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

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TOWN CLERK-CARLISLE  
CHARLENE M. HINTON

Town of Carlisle  
Zoning Board of Appeals  
Town Hall  
66 Westford Street  
Carlisle, MA 01741

October 6, 2014

RE: Hearing on Lifetime Green Homes, LLC  
Application for a Comprehensive Permit under Chapter 40B

Dear Members of the Board:

I am a relatively new resident of Carlisle. Though I may lack the standing supplied by long tenure, newness allows a fresh, and unaligned, perspective on what seems to be a difficult problem for the town. My interest in the 40B dilemma started last spring in the days leading to Town Meeting. I have attended all but one of the sessions on this Long Ridge Road 40B application; I have talked with other Carlisle residents and attended other local board meetings to get a sense of context; and I have read the statute, along with some interpretations, in an effort to digest what seems to be an unnecessarily convoluted law. Two broad concerns come to mind:

1. The Board's power to protect health and safety, design compatibility, and open spaces is calibrated against the need (or, in other words, demand) for subsidized housing. Without such amenities as grocery stores and public transportation, Carlisle probably cannot capture a sufficient share of the regional rental market to make the preferred mixed-income rental housing financially feasible. If so, it will be especially important to assure that facts and expert opinion regarding the economics of subsidized housing are a part of the hearing record.
2. Chapter 40B encourages boards of appeal to include representatives of other land use boards as active participants in the hearing. Section 21 states, in relevant part, that if deemed helpful, the Board "*shall* request the *appearance* of" these local experts. "Appearance," when used in a statute, implies active participation, as if a party to the hearing. It is particularly important to have town consultants sitting next to the MassHousing funded consultant because the Applicant is also the engineering expert for the development, and the Applicant appears at all sessions. Town representatives, who have experience in questioning peer reviewers, should be in position to pose those questions. The statute may mandate it, and it expressly authorizes it.

As the Board is aware, the Department of Housing and Community Development (DHCD) publishes a Subsidized Housing Inventory (SHI). According to the April 2013 SHI only 43 of 351 municipalities in the Commonwealth have reached and remained at the 10% safe harbor level. (The Citizens Housing organization reported in 2007 that 51 municipalities had reached the threshold. Towns are evidently drifting out of the safe harbor protection.) For almost 88% of Massachusetts towns, including Carlisle, the Zoning Boards of Appeal must decide a 40B permit application by weighing the need to protect health and safety, design compatibility, and open spaces against the need for subsidized housing. If the Board determines that the local needs outweigh the housing need, then it may deny the permit application or put strict conditions upon it. The Board must answer this question:

*Is the need to protect local concerns greater than the need for subsidized housing?*

In order to do the careful balancing, facts and expert opinion about both sides of the scale should be part of the hearing record.

The statute expressly addresses the economics underpinning construction of subsidized housing. Section 20 defines a project as "uneconomic" if conditions make "it impossible for a *public agency* or *nonprofit* organization to proceed in building or operating low or moderate income housing without financial loss..." There are several approaches to the "uneconomic" issue.

- Earlier this year, the Carlisle Affordable Housing Trust received a study from RKG Associates, Inc regarding the financial feasibility of mixed income rental development in Carlisle. The study should be made part of the record.
- The *Carlisle Mosquito* reported that as of August 2014 only 21 of 26 units at the 40B project known as Benfield Farms had been leased. This was almost one year after the building was completed and two years after lease applications were accepted. (The projects should not be made to be built only to discover that there is insufficient demand to warrant the construction.)
- If the town were to be subject to loosely regulated private 40B ownership development, it would likely take an increase of about 50% of the existing housing units, more than 800 units, to reach the 10% safe harbor level, and would clearly stress the town and its neighborhoods beyond reason.
- The goal of the statute is to provide housing for low and moderate income families – not to place these families in homes that cost more than the surrounding neighborhood. The Applicant's proposal suggests a market value that is above the median home price in Carlisle and, I believe, well above the median market value of the homes in the Long Ridge Road neighborhood.

The circumstances of this project are unusual in that the Applicant wears many hats. He is the property owner and the developer. He is the civil engineering peer reviewer for the developer. He has evidently lived on the property for many years and been a part of the neighborhood. He reportedly applied for a more conventional development permit before submitting this 40B application. Perhaps most unusual, he was recently not only on the Board of Health but its Chair, and he served as Chair of the Technical Advisory Group to the recent "friendly" 40B project known as Benfield Farms. In short, he should be seen as a formidable applicant, who is very fluent in the ins and outs of the hearing process.

My first reaction on learning each of the above-listed involvements of the Applicant was to assume that the ZBA, and the town, would be mustering all available resources to level the playing field and assure that the town and the abutters get a fair hearing. The Board appeared to be willing to use consultants in that it applied for a MassHousing grant to hire a 40B consultant. One must assume that this consultant has a bias in favor of affordable projects and, because this project has MassHousing approval, that the consultant will lean toward shepherding the project to completion. But, where are the town's consultants?

Section 21 of the statute states, in relevant part:

"... The board of appeals *shall* request the *appearance* at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application ..." (emphasis added)

The helpfulness of other local boards was, at least, implicit in the discussion at the August 27 session. For example, one of the Board members requested that local boards indentify the "ten most important" issues. It is vital that someone be sitting at the table in order to question the peer reviewers, including the Applicant, when technical land use issues are before the Board. Also, if the bylaws themselves are not enforced to the letter, the Applicant should be required to show the subject of each and every bylaw that he seeks to override will still be within very safe parameters.

Thank you for consideration.

Sincerely,



Lyn Lemaire

cc: Douglas Deschenes, Dan Hill, Planning Board, Board of Health, ConsCom, and others