

**SOUTH HADLEY PLANNING BOARD PUBLIC HEARING
ON SPECIAL PERMIT REQUEST AND FORM H PLAN**

BY RIVERCREST CONDOMINIUMS LLS

MINUTES OF JUNE 13, 2011

(As Approved on August 29, 2011)

Present: Joan Rosner, Chair; Mark Cavanaugh, Member; Helen Fantini, Member; Jeff Squire, Member; Melissa O'Brien, Member; Jeremy King, Associate Member; and Richard Harris, Town Planner

Ms. Rosner called the public hearing to order at 6:45p.m. She introduced the members of the Board, the Town Planner and explained the procedures for conducting the hearing. She also emphasized the importance of the public to voice their comments and questions but given the number of persons present, she encouraged speakers to keep their comments short and precise and to state their name and address before speaking.

Mr. Harris, noting that there had been articles and letters/emails regarding standards for review of this project, stated that the Board's focus is on the Standards for Special Permits as specified in the Zoning Bylaw.

Ms. Rosner commented that the Master Plan is a guide, a roadmap of sorts; but is not a regulation.

Mr. Cavanaugh read the notice of public hearing - the South Hadley Planning Board, in accordance with the provisions of Chapter 40-A, Section 11, Massachusetts General Laws, will hold a public hearing on Monday, June 13, 2011 at 6:45 p.m. in Room 204 of the Town Hall to discuss the application of Rivercrest Condominiums LLC, co Craig Authier; 1421 Granby Road; Chicopee, MA 01020 for a Special Permit under Section 5(D) and Section 9 of the Town's Zoning By-Law to develop a multi-family development consisting of thirty-one (31) residential dwelling units to be constructed in multiple buildings on the same parcel. Other aspects of the project include drainage, utilities, and parking on the subject property. The subject property is located on the southside of Ferry Street with the frontage located approximately 700 feet from Brockway Lane and identified on Assessor's Map Number # 47 as Parcel # 76.

Concomitant with this Special Permit application and pursuant to Section 6.00 of the Town's Subdivision Regulations, the applicant has also requested approval of plans For More Than One Building For Dwelling Purposes Per Lot.

Ms. Rosner noted that Mr. Jeremy King, Associate Member, will be participating in the public hearing since it involves a Special Permit; however, he will only participate in the voting if a member is unable to participate.

Ed Ryan, 6 Sycamore Parc stated that he is appearing as a private citizen as he is one of the partners in this proposed development. He introduced the other partners:

- Rich Marion
- Lee Marion
- Russell Marion
- Ray Authier
- Craig Authier

He also introduced two of the consultants on this project including George Boyle, Planning Consultant and Mark Reed, Engineer

George Boyle, 37 Dale Street, Planning Consultant, stated that he prepared the application for the Special Permit and will be speaking to the background materials for this application. He noted that planning for this project began over 1-1/2 years ago at a slow pace as the Planning Board was working towards completion of the Master Plan. Among the points, he noted were:

- They have held 9 meetings with various departments over the past year – there has been a lot of consultation
- They have reviewed and followed the new Special Permit filing instructions
- The Master Plan is advisory, they are still working under the existing Zoning Bylaw
- Extensive support documentation is included in the application submittal

George Boyle addressed the various issues and comments that have been made in news articles, letters, and emails:

1. Alleged inconsistency with the Master Plan
 - The Master Plan calls for a variety of housing alternatives and this proposed development will provide several types of housing at a price point that is affordable to more people
 - The proposed development is within an area which the Master Plan identifies as appropriate for multi-family
 - The proposed development is a form of “in-fill” development
 - The Master Plan calls for pedestrian connectivity – due to the development’s proximity to The Village Commons and existing sidewalks, the proposed development will provide pedestrian access for the residents
 - This proposed development will support the economic development objectives by increasing business opportunities for the residents of Rivercrest

- The proposed dwelling units will provide opportunities for existing homeowners to downsize their units while staying in South Hadley
 - The proposed development provides more open space than would be afforded if the property were developed as single-family homes
 - The proposed development is directly in support of the Recommended Action 2-2-4 of the Land Use chapter of the Master Plan as this falls within one of the “Potential Focus Areas”
2. Is the development excessively dense? He noted that this development is proposed to be 2.9 dwellings per acre which is less than nearly all of the other multifamily developments in South Hadley and far less than the nearby Center Edge condominiums at 8.2 dwellings per acre.
 3. Excessive traffic. The proposed development will not adversely impact the traffic on Ferry Street. According to the data from the Institute for Traffic Engineers (ITE), the peak hour trip generation for this development is estimated at 0.52 trips per dwelling. This translates into 1 trip in/out of the development every 4 minutes during the peak periods of 7 a.m. to 8 a.m. and 5 p.m. to 6 p.m.
 4. Wetlands impacts. This issue is being reviewed by the Conservation Commission
 5. Ferry Street resembles the rural sections of Route 47. He expressed disagreement with this assertion and noted that within 300 yards of this site are:
 - The intersection of Route 47 which includes an area in the Business A zoning district
 - A school, church, professional business
 - 2 and 3 family buildings
 6. Waiver? The application does not request a waiver from the Zoning Bylaw. It does request a waiver from some of the Subdivision Requirements including:
 - Sidewalks. He explained:
 - that they would like to reduce the impervious surface,
 - they recognize the concerns about the need for open space
 - the street is fairly short and not a through street
 - if a sidewalk is required, they would like to have it limited to one side
 - Length of dead-end roadway. He explained
 - This has been discussed with the police and fire chiefs and they have not expressed any concerns regarding public safety
 - Conservation of resources will be enhanced
 - Required configuration of the roadway limits their options
 7. Impact on owner of horses on adjacent property. This proposed development will have no impact unless the keeping of the horses is not in accordance with the Town requirements

George Boyle reviewed the various departmental comments. He noted that most of the comments did not require any changes to the plans or had already been addressed in the plans.

Mark Reed, Heritage Engineers, using a copy of the plans which had been submitted with the application, reviewed the project site and project elements. Among the points, he noted were:

- Locations of wetlands, streams, and topography and how they would be impacted by the project
- The highpoint of the site is on Ferry Street (approximately 212 feet) and the site drops to 185 feet toward the southeast portion of the rear of the property
- Locations of existing houses on adjoining properties
- The access way is proposed to be 22 feet – this lessens the impervious surface from the 24 feet required of a typical subdivision
- Locations of proposed stormwater management structures and the detention basin
- While some work within the 50 foot “no disturbance zone” and the jurisdictional 100 foot buffer is proposed, they are working with the Conservation Commission in the permitting process
- Several different types of residential structures are proposed including some two-story but predominately one-story structures
- Details on paving (sheet 4 of the plans)
- How the stormwater collection system and stormceptor will work to meet the stormwater management requirements
- The dwellings will be served by underground utilities including the municipal sewer, district water, electric, and gas services
- A force main is required; therefore, a sewer ejector system will be used
- Nine visitor parking spaces along the access way are proposed – in addition to a garage and driveway parking spaces for each dwelling (some units will have one car garages with one space in the driveway while others units will have two car garages with space for two vehicles in the driveway)
- A central mail kiosk is proposed
- The site grading will be minimized
- The Conservation Commission is having the stormwater management plan reviewed under a “peer review” process
- Construction detail sheets
- A landscaping plan was prepared by William A. Cannon (a registered landscape architect). Detailed unit landscaping plans will be developed including screening plans
- While the applicant is proposing 31 dwellings, they considered alternatives including a 4 lot subdivision and more multi-family dwellings; however, this plan seemed to be the most feasible and appropriate

Mr. Harris noted that the Town had also received comments from the Tree Warden and provided a copy to the applicants.

Mr. Cavanaugh queried as to how much of the open space is actually developable. Mark Reed commented that the previous plan had more units right off of Ferry Street including more “connecting units”. This plan has more single-level units than previous proposals. George Boyle stated that the single-family subdivision envisioned 5.9 developed acres

with less than 2 acres in open space and none of the open space would be held in common.

Mr. Cavanaugh questioned the impacts of the project and noted that the open space appears to be the undevelopable portion of the site.

Ms. Fantini expressed caution about equating open space with undevelopable land. She noted that the Master Plan provides some guidance as to what is meant by "open space".

A question was raised about the peer review. Mark Reed indicated that Greg Newman was doing the peer review. Mr. Harris commented that the Town lacked a Town Engineer when the application was submitted, therefore, the Town needs to rely on the peer review.

Mr. Squire inquired about the photometrics of the project. Mark Reed stated that the plan does not propose any street lights; rather, there will be only "house mounted" lights.

Mr. Cavanaugh asked about the retention of existing trees. Mark Reed responded that some large trees exist around the southside buildings. But, many of the trees are storm-damaged. Therefore, the plan proposes many new plantings. Trees within the "limits of work" must come down.

Ms. Fantini requested that the proposed grading and "buffers" be described. Mark Reed, referencing the project plans, reviewed the proposed cuts and noted that they are not proposing much fill. The grading will not "touch" the "ravines" on the southside of the site. Fill will be used to maintain a separation from the seasonal high water table in some cases. They plan to recharge all stormwater on-site. The detention basin will be a "dry bottom" basin with a 4:1 slope. With such a side slope, the basin requires a larger footprint. As they proceed through the Conservation Commission's permitting process, the wetland boundaries may change from what is currently depicted on the plans.

Ms. Rosner queried about the landscaping behind the dwellings. She specifically asked about areas of "existing" vegetation. Mark Reed distributed an orthophoto of the area and indicated there will be landscaping on both sides of the buildings.

Mr. Harris inquired if the plans being used for the presentation are the same as the plans submitted with the application. Mark Reed responded in the affirmative and stated the plans used in the displays are "identical" to those submitted with the application.

Mark Reed stated that they could change the driveway orientation for the structure abutting Ferry Street.

Ms. Rosner noted that the proposed units have front facing garages. However, there is only one garage facing Ferry Street, the balance of the garages are side entry.

Mr. King inquired about snow removal plans. He noted the proximity of the access way to the property line.

Mark Reed indicated there will be at least 10 feet between the access way and the property line. If the snow fall or accumulation is heavy, then the snow would have to be removed from the site. Typical snow falls would require storage of snow in front of the units and around the cul-de-sac – it cannot be deposited into the wetlands.

Mr. King queried as to how children would access the school bus without any sidewalks and no street lights. Mark Reed stated that he is not familiar with the School Department's policies regarding busing of students.

Ray Authier, one of the partners Rivercrest Condominiums LLC, stated that he has built 6 or 7 such developments and marketed others. The target is the elderly. Of the 300 or so units he has been involved with, there were children in only 1 or 2. The proposed units are designed as 2 bedrooms with prices ranging from \$230,000 to \$270,000 depending on the size of the units. He noted that he sold 36 units in a Chicopee development in 18 months and at the Gardens of Wilbraham, they have had 11 units go "under deposit" in 7 months. The developers did not propose a 55+ aged community because the Planning Board indicated they wanted some townhouse units which could serve Mount Holyoke College.

Ms. Fantini inquired about the "affordable housing" option. Ray Authier stated that they did not choose to go Chapter 40B. He also commented that they could likely sell some of the townhouse units for less than \$230,000. These units would not be near the price of the Pine Grove dwellings.

Mr. King questioned the likelihood of seniors walking to the Village Commons. He suggested that they may have to drive.

George Boyle reiterated that they requested a waiver of the sidewalk requirement. Alternatively, he suggested that the Board only require a sidewalk on one side of the access way. He also noted that anyone would be driving in winter and over the past several years, the Town has been reducing the installation and use of street lights.

Mr. Cavanaugh asked about the construction schedule, project time frames. Ray Authier responded that they anticipate building 12 to 18 dwellings per year, but that number could increase.

Mr. Cavanaugh inquired about the time schedule for the site work. Lee Marion, one of the partners in Rivercrest Condominiums, LLC stated that they would plan to complete all of the site work in 12 to 18 months.

Mr. Squire noted that there were only 4 test pits made to evaluate the soils on the site. However, the results appear quite favorable. He inquired why the applicant did not make use of Low Impact Development methods.

Mark Reed stated that they did look into LID methods. All of the down spots will flow into infiltration basins. Additional runoff will flow into streets/swales. To do a rain garden, with pre-treatment, etc. would require more area and grading.

Mr. King asked about the lack of a pull off for the mail box kiosk. Mark Reed stated that the “visitor parking” is located in proximity to the mail boxes. While they had more visitor parking in previous drafts of the plan, they removed some of the parking in response to the Planning Board members’ earlier comments. He also noted that he does not have the Postal Service’ specifications for the kiosk at this time.

Ms. Fantini queried about the “calculations” of adjoining properties and the setback for the first unit. Mr. Harris stated that the first dwelling appears to be approximately 50 feet from Ferry Street. There was discussion as to the lack of information on the “lot coverage” and other statistics regarding the adjoining properties. Ms. Fantini indicated that she felt that the lot coverage and setbacks of adjoining properties was important for the Board to have in making a determination as to compatibility.

Joanne White, 36 Ferry Street, thanked the Board for the opportunity to speak on this matter. She indicated she had been chosen as a leader for “Friends of Ferry Street”. The “Friends” are aware of the proposed project and have come to an understanding of the Town’s Master Plan – they have fears that the Master Plan will be ignored. She described the area around this site as being “rural, single-family” and noted that the applicants have the option of developing the site as “single-family”. In regards to this development, the “Friends” have sent letters to the Master Plan Implementation Committee and the members of the Comprehensive Plan Advisory Committee. She commented that the Special Permit is a matter of discretion on the Board’s part.

Joanne White, 36 Ferry Street, referencing an orthophoto, noted the adjoining horse farm and paddock. Using a photograph she stated that there are no trees adjoining the subject site. She suggested that the development will be in her backyard.

Robert Lak, 31 Ferry Street, submitted a written statement (attached to the minutes) and noted a 25 foot area separating the proposed buildings from the abutters. He indicated that the applicants suggested that “with screening and buffer” only a few of the units will be visible; however, he will be able to view at least 35 feet into the property and will see a “wall of houses” which he stated would not be in character with the area. He also questioned who will be responsible for snow removal – the developers or the association.

George Boyle, representing the applicants, stated that there will be some conditions which extend beyond the development period which will be the association’s responsibility. Ms. Rosner noted that during construction and development, the applicants (or developer) will be responsible for managing the property.

Robert Lak, 31 Ferry Street, inquired as to the basis or need for the price range. George Boyle, representing the applicants, noted that the Master Plan identified a need for

housing in a variety of price ranges. However, he noted that the data used for the Master Plan’s housing needs was from 1990/2000 and needs to be updated.

Ms. Rosner asked about any proposed buffers. Mark Reed, representing the applicant, stated that there will be “lawn” from the buildings to the property line on the west side of the property.

Mary Purdy, 21 Ferry Street, stated that there are three persons (including herself) who would like to speak consecutively regarding this application.

Robert Salthouse, 20 The Knolls submitted a written statement (copy attached to the minutes). He summarized his statement and noted that, as a Town, we need to adhere to the Master Plan. He suggested that the Town needs to keep nature unchanged.

Mary Purdy, 21 Ferry Street, read and submitted a written statement (copy attached to the minutes). Among her comments, she noted that:

- The Route 47 corridor is a single-family/rural in character
- Development in this area needs to be subject to Design Review
- The applicants are proposing “31 look alike condo units”
- The Special Permit is, in effect, “spot zoning”
- The proposed development is contrary to several of the standards required for Special Permits

Judith Dyjach, 6 Ferry Street, stated that she observed the traffic on Ferry Street. Based on the numbers provided by the applicant in terms of how much traffic this development will generate, the proposed development would cause 67% increase in residential traffic. This increase in traffic will pose a direct risk and safety hazard to the community. Additionally, she suggested that, if the development were built, but the units not sold, the development would have a negative impact on the community. The proposed development is not compatible.

Ms. Rosner stated that she appreciates all the work that was put into the presentations. She noted that the Master Plan is just a guide and not a regulation.

Joe Dayall, 145 Pearl Street, submitted a written statement (copy attached to the minutes) and stated that he has 1 house on 3 acres. However, with 190 feet of frontage, he is not allowed to divide his property. Therefore, he suggested that with only 100 feet of frontage, the applicants should not be given approval for the number of units they are requesting. He pointed to the waivers being requested as examples of the benefits being given to the applicants and questioned how the community would benefit from such waivers – he suggested that the community would not benefit. He read from a prepared statement which was submitted for the record (a copy is attached to the minutes). In terms of traffic impacts, he noted that no study was undertaken of the vehicular access and its appropriateness.

Geri Brockway, 16 Jacobs Way, stated that it has become the “norm” for abutters to object to new developments but that the property owners should continue to pay taxes on their property. She suggested that the proposed development is the “preferable” plan for this property.

George _____, 97 Ferry Street, inquired as to the required frontage. Mr. Harris responded that there is not a minimum frontage requirement for a multifamily development in this zoning district.

George _____, 97 Ferry Street, asked for a review of the project plan and a clarification of the plan’s rationale. He also queried as to the cul-de-sac design requirements and expressed disagreement about the suggestion that there is business zoning on Route 47.

Marty Holms, 23 Ferry Street, submitted a written statement (copy attached to the minutes) and referred to photos (on a poster board) of structures in the area of the proposed development. He stated that abutters to the development are concerned about the development while persons, such as Geri Brockway, who do not live around it are supportive. He expressed opposition to the project plan. He noted that the applicants are requesting a Special Permit and requesting waivers, waivers, and waivers. Houses are close to the street. The proposed development is at least 0.2 miles from Route 47 and there is a sidewalk of sorts on Ferry Street. He indicated that he appreciates the developers will not make the sidewalk and walking along Ferry Street worse, he questioned why 31 dwellings and why any additional curb cut. In terms of traffic, he stated he made the following observations:

- Friday, June 10, 2011 from 2-3 p.m., 81 vehicles traveling towards Route 47 with 51 turning right; 87 vehicles entered Ferry Street from Route 47 with 53 coming from “the Center”
- The development is at the narrowest point of Ferry Street – residents fear about safety

Cheryl Lak, 31 Ferry Street, presented some photos of wetland vegetation which has been identified on the property. She noted that the Conservation Commission is reviewing the wetlands. She commented that the Town Tree Warden Mike Lamontagne has identified wetland vegetation at corner of adjoining property. There were 5 “indicator species” within a 25 foot radius of the property “where the proposed drive crosses”. Additionally, she noted there “skunk cabbage” in the area which is another indicator species.

Martha Terry, 25 Brainerd Street, stated that she was speaking as a private citizen. She commented that this proposed development is not compatible with the neighborhood as there is no multifamily in the neighborhood. She questioned “what is a neighborhood”? She submitted a written statement including an excerpt of a Citizens Planner Training Collaborative handbook (attached to the minutes).

Norma Stiles, 2 Ferry Street submitted a written statement (copy attached to the minutes) and stated that Ferry Street has celebrated its 175th birthday. There are 45 homes plus 9 on Brockway in this area. She commented that there are water table issues and the area cannot handle water from frozen ground, etc. The soils are “beach-like sand and clay”. This development would alter the character of the area and have adverse impacts on drainage and other systems. She asked the Board to “keep the Master Plan front and center”.

Ellie Klepacki, 34 Leahy Drive, referenced Marty Holmes’ photos and explained the historical context of why houses are close to the street.

Tricia Canavan, 3 Meadowood Drive, stated that she moved to the area from the Berkshires 6-1/2 years ago. She chose South Hadley because of its unique character and suggested that the Board should consider the cost and benefits of development. She commented that this development would change the community’s character.

Norman Moreau, 72 Ferry Street, stated that he is one of the walkers in the area. He questioned as to who is going to plow the snow. He also noted that he has observed a large walnut tree on the corner of the property and wildlife (such as deer and turkey) on the property. Water is being pumped into the sewer system due to the drainage issues and he has large puddles on his property.

Linda Brough, 34 Ferry Street, commented that when they were building their house, they hit water and had to raise the house. She stated that she has observed wildlife (including bear, fox, and turkey) on the property and expressed concern that the vista will be gone and replaced by houses.

Scott Brough, 34 Ferry Street, stated, based on the project plan, the remaining woods in the buffer would be on his property. He expressed concern that the drainage will not work due to the groundwater freezing in winter and that the snowplowing will result in the snow being pushed onto his property due to the lack of adequate space on the project site. Due to the water table, they had to raise their house by 18 inches and have to pump water from their house to the corner of their property – 125 feet. He wondered why the applicant’s consultant did not find the wetland plants on the area adjoining their property.

John Domian, Jr., 21 Ferry Street, submitted a written statement (copy attached to the minutes) and questioned the potential adverse impact of the property being developed but the units not being sold. He suggested that a market study should be provided to document the need for the project and noted that, as of June 12, 2011, there were 41 unsold condominium dwellings in South Hadley.

Kathleen King, 43 West Summit Street, noted that of the 17 dwellings at Center Edge, 5 are rental because owners cannot sell their existing dwellings.

Robert Lak, 31 Ferry Street, stated that he has lived in this location for 31 years and is a systems analyst. He expressed disappointment that Scott and Linda have ruined the view

he once had, but he expected the change in view as this was a single-family development. He inquired “what is the definition of neighborhood” and commented that it is “not the proposed condo development”. In terms of the Special Permit Standards stated in the Zoning Bylaw, he offered the following comments:

- Under the first standard, the development must “mesh” with the adjacent properties
- The neighborhood should be a walkable distance and noted that the walkable distance to the Center is 2,160 feet
- The definition of neighborhood in this instance doesn’t match how it is defined in the Master Plan
- This area is not part of the “Common Area”
- The concept of “mixed use” means the residential and commercial uses on the same property, not in the same general area
- Reviewed the density of development in the area and noted how the surrounding residential areas are at a much lower density than proposed for this development
- At present, there are 19 dwellings in the surrounding area on 111 acres of land
- Use of a buffer is of concern as it seems to keep things apart
- There is a transition from the Commons to Ferry Street, but this proposal does not fit into that transition
- Compared the concept of a subdivision versus the proposed development
- Compared “mixed use” zoning district and “mixed use” area in the 2004 Community Development Plan

Ray Authier, one of the partners in the development, stated that this development helps meet the “affordability” objectives in the Master Plan.

Ms. Rosner expressed disagreement with Mr. Authier’s comment in that the dwellings would not be “affordable” in terms of the moderate income levels.

Rudy Ternbach, 118 Ferry Street, queried about the Board’s Rules and Regulations governing Special Permits.

Mr. Harris suggested that this public hearing be continued.

George Boyle, representing the applicants, inquired as to the reasons for the continuation. Mr. Harris suggested that the length of the public hearing and the statements that have been submitted require review by the Board members and discussion of potential issues at a subsequent public hearing. However, based on what has been discussed so far, he and Ms. Fantini suggested that the public hearing needs to be continued for, at least the following:

- Status of stormwater management and peer review
- Potential impacts of changes in the wetlands boundaries and the questions about potential additional wetlands raised at this public hearing
- Need for lot coverage data for the surrounding properties

All members present indicated that they concurred with those items.

Motion - Mr. Cavanaugh moved and Mr. Squire seconded the motion to continue the public hearing to July 25, 2010 at 6:45 p.m. The Board voted **Five (5)** out of **Five (5)** members present in favor of the motion.

There being no further public comment, Ms. Rosner stated that the hearing will be continued. With concurrence from the other members, Ms. Rosner recessed the hearing at 10:30 p.m.

Respectfully submitted,

As Approved

Richard Harris, Recorder

Cheryl Pelland-Lak
Hi, my name is ... and I live at 31 Ferry Street.

Rec'd 6-13-11
at Pub. Hrg

The Friends of Ferry Street have requested that the Conservation Commission undergo a wetland survey based on plant species for the property under review for a special permit. This is obligatory under the Wetlands Protection Act. At our request, Michael Lamontagne, South Hadley's Tree Warden, came through and identified wetland species for us, on the property of Scott & Linda Brough. We request that the property be re-evaluated for determining wetland boundaries specifically based on plant species. under review

A casual inventory found the following wetland indicator species residing within a 25 foot radius of what may be the proposed roadway: (orange flag in photos)

(Common name, species and National wetland plant species indicator)

- Jewelweed (*Impatiens capensis* Meerb.) FACW
 - and/or... Pale Touch-me-not (*Impatiens pallida* Nutt.)
- Jack-in-the-pulpit (*Arisaema triphyllum*) FACW
- Red Maple (*Acer rubrum* L. var. *trilobum* Torr. & A. Gray ex K. Koch) FACW+
- spicebush (*Lindera benzoin*) FACW-
- American or white elm (*Ulmus americana*) FACW-

Additional wetland indicator species were seen in the greater area and closer examination should be helpful in determining if they also reside in the focal area.

- skunk cabbage (*Symplocarpus foetidus*) OBL

The following resources were used to aid in plant identification:

- <http://www.mass.gov/dep/water/laws/bvwmanua.pdf>
- <http://plants.usda.gov/java/>
- <http://www.fws.gov/pacific/ecoservices/habcon/pdf/1996%20National%20List.pdf>
- <http://www.fws.gov/pacific/ecoservices/habcon/pdf/1998%20National%20list.pdf>

From Robert — 20 The Knolls

Room 204
Selden

Red J
6-13-11
Public
Hrg

I. Introduction

Judith, Mary, and I are speaking formally for the Friends of Ferry Street right now and we respectfully reserve the opportunity to read individual personal statements later in the meeting.

The Friends of Ferry Street have assembled today to voice our opposition to the development, proposed by Mr. Ryan, Mr. Marion, and Mr. Authier, of Rivercrest Condominiums on Ferry Street. We do so in an effort to protect the interests of community members as they have been expressed, particularly in the Town's Master Plan. It is our hope that the information we communicate in today's hearing will help the Planning Board to make a decision that is consistent with South Hadley residents' vision for their community and for the future of our Town. Toward this end, we seek to identify for you today the ways in which this proposed development contradicts the Town's Master Plan, and has the potential to negatively impact the Town in a variety of ways, including, but not limited to, our economy, character, and safety.

Between 2007 and 2009, fifteen people appointed to a Comprehensive Plan Advisory Committee, hereafter referred to as CPAC, researched the opinions of South Hadley residents to create a Master Plan to guide future decision-making regarding development in our town. This endeavor was funded by \$100,000 of taxpayer money, which enabled CPAC to thoroughly and strategically pursue input in the form of *open public meetings and special workshops designed to solicit the opinions, feelings, ideas, visions, and observations of community members including residents, business leaders, regional planning representatives, and public officials* (Introduction 9). The resulting data was aggregated into a Master Plan endorsed at Town Meeting and by the Planning Board and adopted August 30, 2010. To quote from this community-generated and Town government-approved

plan, this document: *represents our community's best thinking about how we can preserve what we love about South Hadley; articulates South Hadley's critical long-term challenges and opportunities; provides a set of achievable goals to move South Hadley toward the future that residents would like to see; and invites South Hadley's citizens, organizations, and government to work together to improve the quality of life for current residents and for the next generation* (Introduction 1). In further establishing the significance of this document to today's hearing, we would point out that Land Use and Community Design Goal number 3 seeks *coordinated actions among Town boards, commissions, and governing bodies... that are consistent with the land use principles and vision statements in this plan* (2).

Rec'd from
Mary Purdy
6-13-11
at Public Hry

I. Introduction

II. This Proposal is Not Supported by the Master Plan

III. The Master Plan has Recommendations for New Development that Serve as Guidance until New By-Laws are Enacted

IV. This Special Permit is in Effect Spot-Zoning

V. This Proposal Does Not Fulfill All Mandatory Standards for Special Permits

VI. Other Concerns

VII. Conclusion

Dear Members of the Planning Board and Fellow South Hadley Residents,

We have prepared a formal document detailing our opposition to this Special Permit Application. The reading will be divided up among three members of the Friends of Ferry Street. In the interest of keeping our statement cohesive, we would ask that you allow our three presenters to speak in uninterrupted succession. Thank you.

I. Introduction

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The Friends of Ferry Street have assembled today to voice our opposition to the development, proposed by Mr. Ryan, Mr. Marion, and Mr. Authier, of Rivercrest Condominiums on Ferry Street. We do so in an effort to protect the interests of community members as they have been expressed, particularly in the Town's Master Plan. It is our hope that the information we communicate in today's hearing will help the Planning Board to make a decision that is consistent with South Hadley residents' vision for their community and for the future of our Town. Toward this end, we seek to identify for you today the ways in which this proposed development contradicts the Town's Master Plan, and has the potential to negatively impact the Town in a variety of ways, including, but not limited to, our economy, character, and safety.

Between 2007 and 2009, fifteen people appointed to a Comprehensive Plan Advisory Committee, hereafter referred to as CPAC, researched the opinions of South Hadley residents to create a Master Plan to guide future decision-making regarding development in our town. This endeavor was funded by \$100,000 of taxpayer money, which enabled CPAC to thoroughly and strategically pursue

input in the form of *open public meetings and special workshops designed to solicit the opinions, feelings, ideas, visions, and observations of community members including residents, business leaders, regional planning representatives, and public officials* (Introduction 9). The resulting data was aggregated into a Master Plan endorsed at Town Meeting and by the Planning Board and adopted August 30, 2010. To quote from this community-generated and Town government-approved plan, this document: *represents our community's best thinking about how we can preserve what we love about South Hadley; articulates South Hadley's critical long-term challenges and opportunities; provides a set of achievable goals to move South Hadley toward the future that residents would like to see; and invites South Hadley's citizens, organizations, and government to work together to improve the quality of life for current residents and for the next generation* (Introduction 1). In further establishing the significance of this document to today's hearing, we would point out that Land Use and Community Design Goal number 3 seeks *coordinated actions among Town boards, commissions, and governing bodies... that are consistent with the land use principles and vision statements in this plan* (2).

II. This Proposal is not Supported by The Master Plan

Given the importance accorded this Master Plan by the community, taxpayers, and governing bodies, we will demonstrate that the proposed development contradicts priorities, concerns, and land use recommendations identified and set forth in the Plan. We are aware that recommendations are just that—recommendations that are not yet by-laws. However, these recommendations are all paths to achieve the Vision the Plan has for the future of the town. Because a special permit is a discretionary matter, the Planning Board can and should use these recommendations to guide their judgment and decisions to ensure that they support and are congruent with the Plan.

First, the Ferry Street/Brockway Lane area is rural with single family homes, characteristics clearly recommended for preservation within the Plan.

This neighborhood is located within the Range, River, and Rural corridor. It is predominantly single-family residences in a quiet, well-established area, with several houses dating back to the early 1900s. The vast Bachelor Brook/Stony Brook Conservation area lies across the street. It includes land zoned as the agricultural district. Other parcels are zoned A-1, the strictest residential classification and character. Ferry Street, both by logical extension and by its inclusion in the Range, River, and Rural area (Introduction 7), falls within the outskirts of the quadrant identified as Route 47, Hadley to Town Common. This quadrant, as stated in the Master Plan, consists primarily of single-family residences.

The Plan precedes all recommendations in the Land Use and Community Design chapter with the following cautionary statement: *Land use policy is instrumental in guiding the type and location of development in South Hadley, while community design guidance helps ensure future development consistent with the Town's visions and identity throughout this planning process (LUCD 1).* The Plan also states that an *increase in residential development has raised many concerns about the long-term vision for the Town's land use (LUCD 5).* Ultimately, *through the*

public engagement process, research, and discussions involved in this Plan, a set of vision statements was developed covering each of South Hadley's greater land use districts or areas, with the purpose of articulating a desired future outcome for each area, as a guiding framework for the many policies, regulations, investments, and public and private decisions that shape the land use character of an area (LUCD 10). Furthermore, these vision statements also act as the guiding statements for upcoming evaluations of the Town's zoning bylaw, to help increase consistency between this Plan and the regulations that are instrumental to its implementation (LUCD 10).

According to the Plan, the vision statement for the Town Line, Route 47 to the Town Common, is that the *character of this corridor should remain in keeping with its current pattern of locating retail/professional businesses in the Village Commons and Town Common area, with the rest remaining rural with single-family residences (LUCD 11). This corridor plays a significant role in the scenic and rural identity of the Town and the preservation of this role is challenging, yet critical for the Town's identity (LUCD 11).* The Plan recommends that *creation of a design review process, with oversight along this corridor, can help preserve the scenic significance and rural identity of this corridor in light of future development (LUCD 12).*

Even if one argued that the Ferry Street/Brockway Lane area is part of the Village Commons, which undeniably it is not as demonstrated irrefutably by zoning district boundaries, there is a lack of consensus within that quadrant about future development. The Plan states that the Village Commons *could benefit from development of a community consensus as to the character of its further development (LUCD 19).* In fact, within Core Initiative 3, with regard to connecting South Hadley's centers including the Town Common, high-density development is not mentioned at all as a goal or strategy for the Village Commons (Introduction 6).

I have established that the Ferry Street/Brockway area is rural and populated by single family homes, and that these characteristics are supported by the Master Plan. The construction of 31 look-a-like condominium units on the limited

buildable acres of the parcel in question is undeniably incongruent with the character of Ferry Street/Brockway Lane. It represents an overwhelming deviation from the approximately 45 single-family homes on the street. 31 condominium units are hugely out of character on a parcel of land in an area zoned for about four single family houses. 31 condominiums represent an increase of 700% density over the number of single family homes for which the parcel is zoned and a 67% increase in residential dwellings in the area. The Plan emphasizes the significance of concerns regarding preservation of a neighborhood's character, stating *the importance of preserving community character has repeatedly been identified as a high priority* (LUCD 1). Furthermore, CPAC points out that *character of a neighborhood is not defined merely as the type of housing* but rather neighborhood character is also defined by, among other things, *the scale of the buildings* (LUCD 22). The Master Plan further details that *in recent years, an increasing share of the new developments has been in the form of multi-family housing* and that *while the density of the multi-family developments approved during recent years have generally been lower than was approved previously, they are often viewed as being out of character by abutters* (LUCD 22).

There are more recommendations and language in the Plan that the proposed development would further contradict

The Plan states that *throughout the public engagement process, there were various common themes raised by the public as critical concerns*, among which are that *development (particularly multi-family and commercial) appears haphazard and located in inappropriate places*, and that *development (particularly multi-family and commercial) is out of character with the surrounding neighborhood* (LUCD 1). More specifically, *suggestions have been made that these developments conflict with the surrounding architectural scale and styles, are out of scale, and generally are not in keeping with South Hadley's preferred historical and cultural character* (LUCD 20). In fact, the Plan states that *this last point may be the most significant when considering South Hadley's planning for its future and the Comprehensive Plan's Vision, as it is vital that new developments be of a style and character which is compatible and consistent with the neighborhood or*

corridor in which the development is occurring (LUCD 20.) This proposed condominium development is inconsistent with these recommendations and with this language.

The Plan does not endorse multi family development for the Ferry Street/Brockway Lane area of town, while it does recommend these projects for other sectors, more suited to such high-density residential units. One such area is *from the Route 202/33 intersection north*, for which the Plan states that *more dense multi-family housing development should be considered* (LUCD 16)

The Plan therefore targets certain areas of town as appropriate for multifamily housing. The Ferry Street/Brockway area is not mentioned at all. Of paramount importance is the statement that *newer housing still conform to the character of the neighborhood and be done in a manner which is compatible with the community's goals and objectives* (LUCD 22). Given the above designation of land use and resulting recommendations, the proposed development would neither conform to the character of the neighborhood, nor conform to the community's goals for this land area as expressed in the afore-mentioned vision statements.

**III. The Master Plan has recommendations for new development
before new by-laws are enacted**

The Plan has one objective in particular, Objective 2-2, with three Recommended Actions that pertain to multifamily development in the short term, that is prior to the adoption of new/revised regulatory tools, to ensure that development before new by laws are enacted do not compromise Plan goals. Indeed, the Plan recognizes that multifamily housing has been problematic in the past, and that it has been occurring haphazardly all over town with no quota on the number of units on a parcel in relation to the zoning for that parcel. These same facts appear to have been recognized in some way by the Planning Board, given that the Board is presently in the process of hiring a consultant with a taxpayer funded allocation of about \$30,000 to review and revise the current Zoning By-Laws. The first priority of the Request for Proposal for this consultant is multi-family housing - its intensity, density, architectural details, etc. The Planning Board has indicated at a past meeting that the exact location for multifamily developments in town will immediately follow the consultant's recommendations on the aforementioned. In light of these actions by the Planning Board, the following land use objectives and recommendations contained within the Master Plan are all the more pertinent to today's discussion.

Objective 2-2 states: Ensure that development taking place in the short term (prior to the adoption of new/revised regulatory tools) does not compromise Plan goals.

Recommended Action 2-2-1 states that *The Planning Board shall give priority consideration to the recommendations of the Plan with respect to new development (and redevelopment) in the Residence A-1, Residence A-2, Residence B, Residence C, and the Agricultural Districts (LUCD 29)*. This condominium project is new development in Residence A-1, and thus should be given priority consideration and increased scrutiny.

Recommended Action 2-2-2 offers the applicants the option of Flexible Development. They have stated that four single-family homes can be built on this parcel of land. Flexible Development will give the applicant up to 50% more units, or 6 total. The Friends of Ferry Street agree with this total as still being in character with Ferry Street/Brockway Lane. It should be noted that with Recommended Action 2-2-2 the Master Plan states that *flexible development or similar methods should be strongly encouraged in the single family neighborhoods within the Residence A-1, Residence A-2, Residence B, Residence C and Agricultural Districts (LUCD 29).*

Perhaps most important in terms of development and land use considerations is Recommended Action 2-2-4, which states that *the Planning Board shall encourage development of multi-family and mixed-use housing developments only in areas identified in the South Hadley Community Development Plan as "Potential Focus Areas" for such development and compatible with the Land Use Area Vision Statements as detailed in the Master Plan (LUCD 29).*

In point of fact, the map identifying Potential Focus Areas for Development was established in 2003, long before the creation of the Master Plan, and is thus both antiquated and superseded by the far more recent and representative Master Plan. In addition, the blue circle on the map around the Town Common area designates Mixed Use not multi-family and this mixed use would require zone changes in all the surrounding A1 and A2 areas to permit commercial uses there. No such zone changes are recommended in the Master Plan, nor does this proposed development include any retail or commercial uses. Moreover, the same radius circle designating Mixed Use is superimposed in the area of fields and McCray's Farm off of Alvord Street. This area is targeted for preservation in the Master Plan.

There are two red circles that specifically designate other areas of town as the potential focus areas for multi-family development. The Ferry Street/Brockway area is in neither of these red circles.

Please note also that the word “potential” is used when referring to focus areas for development. No formal consensus has been established as to whether mixed use or multi-family development is appropriate in any of these differently colored circles. Meanwhile the Master Plan and its land use visions and recommendations reflect a formally-approved consensus among citizens and officials regarding land development in South Hadley, including that which pertains to multi-family or high intensity housing and mixed-use land.

Note also that Recommended Action 2-2-4 uses the word “and” to require that multi-family housing developments be compatible with the land use area vision statements contained in the Master Plan. This proposed development would not be consistent with the vision statements.

The afore-mentioned recommended actions make it clear that CPAC and the Planning Board in writing the plan were well aware that requests for development would come before them before new Zoning By-Laws could be enacted. These recommendations provide clear interim guidance for location and a quota on the total number of units in a proposed development. We conclude this section on development and introduce our next section on zoning considerations with a reminder that:

Objective 3-2 of the Master Plan endorses Zoning that reflects the goals of the Comprehensive Plan, incorporates a public decision making process, and avoids piecemeal change (LUCD 31).

IV. This Special Permit is in effect Spot Zoning

The contradiction this proposed development poses to the Master Plan is not limited to the Plan's stipulations regarding land use, but extends to zoning concerns highlighted within the Plan. The Master Plan identifies *spot-zoning of parcels throughout town* (LUCD 1-2) as one of the common themes raised by the public as a critical concern regarding South Hadley's previous and current land use and community design patterns (LUCD 1-2). Spot zoning, as detailed in the Master Plan, *undermines a neighborhood and the community's character* (LUCD 9). Spot zoning and special permitting have the same end result of allowing development that does not fall within the zoning restrictions and character of a neighborhood, and thus for the purposes of our argument today, are essentially one and the same. Spot zoning, as stated in the Master Plan, *generally involves the application of a zoning classification to a particular parcel of land which is different from that of all the surrounding parcels and is not in keeping with the community's Plan* (LUCD 21). It is generally considered illegal and unsupported by courts (LUCD 21). More significantly, states The Plan, *such zoning undermines the credibility of the community's comprehensive planning efforts, and can set the basis for further zoning actions which are inconsistent with the public interest in advancing sound planning practices* (LUCD 21). Of critical importance, is the Plan's statement that *while within its purest sense, spot zoning is achieved through legislative means, spot zoning can also inadvertently occur through the approval of Special Permits which allow uses to develop which are not in keeping with the Zoning Bylaw's intent* (LUCD 21). The Plan **states that the Planning Board is entrusted with the authority and power to ensure that such actions do not occur, and that to better ensure that such effects do not occur, the Planning Board should utilize the descriptions of the various corridors in considering whether or not a Special Permit is in keeping with the character of the neighborhood** (LUCD 21). One would indeed question what the purpose of A-1 zoning status is if the Town is going to allow developments contradictory to that zoning designation to be built within A-1 areas. The construction of 31

condominium units in an area zoned to accommodate four single-family houses overrides all zoning requirements and negates the uniformity of this district.

The Master Plan expresses concern that the Zoning By-Law as it is written is insufficient to ensure that new development is compatible with existing neighborhoods. The Plan states that of primary concern in regard to South Hadley's Development Review Process, *is the inability of the Zoning Bylaw to integrate new development effectively with the historical character and fabric of neighborhoods and corridors* (LUCD 21). The Plan states that *repeatedly residents and officials expressed a sense that new development often ended up seeming out of character and out of context with the perceived density, visual features, and neighborhood character of well-established neighborhoods...*, often as a results of issues of *site layouts and scale which often were substantially different from those of adjoining, established areas, as well as architectural character* (LUCD 23-24).

Consequently, CPAC identified several recommended actions and objectives in part to protect against new development that would have the same effect as spot zoning via Special Permitting:

Recommended Action 1-1-4 reads *in conjunction with the Open Space and Cultural & Historical Resources goals of this Plan, review the zoning bylaw and map to prevent high-intensity development of those environmentally or visually sensitive lands that are currently within the Residence A-1, Residence A-2, and Agricultural districts* (LUCD 27). Ferry Street/Brockway Lane is both environmentally and visually sensitive and thus would be protected against Rivercrest.

Recommended Action 2-1-2 is to *develop and adopt amendments to the Zoning Bylaw which provide purpose statements for each zoning district that relate to the Comprehensive Plan Goals* (LUCD 29). Such amendments would protect Ferry Street against developments such as Rivercrest, which is inconsistent with the goals for our land area.

Recommended Action 2-1-5 is to *develop and adopt well-articulated special permit standards that further the purpose statements for each*

zoning district (LUCD 29). This recommended action would create more and increasingly specific Special Permit Standards so that an application such as Rivercrest that does not meet the purpose statement derived from the Comprehensive Plan goals for our area would be denied.

And again, we must reiterate that Objective 3-2 of the Master Plan favors *Zoning that reflects the goals of the Comprehensive Plan, incorporates a public decision making process, and avoids piecemeal changes.*

In concluding our evidence that this proposed development contradicts language and recommendations in the Master Plan, and that the Master Plan provides language to carefully guide new development before new by laws can be enacted, we cannot overstate that **the Plan clearly states that *creation of this new Plan sets the stage for the community to again ensure that "spot" zoning does not occur by either Town Meeting or Planning Board Actions (LUCD 21).***

Furthermore, the Plan states that ***this Plan should be the basis for future Town Meeting and Planning Board decisions without prior actions being given the status of "precedent" since they preceded development of this new***

Comprehensive Plan (LUCD 22). We thus reiterate that according to the Master Plan, developed by the Town-appointed committee and including the voices of citizens and town officials, paid for by \$100,000 of taxpayer money, and endorsed at Town Meeting and by the Planning Board, the proposed development resoundingly violates the community's vision for South Hadley's future, particularly as pertains to new development.

V. This Proposal Does not Fulfill All Mandatory Standards for Special Permits

Our opposition, nevertheless, while drawing substantially from the Master Plan, is not limited to its content and language. Our concern extends beyond a contradiction of the community's vision for the future of South Hadley and extends to the Town's Standards for Special Permits, as well as the impact of the proposed development upon the neighborhood and town.

In regard to the former, the proposed development fails to comply with two of the four mandatory Standards for a Special Permit as stated within Section 9 of South Hadley's Zoning Bylaw, and as amended May 13, 2006, at the Annual Town Meeting. Standard A requires that a proposed use will *be compatible in type and scale with adjacent land uses and with the character of the neighborhood in which it is located* (Zoning 110). As we have previously established within our opposition, a 31-unit condominium complex would not be compatible nor in character with single-family homes in an A-1 zoned neighborhood, but rather would represent a 700% construction density increase, and a 67% increase in overall housing density and residential traffic for Ferry Street. We have demonstrated exhaustively that Standard A cannot be fulfilled, and therefore a Special Permit should be denied.

Furthermore, Standard D requires that a proposed use will *constitute no nuisance by reason of excessive air, water or noise pollution, or by structures or accessories which are deemed visually objectionable in light of prevailing community standards* (Zoning 110). Excessive noise pollution will occur, as a result of the 67% increase in residential traffic with associated air pollution, not to mention the noise from construction of 31 new residences. Furthermore, while not obligated to present findings on the following, the applicant for a Special Permit may provide information demonstrating that the proposed use will not *adversely affect the value of the neighborhood or community* (Zoning 111). We respectfully suggest that due diligence be taken by the Town in assuring via contracting of one or more impartial appraisers that the value of homes in our

neighborhood will not be negatively impacted, as we anticipate it would be, by construction of the proposed development.

VI. Other Concerns

Finally, we ask you to consider the impact of the proposed development upon the Town at large. First and foremost, we have significant safety concerns. A 67% increase in residential traffic on this street would be concerning in and of itself but it is all the more so given that the proposed location of the driveway is only about two building lots away from a school, day care center, and ball field. This means that the increased traffic poses a direct risk to children in our community.

Safety concerns are only one of the many considerations for how this will impact the quality of life and desirability of this area of the town and community. We have previously pointed out that such a development would likely decrease property values in the neighborhood. Also, if the condominiums were built and did not sell, the Town could suffer a large impact upon its economy. At further risk to the Town's economy is the additional strain this development would place on the existing infrastructure in a neighborhood currently supporting approximately 45 residences. A two-thirds increase in demand on water pipes, sewer lines, and gas pipes to support an additional 31 residences must be very carefully investigated. Were the supporting infrastructure to fail, the Town could face enormous costs in repair. It seems also appropriate to ask what the impact will be of an additional 31 families upon other town resources, such as the landfill and the schools. We would also request that increased consideration be given to the potential environmental impact of the development in an area containing wetlands and a stream, and existing adjacent to agricultural lands. We would support this by referencing the Master Plan, which identifies a concern for environmental impacts of development as a common theme raised by the public as critical concerns in land use and community design (LUCD 2). We would ask that the town ensure the protection of the land, vegetation, animals, and even our drinking water by paying for impartial third party studies given the environmentally sensitive composition and position of this parcel. Certainly, this development will impact sustainability as it will affect green space.

VII. Conclusion

We would ask the Planning Board to remember that in the court case *Pioneer Home Sponsors v. Board of Appeals of Northampton, First Massachusetts Appellate Court. 830, 831 (1973)*, the Appeals Court ruled that *the board, in the proper exercise of its discretion, is free to deny a special permit even if the facts show that such a permit could be lawfully granted* (Special Permits by Mark Bobrowski, a Land Use expert 10). We have given you many reasons to deny this Special Permit. We summarize them here:

1. The most important reason is that this proposed development is not compatible in type and scale with adjacent land uses and with the character of the neighborhood in which it is located, and thus fails to meet a mandatory standard for a Special Permit.
2. Conferral of a special permit to build the proposed development would contradict the community's input as elucidated in the Master Plan in regard to residents' vision for the future of the town and land development therein. We would remind everyone present that the recommendations in the Master Plan reflect discussion with public officials and commissions who participated in creation of the Plan.
3. A Special Permit in this instance would also amount to the spot zoning decried by the Plan and directly violate the responsibility the Plan places upon the Planning Board to protect against such inadvertent or backdoor zoning.
4. And finally, this proposed development undoubtedly poses safety, economic, environmental, and infrastructure risks to the Town .

We conclude our community-generated appeal to the Planning Board today, with a request for board members to consider that its citizens have spoken before via the Master Plan and that we speak again today via this public hearing, to ask you to protect our community's vision for the future as it was solicited and endorsed by the Town's governing bodies.

The Comprehensive Plan's Introduction and Vision chapter states, *"This Plan, drawn from the wisdom of the citizens themselves, articulates what we would like South Hadley to look like and suggests ways for us to work towards that vision... This Comprehensive Plan will allow South Hadley citizens to SHAPE OUR FUTURE."* We citizens have done just that: we have come to public hearings to express what we would like the Town and particularly our neighborhoods to look like. We, along with you and CPAC members, were partners in the development of this important roadmap for the future of our town by protecting our neighborhoods. We expected and trusted that our opinions, feelings, ideas, visions and observations spelled out in the Plan would be respected and carried out. We urge you to do just that.

Within the Master Plan, citizens set the standards to guide the Planning Board in this matter that involves a judgment. As stated in the Master Plan, *ultimately, it is the community that must weigh the merits of any particular course of action – whether it's a zoning change or a new walking trail – and ensure that all actions together shape the best possible future for South Hadley* (Introduction 10). We are active and engaged community members defending the quality of life in our neighborhood. We urge you to deny this special permit application.

We are providing each member of the Planning Board with a copy of this document read today.

Thank you,

The Friends of Ferry Street

Rec'd from
J.D.H. Ry

6 Ferry St.
Pub Hry 6-13
6-13-11

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Safety concerns are only one of the many considerations for how this will impact the quality of life and desirability of this area of the town and community. We have previously pointed out that such a development would likely decrease property values in the neighborhood. Also, if the condominiums were built and did not sell, the Town could suffer a large impact upon its economy. At further risk to the Town's economy is the additional strain this development would place on the existing infrastructure in a neighborhood currently supporting approximately 45 residences. A two-thirds increase in demand on water pipes, sewer lines, and gas pipes to support an additional 31 residences must be very carefully investigated. Were the supporting infrastructure to fail, the Town could face enormous costs in repair. It seems also appropriate to ask what the impact will be of an additional 31 families upon other town resources, such as the landfill and the schools. We would also request that increased consideration be given to the potential environmental impact of the development in an area containing wetlands and a stream, and existing adjacent to agricultural lands. We would support this by referencing the Master Plan, which identifies a concern for environmental impacts of development as a common theme raised by the public as critical concerns in land use and community design (taken from page 2 in the Land Use and Community Design chapter). We would ask that the town ensure the protection of the land, vegetation, animals, and even our drinking water by paying for impartial third party studies given the environmentally sensitive composition and position of this parcel. Certainly, this development will impact sustainability as it will affect green space.

VII. Conclusion

We would ask the Planning Board to remember that in the court case *Pioneer Home Sponsors v. Board of Appeals of Northampton, First Massachusetts Appellate Court. 830, 831 (1973)*, the Appeals Court ruled that (quote) *“the board, in the proper exercise of its discretion, is free to deny a special permit even if the facts show that such a permit could be lawfully granted”* (end quote-taken from Special Permits by Mark Bobrowski, a renowned Land Use expert, page 10). We have given you many reasons to deny this Special Permit. We summarize them here:

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to protect our community's vision for the future as it was solicited and endorsed by the Town's governing bodies.

The Comprehensive Plan's Introduction and Vision chapter states (quote), *"This Plan, drawn from the wisdom of the citizens themselves, articulates what we would like South Hadley to look like and suggests ways for us to work towards that vision... This Comprehensive Plan will allow South Hadley citizens to SHAPE OUR FUTURE."* (end quote) We citizens have done just that: we have come to public hearings to express what we would like the Town and particularly our neighborhoods to look like. We, along with you and CPAC members, were partners in the development of this important roadmap for the future of our town by protecting our neighborhoods. We expected and trusted that our opinions, feelings, ideas, visions and observations spelled out in the Plan would be respected and carried out. We urge you to do just that.

Within the Master Plan, citizens set the standards to guide the Planning Board in this matter that involves a judgment. As stated in the Master Plan,(quote) *"ultimately, it is the community that must weigh the merits of any particular course of action – whether it's a zoning change or a new walking trail – and ensure that all actions together shape the best possible future for South Hadley"* (end quote) (from the Introduction, page 10). We are active and engaged community members defending the quality of life in our neighborhood. We urge you to deny this special permit application.

We are providing each member of the Planning Board with a copy of this document read today.

Thank you,

The Friends of Ferry Street

Red'd Publog
6-13-11

I'm Joe Dayall. My wife and I own a home at 145 Pearl Street. We have one house on a little over 3³/₄ acres of land, but can't subdivide our parcel as a flag lot because our frontage is ten (10) feet less than the 200 foot minimum needed under the zoning bylaws. While this seems a bit unfair to me (especially since there are four homes right across the street on grandfathered quarter-acre lots), I accept that the line has to be drawn somewhere to prevent excessive development. I don't deserve special treatment.

I oppose granting the Special Permit and approval of the plans submitted by Rivercrest Condominiums, LLC because it does not deserve special treatment either.

As an example, the applicant seeks a waiver from Section 7.01, Subsection 6(a) of the Subdivision Rules and Regulations, which specify that a cul-de-sac or dead end street shall be no longer than 800 feet. The proposal is for a 950 foot long street. That's over 18% more than the rules allow. (My home's frontage is only 5% less than what is needed for me to reap a modest bonanza with a flag lot.)

I note that the developer also wants a waiver for the sidewalks provided for in Section 8.05, Subsection 1.

What is the Town getting in return for this special treatment? The answer appears to be nothing.

- The development is not identified as affordable housing for the poor, the elderly, minorities or any other particularly deserving group.
- There is no housing shortage. Population growth is relatively stagnant and there are many unsold homes and condominium units on the market.

Section 9(c)e of the Zoning bylaws allows the need for the proposed use in the proposed location to be considered as a criterion to be satisfied in the application. The Planning Board should do so.

I believe the proposed project is incompatible with adjacent land uses and with the character of the neighborhood, which appears to be the opinion of the neighbors here tonight.

There is an issue as to whether the proposed project constitutes a significant hazard to abutters, pedestrians and vehicles. The Application devotes only a single paragraph to an "analysis" of vehicular access. No engineering study was performed and no mention was made of the large boats on trailers that transit Ferry Street periodically.

In conclusion, I view this as a matter of fairness. The project proponent should not be given special breaks without good reason or everyone will be seeking them. Please do not approve the plans, do not grant the Special Permit or allow any waivers. Thank you.

Marty Holmes, CPC

Really interested in hearing
from the Public

Rec'd 6-13-11

From: Marty Holmes, CPC [mholmes@msi1.com]
Sent: Monday, June 13, 2011 2:27 PM

Thank-you to the Planning Board for allowing me to speak tonight!
And thanks for asking the questions as they said they have ^{no idea} ^{on} ^{this} ^{form} ^{how}
Friends, fellow neighbors, and residents of South Hadley. My name is Marty Holmes, I am a 28 year resident at 23 Ferry St., with my wife Kathy.

Lee Marion's + Craig Authier's
I strongly oppose, Ed Ryan's plans to build a 31 unit, Condominium Project, known as Rivercrest, *which requires a "special permit" do to so...* Not only does this condo project, break the character of a modest, closely located, mostly single family home neighborhood, but I also have a major safety concern due to increased traffic. All in a neighborhood, built long ago, that can not sustain an oversized project of this scope.

zoning
According to our South Hadley by laws section C. Standards for Special Permits, letter A. states: "that such development must be compatible in type and scale with adjacent land uses and within the character of the neighborhood." As you can clearly see by these recent pictures of our neighborhood, there is no resemblance at all. The density of this project, on a parcel of land we know can't be fully developed due to there being a large ravine, with a stream and wetlands, doesn't even clear the first requirement.

I am not opposed to Development. When we bought our House, 28 years ago, there sat an empty lot directly across the street. Over the years I have mowed, snowblowed and picked up litter there. We knew and expected a house would be built on this property some day. That would be in Character with our neighborhood! Never did we think we would be before the planning board opposing a Special Permit to squeeze in 31 condos!!!! Why?

If the land can hold 4 homes, *fine.* That would make sense!

I am not a traffic engineer, but to appreciate how well this section of Ferry St is *traveled* ~~used~~ here are the numbers of a random 1 hour span. Completed Friday, June 10th 2011 2-3PM. 81 vehicles (cars, trucks and motorcycles) came up Ferry St, headed to route 47. Of the 81, 50 turned right toward the center, 31 turned left.

Same hour, 87 vehicles entered Ferry St, off 47 (53 from the center and 34

from the north)

In all, 168 vehicles, non peak time traveled this stretch of our neighborhood... The developers, in asking for the "special permit" have designed the entrance and exit to be on Ferry St, at the narrowest point. This is a Accident in waiting!!! As you can see from these pictures, many of the homes in this area are built close to the street.

A car traveling 35 MPH, travels 51.3 feet per second. The 2 homes directly opposite of the proposed entrance/exit are 25 and 29 feet from the street. So in 1 second, a car swerving to get around a entering or exiting vehicle, at this point will travel approximately 2x that distance!

With 31 condos, 2 cars each, construction vehicles, service vehicles, friends and visitors going in and out, this is by far,, too much to accommodate!!!

Safety
This team of local developers are much better known in town, than I. As Ed Ryan stated before the conservation committee on June 1, he is known to them as the Town Attorney, Town Moderator and a private citizen,, well, I am only a Private citizen. One that cares deeply about the character and safety of the neighborhood, that I have been a part of over the last 28 years.

I know that there are no members of the planning board, or Ed Ryan, Lee Marion or Craig Authier living in our neighborhood. You probably do not have any children or grand children that do either. Please drive to our neighborhood and see for yourself.... I am asking the planning board to deny the request for a "special permit" as it is completely out of character and not safe, for our neighborhood.

Thank-you!

We also use the Master Plan as a guide

Traffic - chief Zaborie

Neighborhood - Commons

sidewalk waiver children use sidewalks so do adults ^{wouldn't still use stairs}

Had more units we thought it was too much.

undeveloped land

Individuals own it or Condo association.

Asking for a special permit

then asking for a waiver to develop the 50 foot

buffer and a waiver for no sidewalks

driveways ???
Definition of A neighborhood
Commons

Re

George Bank - using guide

Mark Reed

6/13/11 Meeting Planning Board.
Master Plan is a guide
10 of 6 Applicants

Rec'd
6-13-11
Pub. Hrg

My name is Martha Terry.

I live at 25 Brainerd Street.

I am a member of the former Comprehensive Plan Advisory Committee.

I have been regularly attending Planning Board meetings for the past 1 1/2 years.

I chair the Zoning Board of Appeals.

Tonite, I am speaking as a private citizen.

And I am proud to support the Friends of Ferry Street.

As I am sure you are aware, there are four requirements or standards that must all be met in order for a Special Permit to be issued.

They are:

Read a-b-c-d

I would like to speak to the first of these standards.

This proposed development of 31 condominiums is clearly not compatible in type and scale with the adjacent land uses and with the character of the neighborhood in which it is located.

almost all
The adjacent land uses are single family homes and a cemetery. There is no multifamily development near or abutting this proposed project.

It is obvious that this proposed project is not in character with the neighborhood.

This begs the question, "What is a neighborhood?"

A neighborhood can be defined as the small group of houses in the immediate vicinity of one's house. It is related to the verb neighbor which means to adjoin, to border on, to ~~be near~~ to. A neighborhood is not what might be located $\frac{1}{4}$ or $\frac{1}{2}$ mile from the site being considered. Therefore, the only use of this property in question that would be compatible with the character of the neighborhood is single family homes. The Special Permit for this proposed development of 31 condominiums should therefore be denied because the first mandatory standard cannot be met.

Pass out Special Permits brochure

Should you have confidence in your ability to deny this Special Permit? Absolutely.

The courts have consistently supported a Planning Board's discretion and decision in denying a Special Permit.

I have distributed materials that were given to me at a training on Special Permits sponsored by the Citizen Planner Training Collaborative. I am going to read from page 10. I have highlighted this section in the copies I have given to you.

Read from page 10

The point that has been made here is that, if in your discretion, any of the standards for a Special Permit have not been met, and you therefore deny the Special Permit, your decision will withstand any challenge in the courts.

The last subject I would like to address is the Master Plan.

As we all know, the Master Plan was just adopted last year, and the by laws necessary to enact the recommendations are not yet in place. Therefore, in the interim, it is incumbent upon the Planning Board to make decisions that are compatible with it.

The Master Plan states in the Land Use and Community Design Chapter, objective 2-2 “Ensure that development taking place in the short-term (prior to the adoption of new/revised regulatory tools) do not compromise Plan goals.”

Under this objective, the Master Plan makes recommendations regarding multi family housing. The public, CPAC and the Planning Board were well aware that multifamily housing had been allowed by special permit almost anywhere without a limitation on density or the total number of units. Therefore, these recommendations were written into the Master Plan to limit both the location and the total number of multi family units in a development in the time period until new zoning by laws can be enacted.

What is relevant here are Recommended Actions and 2-2-2 and 2-2-4:

Recommended Action 2-2-2 states: “Flexible development” or similar methods should be strongly encouraged in the single family neighborhoods within the Residence A-1, Residence A-2, Residence B, Residence C and Agricultural Districts.” This proposal for multifamily development does not use but ^{should} could use the Flexible Development model which puts a cap on the number of units in the project.

Recommended Action 2-2-4 states, “The Planning Board shall encourage development of multi-family and mixed use housing developments only in area identified in the South Hadley

Community Development Plan as Potential Focus Areas for such development and compatible with the Land Use Area Vision Statements as detailed in the Master Plan.”

The area for this proposed development is not one of those areas that have been designated for multi family housing. Other areas in town have been designated for such. Also, the Ferry Street/Brock way area is not mentioned in any of the Land Use Area Vision Statements as an area for Multi Family Housing or Mixed Use.

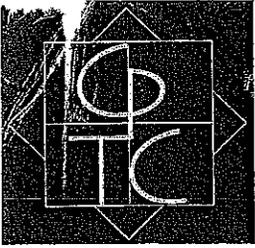
In conclusion, I believe that the appropriate action for the Planning Board is to deny this Special Permit. It is within your discretionary powers that have consistently been supported by the courts.

The applicants will still have options for the development of the land. Single family houses would clearly be in character and compatible with the neighborhood.

In addition, the applicant may utilize the flexible development provisions of the Zoning By Laws. This is one option that is offered as an alternative in the Master Plan.
and recommended

Please deny this Special Permit. In doing so, you show your support of the Master Plan.

Thank you for your time and attention.



The Citizen Planner Training Collaborative

Rec'd from
Mark Terry
6-13-11
at Pub Hearing,

“VARIANCES & SPECIAL PERMITS”

March 15, 2008

*The Variance section was created for CPTC by Jon Whitten, Esq.
The Special Permits section was created for CPTC by Mark Bobrowski, Esq.*

The Citizen Planner Training Collaborative:

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Massachusetts Department of Housing and Community Development
American Planning Association, MA Chapter
Massachusetts Assn. of Regional Planning Agencies
Massachusetts Assn. of Planning Directors
Massachusetts Federation of Planning and Appeals Boards*

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SPECIAL PERMITS

by

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P.O. Box 377
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This outline is intended for reference purposes only and has been prepared for the Citizen Planner Training Collaborative's special permit workshops under the auspices of a 1999 Municipal Incentives Grant from the Department of Housing & Community Development to the Martha's Vineyard Commission.

SPECIAL PERMITS

I. DEFINITION

Mass. Gen. L. ch. 40A, §9 states, in part, that

[z]oning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.¹

The Appeals Court, in *SCIT v. Planning Board of Braintree*, 19 Mass. App. Ct. 101, 109 (1984), offered a succinct definition of special permits:

The role of the special permit in land use planning is not something new. Special permit procedures have long been used to bring flexibility to the fairly rigid use classifications of Euclidean zoning schemes . . . by providing for specific uses which are deemed necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the district Uses most commonly subjected to special permit requirements are those regarded as troublesome (but often needed somewhere in the municipality, for example, gasoline service stations, parking lots, and automobile repair garages) . . . and uses often considered desirable but which would be incompatible in a particular district unless conditioned in a manner which makes them suitable to a given location (citations omitted).

The special permit regulates that middle tier of uses between those so offensive that they are prohibited and those so innocuous that they are allowed as of right.

II. COMPARISON TO OTHER PERMITS

Many early special permit decisions of the Supreme Judicial Court helpfully point out that a variance and a special permit are quite different. The variance is used to authorize an otherwise prohibited use or to loosen dimensional requirements otherwise applicable to structures. A variance is to be issued sparingly and only if all of the statutory prerequisites have been met. Special permits are issued to authorize specifically itemized uses after weighing the benefit or detriment of a proposal. In general, the court has emphasized that the criteria for the issuance of a special permit "are less stringent than those involved in the application for a variance." *Kiss v. Board of Appeals of Longmeadow*, 371 Mass. 147, 153 (1976).

A special permit is not to be confused with a building permit. In *LaCharte v. Board of Appeals of Lawrence*, 327 Mass. 417, 422 (1951), the court noted that "a permit to build is entirely different in kind

¹ Mass. Gen. L. ch. 40A, §§9, 9A, 9B, and 9C go on to detail a host of specific uses which may be regulated by special permit and to establish procedures for the administration of special permits.

from the special permit. One is issued by the building inspector and the other is authorized by decision of the board only after many formalities have been complied with." These "formalities" entail the procedural requirements of Mass. Gen. L. ch. 40A, §9, including notice, public hearing, and a final decision, none of which are applicable to a building permit. After the issuance of a special permit, the successful applicant must obtain a building permit if construction is contemplated.

Finally, special permits resemble the process known as site plan review. Indeed, some uses require approval under both devices. There is, however, one key difference. The site plan review board's powers are limited to "regulation of a use, rather than its prohibition." *Y.D. Dugout v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970). On the other hand, a special permit granting authority has the full range of discretion in assessing an application, including the right to deny the permit.

III. DIMENSIONAL VARIATIONS BY SPECIAL PERMIT

Where locally authorized, a special permit may be used to vary dimensional requirements set forth in a by-law or ordinance. In a dimensional variance, the petitioner is excused from lot area, frontage, yard, or depth requirements. The special permit mechanism may be used to accomplish the same result. Local authorization to do so eliminates the applicant's need to demonstrate hardship, a prerequisite for a variance.¹ For example, in *Woods v. City of Newton*, 351 Mass. 98, 102-103 (1966), the court upheld an ordinance authorizing waiver of the height limitation of forty feet under the auspices of a special permit. In *Emond v. Board of Appeals of Uxbridge*, 27 Mass. App. Ct. 630, 632-636 (1989), the Appeals Court specifically held that the special permit device may be used to "fine-tune" dimensional standards in particular situations.

IV. LEGISLATIVE HISTORY

The legislative history of special permits is set forth in Appendix A.

V. PREREQUISITES IN THE BY-LAW OR ORDINANCE

Case law has established several prerequisites for the exercise of special permit powers. Local ordinances or by-laws must comply with each of these prerequisites, or run the risk that the courts will declare the special permit provision invalid.

I. Adequate Standards

Local ordinances or by-laws must state standards for the evaluation of special permit applications. The by-law must "provide adequate standards for the guidance of the board in deciding whether to grant or to withhold special permits The standards need not be of such a detailed nature that they eliminate entirely the element of discretion from the board's decision." *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638 (1970).

The courts have been extremely generous in reviewing such regulations.² For example, in *Burnham v. Board of Appeals of Gloucester*, 333 Mass. 114, 118 (1955), an ordinance instructing the granting authority to consider only "the effects upon the neighborhood and the City at large" was upheld as adequate.

On the other hand, several decisions,³ following *Smith v. Board of Appeals of Fall River*, 319 Mass. 341 (1946), have held that poorly worded or overly broad standards cannot stand. Unless the court is faced with the rare case in which standards are totally absent or hopelessly contradictory it is doubtful that *Smith* imposes any real limitation.

2. Specificity Requirement Specificity Requirement

Mass. Gen. L. ch. 40A, §9 limits the award of special permits to "specific types of uses which shall only be permitted in specified districts." These uses and districts must be clearly spelled out in the local ordinance or by-law. In *Gage v. Town of Egremont*, 409 Mass. 345, 349 (1991), the Supreme Judicial Court held invalid the town's by-law authorizing by special permit "any . . . use determined by the Planning Board . . . not offensive or detrimental to the neighborhood." The court reasoned that this generic approach violated the charge of the statute to be specific.

Similarly, uses not specifically authorized are not eligible for consideration because of similarities to other uses expressly mentioned. "It is not enough that a use for which a special permit is sought be 'consistent' or 'compatible' with a specific use for which the by-law states such a permit may be granted."⁴ Only those uses actually spelled out are eligible for consideration. As a result, the courts have frequently been called upon to decide whether a proposed use "fits" within a specific category of use allowed by special permit.⁵

Finally, the statutory charge to be specific is quite literally interpreted. In *SCIT, Inc. v. Planning Board of Braintree*, 19 Mass. App. Ct. 101, 110-112 (1984), the Appeals Court invalidated a Braintree by-law which conditioned all uses in a business district on special permit.

² See, e.g., *Simeone Stone Corp. v. Oliva*, 350 Mass. 31 (1965) ("obnoxious to the neighborhood, detrimental effect upon adjoining properties"); *Sellors v. Town of Concord*, 77 ("such use is not detrimental to the neighborhood, due consideration shall be given to conserving the public health, safety, convenience, welfare, and property values"); *Building Commr. of Medford v. C & H Co*, 319 Mass. 273, 281-282 (1946); *Owens v. Board of Appeals of Belmont*, 11 Mass. App. Ct. 994 (1981).

³ See *Cooke v. Board of Appeal of Lowell*, 348 Mass. 767 (1965); *Clark v. Board of Appeals of Newbury*, 348 Mass. 407 (1965).

⁴ See, e.g., *Board of Appeals of Webster v. Z & K Enterprises*, 1 Mass. App. Ct. 845 (1973). The court upheld the denial of a special permit for a mobile home park, where by-law only allowed "hotel or tourist court."

⁵ See, e.g., *Kiss v. Board of Appeals of Longmeadow*, 371 Mass. 147 (1976) (nonprofit indoor tennis facility); *Pratt v. Building Inspector of Gloucester*, 330 Mass. 344 (1953) (stable in residential district); *Dowd v. Board of Appeals of Dover*, 5 Mass. App. Ct. 148 (1977) (greenhouse); *Board of Appeals of Webster v. Z & K Enterprises*, 1 Mass. App. Ct. 845 (1973) (hotel or tourist court).

Mass. Gen. L. ch. 40A, §9 limits the special permit granting power to "specific types of uses"; the court held that the Braintree by-law exceeded delegated authority by placing all uses on this status.

3. Uniformity Requirement: SCIT Doctrine

Mass. Gen. L. ch. 40A, §4 requires, in part, that

[any] ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.

In *SCIT, Inc. v. Planning Board of Braintree*, 19 Mass App. Ct. 101, 107-108 (1984), the Appeals Court reviewed a Braintree by-law that placed all uses in a business district on special permit status. The court ruled that Mass. Gen. L. ch. 40A, §4 "does not contemplate, once a district is established and uses within it authorized as of right, conferral on local zoning boards of a roving and virtually unlimited power to discriminate as to uses between landowners similarly situated." In *Gage v. Town of Egremont*, 409 Mass. 345, 348 (1991), the Supreme Judicial Court limited SCIT to the proposition that not all uses in a district could be placed on special permit. "[A] zoning by-law must permit at least one use in each zoning district as a matter of right."

SCIT and *Gage*, taken together, mandate that towns may not place all uses in a district on special permit. "At least one" use must be allowed as of right. This as of right use need not be a business use - presumably it could be any use. Nothing prevents a town from placing all business uses on special permit status, presumably even in a business district, as long as one use is available as of right. The lower courts have ruled that this requirement pertains also to overlay districts. *Boch v. Planning Board of Tisbury*, 5 LCR 16 (1997); *KCI Management Corporation v. Board of Appeal of Boston*, C.A. No.: 97-02221B (Suffolk Super. Ct. 1998)

However, towns are advised to avoid the temptation to leave only the following uses available as of right:

- * Agricultural, religious, or educational uses exempted under Mass. Gen. L. ch. 40A, §3;
- * Passive recreation or conservation;
- * Other de minimus uses as of right. See, e.g., *Unisys Corp. v. Town of Sudbury*, Misc. Case No. 141550 (Land Ct. 1991).

VI. STATUTORILY AUTHORIZED SPECIAL PERMITS

Mass. Gen. L. ch. 40A, §9 states specific uses that may be authorized by special permit. These include:

- * special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for

persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities;

- * special permits authorizing multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use;
- * special permits authorizing cluster developments;
- * special permits authorizing planned unit developments;
- * special permits authorizing the use of structures as shared elderly housing;
- * special permits authorizing uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production.

Mass. Gen. L. ch. 40A, §9A, allows adult bookstores or adult motion picture theatres to be regulated by special permit. Such zoning ordinance or by-law may state the specific improvements, amenities or locations of proposed uses for which such permit may be granted and may provide that the proposed use be a specific distance from any district designated by zoning ordinance or by-law for any residential use or from any other adult bookstore or adult motion picture theatre or from any establishment licensed under the provisions of Mass. Gen. L. ch. 138, §12. This type of special permit is subject to the same procedural requirements as an orthodox application governed by section 9.

VII. PROCEDURES

This section provides a simple outline of special permit procedures. For a detailed review of the procedures attached to special permit decisions, see "Special Permits and Special Permit Granting Authorities," by Donald J. Schmidt, September 1997.

1. Filing the Special Permit Application

- * All applications for special permits must be filed by the applicant with the municipal clerk.
- * The municipal clerk must certify the date and time of filing.
- * A copy of the application, including the certification by the municipal clerk must be filed forthwith by the petitioner with the Special Permit Granting Authority.
- * An application for a special permit which has been transmitted to the Special Permit Granting Authority may be withdrawn, without prejudice, by the petitioner prior to the

publication of the notice of a public hearing. After publication of the public hearing notice, an application can only be withdrawn without prejudice with the approval of the Special Permit Granting Authority.

- * The Zoning Act specifies that zoning ordinances or bylaws may provide that special permits be submitted and reviewed by other municipal boards and officials. Such reviews may be held jointly and the boards and officials may make recommendations to the Special Permit Granting Authority. Failure of such boards and officials to make any recommendations within 35 days of receipt of the special permit application by such boards and officials shall be deemed lack of opposition to the special permit.

2. Public Hearing

- * The Special Permit Granting Authority must hold a public hearing within 65 days from the date of filing.
- * The required time limit for holding the public hearing may be extended by written mutual agreement between the petitioner and the Special Permit Granting Authority. A copy of such agreement must be filed in the office of the municipal clerk.

3. Decision

- * Final action by the Special Permit Granting Authority must be made within 90 days following the date of the public hearing.
- * The required time limit for taking final action may be extended by written mutual agreement between the petitioner and the Special Permit Granting Authority. A copy of any such agreement must be filed in the office of the municipal clerk.
- * The Special Permit Granting Authority must make a detailed record of its proceedings indicating the vote of each member and the reasons for its decision.
- * Copies of the detailed record and proceedings must be filed with the municipal clerk within 14 days after the decision.

4. Notices and Certifications

- * Notice of the decision must be mailed forthwith, by the Special Permit Granting Authority, to the petitioner, parties in interest and to every person at the public hearing that requested a notice. The notice must specify that any appeal must be made pursuant to Mass. Gen. L. ch. 40A, § 17 and filed within 20 days after the date the notice was filed with the municipal clerk.
- * Upon the granting of a special permit, or any extension, modification, or renewal, the

Special Permit Granting Authority shall issue to the owner and the petitioner a certified copy of its decision containing the name and address of the owner, identifying the land affected, specifying compliance with the statutory requirements for the issuance of the special permit and certifying that copies of the decision have been filed with the Planning Board and the municipal clerk.

- * The municipal clerk must certify that 20 days have elapsed after the decision has been filed in the office of the municipal clerk and no appeal has been filed or if it has been filed that it has been dismissed or denied.

5. *Recording and Lapse*

- * No special permit, or any extension, modification or renewal thereof, can take effect until a copy of the decision bearing the certification of the municipal clerk is recorded in the registry of deeds or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.
- * A special permit will lapse after two years, unless a shorter time period is specified in the zoning bylaw or ordinance, if a substantial use has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause. Excluded from any lapse period is the time required to pursue or await the determination of any appeal taken pursuant to Mass. Gen. L. ch. 40A, § 17.

VIII. DECISION

In making its special permit decision, the granting authority is limited to consideration of the criteria detailed in the ordinance or by-law. See the sample attached hereto as Appendix B for typical criteria. "The board may not refuse to issue a permit for reasons unrelated to the standards of the by-law for the exercise of its judgment." *Slater v. Board of Appeals of Brookline*, 350 Mass. 70, 73 (1966). For example, in *Dowd v. Board of Appeals of Dover*, 5 Mass. App. Ct. 148, 157 (1977), the Appeals Court held that a board decision based, in part, on the character and reputation of the applicant was not sustainable. However, the board may consider the future effects of the proposed use,⁶ as well as the effects of other projects approved or denied in the vicinity of the proposal.⁷ The board must find in the record "substantial facts which rightly can move an impartial mind, acting judicially, to the definite conclusion reached." *Shoppers World v. Beacon Terrace Realty*, 353 Mass. 63, 67 (1967). Information not included in the record is not properly considered. *MacGibbon v. Board of Appeals of Duxbury*, 347 Mass. 690 (1964).

When granting a special permit, the granting authority must "make an affirmative finding as to the

⁶ *Humble Oil v. Board of Appeals of Amherst*, 360 Mass. 604, 606 (1971); *Gulf Oil Corp. v. Board of Appeals of Framingham*, 355 Mass. 275, 278 (1969); *MacGibbon v. Board of Appeals of Duxbury*, 347 Mass. 690, 692 (1964).

⁷ *Colangelo v. Board of Appeals of Lexington*, 407 Mass. 242, 245-246 (1990).

existence of each condition of the statute or by-law required for the granting of the . . . special permit." *Vazza Properties v. City Council of Woburn*, 1 Mass. App. Ct. 308 (1973). For example, in *Pierce v. Board of Appeals of Carver*, 2 Mass. App. Ct. 5, 6 (1974), a board decision to grant a special permit for a mobile home park was annulled. The by-law called for consideration of potentially detrimental effects on the "neighborhood and town." When the board evaluated only the effect on the neighborhood, the court remanded for a finding on detriment to the town.

On the other hand, "refusal to grant a special permit does not require detailed findings." *MacGibbon v. Board of Appeals of Duxbury*, 369 Mass. 512, 515 (1976). If the board finds any permissible reason to deny the application, its decision will be sustained. A sample decision is attached hereto as Appendix C.

The granting authority has the full range of discretion in shaping its decision.

Neither the Zoning Enabling Act nor the town zoning by-law gives . . . an absolute right to the special permit The board is not compelled to grant the permit. It has discretionary power in acting thereon. The board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the by-law. *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638-639 (1970).

Several decisions hold that a board may deny a special permit even if the permit might have been lawfully issued.⁸

IX. CONDITIONS

Mass. Gen. L. ch. 40A, §9 allows the imposition of "conditions, safeguards and limitations on time or use" in the issuance of a special permit. Case law provides many examples of conditions permissible under this authority, including

- * private disposal of solid waste;⁹
- * deadline to commence construction, signage, alarm system;¹⁰
- * limits on vehicles, number of students, gender of residents, noise, possession of substances, maintenance, landscaping, parking spaces;¹¹

⁸ *Humble Oil v. Board of Appeals of Amherst*, 360 Mass. 604, 605 (1971) ("The mere fact that the standards set forth are complied with does not compel the granting of a special permit"); *Gulf Oil Corp. v. Board of Appeals of Framingham*, 355 Mass. 275 (1969); *Pioneer Home Sponsors v. Board of Appeals of Northampton*, 1 Mass. App. Ct. 830, 831 (1973) ("the board, in the proper exercise of its discretion, is free to deny a special permit even if the facts show that such a permit could be lawfully granted"). [See also *Davis v. Zoning Board of Appeals of Chatham*, 52 Mass. App. Ct. 349 (2001)]* (*Inserted by DHCD 8/22/02)

⁹ *Middlesex & Boston Ry. v. Board of Alderman of Newton*, 371 Mass. 849, 852 (1977).

¹⁰ *Kiss v. Board of Appeals of Longmeadow*, 371 Mass. 147, 151 n.3 (1976).

¹¹ *Shuman v. Board of Alderman of Newton*, 361 Mass. 758, 762 n.7 (1972).

- * dust control;¹²
- * three year term with automatic renewals;¹³
- * sewer connection, and bond.¹⁴
- * hours of operation and police details during periods of heavy traffic.¹⁵

A special permit, unlike a variance, may be conditioned by limiting its duration to the term of ownership or use by the applicant. *Huntington v. Zoning Bd. of Appeals of Hadley*, 12 Mass. App. Ct. 710, 715-717 (1981).

Innovative conditions sometimes inspire hostility. In *Middlesex & Boston St. Railway v. Board of Alderman of Newton*, 371 Mass. 849 (1977), and *Hopengarten v. Board of Appeals of Lincoln*, 17 Mass. App. Ct. 1006 (1984), applicants unsuccessfully challenged conditions attached to their special permits because of alleged discrimination. Both matters involved conditions imposed by the granting authority for the first time;¹⁶ appellants claimed that these new policies amounted to unequal treatment of their applications. The court rejected both claims, indicating that a board is free to establish a new policy, where based on a rational objective.

When a special permit application is accompanied by plans or specifications detailing the work to be undertaken, the plans and specifications become conditions of the issuance of the permit. Any significant departure from the plans or specifications, without action by the granting authority, may result in significant risk to the applicant. For example, in *DiGiovanni v. Board of Appeals of Rockport*, 19 Mass. App. Ct. 339 (1985), petitioner put in foundations that were not in accordance with approved plans. "We think it axiomatic that when a variance is granted for a project 'as shown by . . . plans' . . . the variance requires strict compliance with the plans, at least as far as the site location and bulk of buildings are concerned We conclude that the language of a variance is to be construed against the individual requesting the variance, rather than against the granting authority." The same requirement certainly applies to a plans accompanying a special permit.

Finally, where an ordinance or by-law lists conditions that shall be attached to the issuance of a special permit, the granting authority's failure to include these conditions may result in modification by the court. *Wizansky v. Board of Appeals of Brookline*, 21 Mass. App. Ct. 915 (1985).

The court has rejected conditions that attempt to delegate or defer decisions. In *Weld v. Board of Appeals of Gloucester*, 345 Mass. 376, 377 (1963), the Supreme Judicial Court reviewed a special permit with a condition indicating that "the water situation must be arranged to the satisfaction of all concerned."

¹² *Tebo v. Board of Appeals of Shrewsbury*, 22 Mass. App. Ct. 618 (1986).

¹³ *Hopengarten v. Board of Appeals of Lincoln*, 17 Mass. App. Ct. 901 (1984).

¹⁴ *Caruso v. Patson*, 1 Mass. App. Ct. 28 (1973).

¹⁵ *Mandracchia v. Zoning Board of Appeals of Westminster*, 5 LCR 3 (1997).

¹⁶ In *Middlesex*, the board imposed a condition that all solid waste be handled by a private disposal company. In *Hopengarten*, the board issued a special permit for a private tower for a term of three years, with automatic renewal provisions. Both conditions were unique in the annals of the respective boards.

The court noted that a "board may condition the right to operate under a permit presently issued upon the completion of proposed work in accordance with identified plans or other certain standards." But, in annulling the decision of the board, the court held that this condition was defective because it either delegated the decision to other persons (outside the board) or involved "a further determination of substance before the permit can issue."

The *Weld* decision "is often cited but almost invariably distinguished." However, it remains a trap for the unwary. In *Tebo v. Board of Appeals of Shrewsbury*, 22 Mass. App. Ct. 618, 624 (1986), the issuance of a special permit for gravel removal was accompanied by this condition: "Before commencing any operation, a detailed plan of dust control must be submitted to the Board for approval." Abutters complained that this condition "postpones for future action a determination of substance, the fatal weakness of the special permit in *Weld*." The court annulled the special permit and remanded the matter to the board.

When a granting authority has imposed an invalid condition, the court will not allow the decision to stand. Instead, the matter must be remanded for consideration without the unauthorized condition. *Lovaco v. Board of Appeals of Attleboro*, 23 Mass. App. Ct. 239, 243 (1986).

X. CONCLUSION

The special permit constitutes the most powerful land use device in the hands of local decision makers. It is crucial to understand the deference a reviewing trial court owes to a SPGA in this regard. Two appellate decisions state this standard most succinctly. In *Humble Oil v. Board of Appeals of Amherst*, 360 Mass. 604, 605 (1971), the court held that "[t]he mere fact that the standards set forth [in the by-law] are complied with does not compel the granting of a special permit." Thus, even where the applicant complies with all performance standards in the proposal, this does not compel the issuance of the special permit. In *Pioneer Home Sponsors v. Board of Appeals of Northampton*, 1 Mass. App. Ct. 830, 831 (1973), the Appeals Court ruled that "the board, in the proper exercise of its discretion, is free to deny a special permit even if the facts show that such a permit could be lawfully granted." This characterization of the deference due the local decision should be committed to memory by all special permit granting authorities.

Rec'd
6-13-11
at Pub. Hrg

My name is Norma Stiles Monat / 2 Ferry St

To Learn from your Past will protect your future! The past of Ferry St ^{Brockway} ^{Jane} Celebrated its 175th birthday in 2009 welcoming newly built single family homes to our neighborhood. Imagine a ^{2 street} neighborhood 175 years old and approx 1 mile ^{long} that has only 45 homes on Ferry and 9 on Brockway ^{long} and many of those have been built in the last 25 years.

There is a good reason for this and that is because the old timers were by in large farmers and they knew where to place a home and where to plow in spring.

Any of us "old timers" can tell you about the ground water issues all along this street. New cellar holes filling with water, loose stone foundations of early homes on 2, 4 & 6 Ferry street unable to stem the tide in winter after the ground has frozen or during ^{heavy} torrents such as recently fell.

Our predecessors knew full well where not to place a single family home allowing the natural water flow to occur progressing down the

Street, ^{sloping} across the belly on the property in question and after it is filtered ^{by the} on to the brook, then the Stony Brook and ultimately into the Connecticut and on to the Atlantic. ^{proper}

No special Permit will change the centuries old reality of our neighborhood, we live in an ancient lake bed comprised of fine beach-like sand and clay both of which hold water waiting for the hapless sole to dig down and set it all free.

The desire of town Atty Ryan, Lee Marion and Craig Outlier as beneficiaries of this Now Wooded piece of property will alter forever the lay of the land, the natural flow of ground water and the stated character - single family A-1 Rural/agricultural neighborhood in the new Master Plan vision.

I treasure my connection to the Brockway Lane neighborhood for the past 68 years. I for one care about my neighbors some who like me have deep, longtime roots and others who are short timers.

Please keep the new Master Plan at the front and center of your decision. This document is our town's future guide. Please do not let 2 years of hard work +

\$100 K

be tossed out or ignored.

Thank you for your attention

Red'd
6-13-11
Pub. Hrg

My name is John Domian, Jr. and I live at 21 Ferry Street

One significant concern I would like the Planning Board to consider is the potential effect upon the neighborhood and town if the condominiums are built but do not sell. I would be interested in seeing a market study with data that establishes that there is a buyer's pool for this housing. I would suggest that even if the applicant has conducted such a study, it is critical that the Town obtain an impartially prepared market study of its own, particularly given that as of yesterday, June 1st, 2011, there are currently 41 unsold condominiums and town houses saturating the real estate market in South Hadley, according to HomesForSaleInMA.com and Mass Realty.com.

With a real estate market in which condominiums are not selling in general and within a town in which more than the proposed number of condominiums are already built and remain unsold, I find it only responsible to directly question whether or not there is any impartially demonstrated need for these condominiums. I would point out that the Standards for Special Permits imply that there ought to be a need for the proposed use, as the Standards suggest that such information may be furnished where applicable by the applicant for a Special Permit.

While I fear that building such a development at all would likely decrease property values in the neighborhood, I similarly fear that if the condos were built but not sold, our neighborhood would experience an even greater decline in property values. I question what effect this would also have upon the town and its taxpayers.

Thank you.