



BY ELECTRONIC MAIL: DDennis@lancasterma.net

Lancaster Zoning Board of Appeals
Prescott Building
701 Main Street, Suite 4
Lancaster, MA 01523

Re: Goodridge Brook Estates, Lancaster, MA

Dear Members of the Zoning Board:

On behalf of neighbors and abutters to the above-referenced Chapter 40B proposal (the "Project") on vacant land off of Sterling Road (Parcel 34B on Assessor's Map 41) in Lancaster, Massachusetts (the "Site"), I am writing to provide the Board with further comments on the proposed Project's impacts on protected wetland resource areas at the Site, including the vernal pool identified by Comprehensive Environmental Incorporated ("CEI") in its May 7, 2019 assessment. In particular, I am submitting the following peer reviews for the Board's consideration:

1. Wetlands & Stormwater Review #4 for Sterling Road 40B Project, Lancaster, prepared by wetlands scientist and hydrologist Patrick Garner, dated May 15, 2019; and
2. a comment letter by water resources consultant and hydrologist Scott Horsley of Horsley Witten Group, dated May 16, 2019.

Mr. Garner's peer review notes that the vernal pool (within the intermittent stream) lies directly beside the discharge points for three proposed detention basins. Two of these detention basins are within the 50-foot buffer to the vernal pool, and all three basins are within the 100-foot buffer. Under the Town of Lancaster Wetlands Protection Bylaw, Chapter 215-2.A.(6) and (13), the 100-foot buffer zone around a vernal pool is protected, whether or not the vernal pool has been officially certified. See Chapter 215-3 (definition of "Vernal Pool" applies "regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife"). The Lancaster Wetlands Bylaw further prohibits work that could "alter" vernal pools, including activities that could result in: "[c]hanging of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics" of a vernal pool; "[d]rainage or other disturbance of water level or water table"; "discharging .. with any material which may degrade water quality"; and "[c]hanging temperature, biochemical oxygen demand or other physical, biological, or chemical characteristics of any waters." See Chapter 215-3, "Alter," B.-D., I. As described in Mr.

Garner's reviews, the proposed Project would violate these standards in the Bylaw, because outflow from the detention basins during storm events will increase post-development, and effluent from the stormwater basins will contain pollutants, including higher pH, salts, hydrocarbons and herbicides/pesticides that will impair, "if not destroy", the habitat required for the vernal pool. See Garner review, p. 2.

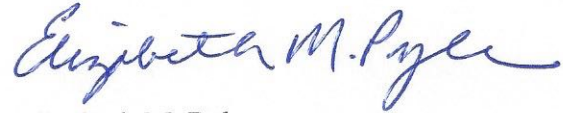
The Project also does not comply with the Massachusetts Department of Environmental Protection ("MassDEP") requirements for vernal pools and stormwater management, so it cannot be approved under state law in its current configuration, in any event. The Massachusetts Wetlands Protection Act, G.L. c. 131, §40, requires a 100-foot buffer around certified vernal pools, and further protects vernal pools as Outstanding Resource Waters ("ORWs"). Under Massachusetts Stormwater Handbook Standard 6 (Table CA 2), stormwater BMPs must be set back 100 feet from a certified vernal pool, proponents must "demonstrate that the stormwater BMPs meet the performance standard of having no adverse impact on the habitat functions of a certified vernal pool," and stormwater discharges to ORWs must be set back from the receiving wetland and receive the highest and best practical method of treatment. Where the detention basins discharge within the 100-buffer to the stream/vernal pool, and the Applicant has failed to provide any water quality filtration, these state requirements have not been met. Mr. Horsley's review of the Project also found that it does not comply with MassDEP Stormwater Standard 3, because it would impermissibly alter groundwater levels. See Horsley review, p. 2-3. Accordingly, the proposed Project violates multiple state standards that cannot be waived as part of the Chapter 40B process. This means that the Project is not viable as currently proposed, and the Board should deny it on those grounds, alone.

Finally, both Mr. Garner and Mr. Horsley have opined that locating the proposed detention basins so close to the vernal pool will likely destroy the vernal pool and its habitat. See Garner review, pp. 2-3; Horsley review, p. 3. When reviewing the Applicant's request for waivers from the protections of the Lancaster Wetlands Bylaw, the Board should note this dire impact on the Town's wetlands and vernal pool species. The Board should note that local rules apply to Chapter 40B projects unless the developer can prove that waivers are needed to make the project economically viable, and that the need for affordable housing outweighs the "local concerns" protected by the local bylaws and regulations for which waivers are sought. This balancing test was illustrated in the recent case of Reynolds v. Stow Zoning Bd. of Appeals, 88 Mass.App.Ct. 339, 350 (2015), where the Court ruled that it was "unreasonable" for the zoning board to grant waivers from restrictive local bylaws given unmitigated environmental and health impacts. To put this standard in plain terms, the Board need only grant waivers to the extent they are necessary to make the project economically viable.

Here, where two different peer review experts have opined that the proposed Project would "destroy" the vernal pool and its associated habitat, the Board has a reasonable basis to deny any requested waivers from the Lancaster Wetlands Bylaw based on environmental concerns. Particularly where the Applicant has failed to meet its burden of proving that a smaller project located farther away from the wetlands is uneconomic, the Board should deny the requested waivers for this Project.

Thank you for your attention to these matters.

Very truly yours,



Elizabeth M. Pyle

cc: Lancaster Board of Selectmen
Adam Costa, Esq.
Paul Haverty, Esq.
Clients