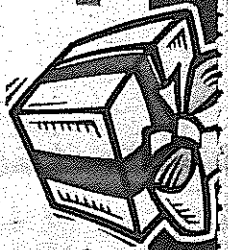


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MONDAY, NOVEMBER 1, 2004

Shrewsbury boards taken to court

By Jacqueline Reis
 TELEGRAM & GAZETTE STAFF

SHREWSBURY — Neighbors of two proposed housing developments have taken their dissatisfaction with town boards' decisions to the next level: Superior Court.

Residents of the Southwoods development near a proposed AvalonBay project on Route 20 and neighbors in the north end of town near the proposed Highland Hill development filed appeals earlier this fall. The Highland Hill neighbors' case, filed Sept. 28, claims that the Planning Board did not adequately consider the traffic problems that the 39-home subdivision will bring to the High, North, Cross and Prospect streets area. The residents have appealed the Zoning Board of

Housing developments appealed

housing development in more general terms.

Katherine K. Ellis, a resident of Kalamat Farms Circle near the proposed Highland Hill project, said she and her mother-in-law, Helena Ellis, a North Street resident, are the named plaintiffs in a suit that is also being supported by several other area residents. The defendants are the Planning Board and the developers involved in the project: Joseph Cariglia, Roger Dufresne, Bradley Field and Robert A. Cole. Mr. Cariglia, Mr. Dufresne and Mr. Field each own part of the 25-acre parcel where the development would be built, and Mr. Cole is the applicant for the subdivision plan.

According to the suit, the Planning Board does not provide for "safe vehicular travel" and therefore exceeds the board's authority. It claims that the roads around the project are already "either heavily traveled and/or contain certain traffic safety deficiencies. The construction of the additional homes at the Project Locus will serve only to exacerbate these existing conditions." The suit asks the court to annul the Planning Board's decision and cover the Ellises' legal expenses.

The Ellises' lawyer, Brian C. Levey, said traffic concerns are "a common basis for appeal."

Board and said he does not know of any case in Shrewsbury in which a Planning Board decision was overturned because of traffic issues. Many appeals, he said, are settled outside of court and without the town's involvement.

Daniel P. Dain is representing the developers and said the project meets all of the town's requirements and didn't need a single waiver. "We had 15 public hearings and meetings in order to be responsive to the community. Afterward, the Planning Board told us that we went further than we had to in terms of mitigation measures," Mr. Dain said. "My client is very proud of the plan that it has come up with."

Mr. Leader is also representing the zoning board in Southwoods residents'

Appeals target Shrewsbury boards

Shrewsbury/From Page B1

appeal of the zoning board's approval of an AvalonBay development. There are 14 plaintiffs in the case, which was filed Oct. 20: Peter and Winnie Abram, Herbert and Kelly Lade, Richard and Mary Garrity, Mark and Erin Shapiro, David and Sheryl Murdock, Steven and Lisa Greene and Robert and Sophia Costello. The defendant is the zoning board. AvalonBay is not listed.

Unlike the Highland Hill case, the neighbors do not cite a specific reason for the appeal in their complaint, saying instead that the decision "exceeds the authority of the board and is arbitrary and capricious, not in accordance with proper procedures, not supported by suffi-

cient facts and is in violation of the applicable law."

The AvalonBay application, which had selectmen's support as a local initiative project, was filed under Chapter 40B, a state law that frees developers from local zoning restrictions if they set aside one-quarter of their units for households with incomes less than 80 percent of the area median. The project's approval will increase the town's supply of affordable housing by more than the minimum needed to buy the town a two-year reprieve from other 40B projects.

The neighbors' lawyer, Gary S. Brackett, said the suit was filed to preserve the neighbors' right to an appeal, but the neighbors are willing to consider resolving their concerns outside

of court. Their main concerns are the size of the project, 264 apartments; its density; and the proximity of the buildings to neighbors' property, which he said will have a visual impact and affect "the quiet enjoyment" of their homes.

"Our clients are not opposed to the concept of affordable housing as provided by Chapter 40B. The concern we have is that it appears as if... the town was seeking to satisfy its 40B requirements for the immediate future, the next year or two, by approval of this one development on the site in question,"

Mr. Brackett said. "If the same number of units were sort of distributed on more than one site in town, it would reduce the impact on this neighborhood."

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