



<http://carlislema.gov>

TOWN OF CARLISLE

**OFFICE OF
Zoning Board of Appeals**

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

Minutes: Board of Appeals, March 14, 2007

The meeting was called to order at 7:40 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, applicant 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 introduced the proceedings. The following exhibits were entered into the record:

195	Letter dated 2/27/07	Louis Levine, March 16 extension
196	Letter dated 3/1/07	Louis Levine offering 4/27/07 extension
197	Letter dated 3/2/07	Kreiger to Levine- cosigned by Board – reopening hearing
198	Letter dated 3/3/07	David Freedman re: Affordable Housing Plan
199	Email dated 3/3/07	John Williams – Affordable Housing response
200	Email dated 3/3/07	Steve Hinton response to Affordable Housing Plan
201	Letter dated 3/5/07	J. Witten, P & S out of date
202	Email dated 3/9/07	Kreiger – draft conditions combined document
203	Letter dated 3/12/07	From Paul Callahan to Mosquito editor
204	Letter dated 3/12/07	Michael Epstein –Septic System C cautions
205	Email dated 3/13/07	Mike Epstein – draft decision conditions
206	Letter dated 3/14/07	M. O’Hagan – revised plan
207	Email dated 3/14/07	Heidi Kummer
208	Email dated 3/14/07	April Stone
209	Memo dated 3/14/07	Board of Health - recommendations
210	Email dated 3/14/07	Ken Hoffman – concerns
211	Letter dated 3/14/07	Board of Selectman – Avery Associates to do property appraisal
212	Letter dated 3/14/07	John Witten
213	Letter dated 3/13/07	Jim Vernon- recommended Hydrogeologic Assessment
214	Letter dated 3/14/07	David Freedman – lower density
215	Letter dated 3/14/07	David Freedman – Pro Forma

Kreiger explained that a draft decision compiling input from all parties addressed the most significant issues. He suggested the Board work through the conditions in that document with limited public input during the evening’s hearing. Kreiger recommended the Board not address the new 48-unit age restricted plan submitted by

the applicant, at this time. The applicant was asked, with the new plan submittal, if there was an extension given to the April 27 decision deadline.

Applicant Mark O'Hagan said the deadline was still the same and the intent of the new plan was to address Septic System C issues raised by the BOA, BOH and abutters which increased the distance to the Epstein well to 200+ feet. O'Hagan further explained that the change to an age-restricted development necessitated the additional units. The plan adds the units and decreases the amount of flow with all else, such as the wells, roads, staying the same. O'Hagan said the plan does not need additional engineering review and the BOH will review Title V compliance, as necessary, after the issuance of the comprehensive permit. O'Hagan refused to replenish the Peer review account when asked to do so.

Nock felt it was unreasonable to have new plans submitted at this stage of the hearing process and for the applicant not to agree to further Peer Review or Peer review account replenishment.

Kreiger requested the applicant to verify which plan was before the Board. O'Hagan said the 48 unit plan. Kreiger felt there was not enough time or funds available to review the new plan. In response to Kreiger, O'Hagan said the 41 unit plan was being withdrawn. Abutter Attorney John Witten pointed out that the 41 unit plan is withdrawn but the 56 unit was being reserved for appeal purposes. Witten likened it to having a club over the Board and that the current project did not have valid project eligibility from HAC. Further, the applicant does not have evidence of site control and the applicant's company is not a limited dividend corporation. In Witten's opinion, the application is not properly before the Board.

The applicant's attorney, Louis Levine, said the same letter of project eligibility had been before the Board during the 41 unit negotiations and that the applicant did have site control. Levine said the 48 unit plan had been submitted in good faith to reduce the septic effluent and increase the distance from abutter wells.

Kreiger reported that Stamski & McNary had provided a Hydrogeologic report to Jim Vernon based upon the 41 unit development but that the report had not yet been reviewed by Vernon. Of concern to Vernon was the location of two domestic wells located less than 200 feet from the Septic System C leach field. In a related matter, Kreiger recommended Vernon moving ahead with the Hydrogeologic study plan discussed at previous ZBA meetings but was unsure as to the impact of the new 48-unit plan.

Hinton thought that the Hydrogeologic study plan was to provide a standard to the applicant. Hinton did not think it was a good idea for the town to move ahead at its own expense to do the analysis but felt the information overall would be useful.

Rolfe recalled that the Board had decided to disengage Vernon at the last meeting. Kreiger felt that the Board had modified that and he had continued discussions with Levine and Vernon. Kreiger said the submitted recommendations (Hydrogeologic study plan) were for the applicant to do and pay for. In response to Nock, O'Hagan said they had instead submitted data to Vernon, a copy of which was submitted to the Board (Hydrogeologic Evaluation Sewage Disposal System C), to help him evaluate groundwater flow. O'Hagan said they will not pay for the additional study/analysis/review of the system. Hill felt that conducting the Hydrogeologic study might be futile if it could not be completed prior to the deadline.

Planning Board Chair, David Freedman, cautioned the Board since Vernon, the abutter's engineer, or the Board of Health, had not reviewed the applicant's newly submitted report and data and such review could result in a change in recommendation.

The Board was concerned that at this late date any analysis would be based on poor data and could not meet the timeline. Nock felt the information provided by Vernon was useful and outlined the steps to be taken to determine if there would be adverse impact. Kreiger emphasized that the Board had formally requested the applicant to provide the analysis and the applicant had refused. Hinton concurred that this information had been requested many times from the applicant and would be required for Title V analysis.

Nock reported that the Purchase and Sale agreement had expired on 2/28. Levine asked why no one had requested an updated P & S. Kreiger told the applicant that he had 60 days to cure the defect. In response to Levine, Hill said that the Board was not required to formally request an updated P & S from the applicant. Witten agreed that the issue of site control was raised by him and that the Board had no obligation to notify the applicant of its own issue. Witten said loss of site control deemed the project dead and would require the applicant to begin the process again.

Rolfe motioned to require the applicant to provide evidence of site control; Hinton seconded. The Board voted unanimously (4-0) to request the applicant to provide evidence of site control.

In response to Nock question on the peer-review account balance, Levine said that there had been no compliance with the 53G statute requirement that the applicant be consulted regarding bidding and scope of review. In response to Nock, O'Hagan said they had paid approximately \$7,500 that was incurred while he was engaged in the process but he advised the board that he did not want to pay any more. The Board formally requested replenishment of the fund; O'Hagan refused.

In response to Hill, O'Hagan said a revised pro forma was submitted based on the new 48-unit plan. Nock requested a pro forma based on the 41 unit plan.

Witten urged the Board to review the project with a lower number of units to provide for the health and safety of the public. Kreiger urged the Board to review the conditions to make progress where possible. Rolfe was uncomfortable proceeding without first making a determination on density. He felt the reduction in density would ultimately be required to insure the health and safety of the public. Knowing whether or not the Board was in support of lower density would impact his decision on the specific conditions. Hinton agreed that the Board did not have enough information and felt the Board should discuss a reduced density project.

Kreiger said the Board is obligated to review the applicant's plan and determine its impact and place conditions on it in a way to protect health, safety and environment. Kreiger suggested the Board look at the project and determine whether it could come to a decision.

In response to Nock, Kreiger said the Board could not begin again with the new plan because it could indicate a constructive approval to the original request.

Rolfe led the Board's discussion through the conditions. *Note: The condition being discussed has been cut and pasted prior to the discussion comments.*

Page 1 – no comments

Page 2 – Irrigation

Hinton supported BOH recommendation which were also supported by state regulation. Rolfe is in favor of no irrigation well, unless density was reduced. The Board agrees that if the irrigation well is allowed, the safety net submitted by the BOH must be in place.

Carlisle resident, Bill Guild, 1400 Westford Street, inquired as to which plan the Board was discussing and suggested that the Board did not have the time to review the 48 unit plan and that the Board should deny it.

The Board agreed with BOH regulations of water usage rate depending on the final number of units in the project.

- F.2 The primary source of water for irrigation of the common area landscaping elements shall be the two, 12,000-gallon "rain barrel" cisterns proposed for the Revised Project, which shall collect and store rainwater from the roofs of the buildings. The proposed irrigation well shall be pumped and used for irrigation only when the cisterns are empty. Project irrigation shall conform to the irrigation plan set forth in the letter from Irrigation Consulting, Inc. to the Board, dated October 10, 2006, which is public hearing exhibit 101, as modified by this Comprehensive Permit.

Board of Health (2/7/07 Memo): Recommends the installation of one irrigation well with a maximum allowable discharge of 2000 gallons per day and the construction of a third 10,000 gallon cistern which would be supplied by this well along with other types of water collecting devices.

Planning Board: Require installation of 2 more cisterns to further reduce dependency on irrigation well.

Witten (Par. 91): The cisterns should be the only source, not the primary one, and delete the last two sentences.

- xx. **Irrigation Condition – Alternative #1 [No Irrigation]:** There shall be no irrigation wells installed as part of the Project. All landscaping improvements shall be irrigated through rainwater collection systems. If this condition requires modifications to the Landscaping Plans, the Applicant shall present such modifications to the ZBA pursuant to Condition B.1(a) above, provided however that the Applicant shall not modify the landscaping improvements that provide screening to abutters as shown on the Landscaping Plans, and shall make all necessary arrangements to ensure that these plantings are established, either through rainwater collection systems or delivery of irrigation water from off-site.

Irrigation Condition - Alternative #2 [Hinton]: The Project's irrigation well shall not pump more than 1,640 gallons of water per day. If this condition requires modifications to the Landscaping Plans,....

Applicant: 20,000 gpd for establishment and 10,000 gpd thereafter; delete last clause ("either through...").

Board of Health: see above.

Witten: see above.

The Board felt that Alternative #2 should be included in the Condition with Rolfe supporting an irrigation well if density is reduced and other BOH safety nets remained. Kreiger noted that cisterns were the primary focus of condition F2.

Kreiger recommended that the Board not determine capacity of the irrigation well during the evening's hearing but wait for input from other Boards.

- F.3 The Condominium Association shall collect and maintain pumping data from the irrigation well through a flow meter and submit such data, and an evaluation as to effectiveness of the irrigation well, to the Board of Health. Such records shall clearly show how many gallons of water are pumped from the well each day and the pumping rate (i.e., 15 gallons per minute). Flow meters shall also be installed on, and data collected from, the irrigation pump so that the Board of Health may evaluate how effective the cisterns are for meeting the Project's irrigation needs. Daily flow rates and quantities from the irrigation pump and well shall be submitted to the Board of Health quarterly. The Board of Health shall report to the ZBA any problems resulting from the Revised Project's irrigation well.

Applicant: Limit reporting to annually, and for 2 years after full occupancy.

Board of Health (2/7/07 Memo): Require a local permit for the well; flow test the well for 15 gpm concurrently with the 5 bedrock wells and the monitoring of the abutters' wells, and submit these data to DEP. Other comments are reflected here or below.

Planning Board: The frequency and duration of monitoring should be as directed by the Board of Health.

Witten: No irrigation well, see above, so no such section.

Abutters/Neighbors: Reporting should cover at least 2 dry seasons (i.e., summers). What will the ZBA do if the Board of Health reports a problem to it?

The Board agreed that reporting specifications should be left to the Board of Health. The Board discussed the process for reporting issues. The Board determined that the Board of Health should be notified of any issues.

- F.4 The Board of Health shall have the authority to declare a local water emergency and may order the irrigation well shut off for any period of time the Board determines is necessary to protect the potable water supply of the Project and its abutters. The irrigation well shall also be shut off upon a declaration of a drought level of "Watch" or higher by the Massachusetts Drought Management Task Force and shall remain shut off until the drought level is returned to "Advisory" or "Normal."

Applicant: Drought watch applicable to everybody – not singling out project

Board of Health (2/7/07 Memo): The well also should be shut off if there is a known, direct impact to the project's or abutters' wells, or for any other reasonable consideration (see 1/27/07 Memo).

Planning Board: This condition reflects one of its comments, and perhaps all of them.

Witten: No irrigation well, so no such section.

The Board discussed conditions allowing irrigation shut off.

- F.5 Between the months of May and September, the irrigation well shall not operate between the hours of 9:00 AM and 5:00 PM, and may only operate up to two days per week, consistent with the Department of Environmental Protection's Guidance Document for Water Management Act Permitting Policy, dated January 17, 2006, Section IV. The Town of Carlisle is deemed to be within a "medium stressed basin," as that term is defined under said Guidance Document. Any violation of this condition may be enforced by the Board of Health as well as the Building Inspector under his zoning enforcement authority, and any violation shall be deemed to be a violation of a Board of Health regulation and subject to civil penalties as the Board of Health may establish from time to time for violations of its regulations.

Witten: No irrigation well, so no such section.

Agreement

- F.6 If a private well of an abutter to the Project fails at any time following the commencement of operation of the irrigation well, as corroborated by the Board of Health, the Board of Health shall have the authority to order the irrigation well shut off for so long as necessary to restore potable water available to the abutter.

Applicant – tighten up the standard.

Abutters/Neighbors: Fails "or is compromised".

Witten: No irrigation well, so no such section.

Agreed that F4 and F6 be combined. Board of Health recommendations should be adopted.

Witten clarified that his clients felt no irrigation well is a better approach. Kreiger requested that if better condition language was available that it be submitted prior to 3/28.

- F.7 The irrigation system shall be controlled centrally, and shall be managed by the Association through a professional property manager. The Applicant shall prepare a Landscaping Operation and Management Plan for the ZBA review and approval prior to the issuance of any occupancy permit in the Project. The Plan shall include provisions for ensuring that landscaping improvements in the 40-foot buffer areas are watered for establishment of new plantings as required, without taking any water from the irrigation well.

Applicant – strike "without"

Witten: No irrigation well, so no such section.

Hill reported that the applicant consented to this condition. The Board, however, added that "If tests reveal hydraulic connectivity between the irrigation well and the water supply wells, the irrigation well shall be permanently abandoned."

- F.8 The irrigation well shall be pump-tested at the same time as the Project's water supply wells, to accurately measure the total water supply impacts of the Project. The irrigation well shall be pumped at peak rates. The irrigation well and the Project's potable water supply wells shall be tested for hydraulic connectivity, to determine whether any one well is hydraulically dependent on any of the other wells.

Applicant: This condition is costly - \$10,000 - \$20,000; check with DEP.

Planning Board: The testing should be as directed by the Board of Health. This condition should specify what happens if such connectivity is found; according to the Board of Health, the wells would be treated as a well field.

Witten: No irrigation well, so no such section.

The Board discussed testing for Hydraulic connectivity. A letter had been sent to DEP from the BOH requesting direction on this issue.

- F.9 The common area landscaping shall be maintained in perpetuity by the Association, which obligations shall be incorporated in the condominium documents. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.

Planning Board: common area "and buffer".

Witten: Same as his Par. 92.

Hill said he would add more detail to better define the common area as including the 40-foot protective buffer area.

- F.10 The boundaries of the land shown on the "Layout Plan" as "Area to Remain Undeveloped" and the 40-foot "Protective Buffer" shall be marked on the ground with stone corner bounds and recreated rudimentary stone wall segments, and referenced in the condominium documents.

Witten: Same as his Par. 93.

Rolfe was concerned that the condition was ambiguous. Hill said the condition would reference the plan. Kreiger clarified that the plan indicates the area that may be undeveloped but it did not prohibit replacing trees.

- F.11 The existing stone walls located on the perimeter of the Site shall not be disturbed. Stones from the stone walls located within the Site shall be reused in the marking of the boundaries under Condition F.10 above.

Planning Board: During the hearing, ZBA should find out if DPW wants the stone wall material to be removed and not reused within the project.

Witten: Same as his Par. 94.

Gary Davis said he would take any stones that were unused from stonewalls. Hill would modify the condition appropriately to allow the DPW the option to accept any remaining unused stones.

- F.12 The Applicant shall incorporate the elements, dimensions, and specifications of the landscaping plan prepared by the Coppinger Company dated May, 2006 and submitted by the Neighborhood Representative as Exhibit 113 in this public hearing into the final Landscaping Plan.

Applicant: objects to this condition.

Witten: Same as his Par. 95.

Abutters/Neighbors: It is uncertain if this condition reflects their comments.

The Board discussed the Landscape Plan. The area of the plan in question is adjacent to Stone/Epstein property. Freedman reminded the hearing that applicant and abutters had agreed to meet but they had not reached an agreement. Witten said there is no deal between the applicant and abutters because the applicant had walked away from the discussions. The Coppinger Plan was based on the prior plan and now was obsolete because of the new 48-unit plan. Hill requested more detail on where the trees would be placed. Nock felt it was unreasonable for the abutters to come up with a plan due to changes in density. Kreiger suggested the issue be deferred until density is determined. Witten said the abutters would be happy to provide a higher quality of the plan. This condition is still under further discussion.

The Board discussed Stormwater management (J Conditions).

- J.2 All stormwater drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utility.

Nock felt J6 should be moved to J2. Hill commented that a Maintenance plan had been submitted. Freedman felt with the change in plans that a final stormwater plan would be required.

- J.5 The Applicant shall add a vegetated swale along the base of the mounded soil absorption area "C" to intercept surface drainage from the slope of the proposed mound, as recommended by the ZBA's peer review engineer in correspondence to the ZBA dated October 30, 2006, Exhibit 103.

Planning Board and Abutters/Neighbors: This section should read as follows:

The Applicant shall add a vegetated swale or other grading or drainage systems acceptable to or required by the ZBA's peer review engineer associated with soil absorption area "C".

This condition deals with Septic C and will be discussed later. Hinton felt a swale was necessary regardless of the final Septic C design. The Board modified the first sentence to read: "The Applicant shall add a vegetated swale or other grading acceptable to the ZBA's peer review engineer..."

- J.6 The ZBA's expenses in reviewing the stormwater management plans and subsequent reports shall be borne by the Applicant. If the Carlisle Conservation Commission (or DEP) engages the services of someone other than the ZBA's Consulting Engineer to review the Revised Project's stormwater management system in connection with the review of a Notice of Intent under the Wetlands Protection Act, the Applicant may have such alternate consultant perform the stormwater management review required by the ZBA under this Section J.6 instead of the ZBA's Consulting Engineer.

No comments/changes by the Board. The Applicant agreed, only if there are changes from the previous plan.

- J.7 The Applicant shall prepare a stormwater management system operation and maintenance plan to be incorporated into the condominium Master Deed that shall bind the condominium association to regularly inspect, maintain and repair the stormwater management system to ensure its effectiveness for the life of the Project. Said plan shall be subject to the approval of the Consulting Engineer and Town Counsel, said approval not to be unreasonably withheld.

Witten re: all of Section J: No analogous provisions; proposes as follows (Par. 81):

The infiltration rate for any infiltration system proposed on site shall not exceed that recommended by Schuler et al. and by the Stormwater Management Policy, based upon soil observations and permeability testing. Soil infiltration rate shall be correlated from the percolation rate from the most restrictive soil horizon in each of the stormwater disposal areas. The design of any infiltration system shall comply with DEP Stormwater Management Policies.

Witten said some of his comments (paragraph 81 in his document) had been omitted. The Board agreed that this required further review. Hill said he would have Preble review it.

- K.1 The Applicant shall fully comply with the Carlisle Board of Health private water supply regulations with respect to the irrigation and fire cistern wells.

Witten (Par. 103): "The Applicant shall comply with all requirements of the Carlisle Board of Health and [DEP] regarding the development and use of private water supplies for domestic consumption unless specifically waived herein."

Abutters/Neighbors: "...irrigation, septic systems and fire cistern wells unless specifically waived herein."

Confirming that this condition dealt with water supply, the Board wanted to insure Board of Health regulations and recommendations were reflected in the condition.

K.2 (a) Contemporaneous with its private water supply pump tests, the Applicant shall monitor the impact of the pump tests on the private wells of the Neighbors listed below in accordance with the Well Monitoring Plan and Protocol ("WMPP") set forth under Condition K.3 below:

- (1) 515 Concord Street (Connolly)
- (2) 63 Spencer Brook (Breuing/Kummer)
- (3) 69 Palmer (Niels)
- (4) 57 Spencer Brook (Epstein/Stone)
- (5) 77 Russell (Parker)
- (6) 44 Spencer Brook (Hoffman)
- (7) 64 Palmer (Dinardo)
- (8) 210 Concord Street (Wilson) (if requested by the property owner)

Witten (Par. 104): Similar condition – No grading, land disturbance or construction unless directly related to access or setup for well drilling until Applicant has (a) conducted water supply pump tests as required by DEP and (b) contemporaneously monitored the impacts of the pump tests on the wells of those 8 neighbors in compliance with the WMPP.

(b) The purpose of the WMPP is to determine whether the Revised Project, under simulated conditions, will have a detrimental effect on the quantity and/or quality of private drinking water wells on abutting properties. The WMPP shall be implemented prior to the issuance of any building permits for the Revised Project, or performing any site clearing work, which is unrelated to access or setup areas for well drilling equipment. Except as stated therein, the costs of implementing the WMPP shall be borne by the Applicant. The Applicant shall retain a civil engineer who is acceptable to the ZBA to perform the services under the WMPP and oversight of the pump testing shall be provided by an independent qualified engineer retained by the ZBA at the Applicant's expense. Additionally, before testing wells and installing necessary transducers, abutters will be required to sign an authorization and release enabling their wells to be accessed and tested.

Applicant: Would delete the two sentences "Except as stated therein, the costs ... retained by the ZBA at the Applicant's expense."

Planning Board: Would delete "and release", and the Applicant should have to indemnify the neighbors for damage from the well testing.

Witten (Par. 104): Same as text, except omits "Except as stated therein" and last sentence.

Abutters/Neighbors: Would delete "Except as stated therein".

K2 – (a)

Witten wanted to insure that the applicant would not be able to do any site disturbance. Freedman noted that the Talbotts, 81 Russell Street, had requested their well be added to those being tested. Abutter Alex Parker concurred.

(b) Questions arose over Witten's comments, specifically paragraph 104 and the last sentence being out of context. It was agreed that the last sentence should be omitted. O'Hagan said he had accepted the cost of the testing and that Vernon would be engaged if an objective party was needed; however, this was prior to Vernon being engaged by the Board. Levine noted that they were not agreeing to any conditions.

Back to (a)

Hinton, referring to (a), requested clarification of Witten's comments. It was agreed that there would be no disturbance or site clearance until well testing had been conducted.

(b) Kreiger explained that abutters would provide written and signed authorization and consent for access to their property. The abutters would not agree to indemnify the applicant for damage incurred on their property during well testing. O'Hagan said that he was uncomfortable with placing items in the well for testing purposes and his concern was if something happened to an abutter's well during testing. It was agreed that the condition should not impose any obligation on the abutters.

(c) If the results of the WMPP indicate that the Water Well Performance Standard (“WWPS”) set forth under Condition K.3 below will be exceeded, the Applicant may not apply for a building permit or commence additional site clearing work until the WWPS can be met. Applicant may propose remedies to attain compliance, including, but not limited to reducing the number of units and performing additional testing in accordance with this section, relocating proposed wells or septic systems, or installing new wells for the Neighbors. Any changes proposed by Applicant to the Plans that are necessary to attain compliance with WWPS shall be subject to approval by the ZBA, said approval not to be unreasonably withheld. If such changes include any modifications to an abutter’s well, the changes shall also require that abutter’s approval, not to be unreasonably withheld.

Planning Board: Changes proposed to the plans should require the neighbors’ approval, as well as the ZBA’s. In the absence of an MOU, nothing can be required of the neighbors.

Witten (Par. 104): Same as first sentence, except states that “no building permit shall be issued and all work on the project ...shall cease.” Omits the rest.

Abutters/Neighbors: Would delete “installing new wells for the neighbors” as a remedial option. Changes proposed to the plans should require the neighbors’ approval, as well as the ZBA’s, would delete the requirement that such approvals not be unreasonably withheld, and would delete the last sentence.

(c) The first sentence would remain and the rest of C would be omitted.

K.3 Well Monitoring Plan and Protocol. The testing of the above private wells shall be governed by the following Well Testing Protocol:

(a) Water Quality

A baseline water quality sample shall be collected from each residence and shall be submitted for laboratory analysis in a data table entitled “Coventry Woods Water Quality Testing for Abutter Existing Wells” shown below.

Coventry Woods

Utilizing the data from the transducers, the maximum self-induced drawdown (“Baseline Self-induced Drawdown Range”) in each private well shall be calculated. This is the range between the depth to the non-pumping average static water level and the depth to the lowest pumping water level in each well. Next, the 180-day projected test-induced drawdown (“Test-induced Drawdown”) on each private well (if observed) shall be calculated by creating a drawdown versus log of time graph of the decline in the normal static water levels (if observed) due to pumping the Coventry Woods wells. Lastly, after determining the pump depth in each well (either by pump installers records, Board of Health records, or by probing the well) the total available water column above the well pump as the difference between the depth to the non-pumping average static water level and the depth to the well pump (“Total Available Water Column”) shall be calculated. For clarification on the definition and meaning of the terms used above, reference is made to Exhibit ___ [Provencher’s hypothetical graph].

Planning Board: Questions rewriting this paragraph without engineering input.

Witten (Par. 108): Same as text, but omits last sentence.

Abutters/Neighbors: Would delete last sentence. Also agrees with PB.

All data from the pumping tests shall be conveyed to the Town of Carlisle for permanent preservation. Additionally, data from each abutter’s well tests shall be conveyed to each abutter.

Witten (Par. 109): Same, but would have data submitted to the Board of Health.

Well testing protocol – the Board of Health requested reviewing the protocol. The Planning Board requested that the applicant pay for the testing. Witten requested the Board to look and consider his Paragraph 108 and that Coventry Woods LLC be changed to the applicant’s name. Witten requested that the sentence “For clarification on the definition and meaning of the terms used above, referenced is made...” be removed and that the Board of Health be added to “All data from the pumping tests shall be conveyed to the Town of Carlisle....”

Rolfe believed that DEP would determine impact. It was clarified that Witten’s position reflected the abutters’.

- K.4 Remedies: No building permits shall issue, and no additional site clearing work shall be undertaken, until the WWPS can be met for each well listed above. If a well has been impacted, the engineers for the affected well owner and the Applicant shall, in good faith and exercising their professional judgment, discuss and analyze the impacts to the well, taking into consideration the particular characteristics of such well to determine whether they believe that such well will be adversely impacted by the Project and is in need of remedial action. The primary remedial action, if feasible, shall be to lower the impacted well's pump equal to the depth of the Test-induced Drawdown, which may include deepening the well. The secondary remedial action, if the primary action is not feasible or does not restore the owner's Total Available Water Column to pre-test levels, would be to drill a new well on the well owner's property. If the secondary action is not feasible or does not restore the owner's Total Available Water Column to pre-test levels, the engineers for the owner and Applicant shall propose a mutually agreed-upon course of action. In the event that such engineers are unable to agree on such a course of action, the matter shall be referred to an independent engineer for a binding determination, who shall be Dr. James Vernon of ENSR , 171 Daniel Webster Highway – Unit 11, Belmont NH 03220 (telephone number: (603) 524-8866) if he accepts such an assignment, and if not, then another engineer who is mutually acceptable. The costs of such review and determination shall be borne by the impacted well owner and the Applicant equally.

Planning Board: Would delete all except first sentence.

Witten (Par. 111): Same as first sentence; omits the rest.

Abutters/Neighbors: Agrees with PB.

NOTE: First sentence duplicates K.2.(c); if that's all that remains, it should be deleted.

Hill explained that the draft language was crafted to avoid uncertainties. Hinton wanted to insure that nothing would preclude the applicant and abutters that would allow them to work out the issue. Also, if there was a substantive change to the plan, it would be brought to the Board to determine if the hearing needed to be reopened.

- K.5 The well pump tests shall be conducted when the water table is low (*i.e.*, during July, August or September). See Exhibit 65 (BOH Memo, June 1, 2006).

Planning Board: The water table is not low until at least August, and even then depends on rainfall.

Timing of well pump testing is recommended to be done in August or September. It was also recommended that if the well tests reveal hydraulic connectivity between the five wells, they should be treated as one well.

K.6 Before the issuance of 15th occupancy permit granted for the Project, the Applicant shall deposit into escrow \$10,000 per private well listed in Section K.2, which shall be held by the Board of Health in escrow for 24 months after full occupancy of the Project to cover expenses incurred by the Applicant or by the well owners to correct deficiencies or to address impacts on the private wells caused by the Project's wells. Escrowed monies shall be released by the Board of Health to aggrieved well owners only upon request of the aggrieved well owner with the consent of the Applicant (or its successors or assigns), which consent shall not be withheld if the WWPS has been breached and the requested disbursement constitutes a reasonable reimbursement, in the Board of Health's sole, subjective discretion, of the well owner's expenses to restore the well to its pre-pump test Total Available Water Column. This provision shall not be interpreted as precluding any private cause of action any aggrieved well owner may have against the Applicant or its successors or assigns. Any escrowed funds remaining 24 months after full occupancy shall be released to the Applicant, with any accrued interest. The escrowed funds shall be kept in an interest-bearing savings account. If the Board of Health does not accept the responsibilities under this Section, the ZBA shall serve as the escrow agent hereunder.

Applicant: The funds would be held for 12 months, not 24.

Planning Board: The Applicant also should be required to carry a \$100,000 bond to cover additional expenses that may occur, and would delete the reference to the Applicant's consent.

Witten (Par. 112): Same as the text, except (1) applies to first building permit, not 15th, (2) refers to issuance of the final certificate of occupancy instead of full occupancy, and (3) substitutes the following second sentence:

Escrowed monies shall be released by the Board of Health to aggrieved well owners only upon request of the aggrieved well owner, in the Board of Health's sole, subjective discretion, [for reimbursement?] of the well owner's expenses to restore the well to its pre-pump test conditions.

Abutters/Neighbors: Should apply to first building permit, not 15th.

If a well listed in Section K.2 experiences difficulties after the issuance of the first occupancy permit in the Revised Project, in addition to any remedies under this section, its owner may propose an abatement remedy to the ZBA in the form of a modification to this Decision, which may include, without limitation, an order to reduce or eliminate irrigation of the Project's landscaping.

Planning Board: This paragraph raises many questions and does not provide much protection.

Witten: No such paragraph.

A brief discussion ensued on which permit this condition should be predicated upon. Final determination should be given to the Board of Health. Kreiger said that the condition's intent was to provide guidance.

K.7 The Applicant shall create a Septic System/Well Replacement Fund to be held by the successor Condominium Association, and shall be funded through the initial sale of homes by the Applicant in the amount of \$35,000.

Planning Board: Condo documents should be reviewed to ensure that the fund is maintained and possibly increased over time as necessary.

Witten: No such paragraph.

Abutters/Neighbors – This section should cross-reference Section M.4., and the amount should be higher, with peer review, Board of Health and Planning Board input.

NOTE: This section duplicates M.4.

This is duplicated in Condition M4. It will be deleted.

K.8 The Applicant shall deposit funds in the amount of \$30,000 in an escrow account held by the Board of Health, or provide the Board of Health with evidence of a Defect Bond naming the successor condominium association as beneficiary, before the approval of a Sewage Disposal Construction Works Permit as a financial guaranty for the installation and construction of the public water supply wells, the fire cistern and well, and the septic systems, to remedy or correct construction- or installation-related defects. The bond or escrowed funds shall be held for a period of one year from the date of issuance of the final Certificate of Occupancy of the dwelling units. The Board of Health may disburse escrowed funds to the successor condominium association to reimburse said association for

expenses incurred in correcting such defects, but only after all diligent, good faith efforts to compel the Applicant to correct such defects have been exhausted. Whether the condominium association has used diligent, good faith efforts shall be determined by the Board of Health in its sole, subjective discretion. Any remaining funds shall be returned to the applicant at the expiration of the escrow period. See Exhibit ___ (Board of Health Memo dated June 19, 2006).

Witten (Par. 113): Same, except omits the last sentence referring to the Exhibit and adds the following sentence:

The Applicant shall provide and maintain in effect for 20 years insurance for the benefit of each owner of a property on the site and of neighboring properties within 500 yards of the perimeter of a wastewater system on the site to indemnify such owners for loss in value, expense incurred and remediation of any contamination of the ground water and the wells of such owners from wastewater generated on the Site.

Abutters/Neighbors: Should refer to any defects, not merely construction- or installation-related ones, and the range of covered defects should be determined by the Board of Health. Also agrees with Ed Woll's insert I.2.

Witten suggested the applicant provide self insurance for 20 years to protect abutters' wells from any adverse long term impact. Levine was unsure any insurance of this type was available. Witten suggested that the applicant insure himself. In response to Hill, Witten said that if a well was contaminated the nitrogen could be traced. Kreiger was concerned that it would be difficult for an insurance company to determine a price. It was clarified that K8 was meant to remedy defects in the infrastructure on the site, not abutters. It was requested that Atty. Ed Woll's insert be supplied for review.

K.10 Before the issuance of any building permits for the Project, the Applicant shall submit to the ZBA and the Board of Health for their review a water supply plan (the "Water Supply Plan"), which shall include a comprehensive set of design drawings for the water supply infrastructure (including pumping facilities), and pumping test results done in accordance with DEP requirements and Condition K.2 above.

Abutters/Neighbors: Asks whether the plan requires Board of Health approval.

Data would be submitted and reviewed for approval by a Peer Review consultant.

- K.11 The Applicant shall provide the Carlisle Board of Health with at least one week's notice of all drilling, sealing, pump testing of the wells, and the testing of the permanent pumping facilities, and shall allow the Board of Health full access to witness said activities.**

Witten (Par. 114): Same.

No issues.

Freedman suggested the Board request the Advisory Board be set up and tasked to work on the conditions and other issues prior to the 3/28 meeting. Freedman requested a Board of Appeal member be included on the Advisory Board. Freedman said the Advisory Board could provide input on project density and input on conditions to help move along the issues.

Rolfe moved that he be the Board of Appeal representative on the Advisory Board. Hinton seconded the motion. The Board voted unanimously (4-0) to appoint Rolfe to the Advisory Board.

It was agreed that the applicant not be involved in these discussions. Freedman informed the hearing that Mass Housing suggests work sessions to include one ZBA member but does not mention the applicant being involved. Nock said the Advisory Board could provide input but the ultimate decision was the Board of Appeals. Levine said they would object to the Advisory Board if the ZBA participates. Hill agreed the ZBA should not be included. Kreiger said input from the Advisory Group was the same as input from other Boards.

Rolfe retracted the motion of having a ZBA member on the Advisory Board. Hinton seconded the motion, the Board voted unanimously (4-0) to retract the motion.

The Board agreed that Vernon should only review the data provided by O'Hagan.

Hinton felt that an appraisal was necessary to discuss density. The Board could look at the density issue after the property appraisal. Unit reductions can only be done scientifically based on collected data/information. Kreiger suggested the Board tackle the density issue by determining the impacts at all levels and at what number of units the impacts are mitigated.

The Board discussed the agenda for the next meeting. Witten estimated he would need about a half hour.

Freedman inquired as to when he would have an opportunity to offer comments on other decision conditions for the benefit of the Board.

Hill will provide a new draft of the conditions a week before the next meeting.

The hearing was continued to March 28 at 7:00 p.m.

Hinton motioned to adjourn the meeting; Kirk seconded. The Board voted unanimously (4-0) to adjourn.

The hearing was adjourned at 11:50 p.m.

Respectfully submitted,

Julie Connor Levey