COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

ARCHSTONE COMMUNITIES TRUST

v.

WOBURN BOARD OF APPEALS

No. 01-07

DECISION ON REMAND

September 20, 2005

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COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

ARCHSTONE COMMUNITIES TRUST, Appellant	)	
v.	)	No. 01-07
WOBURN BOARD OF APPEALS, Appellee	)	

DECISION ON REMAND

I. PROCEDURAL HISTORY

In September 2000, Archstone Communities Trust submitted an application to build 640 units of affordable rental housing pursuant G.L. c. 40B, §§ 20-23. The Woburn Board of Appeals granted a comprehensive permit to build 300 units of housing. The developer appealed that decision, and this Committee modified the permit, permitting the construction of 420 housing units. *Archstone Communities Trust v. Woburn*, No. 01-07 (Mass. Housing Appeals Committee Jun. 11, 2003). That decision was appealed to the Suffolk Superior Court, which affirmed a number of findings in our decision, but found that our conclusion with regard to the number of units "was unsupported by sufficient evidence in the record." *Archstone Communities Trust v. Woburn Board of Appeals*, No. 03-03320, slip op. at 14 (Suffolk Super. Ct. Apr. 21, 2005). The Court has remanded the matter to us to "review the evidence and determine an appropriate number of units given the need for affordable housing and the local needs concerns." *Id.* It left to our discretion the decision as to whether to consider additional evidence and argument.

On June 3, 2005, the presiding officer conducted a Conference of Counsel, and issued an order on June 8 permitting the parties to submit prefiled testimony. See 760 CMR 30.09(5)(d). The presiding officer conducted a hearing on July 21, 2005 to permit cross-examination of the witnesses.[1] The parties filed briefs on September 8, 2005.

II. DISCUSSION

In his June 8, 2005 order, the presiding officer stated:

> 1. ... Although neither party is precluded from introducing testimony on any issue, I encourage the parties to focus primarily on the development's:
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> a. Impact of traffic (volume, safety, or other issues on surrounding roadways, and
>
> b. Impact on residents in close proximity.
>
> ...
>
> 5. Either as part of its prefiled testimony or in its brief, each party is permitted, but not required, to present the Committee with a number that it believes is the appropriate number of housing units to be constructed on this site. However, the Committee's task here, as in all cases, is to reach a decision that relates the proposed development to local concerns in a manner that is as rational and realistic as possible, and not to simply address the size of the development in terms of an abstract or arbitrary number of units. To assist the Committee in this task, the parties are encouraged to first address design elements or changes that are necessary to protect local concerns, and from that, infer the appropriate size of the development. For instance, with regard to traffic impacts, and the parties are encouraged to turn their attention first to the level of traffic impact that is acceptable, and then to what design elements might mitigate the impact of the development, and then finally, if the impact cannot be satisfactorily mitigated through design changes alone, to limitations on the number of housing units necessary to reduce the impact to the acceptable level.

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1. At the hearing, the Board filed a motion to strike certain of the prefiled testimony. The presiding officer granted the motion with regard to all the testimony of the developer's financial expert, ruling that it was irrelevant since the economics of the proposal are not in issue. He reserved ruling on the motion with regard to the following portions of the testimony of the developer's civil engineer and traffic engineer: R-1 (¶¶ 8(f), 13, 14, 17, 20, and 23) and R-2 (¶¶ 24-30 and 31(4)). The motion is hereby granted with regard to the following portions only: R-1 (¶¶ 8(f), 13, 17, and 23) and R-2 (¶¶ 24-30 and 31(4)).

The developer has presented plans, evidence, and argument in support of a 540-unit development. The Board chose not to submit prefiled testimony, and contends that the development should be no larger than the 420 units initially approved by this Committee. On remand, we have focused primarily on these two alternatives, though we have also considered whether the evidence might support an intermediate number.

In our original decision, we enumerated a number of local concerns that arose in this case. We first noted by way of an overview that both the intensity and density of the design should be considered, as well as more specific concerns, which included water and fire protection, impact on residents in close proximity (i.e., setbacks from abutters), building height, emergency access, traffic, wetlands concerns, monitoring wells, affordable units, blasting activity, minimum slope, and number of units. *Archstone Communities Tr. v. Woburn*, No. 01-07, slip op. at 21-40 (Mass. Housing Appeals Committee June 11, 2003). On remand we have reviewed each of these issues, even though the majority of them were adequately addressed in our first decision and need not be reconsidered. For clarity, we address each one individually below, though only the last two, impact on abutters and traffic, require reconsideration.[2]

1. Intensity involves issues such as the adequacy of open space, recreational space, and other matters related to whether the number of units is too great—not in relation to the surrounding area—but for the proposed development site. We indicated originally that

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2. The developer has also asked us to revisit several other issues from our original decision. First is the requirement that the development be built in phases in order to comply with the statutory requirement that construction not be commenced in any one year on land comprising more than three tenths of one percent of the city's land area. See G.L. c. 40B, § 20. We addressed this in detail in our original decision. *Archstone Communities Tr. v. Woburn*, No. 01-07, slip op. at 4-8, 41 (condition VI-2) (Mass. Housing Appeals Committee June 11, 2003). The Court did not charge us with reviewing this issue, and we see no reason to reconsider that legal ruling that we made previously. Second, we have been asked to consider requirements concerning the provision of sidewalks. We decline to review that issue for the same reasons.

intensity is an underlying component of a number of issues that were in dispute. But it is not, standing alone, a significant factor to be considered in determining the proper number of units for the site. As discussed in detail in our original decision, even if 640 units were built, over 40% of the site would be preserved natural area (mostly uplands) and over two thirds of the site would be open space. *Id.*, slip op. at 22. There is clearly enough open space and recreational space on the site.

2. Density is a broad category that need not be addressed separately since its components—in this case impacts on abutters and traffic—are addressed below.

3. Water and fire protection were addressed adequately in our original decision, in which we upheld conditions concerning a new water pump station, water main, and water main loop. Our ruling was affirmed by the Superior Court.

4. The town's building-height limitation was not exceeded in the original proposal, but we struck a condition limiting buildings to 2½ stories, and this was affirmed by the Court. We continue to see no need to apply a height limitation to this development. See below.

5. Emergency access was dealt with adequately in our original decision, and has no implications for the appropriate number of units to be built on the site.

6. Wetlands concerns, monitoring wells, blasting activity, and minimum slopes were addressed adequately in our original decision and were affirmed by the Court.

7. Affordability of units was addressed adequately in our original decision, and has no implications for the appropriate number of units to be built on the site.

8. Impact on abutters is a local concern that might well limit the number of units that could be built on the site. In our original decision, we struck a condition that the Board had imposed requiring a 300-foot buffer from all property boundaries, a buffer so large as to not be achievable even if only 300 units were to be built. *Id.*, slip op. at 30. But we did not explicitly

consider how any impact on abutters might affect the size of the development. We have re-examined this issue, focusing on the recent prefiled testimony of the developer's civil engineer and two new site plans attached to that testimony. See Exh. R-1.

Exhibit R-1-E shows a plan similar to the original 640-unit proposal, which consists of 540 apartment units in 22 three-story buildings, none of which exceed Woburn's 35-foot height limitation for single-family residential zoning districts. Exh. R-1 (¶¶ 19, 20). Exhibit R-1-B shows 540 units in 5 large four-story buildings and 4 smaller three-story buildings. This plan still includes a substantial amount of surface parking, though there are garages under the four-story buildings. R-1 (¶ 7). The roof height of the four-story buildings is 50 feet. R-1 (¶ 9).

The developer's expert testified that the new three-story plan (Exhibit R-1-E) will provide a wooded buffer from abutting properties of at least 150 feet and a minimum separation between apartment buildings and the closest abutting home of 290 feet. Exh. R-1 (¶ 19). This testimony is highly credible, and is substantiated by the plans themselves. Exh. R-1-E. In his direct testimony, the expert did not say in so many words that this proposal will have no impact on the abutters, but that is the clear implication of his direct testimony and is stated explicitly in his testimony on cross-examination. He testified that the "test of reasonableness" that he used was "if they can't see it, they can't hear it, and the dust and traffic construction would not impinge on their properties," and he then "concluded … that this design exactly meets the test…, that it protects the immediate proximity of the neighbors and they will not be able to see or be impacted by the units." Tr. XXIX, 85. Based upon the

expert's testimony and our own review of these plans, we conclude that a 540-unit development configured as in Exhibit R-1-E will have no perceptible impact on abutters.[3]

With regard to the four-story plan (Exhibit R-1-B), the developer's expert testified that the minimum wooded buffer will also be 150 feet, and the minimum separation between the apartment buildings and the closest abutting home will be 440 feet. Exh. R-1 (¶¶ 8(a), 8(b)). This testimony, too, is substantiated by the plans themselves. Exh. R-1-B. In addition, visibility testing using weather-tracking balloons shows clearly that the proposed buildings will not be visible to the abutters to any significant degree. Exh. R-1 (¶¶10, 11), R-1-D (fig. 1-10). The four-story plan will be equally or even more unobtrusive than the three-story plan, and based upon the expert's testimony and our review of the plans, we conclude that a 540-unit development configured as in Exhibit R-1-B will have no perceptible impact on abutters.

We conclude that whether the development contains 300 units, 420 units, or 540 units, there will be no perceptible impact on abutters. Further, it is now clear that the height of the proposed buildings is not a factor, and that the local height restriction should be waived if necessary.

9. The most significant concern raised by the Board is the effect that traffic from the proposed development will have on Cambridge Road.[4] We addressed this only obliquely in our original decision, stating that "the record is replete with examples of the significant strains the proposed development will impose on municipal services and an already crowded arterial

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3. Each development site and neighborhood is different, but we note that we recently approved multifamily developments with setbacks from property lines ranging from 20 to 40 feet. See *Rising Tide Development, LLC v. Lexington*, No. 03-05, slip op. at 22-23 (Mass. Housing Appeals Committee Jun. 14, 20045), *Pyburn Realty Tr. v. Lynnfield*, No. 02-23, slip op. at 12, 14 (Mass. Housing Appeals Committee Mar. 22, 2004).

4. Internal traffic issues, which were addressed in our original decision and affirmed by the Court, have no implications for development size.

roadway." *Archstone Communities Tr. v. Woburn*, No. 01-07, slip op. at 24 (Mass. Housing Appeals Committee June 11, 2003). This is the factor that limits the size of the development.

For our original hearing, the developer's traffic engineer had prepared a detailed traffic study, analyzing four key intersections along Cambridge Road, namely the intersections of Cambridge Road first, with Wall Street and Wayside Road, second, with Bedford Road and South Bedford Street, third, with Revere Street, and finally, with the Cross Roads Plaza driveway. Exh. R-2 (¶ 7), also see R-2-C (fig. 11); see Exh. 130, 131, 132. Immediately before our recent hearing on remand, the engineer conducted additional traffic counts at these intersections for five days, and updated his study. Exh. R-2 (¶¶8, 9). His prefiled testimony is based upon this augmented study. Exh. R-2 (¶ 10).

Cambridge Road is a heavily traveled roadway accommodating approximately 25,000 vehicles per day. Exh 47. Nevertheless, with one exception, the intersections currently operate at Level of Service C ("LOS" C) or better, and, more important, they will continue to do so if 540 units of housing are built.[5] Exh. R-2 (¶¶ 18, 20-22, 31). The intersection of Cambridge Road with Bedford Road and South Bedford Street, however, operates at LOS F. The developer has already agreed to mitigation measures at that intersection that will improve conditions to LOS C if the proposed development is built. R-2 (¶¶ 19, 23, 31); Appellant's Brief, p. 19 (filed Sep. 8, 2005). Based upon these facts, there is no reason to reduce the size of the proposed development below 540 units.

There is an additional concern, however, that was not addressed in the prefiled testimony of the developer's expert. From his testimony on cross-examination, it is clear that because of the steady flow of traffic on Cambridge Road during the morning and evening

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5. Under generally accepted traffic engineering principles, traffic flow through intersections is graded using levels of service "A" through "F." LOS A are optimal conditions, and LOS F is failing.

peak hours, it will be difficult for cars leaving a 540-unit development to make a left turn onto Cambridge Road, specifically, the LOS for that movement will be F, which is considered unacceptable.[6] Tr. XXIX, 71. Installation of traffic signal would solve this problem, but the flow out of the development is not sufficient to meet warrants established by the Massachusetts Highway Department (MassHighway), and its advisability is in doubt since a new signal (in addition to the six already in existence on Cambridge Road near the site) would impede the flow on Cambridge Road slightly. Tr. XXIX, 72-73. For that reason the developer has proposed to monitor the situation in consultation with MassHighway and to install a signal in the future if it is advisable.[7] Tr. XXIX, 71-72.

Cars will have to exit onto Cambridge Road no matter how large the development is, and the evidence does not show what, if any, improvement would result from reducing the size of the development.[8] Neither does the evidence show whether left turns from the development will actually be dangerous or merely inconvenient if no traffic signal is installed. Clearly, if a traffic light *is* installed, the intersection will be both convenient and safe for residents of the development, though there will be the minor inconvenience for drivers on Cambridge Road of an additional traffic light. Whether or not a traffic signal is installed, we do not believe that the circumstances support the reduction of the proposed development below 540 units. We conclude, therefore, that 540 units of housing on this site are consistent with local needs.

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6. The other turning movements will be LOS A or B. Tr. XXIX, 70-71.

7. Lest there be any doubt, we hereby order that the costs of installation of a traffic signal at the entrance to the development be paid by the developer if the Massachusetts Highway Department determines that such a signal should be installed.

8. The developer's expert testified only that he could not agree "that the level of service at the entrance drive would be improved by a reduction to either 420 units at the site or 300 units at the site." Tr. XXIX, 70.

III. CONCLUSION AND ORDER

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee concludes that 540 units of housing on this site are consistent with local needs. The Board is directed to issue an amended comprehensive permit as provided in this decision. All other requirements and conditions contained in our original decision, as affirmed by the Superior Court, shall remain in effect.

Housing Appeals Committee

Dated: September 20, 2005

Werner Lohe, Chairman

Joseph P. Henefield

Marion V. McEttrick

James G. Stockard, Jr.

Dissenting: Christine Snow Samuelson

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