponed and then never get built. He would suggest some kind of guarantee so that would not happen. Mr. Heaton said that there is a possibility to post a bond or put money in escrow. Atty. Pawle said that she had done some research and that the ZBA does not have the authority to hold a bond. Setting up an escrow account would be complex and might also need Town Meeting approval. Atty. Mather felt that this would impose a significant financial burden on the project. He understood the Board's concern but this project is very viable and has already been done.

Mr. Foster asked if the Board had any comments. Mr. Curtis thought they had done a good job. Mr. Oliveiri asked what they were going to do with the rest of Phase I at this point. Atty. Mather replied that when the units are sold, they will be built. They cannot market them right now because they don't know if they are affordable or market units. Mr. Foster noted that at beginning of the project there had been some miscommunication in regards to the affordable units, but if this project is approved they would move right to

building affordables. Mr. Levitt asked where they were planning to market these units. Mr. Fish replied first in Lakeville and then it would be extended to local Towns. Mr. Foster then opened up the questioning to residents and others that were present.

Mr. Charlie Buckley of 13 Sandy Court asked if the affordable units would ever be given over to Lakeville to manage as a public housing plan. Mr. Heaton replied the way the tax credits are set up, the investors own the project for the first ten years, after that the project is generally turned over to the local community. Mr. Fish said that in Mashpee they agreed to train the staff for two years and then turn it over to the local Housing Authority. This can also be done if Lakeville forms a Housing Authority. Atty. Mather said they will do it whatever way the Town wants.

Mr. Varga said that he did have an issue with the septic system. DEP has been concerned in the past about licensing this type of facility because first, having a proper maintenance entity and also having some type of ownership that has powers. He feels this is a potential concern. Mr. Fish replied that they did feel that they could work with DEP on this issue. After further discussion, Mr. Foster said that the concept sounds good and they could work out the details when they got to that point.

Mr. Buckley asked what would trigger the construction of the waster water treatment plant. Mr. Fish replied that the new building would have its own system. It would be partially tied into the septic field that is there now and along with the BioClear system which would be brand new. It would be designed up to the latest engineering standards. Mr. Buckley asked what would happen if the system failed. Atty. Freeman responded that although he was not familiar with the documents, because of the original proposal of the project with its mixture of units, there must be some mechanism within the documents that provides for a legal and pragmatically fair prorating rationing of the applicable costs.

Mr. Thomas Carey of 9 Sandy Circle asked when this treatment plant is built what happens and who maintains it. Mr. Varga replied that was one of the reasons you have a condominium association as they would be responsible. In terms of what happens with the waste, you separate the solids from the liquids and treat them to reduce the content. You end up with a sludge material that is trucked off of the site. The liquid is recharged into the ground.

There was a question concerning the completion of Phase I. Atty. Mather said that they are trying to get that permission to complete Phase I with all market units. Mr. Foster wanted to clarify that they were building all the units and not leaving empty lots. Atty. Mather said that it is their intention to complete the remaining 20 units with all market units. They expect to be able to sell and market the units even if it is at a slow pace.

Mr. Larry Gentailucci of 12 Bogey Way asked if the treatment plant was to be built at the completion of the 20 units. Atty. Mather responded that the original permit says that will go into affect when they hit unit #63. Ms. Lynn Buckley of 13 Sandy Circle asked about the parking for the building. Mr. Fish said that they have provided one space per unit, or

56 spaces, but what they have done in Mashpee is to have an overflow parking area. There is room for more parking if necessary but he would prefer to see green rather than blacktop. It was also asked if the issue of some units not having driveways would be addressed. Mr. Fish said that had been addressed at the meeting and they would be happy to have the architect take a look at that.

It was asked if the Town took over the 56 unit building if it would remain a 55+. Ms. Yeatts said that it would. The access road was also discussed. Mr. Foster wanted to point out that the number of units in the development hadn't changed and ultimately there would have been the same amount of traffic. Ms. Yeatts advised that access was in the original agreement. Mr. Varga said that the other access was an emergency access. It is called for being graveled and gated and only accessible to emergency vehicles. Mr. Foster thought it was a good question to ask the developer to consider and explore on their behalf. Mr. Will said that it was suggested at the residents meeting last week that the access road be available for residents via a card reader. Mr. Foster said that it sounded like this was an important topic for the residents. He suggested that the developer and counsel look into it and come up with a reasonable solution.

Mr. Foster asked members if they felt they were ready to vote tonight. He said that if they decide to vote tonight they would at least hash out the structure and framework of the key elements. Atty. Pawle replied that if they vote the concept they would have 40 days and if that was not enough time they could get an extension in order to get the exact language.

Mr. Foster asked residents what they thought about this proposal. The residents responded that they were generally supportive. Mr. Foster said that they should list the key elements that would be in the modification. Atty. Mather said the first part of their request is to allow them to complete Phase I, the remaining 20 units, as all market units. The second would be to modify Phase II to be the 56 unit apartment over 55 rental building. They would be 100% affordable with local preference. The affordability will be in perpetuity.

Atty. Pawle asked if the Board wanted to allow the completion of Phase I from the date the modification is signed or contingent upon submission to DHCD for tax credits or approval by DHCD. Mr. Foster said that raises the question what if they build the market rate units and then they are unsuccessful in getting the tax credits. Atty. Mather replied that they would like to see it contingent upon submission to DHCD and they will continue to pursue that option until it is successful. Mr. Foster said that he would suggest that the build out of Phase I leave out the final six units, that way the space would still be there for the affordable units. Mr. Fish recommended that they continue to build but only leave five buildings un-built. In the worse case scenario, the affordables would all be built together in their own building.

Mr. Foster said that he would like a plan that lets them make progress toward the collective goal while they build as many market rates as they can. Maybe if it gets to that point and all that is left is affordables, they could then come back to them and get

authorization on a pair by pair basis. Mr. Foster asked Atty. Pawle to read back the first element. Atty. Pawle replied that it was to complete the remainder of Phase I with market units provided that the tax credit financing have been approved. Mr. Curtis clarified that wouldn't be right because they are attaching to that if they don't get the approval, they have to add those affordable units. Mr. Foster agreed that there is a detail to that first part that there is a proper sequence for the execution of the implementation of those remaining units in Phase I. Atty. Pawle stated that the modification should then be the next ten units may be market rates and the final ten units may be market units only if the tax credit financing has been approved and/or with Zoning Board of Appeals approval.

Atty. Pawle advised that in regards to Phase II, it will be modified so that it is a 56 unit apartment restricted in perpetuity for residents 55+, 100% affordable, and with local preference. The units will have one bedroom and the plan will be consistent with the Asher's Path plan submitted.

Mr. Foster thought that captured the needs of the developer as well as those of the Town. He asked if there was a motion to modify the Comprehensive Permit. Ms. Garbitt asked as a point of order if the hearing would first have to be closed. After discussion, it was agreed to vote on a concept tonight and then close the hearing at the February 21, 2008 meeting in case additional documents or plans needed to be submitted.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to approve the modification to the LeBaron Comprehensive Permit.

In regards to Phase I: The first of the ten units may be market rate units and the second of the remaining ten units must be affordable unless the Tax credit financing is approved or further modification by the Board is granted.

In regards to Phase II: It will now be a 56 unit apartment over 55 age restricted, rental building. Apartments will be 100% affordable with local preference. The affordability will be in perpetuity.

The **vote** was **unanimous for**.

Mr. Curtis made the motion, seconded by Mr. Levitt, to continue the LeBaron Residential LLC hearing until February 21, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

Mr. Curtis made the motion, seconded by Mr. Levitt, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 9:55.