



November 23 2015

**BY HAND**

Sherborn Zoning Board of Appeals  
Sherborn Town Hall  
19 Washington Street  
Sherborn, MA 01770

Re: Application for Comprehensive Permit – 247 Washington Street, Sherborn

Dear Members of the Board:

As you may recall, this firm represents neighbors and abutters to the proposed 36-unit residential development located at 247 Washington Street in Sherborn (the “Project” and the “Project Site”), which is the subject of a pending application for a comprehensive permit under General Laws Chapter 40B, Sections 20-23 proposed by The Fields at Sherborn, LLC (the “Developer”).

I would like to briefly respond to a letter from the Developer’s attorney, Mark Kablack, dated November 11, 2015. In the letter, Mr. Kablack makes several misrepresentations, which I feel compelled to correct for the record.

First, Mr. Kablack states on Page Two that the Developer has “agreed to perform groundwater modeling analysis and testing” in order to demonstrate that “the wastewater disposal system meets or exceeds all health and safety requirements.” In fact, the Developer has steadfastly refused to provide the hydrogeological analysis requested by the Board of Health on October 8, 2015, filing instead an incomplete “Environmental Impact Report” (EIR) prepared by its civil engineer, Desheng Wang. The Board of Health requested, but has not received, a nitrogen loading analysis (“mass balance analysis”), a pathogen transport analysis, and a complete soils analysis that includes information on the direction of groundwater flow through bedrock fractures on the project site. The Developer’s unwillingness to provide a complete picture of the hydrogeological conditions on the site led the Town’s Board of Health, Board of Selectmen, and Advisory Committee to retain an independent hydrologist to perform the tasks that the Developer was unwilling, or unable, to perform.

Furthermore, the information provided by the Developer in response to inquiries by the Board of Health and Conservation Commission concerning wastewater impacts has been incomplete, and in some cases, wrong. Specifically, in response to specific questions from both

boards concerning nitrogen impacts, the Developer's engineer responded in its EIR that "it is safe to conclude that the project will have no impact on the nitrogen level in any drinking water wells as the effluent will have total nitrogen level less than 10 mg/l meeting drinking water standard." EIR, p. 6 (copy attached). The Developer repeated this claim at the final Conservation Commission hearing on the Developer's Notice of Intent under the Wetlands Protection Act on October 27, 2015. When pressed for evidence supporting this claim of 10 mg/l at the Commission's hearing, the Developer stated that he had DEP approval for this modeling assumption. Since that date, we have asked the Developer to provide a copy of this claimed "approval," but we have not received it. Rather, the DEP Provisional Approval for the FAST system that we assume the Developer is relying on references a target concentration of 25 mg/l in the effluent.

The best evidence available to date indicates that the Project's nitrogen concentrations will grossly exceed the maximum safe drinking water standards at the Project's property boundaries, its own wells, and at least one well of an abutter, making the Developer's engineer's representation, made under his professional seal, quite troubling. If the Developer is sincere about its plans to "perform groundwater modeling analysis and testing," we would welcome it, but we have seen no such proposals, contrary to Mr. Kablack's representation, and we would insist that every representation and finding be strictly scrutinized given what we have seen to date.

We are also surprised to see Mr. Kablack's comment on Page Two suggesting that your peer reviewer, BETA, has not been specific in its critique of the project's septic system. BETA's November 3, 2015 peer review update is very specific in itemizing the regulatory nonconformities. As just one example, BETA notes in comment T5-2 that the retaining wall along the perimeter of septic fields 2 and 3 is proposed to be just inches from the property boundary, citing the setback requirements of 310 CMR 15.211. Mr. Kablack's comment that "such specificity is lacking in correspondence provided by BETA to date" is confounding, and leads us to question whether Mr. Kablack has seen all of the BETA peer review letters filed with the Board.

Finally, Mr. Kablack states on Page One that all local bylaws and regulations concerning the septic system "are to be reviewed by the Zoning Board of Appeals," and that the Board of Health's role is purely "advisory." This is not entirely accurate. While most local bylaws and regulations are within the province of the Board of Appeals in the context of a Chapter 40B application, local health regulations are relevant to the Board of Health's review of a Title 5 application that features an "alternative" septic system proposal, as is the case here. Under Section 15.286, the regulation specifically states that "a Local Approving Authority may impose additional conditions on the use of alternative systems approved for provisional use under 310 CMR 15.000 only in accordance with regulations adopted pursuant to 310 CMR 15.003(3)." The Board of Health's regulations, including the ones the Developer is seeking waivers from, were adopted under the provisions of 310 CMR 15.003(3). Since Title 5 is a state regulatory scheme, the provisions of Title 5 are not trumped by Chapter 40B, and therefore the Board of Health is free to impose whatever reasonable conditions on an alternative system as it deems

necessary to ensure adequate protection of the public health, safety or the environment, as long as those conditions are derived from the Board's regulations.

Thank you for your continued diligence in your review of this application.

Very truly yours,

  
Daniel C. Hill

Enc.

cc: Sherborn Board of Health  
Sherborn Conservation Commission  
Sherborn Board of Selectmen  
Developer