



Open Letter from The Board of Selectmen on the 40B Process

Late last fall, the Town received a Local Initiative Project (LIP, or 'friendly' 40B) application from Strategic Land Ventures for the proposed development of a 157unit project on School Street at Shingle Hill. Massachusetts general law, under Chapter 40B, allows a developer to pursue development of projects with little restriction by local zoning and wetland ordinance in municipalities that do not meet certain minimum criteria for affordable housing. Manchester does not meet those requirements, so is vulnerable to a chapter 40B development. In either a 'friendly' or 'unfriendly' 40B project, the state ultimately authorizes a comprehensive permit application to be laid before the municipality's Zoning Board of Appeals (ZBA), which holds formal public hearings on the application. The Zoning Board can deny the application, but except for a very narrowed set of cases, the Developer can appeal those decisions to the state HAC (Housing Appeals Committee). The HAC is generally hostile to municipal interests and concerns and has a 40 year history of strong bias towards developers, bolstered by state law, and generally overrules local zoning boards, allowing the Developer to move forward.

The Board of Selectmen (BOS) at no point in this process has the authority to reject or approve the project. This authority rests with the ZBA. However, in a LIP, the Developer comes to the BOS requesting a letter of endorsement of the project. In this version of the process, the BOS can negotiate conditions on the project that can mitigate the impact of the project to the Town; these are conditions that the ZBA would not be able to impose. Those conditions are binding on the Developer and the ZBA. The Developer, in turn, can benefit in large part because it saves them time navigating the state process. If the two parties fail to reach an agreement, the Developer will revert to an 'unfriendly' 40B, turning to the state to issue a certificate of eligibility without the endorsement of the municipality, and will again come before the ZBA, this time unconstrained by any conditions from the BOS. Regardless of the conditions imposed by any agreement between the Board and the Developer, the project will still need to meet certain state environmental and safety criteria in order to move forward. Those details will be addressed in the formal review process before the ZBA.

This initial negotiation step between the BOS and the Developer happens, interestingly enough, before the project designs are complete. There are various chicken and egg issues, and aspects of state permitting law that bring this about, but it leads to some challenging aspects with respect to the negotiations. A critical aspect of this negotiation period is that it has to be completed in a relatively short, but undefined period of time; the Developer will pursue this negotiation only if it looks like it will save them time and effort. If the Developer does not see sufficient progress in negotiations, they will typically walk from the negotiations, converting the 'friendly' 40B to an 'unfriendly' 40B.



The BOS is responsible for looking to the Town's overall interests, and must consider the likelihood that the 40B project will move forward regardless of whether it is a LIP or not. The Board has received a number of letters asking the Board to simply reject the 'friendly' 40B and instead pursue other options, presumably without negotiating with the Developer. Taking this course of action means that the Town would significantly limit any chance of obtaining conditions on the development should it go forward. If the project does move forward, the Town is better served if it moves forward with conditions that mitigate the impact to the Town. Therefore, the Board is engaged in the process of negotiating with the Developer to see if an agreement can be reached on these conditions.

Over the past couple of months, the BOS has been accumulating concerns from residents and boards regarding various facets of the project. The Board has been working to construct a set of relatively broad conditions that addresses as many of these concerns as possible to negotiate with the Developer. The fact that we cannot have all of the details of the project fully laid before us makes this process challenging. The guidance the Board has received is that this is an unfortunate byproduct of the process as laid out in state law, and the way it needs to be dealt with is for the Board to judiciously defer detailed conditions of the development to the ZBA permitting stages, instead focusing on broad conditions that put guardrails around the ZBA process, thus protecting the Town's broader interests, even though we lack complete information about some aspects of the project. Examples of such aspects include stormwater runoff, and septic system design.

Recently the Board received a petition from residents, signed by more than 600 people requesting that the Board pause negotiations with the Developer until a number of conditions were met. While the Board is in agreement that it would be best to have a more complete understanding of the details of the project, it is not feasible for us to wait for certain pieces of information. For example, the design of the development's septic system will not be refined at all until the development is much further along in the ZBA review, which happens, by definition, after the negotiations with the BOS. Therefore, the Board must enter negotiations operating with incomplete data for some of these areas, instead developing broader conditions that will hopefully achieve desired protections without being able to address fine resolution details of those areas of the project.

Whether or not the Board can reach an agreement with the Developer on conditions that the board feels addresses a reasonable set of the concerns from the public remains to be seen. It certainly will not be able to satisfy everyone, as it is obvious that most people simply do not want the development at all. That is very likely not an option, and at any rate is not something that the Board of Selectmen can control. However, we will strive to get the best result possible for the Town should the project move forward.

Manchester Select Board



Eli Boling (chair)
Jeffery Bodmer-Turner (vice-chair)
Becky Jaques
Ann Harrison
John Round