

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE
NO. 2019-07

SURFSIDE CROSSING, LLC,
Appellant,
v.
NANTUCKET ZONING BOARD OF
APPEALS,
Appellee.

**UNSWORN STATEMENT/OFFER OF PROOF OF
INTERESTED PARTY RESIDENTS**

We represent 18 neighbors who live in the immediate neighborhood of this project. These 18 have banded together because the scope, scale, and density of the proposal is inconsistent with the character of the community. Indeed, at an early hearing on this project on Nantucket, 800 people filled an auditorium in opposition.

The Hearing Officer denied the neighbors' application to be intervenors in this case, along with that of the Nantucket Land Council.

Offer of Proof

Had the neighbors been allowed to be intervenors and given the right to call witnesses, we would have adduced important relevant evidence not part of the evidence offered by the two parties. We therefore make the following "Offer of Proof":

The neighbors would present factual and expert testimony and related evidence, some of which they and others developed and presented to the Nantucket Board of Appeals, but which are not yet included in the record of this proceeding. Although this 156-unit project, as proposed today, has never been presented to any Nantucket governmental board nor to the Island community to consider, much evidence already gathered at the Board of Appeals is relevant, and is already available to demonstrate that this new project is so flawed that it should be denied outright for many reasons, including these six reasons:

1. **Risk from Isolation.** Were they permitted to intervene, the neighbors would present factual and expert testimony and related evidence, that Nantucket, as an Island 30 miles out to sea, has unique risks that make the handling of the issues raised by this project different from those involving mainland communities. There is no MWRA to provide water and sewer. There are no adjoining communities to provide assistance or effective mutual aid. Nantucket is all on its own. To illustrate this isolation, consider that during the COVID 19 pandemic, the hospital has 10 beds, no Intensive Care Unit, and, if Boston Hospitals were overwhelmed with COVID 19 cases, Nantucket would not be able to send emergency med flight to the mainland, so the Hospital had to ask some owners of homes not to come on Island as it had concerns about the hospital's abilities to handle COVID 19 cases. This Surfside Crossing project must be viewed from the perspective of the risks created by the fact that Nantucket is all alone.

2. **No Fire Safety.** Were the neighbors allowed as intervenors, the neighbors would supplement the Nantucket Fire chief's pre filed testimony and that of Bruce Perry, that the project proposed by Surfside Crossing is not safe for either the neighbors nor for any future occupants of this site; that the Nantucket Fire Department could not handle a major fire at the proposed development, and the very combustible vegetation surrounding the site means that every one of the neighbors we represent is personally at risk, including possible personal injury and property damage. Emergency help from adjoining towns is not an option. The neighbors would confirm the presence of such vegetation on and surrounding their properties, confirm the lack of other town-accepted or regularly used roadways as alternative access to their neighborhood, and validate their concerns with aggravation of existing challenges for emergency access and firefighting capabilities. Recently, Nantucket has experienced the explosion of a house that required use of all of its firefighting resources. That was a single-family home, not a multi-unit large-scale development as proposed here.
3. **No Sewer solution.** Were they permitted to intervene, the neighbors would present factual and expert testimony and related evidence, some of which they and others developed and presented to the Nantucket Board of Appeals, that there are sewer lines in close proximity to their homes, and that there is no sewer-wastewater solution available for Developer's plan as is seen by the pre filed testimony already on record. The neighbors would demonstrate that Nantucket has a well-documented history of serious, and in some cases recent and catastrophic, sewer failures resulting in major damage to the environment and private properties, and related administrative consent orders against

local government, which underscores concerns with its aging and overburdened sewer infrastructure and sensitive ecology, all of which are implicated by the applicant's proposed connection to vulnerable force mains, some of which lie on or adjacent to the neighbors' properties. The neighbors would testify that many of them have private wells on their properties; that some of those wells are just a few feet or few dozen feet from the Project Site; that the force mains run directly beneath some of their properties; and that, as shown by evidence adduced at the Board hearing, a break in the force main would discharge tens of thousands of gallons of raw sewerage before the system could be shut down, thereby exposing the neighbors, their properties and wells to contaminating waste.

4. **No Water solution.** Were they permitted to intervene, the neighbors would present factual and expert testimony and related evidence, that the project should not be allowed to use any drinking water at this location from any public or private source, in light of expert testimony that the fundamental scientific investigations to determine water sustainability for water withdrawals has never been performed. There has been no determination yet how much water can be safely withdrawn from a small lens of freshwater atop salt water, 30 miles out to sea with no ability to obtain drinkable water from any other community or the MWRA. However, because the town's water withdrawal permit has expired, this project also will require draining water in excess of the town's expired water withdrawal permitted limit and what the water department has asked for in a new permit even if granted. If the fresh water is over drained, then salt water will replace the fresh water, according to the expert, and what is to become of the people we represent without drinkable water?

5. **No Traffic solution.** Were they permitted to intervene, the neighbors would testify from their own intimate familiarity with the traffic situation, that the existing traffic infrastructure is unable to handle traffic from this project today. As was true in proceedings before the Board, there has been testimony in this proceeding (including that of transportation engineer Kien Ho) that traffic at the intersection of South Shore Road with Surfside Road and at the intersection of Surfside Road with Miacomet Road - through which Surfside area traffic including Project traffic must pass - already is congested during the peak morning and evening hours. Existing levels of service are “D” and “E” at the former intersection and are “F” at the latter intersection. The Project would exacerbate the latter and degrade the former. In particular, the neighbors would testify that they routinely experience delays at these crucial intersections as they travel to and from their South Shore Road properties. The traffic and access impacts of the proposed Project are of legitimate local concern, including for the neighbors who live and conduct business beyond those intersections. They also are significant from the standpoint of firefighting and emergency access. In particular, the neighbors would testify that South Shore Road functionally is a dead-end road that leads to the ocean, and that their properties therefore are unusually vulnerable to any blockage of that road upstream. Moreover, they would testify that there is no viable alternative egress for them or for emergency vehicles to service their properties in the event of a fire. The neighbors would testify that even previously contemplated conditions for financial mitigation, as required by the Board of Appeals but not agreed to by Developer, would not make the presently congested infrastructure capable of handling traffic from this project.

6. **No Historic District compliance.** Were they permitted to intervene, the neighbors would present factual and expert testimony and related evidence, some of which they and others developed and presented to the Nantucket Board of Appeals, that this project has not demonstrated compliance with the Nantucket Historic District Act. Nantucket is a national asset because of its historic nature. It is a national registered landmark, and a historic district; and the Island's economy is based in part on vigorous enforcement of a special state law regulating buildings to ensure preservation of this historical asset. There is a state law that says no buildings, such as the new 18 buildings proposed by Developer, can be built on the Island without a certificate of appropriateness. The neighbors will testify their economic wellbeing depends in part on the preservation of the Historical values of Nantucket. These new plans with its newly presented buildings have never been reviewed by any Nantucket officials or boards. Neither of the two parties have offered any evidence that there has been any compliance with this state law, but the burden of proof is upon the appellant Surfside Crossing. As knowledgeable Nantucket witnesses would testify, this newly presented project does not comply with that state law.

Conclusion

Had they been allowed to intervene, the neighbors would have worked with the hearing officer and the parties to ensure an appropriate and complete record. We believe that more complete record would demonstrate clearly that an outright denial of the project is warranted by the

standards governing this HAC proceeding, with due consideration for the legitimate local concerns.

Dated: March 4, 2021

Respectfully submitted.

INTERESTED PARTY RESIDENTS,

By their attorneys,

/s/ Paul R. DeRensis

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CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that a true copy of the foregoing Unsworn Statement/Offer of Proof of Interested Party Residents was served upon Counsel for all parties and Counsel for Nantucket Land Council by **Electronic Mail** on March 5, 2021.

/s/ Daniel R. Deutsch

Daniel R. Deutsch