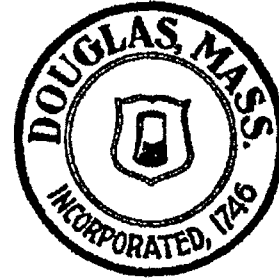


Memo



To: Board of Selectmen
From: William J. Cundiff, P.E., Town Engineer
Date: July 20, 2006
Re: North Village – North Street / Affordable Housing Project

Barlow Builders has come before the Board of Selectmen regarding a proposed affordable housing project located off North Street near the Sutton town boundary. The project is proposing 29 single family house lots and 95 proposed condominiums yielding a total of 124 dwelling units. Of the 124 units, 32 units are proposed as affordable (8 single family and 24 condominiums) which complies with the minimum 25% affordable standard established by MGL ch 40B Sec 20-23.

The original project submitted to the Board of Selectmen proposed 130 (33 Affordable, 97 Market Rate) Single Family Homes. Enclosed please find a copy of the Town's concerns regarding that proposal which were previously submitted to the MassHousing. Although the new project preserves more open space on the subject site, many of the same concerns remain the same with the current proposal.

Additionally, the Applicant has requested that the Board consider becoming a co-Applicant under the State's Local Initiative Plan (LIP) Program. Typically, LIPs are filed to the State on projects that the Town supports in theory and concept. Many LIPs offer concessions to the Town such as one or more of the following considerations:

- Higher than the minimum 25% affordable component;
- Age restricted Housing component;
- Offsite infrastructure Improvements;
- Onsite public improvements such as ballfields;
- Reduction of project size / density;

Accordingly, I am willing to assist the board in review of any concessions offered by the Applicant that are above the minimum 40B requirements, as the board considers whether or not they want to participate in a LIP process.



Town of Douglas

Community Development Department
29 Depot Street, Douglas, MA 01516
T: (508) 476-4000 ♦ F: (508) 476-4012

Mr. Richard J. Herlihy
Loan Officer
MassHousing
One Beacon Street
Boston, MA 02108-3110

November 1, 2002

**RE: Site Eligibility Application – DELPHIC Associates, LLC.
North Village, Douglas, MA – Comprehensive Permit**

Dear Mr. Herlihy:

On behalf of the Town of Douglas and the Douglas Board of Selectmen I am pleased to submit to you comments on the above referenced application. The Town of Douglas has reviewed the above referenced Site Eligibility Application for “North Village, Douglas MA” – A Comprehensive Permit. As part of our review, we have solicited feedback from all town departments, property abutters and parties in interest to the proposed project and as a result have compiled this letter to assist you in identifying any potential fatal flaws or, at a minimum, identify any issues or concerns related to the health, safety and general welfare of the current and future residents of Douglas and Sutton as a result of the proposed project. Please note that we believe there are a number of outstanding issues that will require resolution before any application is approved by the Zoning Board of Appeals and as such wanted to make you aware of as many of these issues as possible. We trust that this information will assist you in your decision regarding site eligibility for the project.

Preliminary Matters

The application as submitted indicates that Delphic is proposing to “*form for the sole purpose to develop the above-referenced property, a development entity to be known as North Village, LLC. This entity will execute a Regulatory Agreement in accordance with Massachusetts General Laws MGL 40B, Section 20-23, thereby creating a “LIMITED DIVIDEND ORGANIZATION”.*” (emphasis added) According to Town Counsel, Delphic must actually create the limited dividend organization in order to be eligible for site approval from MassHousing.

Site Description

The site is comprised of approximately 87 acres of wooded land that is located in the northwesterly part of Douglas, west of North Street, and south of Brown Road as it appears on the USGS topographic map. The USGS topographic map indicates the site contains undulating topography with some very steep sideslopes (in excess of 3:1 and some as steep as 2:1 with an overall elevation difference of approximately 80 vertical feet across the site). This is not represented on the plan submitted for consideration and actually, the applicant makes the comment in the application that the site contains "minimal topography." It is clear based upon this and the following review comments that the Applicant has not spent a great deal of time considering the usability of the Site and appropriateness of a project of this magnitude and scale at this location.

Septic Disposal

The topography of the site combined with the types of soils and the elevation of groundwater would require raised and larger septic disposal systems. Based upon the average lot size of 1/3 of an acre and the Title V requirements for groundwater offset and breakout grading, we are confident that the overall number of lots will have to be reduced from what is proposed because of physical site constraints (ie. grading and groundwater offset, etc.). Furthermore, Nitrogen Loading and groundwater mounding are of particular importance relative to the potential impacts to the resource areas, surrounding water supply wells and overall public health and safety. Title V requires that flows not exceed 440 gallons per acre per day, as proposed the project would yield between 2,000 and 3,000 gallons per acre per day of septic flows.

Water Supply

Water pressure in the vicinity of the proposed project may not be adequate to accommodate the demand that would be required from a project of this scope and magnitude. As such system upgrades such as increasing pipe diameter, construction of a pump station, construction of a water tank, or a combination thereof may be required for the project to proceed.

Wetland Resource Areas

According to the USGS map, at least two significant wetland bodies are present on the site with one intermittent stream crossing at the westerly end of the property. The submittal package indicates that the applicant is "in the process of delineating the wetlands with the Douglas Conservation Commission." This is not so, the Douglas Conservation Commission has not yet received any correspondence or other contact from the Applicant or his representatives regarding the Site. As such, we would like to re-iterate the fact that any potential protectable resource areas have not been identified nor properly evaluated by the Douglas Conservation Commission. This may have a significant impact on the proposed concept and should be considered prior to any plan submission. The number of lots may vary significantly depending upon the establishment of the proper delineation of protectable areas.

Traffic Issues

The proposed 130 new homes are likely to generate more than 1,300 vehicle trips per day. As such, consideration of the condition, width, grade and construction of North Street, Hough Road, and Brown Road will be made. The potential that this added traffic flow will warrant offsite improvements such as the aforementioned roadway construction, but also traffic safety issues such as signage and potentially traffic control lights at either the Gilboa/North Street intersection in Douglas or the Whitins/Hough Road intersection in Sutton, or both. Minimum State and Federal design standards will be adhered to.

Currently no sidewalks are located along North Street in the vicinity of the project site. Pedestrian traffic is anticipated to increase along North Street as a result of the project and would likely require the construction of sidewalks along this road.

Pro Forma

The development budget submitted by Delphic raises questions as to the financial aspects of the proposed project. Delphic's purchase price of the property, according to the Purchase & Sale Agreement is \$2,200,000 for 60 buildable acres or \$36,667/buildable acre. This past year the Douglas Zoning Board of Appeals approved a comprehensive permit application for Forestview Estates which was also submitted by Delphic, the purchase price was \$630,000 for 45 buildable acres or \$14,000/buildable acre. This demonstrates a significant discrepancy between the land value associated with the two projects and raises questions about the purchase price of the land. Furthermore, the assessed value of the North Street property is \$170,800 or \$2,847/buildable acre according to the Assessors office. As I am certain you are aware, higher purchase prices are often an effort to justify an increased density of housing.

Other Significant Issues

The project will require an Environmental Notification Form (ENF) and a Mandatory Environmental Impact Report (EIR) as required by 301 CMR 11.00 MEPA Regulations. This should be completed before a submittal is made to the Town for the project because of the likely significant changes the project will warrant.

Stormwater Management and control is not depicted on the concept drawings in any way, shape or form. Please note that the Massachusetts Stormwater Management Policy Manual will be adhered to and required as part of this project. As a result, it is likely that a number of the proposed lots will be eliminated.

The location of the Douglas-Sutton town boundary is questionable in this area. As such, the status of Brown Road as a public way is also questionable. Based upon data available to date, it appears that Brown Road lies within the Town of Douglas and is not considered a way within Douglas. Furthermore, it appears that the concept plan presented the limits of "Brown Road" as they appear on a USGS Map, which is not consistent with what is perceived as the limits of Brown Road. As a result of this incorrect assumption the concept plan indicates that Road E and Road C will discharge and connect to private property. In my opinion, no connection can be allowed to Brown Road at this time unless a demonstration that this ability exists has been demonstrated. Furthermore, as the plan is submitted it shows two lengthy road networks each having only one access/egress point. This is of particular concern due to the safety of such a layout and the issues associated with accessibility of emergency vehicles.

I have attached some of the correspondence that I received pertaining to the project. Please review these comments and feel free to contact me with any questions or comments that you may have. I would be happy to meet with you to discuss these items in detail, as necessary. Thank you for the opportunity to provide input at this stage of review.

Very truly yours,
Community Development Department

William J. Cundiff, P.E.

cc: Town of Sutton Board of Selectmen
Board of Selectmen
Zoning Board of Appeals
Board of Health

Conservation Commission
Planning Board
Board of Assessors
Dan Hill, Kopelman & Paige



Town of Douglas

Community Development Department
29 Depot Street, Douglas, MA 01516
T: (508) 476-4000 F: (508) 476-4012

Mr. William J. Cundiff, P.E.
Town of Douglas
Town Engineer
Community Development Department

October 31, 2002

RE: Site Eligibility Application-Delphic Associates, LLC.
North Village, Douglas, MA-Comprehensive Permit

Bill, here are some additional comments regarding the site eligibility application for North Village.

- The preliminary plan should show the approximate location of the proposed houses, the location of the different architectural style homes along with the location of the affordable lots.
- The type or style of home, which will be used for the affordable homes, should be listed in the submittal. The affordable homes should be an equal percentage of the different architectural styles homes that are being offered. Not all of the affordable homes should be the same architectural style.
- A letter from Delphic Associates, LLC, states that they reserve the right to change the model type of the homes being proposed depending upon the market.
 - The entire 40B submittal is based on the specification for building the five architectural styles homes, which have been submitted as part of the comprehensive permit.
 - There are five types of homes being offered;
 - 1) The Farmer's Cape (2 full baths)
 - 2) The Bradford Ranch (2 full baths)
 - 3) The Lawrence Colonial (2.5 Baths)
 - 4) The Family Colonial
 - 5) The Sherman Cape (2.5 Baths)
 - I would request that instead of allowing Delphic Associates with an open invitation to change any or all of the proposed styles of homes. That a more comprehensive process is put in place between the developer, MassHousing and The Town of Douglas before any changes are made to the architectural style of buildings being offered. This would help assure



Town of Douglas

Community Development Department
29 Depot Street, Douglas, MA 01516
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that the project is built in accordance to what's being proposed and approved upon.

Project Eligibility Application

- Section #7 Project Description: States that the
 - *"Site will be serviced by town water with individual septic systems. The homes will primarily be 3 bedrooms with 1.5 baths with optional family rooms and garages."*
 - Four out of the five proposed architectural style homes are designed with 2-2.5 bathrooms instead of the 1.5 bathrooms as indicated on page 1 of the application.
- Section # 13 Availability of Utilities:
 - The applicant has indicated that both public and private sewer utilities will be available to this site. This information is misleading and may not be correct do to the fact that the Towns Sewer Treatment Plant is at full capacity and are not accepting any additional hookups.
 - The applicant has NOT indicated on section #13, to the type of water supply will be servicing the site.
- The Delphic Associates has listed the Town of Douglas Median Income at **\$58,400.00**. No information has been submitted detailing exactly where this number was derived from. After reviewing the Forestview Estates Comprehensive application, I noticed a letter from MassHousing dated September 24, 2001 that had listed the median family income for Douglas as being **\$45,600**. I would request that some clarification be given to the current median family income for Douglas.
- The entrances to roads "E" & "C" are being proposed to access off of Brown Road. The status of Brown Road is uncertain do to the fact that there is a discrepancy to the exact location of the Douglas-Sutton town boundary line. Brown Road has never been voted as a Town way in Douglas and is not on the officially Town Map as being either Public or Private. If it turns out that Sutton has the rights to Brown Road, then wouldn't they need to be part of the Comprehensive Permitting Process?

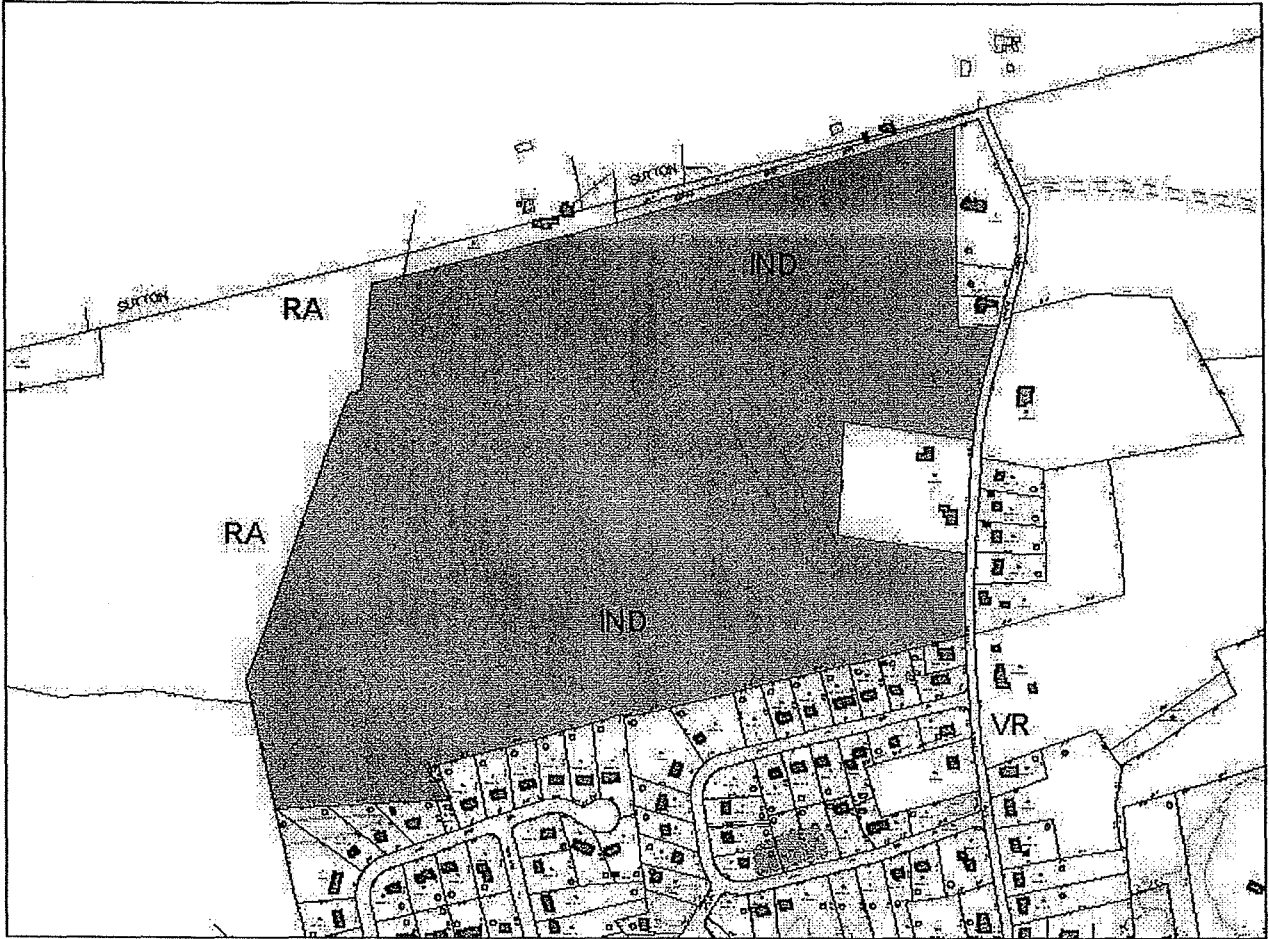
Very truly yours,
Community Development Department

Stephen D Zisk
Planning/Conservation Agent



Town of Douglas
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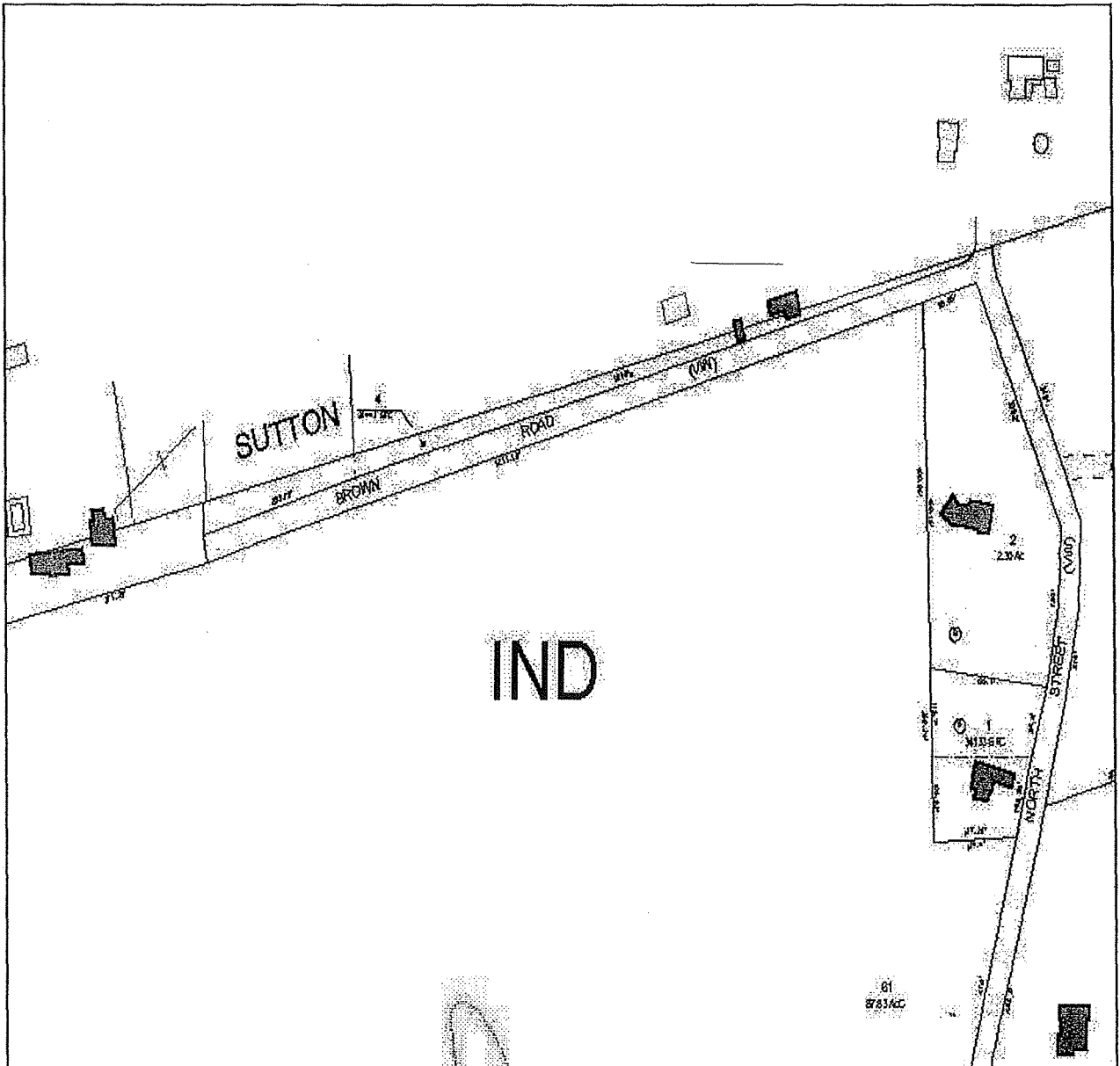
North Village





Town of Douglas
Community Development Department
29 Depot Street, Douglas, MA 01516
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Brown Road



William Cundiff

From: Jennifer Hager [JHager@town.sutton.ma.us]
Sent: Wednesday, October 09, 2002 1:17 PM
To: WCundiff@DouglasMA.org
Subject: North Village

Thank you for forwarding the Massachusetts Housing Application for the above project.

Sutton has serious concerns with the potential traffic impact of this development on Hough Road and Whitins Road, including the four way intersection of the two. As you are aware our Senior Center and a large playing field complex and playground are located on Hough Road. We already have safety issues with cut through traffic from Douglas to Route 146 at this location. Noting that Northbridge is going through the approval process on a 170,000+ S.F.. Super Walmart at this exit of Route 146 with over 8,000 vpd projected, the cut through traffic is sure to increase measurably and dangerously.

Please feel free to include our concerns in your packet of concerns to MHP.

We are highly supportive of affordable housing provisions (and are disappointed this project only contains the bare minimum!), but feel strongly the impacts should be more carefully weighed as with all other forms of locally controlled development in the Commonwealth.

Please keep us informed.
Thank you for the opportunity to comment.

Jennifer Hager
jhager@town.sutton.ma.us

INTEROFFICE MEMO FROM THE ASSESSORS' OFFICE

DATE: OCTOBER 24, 2002
TO: BILL CUNDIFF, TOWN ENGINEER
FROM: BOARD OF ASSESSORS
RE: "NORTH VILLAGE"

The Assessors' Office has reviewed the Conceptual Subdivision Plan of "North Village" prepared by Heritage Design Group and offers the following concerns:

The plan shows access to the lots from Brown Road as well as North Street. For a number of years there has been a question regarding the actual location of Brown Road. In June of 1994 Sutton Town Administrator John Olson wrote a letter to the Douglas Board of Selectmen regarding the issue. Our office was given a copy of Mr. Olson's letter and did some research on Brown Road with no conclusive determination. Our office was not informed of any action taken by the Douglas Board of Selectmen at that time.

Since then, the Town of Douglas contracted with Cartographic Associates of Littleton, NH to undertake a tax mapping project which included a full deed research and aerial photography that was flown in December 1999. The result of that project clearly shows that Brown Road is located in Douglas. It is our opinion that Brown Road should be shown on all plans for the "North Village" subdivision.

Our Board also questions the location of the "Road E" access off Brown Road on the "North Village" plan. According to our estimated calculations Brown Road does not extend westerly that far on the northerly side of the Bresnahan property. We recommend that a full survey of Brown Road be completed to determine the exact location of Brown Road.

OFFICE OF
TOWN ADMINISTRATOR



MUNICIPAL CENTER
4 Uxbridge Road
Sutton, MA 01590-1702
Telephone (508) 865-1123
(508) 865-5078

Ref #322

Hold

June 13, 1994

Ms. Betty Therrien, Chairman
Douglas Board of Selectmen
P O Box 661
Douglas, MA 01516

Dear Betty,

The Sutton Board of Selectmen has asked me to write you regarding a minor boundary line change which concerns the Slocum property on Brown Road in Sutton.

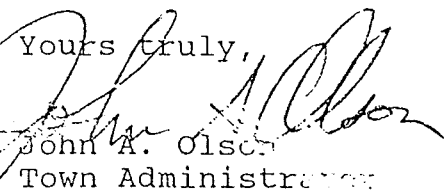
For years it has been recognized by both Sutton and Douglas that the common boundary between the two communities has been Brown Road extended west from Hough Road. The Slocums have considered themselves residents of Sutton and have paid their property taxes in Sutton.

However, in reviewing the historical maps it appears that one map indicates that the boundary runs through the Slocum property thus showing a small portion of the land in Douglas.

I have enclosed a copies of the maps to show you the problem. Mrs. Slocum wishes to sell a portion of her land to her son, however it cannot occur until the boundary question is clarified.

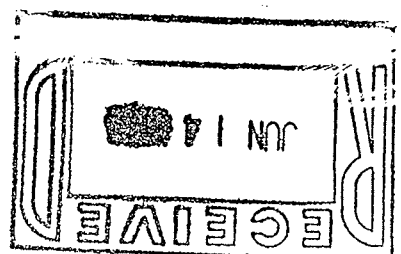
The Town has talked with Senator Matthew Amorello about the boundary question and he has said that the Legislature would like approval of the change from both Sutton and Douglas.

If you would like to discuss this matter with me please feel free to call me at 865-8720. Thank you for your consideration.

Yours truly,

John A. Olson
Town Administrator

JAC:des

enclosure



October 24, 2002

Zoning Board of Appeals
Town of Douglas
29 Depot Street
Douglas, MA 01516



Attention: William J. Cundiff, P.E.

Re: North Village Subdivision

Dear Members of the Board:

On behalf of Rich Lamoureux, an abutter to the Project, we offer the following comments regarding the application for a comprehensive permit submitted by Mr. Paul E. Cusson of Delphic Associates, LLC for the North Village Conceptual Subdivision Plan, in Douglas, Massachusetts. This permit is submitted for the development of 130 (33 Affordable, 97 Market) single-family homes on 87 acres of land of which an estimated 60 acres are classified as upland and 27 acres as wetlands. The project is located off North Street and Brown Road in Douglas, Massachusetts. The following materials were submitted to for review:

<u>Description</u>	<u>Date Prepared</u>
"Conceptual Subdivision Plan"	July, 2002

The following documents were received along with the Plan:

<u>Description</u>	<u>Date Prepared</u>
"Cover Letter"	September 25, 2002
"DHCD Letter"	September 25, 2002
"Project Eligibility Application"	September, 2002
"Purchase and Sale Agreement"	September 20, 2002
"Site Directions"	September, 2002
"Architectural Plans"	September 25, 2002
"Specifications"	July 31, 2002

Plan Summary

The Conceptual Subdivision Plan proposes to create one-hundred and thirty new, buildable lots off of North Street and Brown Road. The majority of the proposed lots are in the range of 15,000 to 20,000 square feet with the smallest being 12,795 square feet (0.29 acres) and the largest being 122,427 square feet (2.81 acres). The project proposes no Open Space lots. Wetland areas comprise an approximately 31 percent of the Parcel, all of which have been included in Buildable Lot sizes.

The project proposes four access roads, two off Brown Road, and two off North Street. The roadways have not been labeled but appear to be 40-feet in width.

The new homes would be served by town water supply and individual septic systems. These would be subject to review by the Board of Health.

We are pleased to offer the following comments:

General Issues

1. We recommend that the Plan is stamped by a professional land surveyor and professional engineer before a permit is granted. The Plan provides no boundary survey information (bearings & distances), no benchmarks or datum points, and the topography appears to be an exact blowup of the USGS quad sheet #185870, which insinuates that the Parcel was not surveyed and the approximate wetland location was taken directly from the quad sheet. Therefore, the subdivision of the Parcel and roadway configuration cannot be properly evaluated and reviewed.
2. The project proposes the alteration of land within wetlands and buffers and therefore is subject to the jurisdiction of the Wetlands Protection Act. The Wetlands Protection Act requires an Order of Conditions for any project that proposes an alteration of a wetland or a wetland buffer zone and MUST conform to the Nine Standards of the Massachusetts Stormwater Management Policy. The North Village project proposes no stormwater management measures. We recommend at a minimum the Plan show proposed stormwater structure locations, computations, and details.
3. We recommend that a study of Caswell Brook be conducted by the Commission in accordance with 310 CMR 10.58(2) of the Wetlands Protection Act to verify whether it is a perennial stream. If it is a perennial stream then the project will be subject to various riverfront protection requirements, which requires adherence specific performance criteria.

4. Road D crosses directly through the wetland area and therefore must be addressed by the Applicant to comply with 310 CMR 10.55(4)(b) of the Wetlands Protection Act.
5. We recommend a subsurface investigation of the Site be completed, verifying the validity of on-site sewage disposal in reference to soil types, wetland setbacks, and depth to groundwater. We note that the alteration of wooded, well-vegetated land to 1/3 to 1/2 acre residential lots will raise the existing groundwater table onsite thus extending the existing wetland area, without proper stormwater management.

The reason these environmental issues must be addressed at this stage is because approval of the Comprehensive Permit would allow construction of 130 lots, whereas the constraints of the Site would most assuredly reduce this number, change the proposed lot layout, affect project construction costs, and impact the project Pro-Forma. All of these issues must be addressed now, in order to comply with the provisions of Chapter 40B of Massachusetts General Law 760 CMR 30.00.

Comprehensive Permit Requirements

The following is a list of requirements by the Comprehensive Permit Rules of the Zoning Board of Appeals, Revised January 4, 1991 that have not been addressed by the submitted Plan.

- Section 3.01(a), Site Development. Locations and outlines of the proposed buildings, the materials proposed for street and drive construction, the location, and dimensions of the drives, and locations of any landscaping improvements
- Section 3.01(b), Existing Site Conditions. The applicant should show Brown Road and North street on the Plan and existing characteristics of the Parcel.
- Section 3.01(d), Proposed Plan. Table summarizing Proposed Plan, including Building types and sizes, paved surface area, etc.
- Section 3.01(f), Utility Plan. Plan showing location and types of sewage, drainage, and water facilities, including hydrants.
- Section 3.01(h), List of Exemptions. List of local requirements and regulations, codes, ordinances, and by-laws requested for exemption.

Douglas Planning Board
October 24, 2002
Page 4

We appreciate the opportunity to review this Special Permit Application and we will gladly answer any questions that you may have regarding this matter.

Sincerely,

Rich Claytor, P.E.

Justin Lamoureux, E.I.T.

Via Email

10/19/02

Mr. Bill Condiff
Town Engineer
Douglas

Bill,

After reviewing the plan entitled "North Village" by Delpliz Associates, LLC, I've seen some concerns that I would like to bring to your attention. They are listed below.

- ① If the project is not supplied by town water, it would be difficult, if not impossible to offset 100' from septic.
- ② Douglas requires septic to be greater than 100' from wetlands. This would be impossible on some lots. The 50' setback required by Title 5 would be difficult if not impossible on several lots.
- ③ Why does the proposed road extend into wetlands? It's not required to access upland and therefore will not meet the requirements for a limited project.
- ④ Based upon wetland limits shown, Road D could cross at a narrower point with the loss of 2 lots.

⑤ There will be a high population density with no open space or playgrounds

⑥ With the large amount of lots, traffic will be a major concern.

⑦ The project is located in an industrial zone which means the loss of industrial sites. Douglas has a limited amount of industrial land now.

⑧ There is some steep topography on the site which will make it hard, if not impossible to meet the requirements for road grades. This will also affect the construction of septic systems.

⑨ Having property that abuts the project, I know from past experience that the soils in the area are not conducive to septic systems because of the high ground water and slow perc rate.

Respectfully Submitted

G. and H. [Signature]

**John S. Slocum
32 Brown Road
Sutton, MA 01590**

**(508) 234-8772
(508) 234-2492**

October 24, 2002



Zoning Board of Appeals
Town of Douglas
29 Depot Street
Douglas, Mass 01516

Attention: William J. Cundiff, P.E.

Re: North Village Subdivision

Dear Members of the Board:

I am offering you the following comments, as an abutter to this project. My address is 32 Brown Road, Sutton, MA. My property abuts this proposed subdivision for approximately 746 feet +/- . I have reviewed the "Conceptual Subdivision Plan" presented and have several significant problems.

This conceptual plan shows a road, "Road E" entering onto my property. It would not be able to connect with Brown Road in any manner. Brown Road was laid out on June 7, 1812, and accepted by the Town of Sutton on November 12, 1812, for a length of 1320 feet and a width of 2 rods. The road ends at my property line. The proposed "Road E" enters my property approximately 425 feet from the public road.

The conceptual plan does not accurately show the wetlands and the area into which they drain. The major wetland shown in the middle of the plan drains mostly north into Sutton. There is a major culvert under Brown Road. The water drains onto the property of Frank Silun of 8 Brown Road, Sutton, MA, crosses his property for approximately 100 feet +/- and then enters my property and meanders through my fields for 800 to 1000 feet and then onto the property of Steven Frieswick of Whitins Road, Sutton, MA. In a normal year the "run off" does not stop until August. In the spring it can be a torrential flood at times. The plan as shown does not take into account the need for any storm water retention ponds to alleviate additional run off. This run off will severely and negatively impact my property as well at the property of Mr. Silun and Mr. Frieswick. Additionally, the number of private septic systems will have an effect on the water

quality and the quality of the water in my well, which is only 125 feet deep. The amount of development will also raise the water table significantly and directly impact my property in a negative way. A detailed study of the run off needs to be done to ensure that the run off after the development does not exceed the current run off. This project can not negatively impact my property in any manner related to conservation issues, and land quality.

This property has been in a natural wooded state for many years. I have lived here since 1951, and it was heavily wooded at that time. There has been no use of the property other than my riding horses there as a child and the recent logging. It has essentially been a wild parcel of land with many exotic animals such as "Fishers", as well as the usual turtles, salamanders, newts, birds, and other wild creatures. I believe there could possibly be endangered species in the wetlands.


I am concerned about the impact this development will have on Caswell Brook. This Brook originates in Sutton and crosses my property. The brook has many springs, of which at least 2 are on my property and the stream flows year round.

The land in this area is full of clay, some of which is only 2 or 3 feet below the surface. I request that full perk tests be performed on each lot for ALL proposed septic systems.

I believe these environmental issues must be addressed immediately because approval of Comprehensive Permit will allow the construction of the 130 houses. All of these issues must be addressed now in order to comply with the provisions of Chapter 40B, and mitigate the impact of this proposal on the community. Proper surveys and plans will show that 130 homes can not be built on this property.

As this process proceeds I will be in touch with you regarding further impact on my property and quality of life. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,


John S. Slocum

Cc: Douglas Board of Selectmen
Sutton Town Planner
Sutton Town Administrator
Frank Silun, Jr.
Richard Lamoureaux

LEONARD KOPELMAN
DONALD G. PAIGE
ELIZABETH A. LANE
JOYCE FRANK
JOHN W. GIORGIO
BARBARA J. SAINT ANDRE
JOEL B. BARD
EVERETT J. MARDER
JOSEPH L. TEHAN, JR.
ANNE-MARIE M. HYLAND
THERESA M. DOWDY
DEBORAH A. ELIASON
RICHARD BOWEN
DAVID J. DONESKI
JUDITH C. CUTLER
ILANA M. QUIRK
KATHLEEN E. CONNOLLY
DAVID C. JENKINS
MARK R. REICH

EDWARD M. REILLY
DIRECTOR WESTERN OFFICE

WILLIAM HEWIG III
JEANNE S. MCKNIGHT

KOPELMAN AND PAIGE, P. C.

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

BOSTON, MASSACHUSETTS 02116-4102

(617) 556-0007

FAX (617) 654-1735

PITTSFIELD OFFICE

(413) 443-6100

NORTHAMPTON OFFICE

(413) 585-8632

WORCESTER OFFICE

(508) 752-0203

KATHLEEN M. O'DONNELL
SANDRA M. CHARTON
PATRICIA A. CANTOR
THOMAS P. LANE, JR.
BRIAN W. RILEY
MARY L. GIORGIO
DARREN R. KLEIN
THOMAS W. MCENANEY
JONATHAN M. SILVERSTEIN
KATHARINE GOREE DOYLE
GEORGE X. PUCCI
LAUREN F. GOLDBERG
JASON R. TALERMAN
MICHELE E. RANDAZZO
GREGG J. CORBO
LISA C. ADAMS
ELIZABETH R. CORBO
DANIEL C. HILL
MARCELINO LA BELLA
VICKI S. MARSH
JOHN J. GOLDROSEN
SHIRIN EVERETT
TANYA D. TREVISAN
BRIAN E. GLENNON, II
JONATHAN D. EICHMAN
MICHAEL C. GLEBA
TODD A. FRAMPTON

October 31, 2002

BY FACSIMILE – (508) 476-4012

Hon. Shirley M. Mosczynski and
Members of the Board of Selectmen
Douglas Town Hall
29 Depot Street
Douglas, MA 01516

Re: North Village Prospective Comprehensive Permit Application

Dear Members of the Board of Selectmen:

You have requested our review of an application submitted by Delphic Associates, LLC (“Delphic”) to the Massachusetts Housing Financing Authority (“MassHousing”) for determination of “project eligibility” under MassHousing’s “Housing Starts” program. “Project eligibility” is a prerequisite for applying for a comprehensive permit under Chapter 40B of the Massachusetts General Laws. The application concerns the potential development of property located off North Street and Brown Road in the northwest part of Douglas (the “Property”). I have reviewed Delphic’s project eligibility application, and Town Engineer William Cundiff’s draft letter to MassHousing, and have the following comments and observations as they relate to Delphic’s legal obligations under Chapter 40B and its regulations.

1. Preliminary Matters

As you may know, as a jurisdictional prerequisite to applying for a comprehensive permit, a housing developer must obtain a “project eligibility determination” from a public subsidizing agency, meaning that the subsidizing agency has given preliminary approval for funding of the proposed affordable housing development under one of its subsidy program. Under regulations adopted by the Department of Housing and Community Development, the subsidizing agency

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must notify the board of selectmen for the municipality in which the proposed housing is located of the pending application, and allow the board of selectmen to provide written comments on the proposed development. 760 CMR §31.01(2)(d). This regulation affords a significant opportunity to raise initial concerns with any and all aspects of the proposed development.

In addition to obtaining a project eligibility determination, an applicant for a comprehensive permit must demonstrate that it "controls the site" of the proposed development, and that the applicant is a public agency, a non-profit organization, or a limited dividend organization. 760 CMR §31.01(1). Applicants typically demonstrate site control through evidence of a deed or a purchase and sale agreement for the proposed site. Here, Delphic has entered into a purchase and sale agreement with the owner of the Property, Jane Bresnahan. Upon my preliminary review, it appears that the Agreement is sufficient for Delphic to satisfy the site control requirement. However, please note that we have not examined Ms. Bresnahan's title to the Property. There may be a problem with the title if, as Mr. Cundiff explains in his draft letter, Brown Road is not a public way and Ms. Bresnahan does not have the right to use Brown Road as access for a 130-unit subdivision. If Delphic eventually submits a comprehensive permit application, the Board of Appeals may wish to request a certification of title from Delphic in order to address this issue. The Town may wish to address this issue in its comments to MassHousing.

With respect to an applicant's organizational form, the majority of comprehensive permit applications are filed by private entities that agree to operate as "limited dividend organizations." Applicants generally satisfy this requirement by simply agreeing to execute a regulatory agreement after a comprehensive permit is issued, regulating the amount of profit the applicant may take from the development. Here, Delphic is proposing to create a limited dividend organization. In my opinion, Delphic must actually create the limited dividend organization in order to be eligible for site approval from MassHousing, and I suggest that the Town address this issue in its letter to MassHousing.

2. Site Conditions

Mr. Cundiff's draft letter to MassHousing covers important site concerns such as the viability of individual septic systems serving the proposed house lots, the viability of individual wells to serve the potable water needs of all of the proposed lots, the impact of the development on proximate wetland resources areas, and traffic congestion. I note that an abutter to the Property has apparently retained an engineering firm in anticipation of a comprehensive permit application, and that an initial evaluation of site conditions performed by this engineering firm was forwarded to the Board of Appeals. If the evaluation reveals issues of concern to the Town, it would be appropriate, in my opinion, to include this evaluation in the Town's letter to MassHousing, as Mr. Cundiff has proposed.

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I note that Mr. Cundiff has identified potentially adverse traffic impacts that could result from the proposed development. The Town may also wish to comment on the proposed road layout of the development, which contemplates three dead-end streets. Lengthy dead-end street are often disfavored as they tend to hinder emergency vehicle access to lots served by said streets. Further, the "conceptual plan" does not show the location of drainage utilities, an important feature of the proposed development given the site's challenging topography and geology. The Town may wish to comment that a determination of site approval by MassHousing, which is required under Chapter 40B regulations, would be insufficient if it is based on the limited information that Delphic has provided with respect to site conditions.

I note that the conceptual plan submitted by Delphic does not indicate any planned "open space" or recreational areas for use by the development's residents. In a recent decision from the Housing Appeals Committee, the state administrative agency with jurisdiction over Chapter 40B ("HAC"), a local board of appeals denial of a comprehensive permit, which was predicated on the proposed development's lack of open space, was upheld by the HAC. See, Dennis Housing Corporation, HAC No. 01-02. The development at issue in the Town of Dennis consisted of a 50-unit condominium complex on a relatively small parcel of land. While HAC's ruling in the Dennis case may have limited applicability to a subdivision featuring individual single-family lots, the Town may still wish to raise a concern with Delphic's apparent disregard for open space and passive recreation.

Finally, If a comprehensive permit is ultimately submitted, I recommend that the Board of Appeals retain engineering consultants, at Delphic's expense, to engage in a thorough evaluation of the site and the predicted impacts from the proposed development.

3. Pro Forma

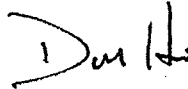
The development budget, or *pro forma*, submitted by Delphic with its project eligibility application raises questions as to the financial aspects of the proposed development. First, and most significant, Delphic's purchase price for the Property, \$2,200,000 for 60 buildable acres, may not reflect the fair market value of the Property. Delphic's consideration for the property that is the subject of the Forestview Estates comprehensive permit that was issued by the Board of Appeals this year was \$630,000 for 45 buildable acres, or \$13,797 per buildable acre. The price for this Property will be \$36,666 per buildable acre, without any indication why the Property should have a value that is more than two times that of Forestview Estates. Higher purchase prices are often a justification made by developers for increased density of housing. The Town may wish to alert MassHousing of this apparent discrepancy.

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Other development costs itemized on the pro forma appear, on their face, to be within accepted industry standards. Delphic's financing costs, however, are considerably higher than Delphic's financing costs in Forestview Estates (\$10,441 per unit versus \$3,113 per unit), and its marketing costs exceed the standard 5% brokers commission. While scrutiny of the development budget is typically within the purview of the subsidizing agency's review, it would be appropriate, in my opinion, for the Town to raise these concerns in its letter to MassHousing. If a comprehensive permit application is filed, the Board of Appeals may wish to make a closer examination of Delphic's development budget.

Please do not hesitate to contact me or my colleague Jason R. Talerma, if you have any questions, or if you require further assistance in regard to this matter.

Very truly yours,



Daniel C. Hill

DCH/mcj
cc: Town Engineer
Board of Appeals