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**TOWN OF CARLISLE**

**OFFICE OF  
Zoning Board of Appeals**

**66 Westford Street  
Carlisle, MA 01741  
978-369-5326**

**Minutes: Board of Appeals, February 16, 2007**

The meeting was called to order at 7:38 p.m. in the Town Hall, 66 Westford Street. Board Members Cindy Nock (Chair), Steve Kirk (Clerk), Associate Members: Ed Rolfe, Steve Hinton, Town Counsels Dan Hill and Art Kreiger, secretary Julie Levey, and interested parties were present. Ed Rolfe sits as a full member for this 40B Coventry Woods application.

Nock opened the continued hearing for **Case 0513, the application of Coventry Woods, MCO & Associates, Inc.** request for a Comprehensive Permit under Massachusetts General Laws Chapter 40B for the construction of a fifty-six unit, age restricted (55+) condominium development to be located off Concord Street.

Nock provided the meeting agenda. The following exhibits were entered into the record:

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|-----|---|--|
| 168 | Email dated 2/2/07  | Michael Epstein                          |
| 169 | Email dated 2/2/07  | Gerry Preble to BOH – correction         |
| 170 | Letter dated 2/2/07   | Board of Health to DEP                   |
| 171 | Memo dated 2/7/07   | BOH to ZBA                               |
| 172 | Letter dated 2/8/07   | Joan Parker to ZBA, Dan Hill, BOH & PB   |
| 173 | Letter dated 2/13/07  | Ed Woll to ZBA                           |
| 174 | Proposed Scope of Work –<br>Hydrogeologic Study – 2/14/07                             | D. Hill                                  |
| 175 | Letter dated 2/15/07  | Edward Talbot, Abutter                   |
| 176 | Memo dated 2/15/07  | David Freedman, PB Chair – Traffic Study |
| 177 | Letter dated 2/16/07  | Gary Davis, Public Work – Tree removal   |
| 178 | Memo dated 2/16/07  | BOH to ZBA – offering more assistance    |
| 179 | Pictures of Marked Trees  | Ed Rolfe                                 |
| 180 | Mark up by S. Horsley of<br>Proposed Scope of Work –<br>Hydrogeologic Study – 2/14/07 | Atty. Witten, abutter representative     |
| 181 | EPA - Ground Water Issue White<br>Paper   | D. Hill                                  |
| 182 | EPA – Final Ground Water Rule   | D. Hill                                  |
| 183 | Pro Forma – 24 Dwellings  | Atty. Witten – Est. Pro Forma            |
| 184 | Pro Forma – 16 Dwellings  | Atty. Witten – Est. Pro Forma            |

Kreiger explained that the applicant could wait 40 days from the January 29<sup>th</sup> hearing then go to the HAC asking them to agree that the hearing had closed on January 29, 2007. Three possible outcomes were indicated: 1) the HAC could agree the hearing closed on January 29, 2007 and remand it to the board to make a decision; 2)

the HAC could give the board a deadline for closing the hearing; or 3) constructive approval would be granted. Kreiger felt the third possibility was the least likely due to the Boards efforts to work through the process. Kreiger reported that he had talked with the applicant's attorney, Lou Levine regarding the Board's requiring nitrate, virus and bacteria testing (analysis and computer simulation) as recommended by the Board of Health and Scott Horsley's letter. Kreiger said the proposed scope of work for the Hydrogeologic Study had been produced to explore different protocols and/or testing parameters to induce the applicant to continue the process. Kreiger emphasized that the applicant's position is that the hearing is closed. Kreiger proposed to have all interested parties contribute to the Scope of Work document. Kreiger said the document is a compromise with the applicant in order to continue the process and Kreiger noted that the vote taken at the last meeting was not the only way to be protective of the water. Kreiger said they hoped to determine guidelines to which all could agree and recommended hiring a third party, Jim Vernon, to help determine the guidelines and develop the Scope of Work.

Hinton clarified that all testing would be in the form of computer simulations not chemical sampling.

The Board moved onto the tree removal under the Scenic Road Act portion of the hearing. Four trees had been marked for removal. Nock reported that she and the tree warden had visited the site. Nock referred to the letter submitted by Gary Davis approving the removal of the marked trees for site, distance and safety reasons. Davis also offered to remove brush from the area to increase visibility.

Kreiger noted hearing and notice posting requirements complied with 40B regulations. Rolfe was concerned that not all the trees required to be removed were marked. Hill emphasized that the scenic road hearing was in compliance under 40B regulations.

David Freedman, Chairman of the Planning Board, felt the only area of the Scenic Road Act that the hearing met was the taping of the trees to be removed. Freedman reminded the Board that it had been questioned whether the ZBA or the Planning Board should conduct the tree removal hearing. Freedman noted that an email had been sent to counsel accepting counsel's decision and offering George Mansfield to handle notice and posting. Freedman said that the offer was declined. Freedman noted that two small articles had appeared in the Mosquito but they did not provide legal notice compliance. Freedman noted that the bylaw required notice of the hearing and location to be posted on the trees, at Town Hall and to other boards; none of these requirements were met. Freedman said that all of the trees requiring removal had not been marked.

In response to Abutter Mike Epstein, Kreiger said that the applicant would be required to return to obtain approval to remove any additional trees. Abutter Alex Parker felt the fundamental issue was whether there were adequate site lines. Abutter Joan Parker said she had observed the line of site while traveling at a speed of 45 mph and that observing from the land is different from observing while traveling on the road.

Freedman was concerned that removal of the trees located where the proposed driveway would be was in violation of the Shade Tree Act. Epstein felt justification should be provided for cutting down any trees. Rolfe referred to the October 23, 2006 set of plans provided by the applicant which indicated the trees to be removed. Rolfe felt that other trees met the Planning Board criteria for marking but they had not been indicated on the map. Hill would follow-up to determine if any more trees needed to be marked for removal. The Board decided to delay its final determination until all information had been provided.

In response to Hinton questioning whether it was appropriate to consider sight line distances for travel speeds greater than the posted speed limit, Hill said he would talk with Preble concerning his analysis of the site distance requirements. In response to Rolfe, Nock said that the applicant was responsible for the removal of the trees but that Davis had agreed to maintain the trimming of the brush along the roadway; i.e., not to remove the trees. Freedman said the Planning Board consents to the removal of trees and sometimes requires replacements to be planted.

In response to Rolfe, Hill said that many typical bylaw requirements are not necessary under 40B regulations and it is not required to notice as specified under the Scenic Road Bylaw.

Hinton moved to require the removal of the 4 trees and the brush as indicated on Stamski & McNary plan dated 10/23/06 entitled vegetation removal sketch. Kirk seconded the motion. The Board voted 3-1 in favor of the motion (Nock –aye, Hinton –aye, Kirk –aye, Rolfe – nay).

Kreiger reported that the applicant had agreed to pay the outstanding Beals and Thomas invoices up to, but not including, the December invoice.

John Witten, attorney for the abutters, provided a brief background on himself. Witten shared his outrage for the absence of the applicant. Witten submitted a redlined version of the Proposed Scope of Work. Engineer Scott Horsley had provided feedback on the document. Witten highlighted the following points: Horsley recommends using computer generated MODFLOW to adequately determine transport and nitrogen concentrations. However, the applicant would need to provide detailed information for this study and Horsley had recommended using a nitrogen criteria of 5 mg/L instead of 10 mg/L, noting that “10mg is suicide” because at that level of nitrogen in the water it is not potable. Witten said that 10mg is a regulatory threshold not a planning threshold.

Witten commented that the project must strike a balance between economics and health and safety for the community and that health and safety is uniquely tied to the water supply in Carlisle. Witten, using the Inspector General’s +5% over the land acquisition cost which he estimated be \$675K, analyzed the project’s pro forma. Witten submitted two pro forma scenarios: 24 units resulting in a 37% return and 16 units resulting in a 32% return.

Witten urged the Board to consider reducing the approved number of units. Witten said the developer could still produce an economic project without the high density which would also protect abutter water supplies. Kreiger recommended returning to the agenda and address Witten’s points at another time.

In response to Nock, Witten explained that the assessed value of the property was approximately \$637K which he applied the 5% variation. Witten felt this was relevant because the applicant had not provided an appraisal for the 22 acres of land. Witten felt the Board should consider March 9 as the deadline for the decision as that is the date 40 days from the January 29, 2007 applicant’s withdrawal from the proceedings.

In response to Nock, Kreiger advised the Board to continue to flesh out the details and then to determine whether another vote or a modification to their prior vote on Hydrogeologic Study was required. Hill felt the prior vote did not provide enough definition for the applicant. Hill said the applicant had agreed to have an impartial 3<sup>rd</sup> party look at methodology and study results. Hill had talked with Vernon regarding the project and Vernon is interested, and is available.

Epstein endorsed having Vernon as the peer reviewer for the water issue and advocated for abutters to have time to provide input into the process. Epstein felt the developer had utilized the 40B process unfairly by requiring the town to make expenditures for water protocol testing guidelines and landscape architect LID guidelines.

Kreiger advised the Board to be prepared to retain Vernon whether or not the applicant pays but said he would talk to Levine.

Board of Selectman, John Williams, said Vernon had been recommended by the Parkers and that if he was the right person they would provide funding.

Hinton moved to engage Vernon for an amount not exceed \$6,000, to provide Hydrogeologic testing guidelines.

Kreiger said that the intent was to refine the Scope of Work, circulate it, and then to have the Board make a decision at the next meeting prior to March 9, 2007.

In response to Kirk, Hill estimated that two more public hearings and two deliberation sessions would be needed to close the hearing.

Abutter Ken Hoffman felt the applicant had laid a trap for the abutters as the applicant had no intention of making a deal with them. Hoffman felt the town should not pay for an additional water expert as the abutters had engaged a well known expert in the area (Horsley) and the Board of Health had provided guidelines. Nock said they depended upon Counsel's advice and were attempting to engage the applicant. Kreiger pointed out that Horsley had recommended a level of 5 mg and the Board of Health had recommended 10 mg limitation levels, therefore, he recommended a third party to make a determination.

The Board would make all versions of the Scope of Work available to the consultant.

Kirk seconded the motion on the table and the Board voted unanimously (4-0) to engage Vernon to consult on the Hydrogeologic scope of work.

Nock informed the hearing that she would be away March 3-27, 2007.

Kreiger insured the Board that the Board of Health would be involved in the Hydrogeologic study plan. Nock said that Mike Holland, Board of Health member, would be involved in the discussions and Hill said that he had discussed the Scope of Work with Jeff Brown from the Board of Health. Kreiger said that 4-5 experts, including Horsley and the Board of Health would be involved in the process.

In response to Kirk, Hill said the unit density was a negotiated number and had been agreed upon by a number of parties. Hill said that the negotiated number of units had been the reason that a pro forma analysis had not been requested. Hill suggested the board require a pro forma review. Hill felt that without the applicant's cooperation, it would be difficult to get a land value appraisal and it was the Boards' right to request an appraisal. Hill said that the guidelines suggested by the Inspector General had not been adopted nor had the law, and encouraged the Board to require an appraisal of the land.

In response to Rolfe, Kreiger said that hearing timelines were uncertain. Hill said that at this point the applicant was not engaged in the process and felt it was necessary to have the applicant return to the hearing.

Nock felt that the further along the Board was on finalizing conditions, the better position the Board would be should HAC be called upon to make a determination.

Witten informed the hearing that the abutters had not agreed to anything with the applicant but that they had negotiated in good faith with the applicant. Witten said that the formal application in front of the Board was for 56 units, not 41 units.

Rolfe motioned to adjourn the meeting and continue the hearing to March 1, 2007. Hinton seconded the motion. The Board voted unanimously (4-0) to adjourn.

The hearing was continued until March 1, 2007.

The meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Julie Connor Levey