



142 Littleton Road
Westford, MA 01886
978.692.1313

June 29, 2015

Lisa Davis Lewis
Carlisle Board of Appeals
Town Hall
66 Westford Street
Carlisle, MA 01741

Re: "The Birches"
Application for Comprehensive Permit
Consultant Review Fee

Dear Ms. Lewis and the members of the Board of Appeals:

This letter is formal notification that the applicant (undersigned) of the above referenced project objects to the peer review fees and, in particular, the procedure used by the Town in seeking deposits, the approval of additional work beyond the scope of services, the billing process employed by the peer review consultant, the items included in the billing, the reimbursable expenses and their relation to the contract, and the lack of presentation or record provided of expenses incurred and expenses paid. The only portion of this process that is not objected to is in the seeking and choice of consultants and the initial deposit paid, which, as noted, was to include some additional funds for overages.

Peer Review Proposal and Contract:

As you know, after receiving three proposals from engineering firms, the Town of Carlisle Board of Appeals chose Nitsch Engineering of Boston, MA as the peer reviewer for Civil Engineering, Traffic, Hydrogeology, and Final Plan review. The August 13, 2014 proposal stipulated the fee proposed as a LUMP SUM fee for the given Scope of Services in the amount of \$12,300.00. The proposal has one and only one additional fee proposed for Meetings, ESTIMATED at \$3,400.00 for a total contracted amount of **\$15,700.00**.

The contract further outlines that no work will be done beyond the contract without Client approval. It further outlines that the Lump Sum fee includes ALL reimbursable expenses including prints, postage, mileage, delivery, etc.

My first objection for the record is that I do not believe the invoices reflect these clearly stated contract conditions (i.e. reimbursable expenses are billed separately and added to the amounts).

Deposit for Peer Review:

This deposit was required in addition to the Board of Appeals Filing Fee charged for the application for Comprehensive Permit (see below). The Town requested the applicant to fund a “special account” to be maintained by the Town Treasurer in accordance with Section VIII.3.03 of the “Carlisle Zoning Board of Appeals Rules and Regulations, June 15, 2009, Revision 5”. The initial deposit anticipated some additional funding which may have been necessary so the request from the Board of Appeals was to fund the “special account” with a payment of \$18,000. This was promptly paid. Additional requests for funding were made during the process. The following table represents the funding, as paid, for this special account.

Date	Amount
September 3, 2014	\$18,000
February 23, 2014	\$16,000
May 6, 2015	<u>\$ 2,500</u>
TOTAL	\$36,500

The total amount funded to May 6, 2015 is already 130 % more than the original estimate. With the payment of May 6, 2015 my legal counsel objected in paying any additional funding, then and in the future, and requested back up material including authorizations for the additional work done. Nothing has been provided.

The established protocol was not followed whatsoever, the authorizations for additional services appears lax or not at all, the back-up documentation has yet to be provided, the invoices that were provided by Nitsch back in February do not follow the contract in the least, and I seriously question that some charges were beyond peer review limitations of submitted materials as required under the Comprehensive Permit regulations and those of the Town of Carlisle. As you know, independent reports, analysis, or other studies are not allowable expenses to be paid by the applicant which would include consulting services not in response to or for technical review of submitted material.

We have not submitted any material in May or June that would necessitate a peer review so any charges incurred cannot be charged to the Applicant. As you know, the only item that could be considered as reviewable was the Nitrogen Aggregation computation, which resulted in at least three written documents by the peer reviewer, all of which were admitted – by the peer reviewer - to be wrong and for which a final, correct letter has yet to surface. Certainly, none of us should pay for studies done incorrectly.

I reiterate our request for back up material and documentation for the payments already made and those requested, including timesheets for charges that are of a Time and Material Basis, a tabulation of charges billed on a Lump Sum basis pursuant to the contract, and tabulations of additional services with associated time and monetary amounts. Further, I request again the documentation of the Town Administrator for authorizing additional services beyond the contract, including the date that said authorizations were made.

Filing Fee:

The filing fee for this Comprehensive Permit application was as follows:

Initial:	\$5,000
Per Unit: \$1000 x 20 units =	<u>\$20,000</u>
TOTAL	\$25,000

According to Section VIII.3.02 this fee, provided with the application for the Comprehensive Permit, is to allow the town “to cover the costs associated with statutorily required notice and mailings plus an additional cost based upon the number of proposed housing units”. It should not be used for legal assistance and I do not voluntarily agree that this fee or any other fee should be used for legal assistance.

However, I recognize the tremendous effort of Peggy Wang, as assistant to the Board and Charlene Hinton, as Town Clerk in gathering, organizing, filing and all the other things they have done to maintain the files and otherwise administer this process. I have absolutely no objection to paying my full share for these important tasks. They have done a marvelous job.

To the extent that there are additional funds remaining from the filing fee of \$25,000 to pay for this project’s administration but not legal services, I request and expect the balance to be paid back to me upon completion of the deliberation process.

Conclusory Statement:

For all of the reasons outlined in this letter and in the letter of notice submitted by my attorney in May, informing the Board that no additional funding would be submitted and since no submittals from the applicant in the last several weeks (at least 4), required peer review, and in full understanding of Section VIII.4.03 of the Carlisle Zoning Board Rules and Regulations, I do not intent to fund additional peer review beyond that which has already been submitted. Further, I presently object to the billing practices to date and I reserve all my rights to review the back – up documentation to submit and seek potential reimbursement pursuant to Section VIII.4.04 of the Carlisle Zoning Board Rules and Regulations. Finally, in accordance with this request and the previous request of my attorney, I hereby require that a “final report” of said account including all of the back-up material previously requested be provided to me as soon as reasonably possible.

I look forward to the submission of the material requested herein.

Sincerely,
LIFETIME GREEN HOMES, LLC

Jeffrey A. Brem

Cc: Doug Deschenes