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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, March 1, 2007**

The meeting was called to order at 8:05 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:

185	Letter dated 5/26/06	Inspector General Letter – Developer Profits
186	Letter dated 9/13/06	Inspector General Letter to Mass Housing
187	Letter dated 12/6/06	Inspector General Letter to CHAPA
188	Letter dated 1/26/07	Board of Health letter – Septic C/Water Supply
189	Letter dated 3/1/07	Board of Health letter – Recommendations
190	Check dated 1/24/07	From applicant for \$7,549.04 to cover Peer Review costs through November
191	Draft decision 3/1/07	J. Witten – edited draft decision
192	Dated. 3/1/07	Revised proforma from J. Witten
193	Memo dated 2/28/07	David Freedman – reduced density recommendations
194	Letter dated 3/1/07	Levine – agreement letter

Jim Vernon, Senior Hydrogeologist, attended the meeting to provide feedback and expert advice to the board concerning water issues pertaining to Coventry Woods.

Kreiger summarized recent discussions with the applicant on water testing scope of work. Kreiger said the applicant agreed to conduct Part 1 of the Scope of Work utilizing the existing deep test holes; Part 2 – the applicant agreed to the mounding analysis using the Hantush method; Part 3 – Nitrogen analysis – applicant would agree to testing to comply with the Board's version of the testing request; Part 4 – Transport analysis – applicant is not willing to do the testing without a guideline.

Kreiger reported that this is where things stood until today. Groundwater directional flow needs to be determined. Contradicting reports have the groundwater flow heading south to the brook (Stamski & McNary) and west (Horsley). A westerly flow would be directed to the Epstein/Stone well. The Board does not have enough information to base a decision on at this point. The groundwater flow direction deals only with the overburdened groundwater flow not the bedrock flow direction. Stamski and McNary have agreed to send data on deep hole water flow direction to Vernon; the data had not arrived at the time of the meeting.

Kreiger presented a letter from Attorney Levine withdrawing the January 29, 2007 letter ending the hearing if the Board agreed to reach and file a decision by April 27, 2007 otherwise there would be a constructive approval.

The Board discussed the agreements implications.

In response to Nock, Vernon said groundwater flow direction is important information that is needed to determine Septic System C impact on abutter wells. Vernon recommended utilizing three monitoring wells to determine if there is a significant gradient and its direction. Vernon said that the method agreed to by the applicant (Hantush) assumes a flat water table. Vernon said that the depth of the soil, presence of ledge, and whether current abutter wells are drilled into bedrock would help determine the water table and whether nitrate or virus could reach the bedrock. Vernon said that it was important to determine the presence of anything that would block the discharge path or if it would go right to the leach field.

In response to Nock, Vernon said groundwater flow could be established on site if the applicant agreed to testing or if present data were given for review. Hinton clarified that only test pit data was available from the client and that there were no wells currently on the development property to use for the Hantush analysis. The well data is needed to predict the flow. Vernon agreed that test pit data was less precise. Kreiger said that he had not reconfirmed this with the applicant but the applicant had previously agreed to provide data on the existing test pits. Vernon said test pit data would be too imprecise for the important decision. Rolfe felt the applicant's requirements of using the Hantush method limited the Board's ability to make a good decision. In response to Rolfe, Vernon said reviewing the data will help with the analysis.

Hinton was concerned that if the Board moved ahead with what the applicant agreed to, the Board would still be faced with making decisions based on questionable data. In response to Hill, Vernon said it would be possible to create a simulation model based on the data. He suggested conducting two analyses with one assuming the worst case which would have the flow head towards the Epstein property. Kreiger said he would discuss the issue again with the applicant.

Vernon recommended designing a simulation program to determine if Septic System C would work. In response to Kirk, Vernon said a bedrock study, 3 shallow wells to get groundwater flow, characterize the overburden, obtain records of homeowner wells such as how deep they are and if they are drilled in bedrock, and conduct a tracer test in the field to see if abutter wells are affected. Board members were concerned with the amount of data required for these tests as well as the amount of time and money that would be needed. Vernon said that the Hantush method which gives the maximum height of the mound at its center would give an indication if the mound would work. Hinton felt that the proposed methodology for nitrogen testing was simplistic and that without the three monitoring wells it would not be possible to determine the volume of water moving horizontally.

The Board discussed the possibility of conditioning the permit to cover the water issues. Hinton was concerned that baseline data was not available. Rolfe felt that post permit conditions would allow for testing to be done professionally and accurately. Hill said it was possible to condition the permit but there was a possibility that the HAC could strike the condition. Kreiger said that it could be stricken if the HAC determine that it would come under Title V and BOH review.

Board of Health Chair, Martha Bedrosian, observed that since the applicant had not provided the requested data it was possible that he did not have the funds to conduct the testing. Bedrosian recommended the testing be done pre-permit. Bedrosian questioned whether the HAC would approve the Comprehensive Permit that threatened the town's natural resource. She urged Town Counsel to stress the impact on the abutters to the HAC. Kreiger said it was possible that the HAC could rule that the hearing had gone on long enough, it was closed on 1/29 the HAC could and find a constructive approval. Bedrosian recommended denying and closing the hearing.

Jeff Brem, Board of Health member, stated that under Title V regulations stated that groundwater mounding analysis must be done. Brem said it was possible that Septic System C was not constructible and if that was the case the developer would be required to return to the Board. Further, he said it was also possible that retaining walls may be needed but without the data this could not be determined. Brem said the Board of Health felt it was important to have the water testing done pre-permit and that the testing being asked of Vernon would be difficult to do prior to April 27. Brem noted that the Board of Health had requested well testing months ago and that although the Board of Health had debated whether the testing be conducted in July/August timeframe, they felt it should be done pre-permit. In response to Kreiger, Brem felt that the town should conduct the water testing then request reimbursement from the applicant. Hinton said that the Board required permission from the applicant to access the property. Rolfe felt the town would be doing the applicant's work.

Board of Selectman, John Williams, encouraged the Board to take full advantage of Vernon's expertise and get the analysis for the health & safety of Carlisle people. In response to Kirk, Williams felt it was likely that the permit would go to HAC and that it was best not to make determinations based on scenarios. Hinton agreed that the thrust should be to get the data required.

Kreiger said the risk of going with no decision would possibly result in a constructive approval alternatively if a decision was reached, the Board would be locked into the number of units. Kreiger advised the Board not to issue a decision by March 16<sup>th</sup> due to the lack of complete information.

Hill recommended crafting the decision with April 27<sup>th</sup> as a target date. Kreiger said he thought the applicant would probably give permission to access the property for the testing. Vernon estimated that testing would cost about \$10K for three wells to determine groundwater flow and \$40-50K to conduct the ModFlo testing. Vernon said some of the testing is covered under Title V. Vernon felt that it was reasonable to require the testing to be done with wells rather than test pits. Vernon said he would recommend a phased approach to the testing and that baseline information for a reasonably accurate groundwater flow direction was needed.

Abutter Michael Epstein urged the Board not to cut a deal with the developer. Epstein reported that the applicant had pulled out of a previous negotiated deal and had misrepresented an earlier request to explore alternative septic system technologies. Epstein said the primary focus was on the safety, health and welfare of his home and his family. Epstein recommended a decision that reduced the number of units and did not require Septic System C.

Freedman felt that the Board and their Counselors were still trying to get the applicant to agree to a compromise despite the absence of the applicant. Freedman asked the Board, based on the information provided, whether they believed 41 units could be put on this site and be safe. Freedman felt that Section K allowed an option to install new wells for neighbors if their wells failed. Hill said the condition did not say that. Freedman recommended that the development's density be decreased.

Witten questioned whether the applicant had site control and whether the Purchase and Sale agreement had been extended. Kreiger said he had no information as to whether the P & S had been extended. Witten said if the applicant's claim that the hearing was closed he could not submit any more data. Witten felt that if the density was reduced then Septic System C would not be needed.

Kreiger advised the Board that it was not allowed to design the project and that if it granted a reduced unit development which would reduce Septic System C they could be faced with a procedural issue.

Witten submitted a revised pro forma for 24 units with a land price of \$1.5M which estimated that the developer would realize an 18% or \$2M profit but he noted that an actual land appraisal had not been

provided. Witten recommended the Board allow the Board of Health manage the waivers having to deal with the water/septic issues. Witten also said that the applicant was required to demonstrate the need for the waivers requested and the applicant had not done that. Witten also felt that the burden to produce information was on the applicant. Witten inquired as to whether any strings were attached to the April 27<sup>th</sup> deadline offered by the applicant. Kreiger said that no strings were tied to the agreement. Witten felt that if no strings were attached it was agreeable to keep the hearing open to obtain more information from experts and other boards, but that he thought it was ready to close. Witten recommended that the Board accept the agreement offered by the applicant.

In response to Rolfe, Witten said the Board had enough information to close the hearing but agreed that the Board should accept the offer. Witten felt that with the site control issue in question, if the hearing was closed, the applicant could not provide an updated P & S and because it was a public hearing the Board was not obligated to inform the applicant of its position.

Hill inquired as to the change in the abutter's request; for a month the abutters had requested pre-permit water testing and now were changing their request to ask the Board to close the hearing. Witten responded to Hill stating pre-permit conditions were feasible months ago, but now that the applicant had put a gun to the Board's head it was not prudent unless the applicant agreed to a full slate of testing. Hill explained that the course the Board had been on was to have a Hydrogeologic study conducted and not close the hearing until it was performed and now the abutters were withdrawing the request and asking for the hearing to be closed. Hinton felt the solution was to reduced the density. In response to Witten, Kreiger asked how it was determined that 24 units were necessary as opposed to 32 units. Witten explained that 1 unit per acre would achieve those standards. Kreiger warned that it was possible that the HAC could look at the decision and see that there was a defacto denial if the number of units approved differed from the number requested.

Witten stated that caselaw history had no evidence of the HAC turning an approval of conditions into a denial.

In response to Hill, Witten said that the applicant should be providing any data required and that the economics supported 24 units.

Appropriate selling price for the units was discussed. Rolfe noted that Rocky Point units were selling for approximately \$700K. Witten noted that in the applicant's pro forma affordable units were expected to sell for \$163K not the \$185 – \$195K recognized in the Carlisle guidelines. Hill corrected the information and said that the affordable units should be priced at \$183K. Hill said the Board had requested an updated pro forma from the applicant.

Nock was concerned about the town's agreement with the applicant to provide 12 affordable units. Williams said that the primary goal was to protect the safety and health of town. Williams said that the Coventry Woods plan was not in line with the affordable housing plan. The housing plan did not anticipate a project of this scale; rather the town preferred smaller projects dispersed throughout the town. Nock thought that the Coventry Woods affordable units were part of the housing plan. Rolfe felt that the number of units could still be reached with other projects.

Epstein agreed that if the developer would not conduct the tests, why continue the hearing.

Board of Selectman Doug Stevenson clarified that at one point the abutters, BOS and applicant had agreed upon a 41 unit development with 12 affordable units. However, Coventry Wood was not in the Housing Authority Plan and the agreement had been contingent upon the towns, abutters and applicant – partnership. Stevenson said that Town Meeting had supported providing \$200K CPA funds to support the agreement with Coventry Woods to provide 2 more units of affordable housing but the vote is not binding.

The Board requested input as to whether the hearing should be closed or not.

Epstein remarked that the abutters had not planned on requesting the hearing to be closed. Epstein asked what the benefits were to agreeing to the April 27 extension.

Kreiger felt that the applicant could provide a new P&S and the HAC would allow it. Epstein felt that since the applicant was refusing to cooperate, it may not be useful to proceed with the hearing. Kreiger and Hill felt that keeping the hearing open to obtain information from Vernon on water testing and testimony on the draft decision would be helpful.

In response to Williams, Kreiger said if the Board of Appeals signed the April 27 offer letter, the 1/29 letter is retracted, and there is no risk to the Board.

Rolfe motioned to execute the agreement from the applicant rescinding the January 29<sup>th</sup> letter closing the hearing and agreeing to a April 27<sup>th</sup> decision deadline; Hinton seconded the motion. The Board voted unanimously (4-0) to agree to the offer. Nock executed the agreement. Kreiger filed the agreement with the Town Clerk.

Brem emphasized that the Board of Health had consistently asked for more information from the applicant. Brem said that the Board of Health supported a 165K water allowance per day for the development.

In response to Kreiger, Witten said that since the Board had signed the agreement that he would change his recommendation and ask the Board not to close the hearing tonight.

Rolfe requested Witten's draft document be combined with Hill/Kreiger's document. Kreiger suggested that the Board keep the hearing open for more input.

The Board discussed next steps.

It was decided that the next public hearing would take place on March 14<sup>th</sup>. The March 14<sup>th</sup> hearing would predominantly be a working session for the Board of Appeals with limited public input. A combined document would be circulated to all interested parties by March 9<sup>th</sup> and feedback could be provided.

Kreiger said he would follow up with Vernon after the hearing for his input/recommendations.

Hinton motioned to adjourn the meeting and continue the hearing to March 14, 2007. Rolfe seconded the motion. The Board voted unanimously (4-0) to adjourn.

The hearing was continued until March 14, 2007 at 7:30 p.m.

The meeting was adjourned at 10:55 p.m.

Respectfully submitted,

Julie Connor Levey