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Carlisle Board of Selectmen
Town Hall
66 Westford Street
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February 20, 2015

RE: Long Ridge Road 40B Hearing
Town's Responsibility to Introduce Evidence to Support
Public Health Rationales for 2-Acre Minimum

Dear Members of the Board:

On the evening of February 4th, the Board of Health, ConsCom, and Planning Board presented their initial analyses of the Long Ridge Road 40B project. In addition to identifying specific risks, each board offered sound reasons for the general conclusion that the infrastructure design is "too dense" for the land. Drinking water safety, septic system reliability, and wetlands viability were of greatest concern. For the first time in six months, the idea of reducing the number of units arose. But so far, there is no framework to assess how many units should be allowed.

The developer has designed the project as a single lot, so the zoning requirement of a two-acre minimum lot size has, at first glance, been side-stepped. However, the rationales for the basic density regulation should be at the center of the ZBA hearing.

The Town Must Present Evidence

Under 40B, the legal standard is not a line; rather, it is a balancing test. The need to protect health, safety, and the environment is *weighed* against the need for subsidized housing. When the percentage of subsidized housing units is below 10% of the total units, there is a "rebuttable" presumption that housing need¹ outweighs other local concerns. The courts have stressed that a "rebuttable" presumption merely requires the town to present evidence to justify zoning requirements or the conditions a ZBA may place on a comprehensive permit. The rebuttable presumption just says that the town must go first. If the town fails to present evidence to back up the zoning regulations or conditions, then the developer will win without more. If no evidence is presented, we will not have made our case. But, Carlisle has a good case to make.

¹Contrary to common perceptions, the courts have said that the distance from the 10% safe harbor threshold is not relevant to weight of housing need. Rather, it is determined by the number of low income persons in the area.

Not too long after the 1973 *Hanover* decision, the cornerstone opinion on 40B, a state appeals court considered whether large lot requirements manifested "exclusionary" zoning. In *Wilson v. Sherborn*, the Court decided that the need to protect against the potential problems associated with private septic systems and wells was a valid public purpose. The court upheld Sherborn's two-acre minimum lot size.

The *Sherborn* Court addressed the possible need to relocate septic systems as one reason for mandating larger lots. The risk of septic failure may be somewhat higher on Long Ridge Road than in other parts of Carlisle. Several neighbors have reported the need to replace leach fields. The proposed project is so congested, it is unclear where a septic field might be relocated in the event of failure. Factual evidence of neighborhood septic system fragility should be presented at the ZBA hearing.

Granite Ledge, Extensive Wetlands, and Unknowables

The hearing has provided an education on hydrogeology. Several of us in attendance had not heard of the "overburden" nor understood concerns about non-vertical fractures in bedrock. Although the presence of granite outcroppings and wetlands can be observed, the extent and significance of these terrain features was not clear until the recent hearing session. The proposed development appears to be about one-third wetlands. The 9+ acre lot has only about six acres available for actual construction, and the need to protect the wetlands further limits the site. The developer has mentioned the need to "blast and fill" because of the granite ledge. A lot of ledge, especially when combined with a high water table, may reduce the depth and continuity of the overburden and thus reduce the margin for error in its filtering capacity.

As I understand the safe drinking water issue, described more fully in my January 24 letter, the key factors are: (1) the amount and type of contaminants, (2) the distance between the source of contaminants and wells, and (3) the capacity of the leach fields and soils in the overburden to filter contaminants in that distance. In addition, if there are non-vertical bedrock fractures, contaminants can travel quickly – and without detection – to drinking water. It seems that it is almost impossible to feel sure that there are no non-vertical fractures in the bedrock.

Well contamination that may cause illness, even fatal illness, may not be discovered for a month or longer.

With all of these uncertainties and the chance that health may be endangered, a clear margin of safety is warranted. The Board of Health, Conservation Commission, and Planning Board have presented potential dangers of the congested site design. The boards have addressed the project from the developer's perspective. The town should now put facts before the ZBA that the land can safely support only that number of units that would be permitted under the two-acre minimum regulation.

Thank you, in advance, for assuring that all of the residents of Carlisle, present and future, are protected from unwise and unsafe building projects.

Sincerely,



Lyn Lemaire

cc: Zoning Board of Appeals
Board of Health
Planning Board
Conservation Commission
Town Hall Advisory Group