

Bas Meeting  
09-10-07

#7

9/17/07

**John Murray**

**From:** Doug Halley  
**Sent:** Monday, September 10, 2007 3:52 PM  
**To:** John Murray  
**Subject:** 4 High Street

You asked a question regarding the potential for 4 High Street if an on-site system was utilized instead of a connection to the sewer system. Based on the existing septic system, the types of soils and the developmental requirements of the site the Health Department would estimate that approximately three 3-bedroom units could be serviced by an on-site system. However, depending on how those units are structured and what additional soil tests might show that estimate could either increase or decrease by a 25% to 50% margin.

Please place all the materials  
in last week's packet into  
the 9/17/07 packet

9/10/07  
#7  
BOS  
AG

STAMSKI AND McNARY, INC.

80 Harris Street  
Acton, Massachusetts 01720  
(978) 263-8585  
FAX (978) 263-9883

WILLIAM F. McNARY, P.L.S.  
JOSEPH MARCH, P.E., P.L.S.

August 2, 2007

Acton Board of Selectmen  
472 Main Street  
Acton, MA 01720

Re: 4 High Street

Members of the Board,

On behalf of our client, Faulkner Mill Realty, LLC, we are writing to you, acting as the Acton Sewer Commissioners, to specifically authorize 20 residential housing units proposed at 4 High Street, each with two bedrooms, to be serviced by the public sewer in Main Street.

This site has been previously approved for both non-residential and residential projects. The Board had originally approved a sewer connection for this site for a Health Club serving 300 people a day. Subsequently, the Board had approved a sewer connection for 30 residential housing units with up to 2-bedrooms each. These uses would potentially have had flows of 6,000 and 6,600 gallons per day respectively. The present proposal will have a maximum design flow of 4,400 gallons per day.

The applicant, after having expended significant efforts and resources, has regrettably found the 30-unit housing proposal financially unviable. However, the current proposal will still make a critical contribution to the goals of the South Acton Village Plan by providing vital housing.

Our client has corresponded with Doug Halley, Health Director, regarding the formula for calculating betterment fees. The applicant is willing to connect based on the terms of the formula that was discussed. The fee will be one hundred sixty four thousand, nine hundred seventy four dollars and thirty seven cents (\$164,974.37).

We thank you for your time in consideration of this matter. Please call our office if you have any further questions.

Respectfully yours,  
Stamski and McNary, Inc.

  
George Dimakarakos, P.E.



Planning Board



TOWN OF ACTON  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9636  
Fax (978) 264-9630  
[pb@acton-ma.gov](mailto:pb@acton-ma.gov)

8/3/07 / 8/13/07  
Sewer Comm -  
Issuance Bus.

**MEMORANDUM**

**To:** Board of Selectmen **Date:** July 30, 2007  
**From:** Planning Board  
**Subject:** 4 High Street – Faulkner Mills (Fenton)

Messrs. Fenton and Jeanson visited the Planning Board on July 24. The purpose of their visit was to show the Board the revised plan for their project at 4 High Street. The project as originally conceived and approved had 30-plus dwelling units in two buildings. The larger building was designed recalling a mid- to late 19<sup>th</sup> century industrial mill building. The smaller one was reminiscent of mill worker housing from that time period. The revised plan would scrap the mill building and instead replicate the mill worker housing style in an arrangement of duplexes over a larger area of the property. The overall number of units would be less (+/-20). The revised project would be 'by right' under zoning. The two gentlemen explained their reasons for the change in the project as having to do with the construction cost of the larger building and with the current unfavorable market conditions.

While regretting the loss of the mill building, the Board found the revised design concept generally acceptable and in furtherance of the goals of the South Acton Village Plan. The village plan calls for attracting a mixture of residential and commercial uses so as to create a small vibrant village. The addition of new housing at 4 High Street raises the residential density that is so critical in supporting the small businesses in the South Acton Village.

Sincerely,

Greg Niemyski  
Chairman, Planning Board



## INTERDEPARTMENTAL COMMUNICATION

Acton Board of Health - Telephone 978-264-9634 - Fax 978-264-9630

August 8, 2007

TO: John Murray, Temporary Town Manager

FROM: Doug Halley, Health Director

SUBJECT: Faulkner Mill Realty Sewer Connection Request

Stamski & McNary has submitted a request on behalf of their client, Faulkner Mill Realty, for authorization from the Sewer Commissioners to allow 20 residential housing units at 4 High Street to be serviced by the public sewer on Main Street.

4 High Street is just outside the Middle Fort Pond Brook Sewer Service Area that was finalized with the issuance of betterments in June of 2005. In 2003 the Sewer Commissioners approved a request from the then owners of 4 High Street, Waitco Machine Company, to be serviced by the public sewer. The approval was given on the conditions that they accept the responsibility of the sewer assessment for 4 High Street as specified in Chapter D10 (2) of the Bylaws of the Town of Acton.

In 2005 the current owners of the property, Faulkner Mill Realty, requested authorization from the Sewer Commissioners to allow 30 residential housing units at 4 High Street to be serviced by the public sewer on Main Street. The Sewer Commissioners approved the request with the condition that they accept the responsibility of the sewer assessment for High Street as specified in Chapter D10 (5) Sewer Privilege Fees of the Bylaws of the Town of Acton.

The existing wastewater treatment plant for the sewer service area was able to obtain a permit extension in 2005 that increased its capacity by 49,000 gallons per day. When the Comprehensive Water Resources Management Plan was completed in 2006 a portion of this excess capacity was allocated for Needs Areas identified in the plan (Spencer/Flint/Tuttle and a portion of West Acton Center). At that time excess capacity was also allocated to the Powdermill Plaza sewer extension and 4 High Street based on the previous votes by the Sewer Commissioners.

When the original sewer system was built it was “supersized” to account for additional areas eventually connecting to the system. The cost of the “supersizing” was set at \$1,166,200 and payment of that cost was allocated to users either outside the service area or within the service area with wastewater flows greater than allowed by zoning. Powdermill Plaza, Blanchard Place, etc. have been charged privilege fees which have offset the outstanding cost of the “supersizing.

As of this date the Town has received \$347,265.84 of privilege fees and has a remaining balance of \$818,934.16 for the “supersizing”. There are several potential privilege fee projects that might move forward to help offset the “supersizing costs” but many of these projects like the Exchange Hall project may take several years to complete or ultimately be downsized or abandoned.

In their request letter Stamski & McNary noted that they had discussed the formula for calculating the betterment fees with me. The fee that they stated, \$164,974.37 is correct and it is based on a betterment value of \$12,311.52 times the number of units times .67 to account for the two bedroom status of each unit.

Should the Sewer Commissioners determine that the proposed 20 residential housing units be serviced by the public sewer in Main Street the Health Department would recommend the following:

1. The applicant shall be responsible for all costs and permits required related to the construction of the sewer service to the existing sewer line.
2. The applicant shall comply with all the requirements of D10 5 Sewer Privilege Fees of the Sewer Assessment Bylaw.
3. The applicant shall sign an agreement as specified by Town Counsel prior to the issuance of any building permits for 4 High Street.

1000 My ...  
Confidential  
9/10/07

**Roland Bartl**

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**From:** Stephen Anderson  
**Sent:** Saturday, September 01, 2007 3:39 PM  
**To:** Roland Bartl; John Murray  
**Cc:** Mark Hald; Stephen Barrett  
**Subject:** Acton/SewerFaulkner: Analysis Request for Public Sewer Line Extension to 4 High Street and Town Bylaw Chapter O

Gentlemen:

I have attached the following materials responsive to the questions below:

- My Memorandum analyzing the Applicability of Chapter O of the Town Bylaws to the Request of Faulkner Mill Realty, LLC to Connect to Town Sewer;
- My Memorandum analyzing the Request of Faulkner Mill Realty, LLC to Connect to Town Sewer in view of the Board of Selectmen's prior votes as to that property; and
- Information from the Secretary of State on the two LLCs .

As for the question of whether the Board can lawfully impose conditions upon Faulkner Mill Realty, LLC in return for allowing it to connect to Town sewer, the answer is somewhat less clear:

1. If Faulkner Mill Realty, LLC voluntarily enters into a written agreement in which it agrees to abide by the conditions (and waives its right to withdraw or to challenge the conditions), then the conditions should stand.
2. If the conditions are unilaterally imposed by the Board but are directly related to the sewer connection itself, the conditions should be upheld. See *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40, 44 (1964) (upholding a requirement that an intervening water pipeline be upgraded from 2" to 6" as a condition of allowing a subdivision street to connect to the public water supply).
3. If the conditions are unilaterally imposed by the Board but are not directly related to the sewer connection itself (e.g. a requirement to construct a sidewalk), the answer is not as clear. Generally speaking, a town "is obliged to furnish water [or sewer] to each prospective customer 'on the same terms on which it ... [furnishes] water [or sewer] to others.'" However, prospective customers "whose demands for water [or sewer service] necessitate extensions of existing systems may stand on a different basis from those whose requirements may be met from immediately adjacent ... mains." As a result, the conditions would be evaluated as to whether the Board has exercised a "reasonable and fair discretion in determining whether and upon what terms to make extensions of its lines." *Id.* The more onerous the condition and the less related to the sewer extension itself, the more vulnerable the condition will be to a challenge.

Steve

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**From:** Roland Bartl [mailto:rbartl@acton-ma.gov]  
**Sent:** Thursday, August 30, 2007 8:36 AM  
**To:** Stephen D. Anderson  
**Cc:** Mark Hald; Stephen Barrett  
**Subject:** RE: Request for Public Sewer Line Extension to 4 High Street and Town Bylaw Chapter O

Steve:

I should have added another nuance to the question. One Selectmen asked if they could deny the requested extension regardless of what Ch. O says. The Selectmen had previously granted the extension on a large project

9/4/2007

on the same site by the same developer, which had more units, more bedrooms, and more projected sewage flow.

Thanks -

*Roland Bartl, AICP  
Planning Director, Town of Acton  
472 Main Street  
Acton, MA 01720  
978-264-9636*

-----Original Message-----

**From:** Roland Bartl

**Sent:** Wednesday, August 29, 2007 6:27 PM

**To:** Stephen Anderson

**Cc:** Mark Hald; Stephen Barrett

**Subject:** Request for Public Sewer Line Extension to 4 High Street and Town Bylaw Chapter O

Hi, Steve:

The Selectmen have on their upcoming agenda (9/10) a meeting continuation to consider the request for a public sewer connection to the multi-unit development project at 4 High Street in South Acton. The same developer has done the Crossroads 40B project (4 High St is not a 40B). After an IG investigation, the Town has filed a demand notice with the developer to collect moneys owed to the Town in connection with Crossroads. I believe the notice was sent sometime in July or June. I was told you would know the exact date since it was sent from your office.

With the High Street matter before the Board now, we arrive at Chapter O - Revocation or Suspension of local licenses. The question I need to investigate is whether Chapter O can be invoked to deny the sewer extension because the demand notice has not been paid. Based on my finding that these are two separate sites, that the developer has two separate corporate entities for each project, and that the demand notice is not at least 12 month overdue, I conclude that Chapter O cannot be brought into action here.

Please confirm my reading or advise otherwise if I missed something.

Thank you -

*Roland Bartl, AICP  
Planning Director, Town of Acton  
472 Main Street  
Acton, MA 01720  
978-264-9636*

PS: Another item on the Selectmen's 9/10 agenda is an executive session concerning Grace. Do you have that on your schedule? I can't tell from my notes what John told me regarding this - he is on vacation. It may be an internal affair also.

9/4/2007

## MEMORANDUM

To: John Murray, Temporary Town Manager

From: Stephen D. Anderson, Town Counsel

Date: September 1, 2007

Re: Acton/Sewer: Applicability of Chapter O of the Town Bylaws to the Request of Faulkner Mill Realty, LLC to Connect to Town Sewer

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On September 10, 2007, the Selectmen will consider the request of Faulkner Mill Realty, LLC for permission to connect a planned 20-unit condominium project at 4 High Street, Acton to the public sewer. I have previously analyzed the question whether the Town is obligated to allow that connection based on prior votes of the Board with respect to a proposed 30-unit project on the same property. The answer is no. See attached.

You have now asked whether Chapter O of the Town Bylaws either permits or obligates the Board of Selectmen to deny permission for the sewer connection to Faulkner Mill Realty, LLC based on the facts presented below.

### Facts:

1. Faulkner Mill Realty, LLC is a Massachusetts limited liability company with a principal place of business at 25 Westford Lane, Acton, Massachusetts 01720. Its members are James D. Fenton and Michael J. Jeanson. See attached.
2. As it happens, James D. Fenton and Michael J. Jeanson are also the members of Crossroads Development, LLC, another Massachusetts limited liability company with a principal place of business at 25 Westford Lane, Acton, Massachusetts 01720. See attached.
3. Pursuant to a comprehensive permit from the Acton Board of Appeals, Crossroads has developed a 12-unit condominium project at 244-248 Main Street, Acton. Crossroads entered into a Regulatory Agreement with the Town on September 9, 2003, regarding that project which limited Crossroads' development profit to no more than 20% of its total development costs. That Agreement expressly provided that all profits in excess of the Allowable Profit "shall be paid by [Crossroads] to [the Town] for deposit in an affordable housing fund to be used by [the Town] for purposes of encouraging, creating or subsidizing the construction or rehabilitation of affordable housing elsewhere in the municipality [the Town]."

4. Following an investigation by the Inspector General's office, the Town has issued a demand for payment of \$763,000 by Crossroads Development, LLC, Mr. Fenton, and Mr. Jeanson for alleged violations of the Agreement and for the other matters alleged in a draft Complaint served with the demand.
5. Chapter O, § a, of the Town's Bylaws provides as follows (emphasis added):

The Tax Collector ... shall annually furnish each department, board, commission or division, hereinafter referred to as the Licensing Authority, that issues licenses or permits ... a list of any person, corporation, or business enterprise, hereinafter referred to as the Party, that has **neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period**, and that such Party has not filed in good faith a pending application for an abatement of such tax or has a pending petition before the appellate tax board.

6. Chapter O, § b, of the Town's Bylaws further provides as follows (emphasis added):

The Licensing Authority shall deny, revoke or suspend any license or permit ... of any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the Party and the Tax Collector, as required by applicable provisions of law, and the Party is given a hearing, to be held not earlier than fourteen days after said notice. ... Any license or permit denied, suspended or revoked under this section shall not be issued or renewed until the Licensing Authority receives a certificate issued by the Tax Collector that the Party is **in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the municipality** as of the date of issuance of said certificate

7. Chapter O, § d, of the Town's Bylaws further provides as follows (emphasis added):

The Board of Selectmen may waive such denial, suspension or revocation if it finds there is **no direct or indirect business interest** by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.

**Analysis:**

The Board of Selectmen is under no obligation to allow the connection of the 20-unit condominium project at 4 High Street to the Town's sewer, because that project does not front on a sewer street. See G.L. c. 83, § 3 (“[i]f the board of health of a town making such appropriation shall order land abutting upon a public or private way in which a common sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer having charge of the maintenance and repair of sewers application to connect his land with a common sewer, such board or officer shall make such connection.”). See also *Clark v. Bd. of Water & Sewer Commissioners of Norwood*, 353 Mass. 708 (1968) (where a property fronts on a sewer street, a town generally has no discretion to deny an applicant the right to connect to a common sewer system unless “the connection would at once overload the sewer and risk serious flooding and danger of injury to persons or property”); *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40 (1964) (A municipality engaged in furnishing water service (subject to whatever statutory regulation there may be) is permitted to exercise a reasonable and fair discretion in determining whether and upon what terms to make extensions of its lines).

However, the Board should not base a denial of that connection on Chapter O of the Town Bylaws because:

1. The Town's claim against Crossroads Development, LLC, Mr. Fenton, and Mr. Jeanson for \$763,000 for alleged violations of the Regulatory Agreement on the 12-unit condominium project at 244-248 Main Street is not a claim for “local taxes, fees, assessments, betterments or other municipal charges” within the meaning of Chapter O.
2. The Town's claim for \$763,000 has, in all likelihood, not been listed by the Tax Collector on the “list of any person, corporation, or business enterprise ... that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period.”

## MEMORANDUM

To: John Murray, Temporary Town Manager  
From: Stephen D. Anderson, Town Counsel  
Date: July 15, 2007  
Re: Acton/Sewer: Request of Faulkner Mill Realty, LLC to Connect to Town Sewer

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### I. INTRODUCTION

By letter dated May 30, 2007, Faulkner Mill Realty, LLC of 25 Westford Lane, Acton, MA ("Faulkner") has requested that the Board of Selectmen "approve our request whereby the sewer connection fees for the planned twenty condominiums [at 4 High Street] be paid proportionately upon issuance of a single or each occupancy permit as determined by the Building Commissioner."

In reviewing this request, you have identified a more fundamental question: Should Faulkner be allowed to connect the proposed 20-unit condominium development to the Town sewer at all?

### II. CHRONOLOGY

#### A. The Zoning Decision

Between November 15, 2004 and January 24, 2005, the Board of Selectmen conducted a public hearing on Faulkner's application # 09/24/04-399 for a Site Plan Special Permit under Zoning Bylaw § 10.4 and a Special Permit under Zoning Bylaw § 10.3 and note 2 of the Bylaw's Table of Principal Uses<sup>1</sup> for a multi-family residential development consisting of two buildings totaling 30 units (one 3-unit building and one 27-unit building) at 4 High Street (Assessors' Map H2A, Parcel 64).

At the public hearing on November 15, 2004, the Petitioner's engineer indicated that the proposed project would "improve the property in a number of ways" including the following:

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<sup>1</sup> At that time, note 2 (since renumbered note 3) provided as follows with respect to the VR and SAV Zoning Districts:

Not more than four DWELLING UNITS shall be permitted per multifamily dwelling. At least one of the DWELLING UNITS shall be occupied by the owner of the property. For purposes of this footnote, the owner shall be defined as one or more individuals residing in a DWELLING UNIT who hold legal or beneficial title and for whom the DWELLING UNIT is the primary residence for voting and tax purposes. In the VR District a Site Plan Special Permit shall not be required. In the SAV district, the Board of Selectmen may by Special Permit allow more than four DWELLING UNITS per Multifamily Dwelling.

They plan on developing 40% of the parcel. ... It creates housing that is not typical in Acton. It is an alternative to large private homes. They feel these smaller apartment size units will fill a need for rental units.

See Minutes of 11/15/04 Hearing.

At the public hearing on December 13, 2004, the Petitioner's engineer indicated that the developer has "already made a request to be in the Sewer district." See Minutes of 12/13/04 Hearing.

At the public hearing on January 24, 2005, the Petitioner's engineer indicated that, "This project requires sidewalks and a sewer connection."

On February 28, 2005, the Board voted 4-0 (Ashton abstaining) to grant the Site Plan Special Permit and the Special Permit, subject to certain findings, conclusions, conditions and limitations. As set forth in the Board's Decision, these include without limitation the following:

- The approved plans showed a sidewalk along the frontage of High Street, as required by the Bylaw: "A flush concrete sidewalk shall be extended across the entrance to Erikson Grain Mill. The entire sidewalk along the frontage shall be concrete." Finding 1.5.
- The Decision confirmed that the Petitioner has also agreed to install a bituminous concrete sidewalk leading to the westerly emergency entrance to Audubon Hill if they can get necessary approvals." Finding 1.5.
- The Decision required that the approved plans "shall be revised to provide a sidewalk east of the site up to the emergency entrance to Audubon Hill. The design shall meet the approval of the Town Engineer. If it is determined the sidewalk cannot be located within the street layout and consent of the affected property cannot be obtained the Board shall be notified. ...." Plan Modifications 2.1.
- The Decision confirmed that the "Acton Housing Authority and the Petitioner had reached an agreement to set aside two rental units for low income households. The rents for the two units would have been set at HUD's Fair Market Rents. Unfortunately the Acton Housing Authority is unable to permanently guarantee Section 8 subsidy." Finding 1.9. However, the Decision required that, "If HUD subsidy becomes available the Petitioner shall cooperate with the Acton Housing Authority to make units available. In addition if the Petitioner ultimately sells the units [h]e has agreed to discuss selling units to the Town." Condition 3.5.

- The Decision confirmed that, “The Petitioner has requested from the Sewer Commissioners permission to connect this property to the Town Sewer system.” Finding 1.4. However, the Decision noted that, “This approval is not an indication that the Commissioners will approve the requested tie in. The Petitioner must either obtain that approval or design a septic system compliant with Title V.” *Id.*; see also Condition 3.4 (“The Petitioner shall either obtain permission from the Sewer Commissioners or approval of the Board of Health for a Title V system.”)

Based on these and other findings, the Selectmen approved the plans and issued the Site Plan Special Permit and the Special Permit, finding the proposed development to be “compatible with [its] surroundings.”<sup>2</sup>

#### **B. Sewer Connection For the Approved Project**

I have not been provided with a copy of Faulkner’s original request to connect the property at 4 High Street to the Town sewer, which presumably predated the reference to that request in the Board’s Minutes of December 13, 2004.

However, by letter dated June 28, 2005, Faulkner’s engineer wrote to ask the Board of Selectmen, acting as the Sewer Commissioners, “to proceed on our earlier request to specifically authorize the 30 multi-family units proposed at 4 High Street, each with two bedrooms or less, to be serviced by the public sewer in Main Street.” Faulkner’s engineer confirmed that the Board “has approved a Site Plan Special Permit and Use Special Permit for the project and is very familiar with the details of the proposal.” Faulkner’s engineer also confirmed that Faulkner was willing to connect based on the Town’s “formula for calculating betterment fees,” which would result in a fee due from Faulkner of \$247,461.60.

At a meeting on July 18, 2005, the Board of Selectmen acting as the Sewer Commissioners unanimously voted “in favor of approving the connection” requested by Faulkner.

To the best of my knowledge, Faulkner has never executed an Agreement with the Board of Selectmen acting as the Sewer Commissioners either authorizing the sewer connection for the project or paying (or agreeing to pay) the applicable sewer privilege fee.

#### **C. Current Request for Sewer Connection**

By letter dated May 30, 2007, Faulkner has now requested that the Board of Selectmen “approve our request whereby the sewer connection fees for the planned

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<sup>2</sup> Faulkner did not appeal the Decision. By letter dated January 23, 2007, Faulkner requested a “2 year extension” of the permit approved by the Decision, “to the extent that it is required.” Faulkner indicated that “the project has commenced” “in the form of demolition of the existing building,” but cited “current economic conditions [that] may temporarily delay the commencement of new construction.”

twenty condominiums [at 4 High Street] be paid proportionately upon issuance of a single or each occupancy permit as determined by the Building Commissioner.” Apparently Faulkner is no longer planning to construct the 30-unit rental project approved by the Decision but nonetheless believes it is entitled to connect a 20-unit condominium project on the property to the Town sewer based on the Board’s July 18, 2005 vote.

### III. ANALYSIS

Based on the facts summarized above and the law applicable to connections to the Town sewer, Faulkner is not entitled to connect a 20-unit condominium project on the 4 High Street property to the Town sewer based on the Board’s July 18, 2005 vote. Rather, if Faulkner seeks to connect the 20-unit condominium project to the Town Sewer, Faulkner must first (a) obtain a new vote of the Board of Selectmen acting as the Sewer Commissioners specifically authorizing that connection, (b) execute an Agreement with the Board of Selectmen acting as the Sewer Commissioners agreeing to pay the required sewer privilege fee for the new project, and (c) pay the required sewer privilege fee.

The basis for this conclusion is as follows:

1. The property at 4 High Street (Assessors’ Map H2A, Parcel 64) has no frontage on a sewer street and has not been assessed any sewer betterment with respect to the Town’s Middle Fort Pond Brook Sewer System. As such, the owner of the property is not entitled to connect the property to the Town’s sewer.<sup>3</sup>
2. Instead, pursuant to G.L. c. 83, § 17 and Section D.10.5.a of the Town’s Sewer Assessment Bylaw, the Sewer Commissioners *may* allow a property to connect to the Town’s sewer upon payment of reasonable fees established by the Sewer Commissioners.
3. In the present case, Faulkner made a “request *to specifically authorize* the 30 multi-family units proposed at 4 High Street, each with two bedrooms or less, to be serviced by the public sewer in Main Street” (emphasis added). Faulkner’s request was specifically tied to the project for which the Board “has approved a Site Plan Special Permit and Use Special Permit ... and is very familiar with the details of the proposal.” On July 18, 2005, the Board approved Faulkner’s specific request.

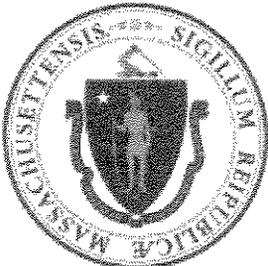
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<sup>3</sup> See G.L. c. 83, § 3 (“[i]f the board of health of a town making such appropriation shall order land abutting upon a public or private way in which a common sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer having charge of the maintenance and repair of sewers application to connect his land with a common sewer, such board or officer shall make such connection.”). See also *Clark v. Bd. of Water & Sewer Commissioners of Norwood*, 353 Mass. 708 (1968) (where a property fronts on a sewer street, a town generally has no discretion to deny an applicant the right to connect to a common sewer system unless “the connection would at once overload the sewer and risk serious flooding and danger of injury to persons or property”).

4. The Board's July 18, 2005 vote did not approve a general tie-in for the 4 High Street property to the Town's sewer; rather, it approved a tie-in for a specific project. As represented by the developer and approved by the Board, that project was to have a number of significant features including, without limitation, (a) 30 small rental units which, according to Faulkner's engineer, "will fill a need for rental units" in Acton; (b) a concrete sidewalk along the High Street frontage and across the entrance to Erikson Grain Mill; (c) provision for a bituminous concrete sidewalk leading to the westerly emergency entrance to Audubon Hill; (d) provision for affordable rental units for the Acton Housing Authority if a HUD subsidy were to become available to AHA; and (e) other "Smart Growth" features making the proposed 30-unit rental project "compatible with [its] surroundings."
5. Given these important features of the approved 30-unit rental project, the Board of Selectmen acting as the Sewer Commissioners specifically authorizing the connection of the project to the Town's sewer. Subject to arriving at a written agreement and paying the applicable sewer privilege fee, the Board's vote to approve the project's connection conferred a privilege, not a right, upon Faulkner. The request for the privilege and the approval thereof were tied to the 30-unit project. The approval did not provide *carte blanche* permission to connect whatever the developer might decide to develop on the property.
6. Whatever the merits of the 20-unit condominium project, it is not the 30-unit rental project approved by the Board. If Faulkner wants to connect the proposed 20-unit condominium project to the Town's sewer, Faulkner needs to make a specific request to the Board to do so and the Board needs to decide, based on current facts including the Town's comprehensive planning for the sewer system, whether to allow that new connection at this time.

**Roland Bartl**

**From:** Stephen Anderson  
**Sent:** Saturday, September 01, 2007 1:38 PM  
**To:** Stephen Anderson  
**Subject:** Acton/SewerFaulkner: Faulkner Mill Realty, LLC

	<p><b>The Commonwealth of Massachusetts</b>  <b>William Francis Galvin</b></p> <p>Secretary of the Commonwealth, Corporations Division                  One Ashburton Place, 17th floor                  Boston, MA 02108-1512                  Telephone: (617) 727-9640</p>
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**FAULKNER MILL REALTY, LLC Summary Screen** Help with

[Request a Certificate](#)

**The exact name of the Domestic Limited Liability Company (LLC):** FAULKNER MILL REALTY, LLC

**Entity Type:** Domestic Limited Liability Company (LLC)

**Identification Number:** 000864031

**Date of Organization in Massachusetts:** 03/24/2004

**The location of its principal office:**  
 No. and Street: 25 WESTFORD LANE  
 City or Town: ACTON State: MA Zip: 01720 Country: U

**If the business entity is organized wholly to do business outside Massachusetts, the location of that off**  
 No. and Street:  
 City or Town: State: Zip: Country:

**The name and address of the Resident Agent:**  
 Name: MICHAEL J. JEANSON  
 No. and Street: 12 KENNEDY LANE  
 City or Town: ACTON State: MA Zip: 01720 Country: U

**The name and business address of each manager:**

Title	Individual Name <small>First, Middle, Last, Suffix</small>	Address (no PO Box) <small>Address, City or Town, State, Zip Code</small>

The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	MICHAEL J. JEANSON	12 KENNEDY LANE ACTON, MA 01720 USA
SOC SIGNATORY	JAMES FENTON	1 MILBERRY LANE ACTON, MA 01720 USA

The name and business address of the person(s) authorized to execute, acknowledge, deliver and record recordable instrument purporting to affect an interest in real property

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	MICHAEL J. JEANSON	12 KENNEDY LANE ACTON, MA 01720 USA
REAL PROPERTY	JAMES FENTON	1 MILBERRY LANE ACTON, MA 01720

Consent    
  Manufacturer    
  Confidential Data    
  Does Not Require Annual Report  
 Partnership    
 Resident Agent    
 For Profit    
 Merger Allowed

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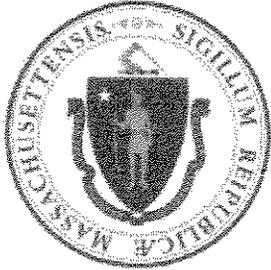
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Comments

**Roland Bartl**

**From:** Stephen Anderson  
**Sent:** Saturday, September 01, 2007 1:39 PM  
**To:** Stephen Anderson  
**Subject:** Acton/40BCrossroads: Crossroads Development, LLC



**The Commonwealth of Massachusetts  
 William Francis Galvin**

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**CROSSROADS DEVELOPMENT, LLC Summary Screen**

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**The exact name of the Domestic Limited Liability Company (LLC):** CROSSROADS DEVELOPMENT,

**Entity Type:** Domestic Limited Liability Company (LLC)

**Identification Number:** 000829555

**Date of Organization in Massachusetts:** 11/20/2002

**The location of its principal office:**

No. and Street: 25 WESTFORD LANE  
 City or Town: ACTON State: MA Zip: 01720 Country: U

**If the business entity is organized wholly to do business outside Massachusetts, the location of that off**

No. and Street:  
 City or Town: State: Zip: Country:

**The name and address of the Resident Agent:**

Name: MICHAEL J. JEANSON  
 No. and Street: 25 WESTFORD LANE  
 City or Town: ACTON State: MA Zip: 01720 Country: U

**The name and business address of each manager:**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code

The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	MICHAEL J. JEANSON	25 WESTFORD LANE ACTON, MA 01720 USA
SOC SIGNATORY	JAMES D. FENTON	5 MILLBERRY LANE ACTON, MA 01720 USA

The name and business address of the person(s) authorized to execute, acknowledge, deliver and record recordable instrument purporting to affect an interest in real property

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	MICHAEL J. JEANSON	25 WESTFORD LANE ACTON, MA 01720 USA
REAL PROPERTY	JAMES D. FENTON	5 MILLBERRY LANE ACTON, MA 01720 USA

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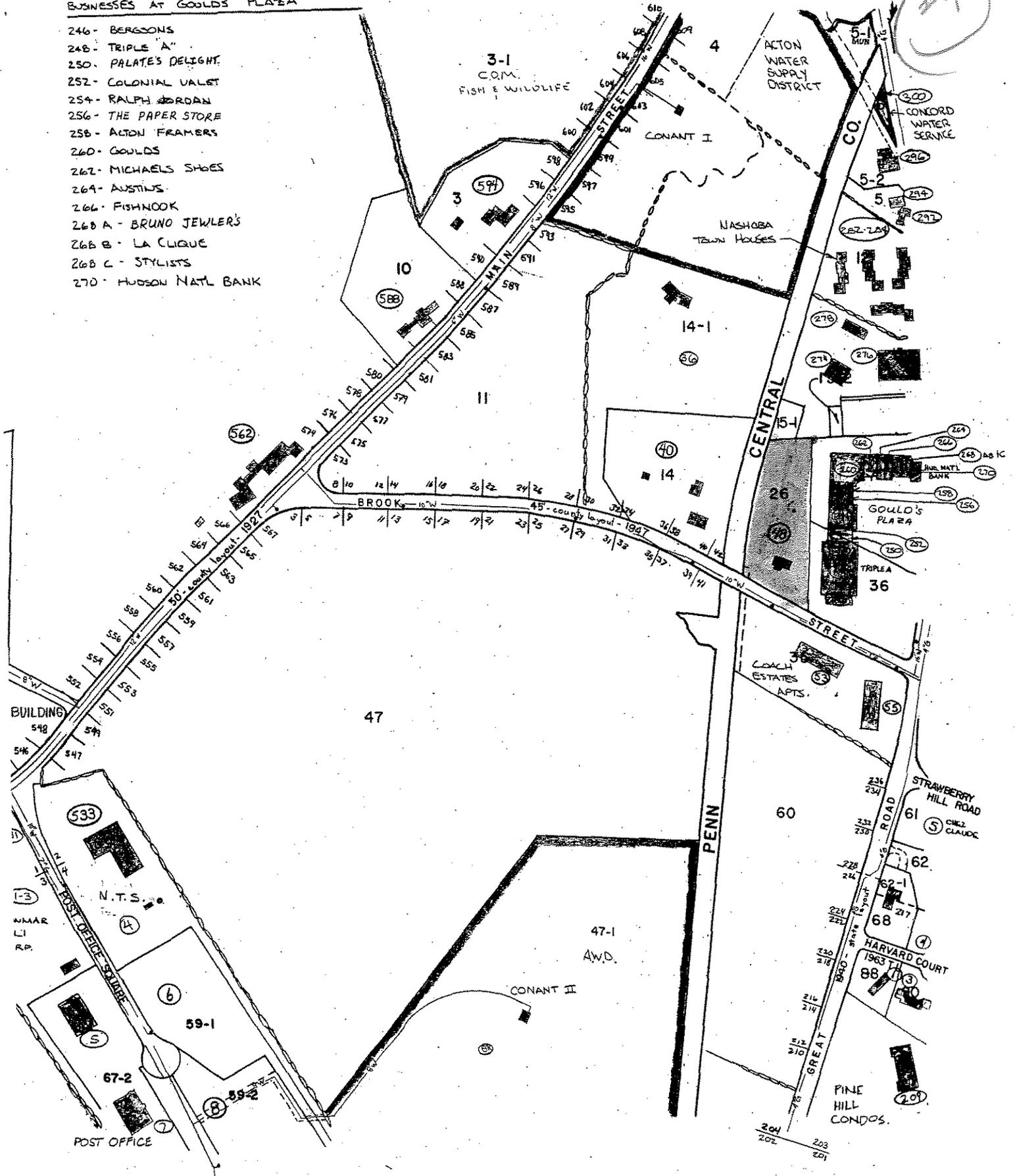
   

Comments

E-4  
 Boston 9/10/07  
 #9

BUSINESSES AT GOULDS PLAZA

- 246 - BERGSONS
- 248 - TRIPLE "A"
- 250 - PALATE'S DELIGHT
- 252 - COLONIAL VALET
- 254 - RALPH JORDAN
- 256 - THE PAPER STORE
- 258 - ACTON FRAMERS
- 260 - GOULDS
- 262 - MICHAELS SHOES
- 264 - AUSTINS
- 266 - FISHNOOK
- 268 A - BRUNO JEWELERS
- 268 B - LA CLIQUE
- 268 C - STYLISTS
- 270 - HUDSON NATL BANK





9/10/07 (7)

**ACTON NATURAL RESOURCES DEPARTMENT**

INTERDEPARTMENTAL COMMUNICATION

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**To:** John Murray **Date:** September 6, 2007  
**From:** Tom Tidman, Director *T*  
**Subject:** 4 High Street

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The Commission had previously authorized a sidewalk along High Street, in connection with the 30-unit development, which included minor impacts to the man-made wetland near the road. Though the sidewalk could be constructed along the edge of the road without direct impact to the wetland, the Commission, staff and abutters found that the sidewalk was more appropriate behind the stone wall along High Street for safety reasons and the developer was encouraged to construct it in such a manner.

Therefore, if the Board of Selectmen find it appropriate to require a sidewalk along High Street, it should be requested to be similar to the sidewalk shown on the "Grading Plan" (Sheet 2 of 5) dated December 6, 2004, of the previous site plan. Such a design would be consistent with the previous Order of Conditions and preference of the Commission, Staff and abutters.

cc: Roland Bartl, Town Planner

mail  
P/CA  
9/10

Agenda 9/10

**Acton Community Housing Corporation**  
**Nancy Tavernier, Chairman**  
**TOWN OF ACTON**  
Acton Town Hall  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 263-9611  
[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

---

TO: Board of Selectmen  
FROM: Naomi McManus, Clerk  
SUBJECT: Faulkner Mill  
DATE: August 30, 2007  
cc: Jim Fenton

The members of the ACHC are submitting comments regarding the ten duplex development Mr. Fenton proposes to build at Faulkner Mill located at 4 High Street. Outlined below is the history of the affordability component of the project:

On 11/12/04 the Acton Housing Authority submitted a letter to the BOS stating Mr. Fenton had an agreement with the AHA to set aside 2 rental units for low income households. The rents for the 2 units would be set at HUD's Fair Market Rents. The Selectmen's decision dated February 28, 2005 noted that if the developer ultimately sells the units, he has agreed to discuss selling units to the Town.

On June 1, 2006 Mr. Fenton met with the ACHC's Board to discuss his intention to change the development from rental to condominiums. The project change was attributed to high construction cost, sewer tie in, construction of sidewalks and the water departments demand fee. At that time the proposed development consisted of 32 units of studio, one bedroom and two bedroom units. He anticipated selling the market rate units at \$200,000. The ACHC's agreed to evaluate the possibilities of designating 1 or 2 units as affordable.

On April 30, 2007 Ms. Tavernier and Ms. McManus met with Mr. Fenton to discuss the possibility of the ACHC buying the High Street site with housing gift funds. The ACHC offered to pay cash for a price below the "appraised fair market value" that takes into account the value of the permitted units.. Mr. Fenton declined the offer and said he had decided to build a ten duplex project. He expressed an interest in selling a couple of the market rate units at a 5-10% discount to First Time Homebuyers.

On August 16, 2007 the ACHC's members discussed the Faulkner Mill project as a result of Mr. Fenton's recent meeting with the Board of Selectmen. The ACHC felt that if Mr. Fenton offered the Town one or two affordable Deed Restrictive LIP units and the sidewalk, the project would serve a public purpose and therefore should be granted a sewer connection.

The ACHC would therefore request the inclusion of 1 affordable unit to be priced as affordable to households earning no more than 80% of the Area Median Income. The unit should meet all the DHCD LIP Local Action Unit requirements so it can be counted toward the Town's 10%. The marketing and lottery for the affordable unit should be done at the developer's expense with ACHC oversight. The condo fee for the affordable unit would also need to be discounted to reflect the smaller percentage of beneficial interest this unit would be assigned. The LIP requirements for the Local Action Units that allow them to count are:

- (1) they have resulted from city or town action or approval.*
- (2) they will be sold on a fair and open basis and will be subject to an affirmative fair marketing and lottery plan approved by DHCD.*
- (3) their sale price is affordable to households at or below 80% of area median household income.*
- (4) their long-term affordability is secured by use restrictions, approved by DHCD*

Thank you for seeking our comments on the Faulkner Mill development.

BoS Agenda  
09-10-07

ACTON HISTORIC DISTRICT COMMISSION  
472 Main Street  
Acton, MA 01720

September 5, 2007

Board of Selectmen  
472 Main Street  
Acton, MA 01720

To the Board:

At your request, the Historic District Commission ("HDC") reviewed the further revised design and plan for the property at 4 High Street. This process included a meeting last night with the owner and architect. The property is outside but immediately adjacent to the South Acton Historic District Area, and is across the street from the Faulkner House, the oldest surviving house in Acton. We appreciate the Board's interest in our views concerning the new proposed design.

By a letter to the Board dated December 29, 2004, the HDC provided comments regarding a prior design for this property featuring a triplex building near High Street and a large building at the rear of the parcel. The HDC was generally in favor of the proposed elevations, and included minor recommendations for the project.

The current design calls for a collection of twelve identical duplex buildings to replace the prior design. In their exterior arrangements and materials, the duplexes track the triplex building proposed for this site back in 2004, except the architect has converted that triplex into a duplex and interspersed it many times throughout the buildable portion of the site. The current design features far less variety and visual interest than the prior design did. In the prior design, the proposed buildings were markedly different and there was no duplication of buildings, let alone duplication more than ten times over. This problem with the present design is most acute in the four duplexes in a group closest to High Street, which would be the most visible portion of the development from the street. The lack of any differentiation in the exterior designs of the duplexes creates a monotonous, "cookie cutter," mass-produced and thus non-historical effect.

We suggested that the owner and architect consider differentiating the size and exterior designs of the proposed buildings, to improve their historic character. We encouraged altering rooflines and considering more than one style for a project of this size and number of buildings. We also suggested the proponents of the development consider the Davis Place project as an example of more historically appropriate design.

The HDC would be happy to consult informally on design issues with the Selectmen or developer if and when this project moves forward.

Sincerely,

  
Brian Bendig  
Historic District Commission

cc. George Dimakarakos  
HDC  
Garry Rhodes  
(all by email)

## John Murray

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**From:** Ann Sussman  
**Sent:** Thursday, September 06, 2007 10:47 AM  
**To:** Lauren Rosenzweig  
**Cc:** Design Review Board; Manager Department; Dore' Hunter  
**Subject:** RE: Fenton - South Acton development

Lauren,

Sorry for the error re: 40b – someone started calling it that in the meeting...so it slipped in.

All I wanted to report is that a number of members of various committees who have seen the new South Acton project, including members of PB, HDC & DRB...expressed serious concern about its layout, design and poor quality.

We knew, technically, that Mr. Fenton could proceed with it.

We wondered if you knew about this public concern?

As the Chair of the DRB, I do not feel it is my role to call Mr. Fenton unless directed to do so by the Board of Selectmen or one of its members.

Best,

Ann  
978 790 7776

---

**From:** Lauren Rosenzweig [mailto:lsr57@comcast.net]  
**Sent:** Thursday, September 06, 2007 10:28 AM  
**To:** annsmail@pipeline.com  
**Cc:** drb@acton-ma.gov; manager@acton-ma.gov; DoreHunter@aol.com  
**Subject:** RE: Fenton - South Acton 40b

Hi Ann,

Thanks for your e-mail. Firstly, this project is not a 40B. It is a residential project allowed by right in the South Acton Village zoning district. The Planning Board supported granting sewer connection for this revised project because they feel that denser residential development in the vicinity of the train station and the businesses in the South Acton Village represents the essence of Smart Growth. The residents will give a much needed boost to the local business ventures, and the project is likely to attract people who wish to be able to walk to a train station to get into Boston or Cambridge to work. The Selectmen felt that the current project had not been vetted with the HDC and had other concerns that in order to grant sewer connection the project should be providing a similar level of public good as the previous special permit project for which the Selectmen had approved the sewer connection. Mr. Fenton agreed to go back and meet with the HDC. When Terra called me after she attended the HDC meeting on Sept. 4th she thought more design input was needed. I suggested she discuss her concerns with the DRB committee. I assume that your e-mail is in response to that discussion.

To give you some history---Mr. Fenton went through much process to get his original plan approved, which was a special permit to build apartments in a mill-type multi-story building on the old Waite Co. building footprint, with a Victorian looking duplex along the High Street frontage. The planning included extensive meetings with the HDC because given its nearness to the Historic District the Board of Selectmen were concerned that it be compatible with the rest of the character of the South Acton Village. Due to circumstances beyond his control, the project became economically unfeasible. The façade he is using on the duplex buildings is the one that they approved, albeit in a different configuration. I was not at the HDC meeting September 4<sup>th</sup>, but Terra reported to me by telephone that their suggestion to him when he went back with his current plan was that he vary the facades so they don't all look identical, but stay within the Victorian feel of the South Acton village. I understand that your committee would like to give further input, but it is out of your jurisdiction which is limited to commercial properties. The zoning allows Mr. Fenton to build this project by right. What is at issue is the permit for sewer hook-up. As I

9/6/2007

told Terra, if you as individuals wish to attend meetings about sewer connection for the project and offer concrete suggestions that you think might enhance the project, I feel that would be appropriate. Because the project is a by-right project it is not subject to a public hearing. You are also free to contact Mr. Fenton as the chair and ask if he would voluntarily like your input. What I as your liaison would want to avoid is any advice that would be in conflict with the direction the HDC has given him, and also to avoid alienating the development community because the committee is perceived as overstepping their bounds. As chair you might want to have a conversation with Mr. Fenton and tell him your concerns, and see what his response is. Emphasize that you know you don't have jurisdiction, but you care very much how the village turns out, and you have professionals on the committee that you think could be helpful. You can contact the Building Department to get his contact information.

Sincerely,

Lauren S. Rosenzweig

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**From:** Ann Sussman [mailto:annsmail@pipeline.com]  
**Sent:** Thursday, September 06, 2007 8:23 AM  
**To:** 'Lauren Rosenzweig'  
**Cc:** 'Design Review Board'  
**Subject:** re: Fenton - South Acton 40b

Hi Lauren,

At the DRB meeting yesterday, the board expressed some concern about the newly revised 40b project Mr. Fenton is proposing for South Acton. This is no longer the "mill building", Mr Fenton originally proposed for the industrial-type site over a year ago, but a series of cookie-cutter town houses. While technically "legal", there is some concern voiced on the part of individual DRB members as well as members of the PB and the HDC, that this new proposal does not enhance the character of the area, or promote the look & feel of a revitalized south acton village the way we would hope -- or the way the former project might have.

The DRB would be very willing to discuss this project with Mr. Fenton. We have not met with him formally nor have we officially reviewed the project to date. We also have not invited him to visit the board as of yet, because technically he is under no obligation to do so.

Please advise: could the selectmen recommend that he visit the DRB?

We could also submit a letter (email) of concern to the Board of Selectmen as a whole before the BOS hears/ approves the project.

Thanks,

Ann  
 978 790 7776

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