

Brem - 159 - 01.28.2015

Lyn Lemaire
864 West Street
Carlisle, MA 01741
978-341-8698

R E C E I V E D
JAN 28 2015

TOWN CLERK-CARLISLE
CHARLENE M. HINTON

Carlisle Board of Selectmen
Town Hall
66 Westford Street
Carlisle, MA 01741

January 24, 2015

RE: Long Ridge Road 40B Proposal
Duty to Protect Public Health and Safety
Enforcement of Town Bylaws

Dear Members of the Board:

This letter is in response to announcements made at the January 13, 2015 meeting of the Board regarding the appointment of special counsel and the retention of yet another hydrogeology expert. While the Board is to be commended for responding to citizens' concerns, the response may be premature, unnecessarily costly, and perhaps an impediment to the town's ability to protect the health and safety of residents. Instead of retaining additional experts, which will only add to the evident confusion that infuses this 40B hearing, the Board should take steps to assure that the ZBA enforces its bylaws.

Carlisle citizens have spent considerable time and effort to develop and approve bylaws for all the local land use boards and, in particular, for the Zoning Board of Appeals. The opening statement in section VIII of the ZBA's regulations emphasizes that these "procedural and substantive" rules are to:

... protect the health, safety and welfare of the present and future inhabitants of the proposed development and the town, including ... the following purposes: to protect drinking water supplies...

Testimony at the Long Ridge 40B hearing has shown how difficult it is to protect wells – without strict compliance to the town bylaws. While it is vital to protect both water quantity and quality, attention in this letter is directed at assuring wells are not contaminated. It is my understanding that contamination can lead to serious illness, even fatal illness, an effect which may not declare itself for a month or even a year after drinking bad water. People do not test their water with any frequency, so contamination must be protected against through sound town oversight, infrastructure design, and sufficient capacity in the underlying land.

The site design is too dense. This is the conclusion of the other direct land use boards: Planning Board, Conservation Commission, and Board of Health. The word

"density" in this context is not the common meaning that houses may be located too close together from an overhead bird's view. This conclusion refers to the congestion and lack of buffer at and, especially, below the surface.

1. Distance of Wells from Sources of Contamination

Expert testimony and comments at the 40B hearing have been illuminating to those of us without engineering degrees. As I understand it, the wells are drilled into bedrock. An "overburden" lies on top of the bedrock and acts as a filter and medium for recharging the soil. Both the capacity and the stresses on the overburden are fundamental to "cleaning" the water of contaminants, such as fecal matter or other harmful substances. One factor is the length of time it takes for material from a septic field to reach adjacent wells. A corollary is whether there are other sources of contamination, such as winter road treatments, car engine oils, or landscaping chemicals.

2. Difficulty in Determining Whether There Are Diagonal, Non-Vertical Fractures in the Bedrock

Another concern, which may be impossible to resolve through pre-construction testing, is whether there are diagonal fractures in the bedrock that could speed contaminants to wells – either adjacent or at some greater distance from the source of contamination. This is the potentially devastating problem that was to be addressed by the proposed dye test discussed at the October and November 40B hearing sessions.

3. Protect Water Quality on Every Front

From the experts and town boards, it seems there are three overlapping and related categories to assuring well quality: (1) limit or minimize the amount of contaminants entering the land, (2) maximize the capacity of the overburden soils to filter and recharge, and (3) create as much distance as possible between wells and sources of contamination. The bylaws, as a whole, function to protect our drinking water by setting limits in each of these dynamic categories. If the bylaws are enforced without exception, there should be ample buffer for the unseen circumstance. However, if exceptions cut into the holistic approach taken by the town, the Board cannot feel secure about the health of Carlisle residents.

The Applicant presented another revised plan in early December. The changes apparently make things worse. For example, the private driveway is widened from 20 feet to 24 feet, presumably at the request of the fire department (there is only one access road to this dead-end development, which is another problem). But, the town has approved private driveways at 20 feet. The widening further stresses the land. There is a 20% increase in the amount of impervious structure. There will also be more invitation to car parking with oil drips and a shrinking of the distance from driveways to wells.

The massive septic field in the northwest corner of the single lot has been severed into two side-by-side fields so that the Applicant can argue that the smaller development rules control over the gallons per day allowed. This particular gambit is not only an offense to fairness and collaboration but also goes the wrong direction from what is needed to protect drinking water.

It is time for the ZBA to enforce both its and, by reference, the Planning Board and Board of Health bylaws. The ZBA has special 40B permit regulations, including Rule VIII. 3.01(h), which provides in relevant part:

With particular respect to regulations promulgated by the Carlisle Board of Health and Planning Board, the application shall provide supporting documentation as to why the relevant regulation should be waived, ... and how the purpose of the regulation would not be compromised should a waiver be granted. (underscoring supplied)

There are two significant points in this requirement: (1) it presupposes that the whole of the bylaws will stand unless a waiver to a specific regulation is granted and (2) it places the burden of demonstrating that health and safety will not be compromised on the Applicant.

Review fees are funding one hydrogeologist (Steve Smith), and the abutters group has retained another well-regarded expert (Scott Horsley). So far, Horsley has been left out of meetings regarding soil tests performed by the Applicant and regarding other issues. As the abutters' and the future occupants' interests in safe drinking water are aligned, there is no reason to retain yet another expert. If retention by the town is necessary to get Horsley included in expert review of data and meetings regarding that data, so be it. Retention of yet another hydrogeology expert will simply muddy the issues, perhaps hampering the town's ability to protect health and safety; ironically, at the town's expense. The Board should, instead, press, through Town Counsel or otherwise, the ZBA to simply enforce its own rules.

Thank you for your attention to this issue, one which is so very important to Carlisle residents.

Sincerely,



Lyn Lemaire

cc: Zoning Board of Appeals
Board of Health
Planning Board
Conservation Commission
Thornton Ash