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BY EMAIL: jeanne.guthrie@sherbornma.org

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

Re: Farm Road Homes application for comprehensive permit, 55-65 Farm Road, Sherborn MA

Dear Members of the Board:

As you know, I represent direct abutters Brian and Mary Moore of 49 Farm Road, who have asked me to explain the legal significance under Chapter 40B of the nitrogen loading analysis submitted by their hydrology expert, Scott Horsley, whose November 5 report corroborates your own peer reviewers who likewise recommended a “hydrogeological assessment required to determine nitrogen loading”. (10/27/23 Tetra Tech Ltr, p. 7, ¶ 58)

Over the years, few things have been found to outweigh the need for affordable housing. Protecting drinking water wells like the Moore’s happens to be one of them. The potential threat of nitrogen contamination in drinking water wells has been determined by the Appeals Court to be of such paramount importance that it outweighs the housing need under Chapter 40B:

the private wells on [Plaintiff] and his neighbors’ properties will have elevated nitrogen levels due to the discharge into the waste disposal system designed for the locus and, therefore, it was unreasonable for the [zoning] board to waive certain waste disposal limitations contained in the town by-law.

Reynolds, et al. v. Zoning Bd. of Appeals of Stow, 88 Mass. App. Ct. 339, 340 (2015). In the Reynolds case, the local ZBA waived local bylaw protections that would have limited nitrogen discharged from the septic system and granted a comprehensive permit. The Appeals Court reversed and revoked the comprehensive permit because “it is unreasonable to conclude that the local need for affordable housing outweighs the health concerns of existing abutters.” Id. at 350.

Sherborn’s own Groundwater Protection Committee (“GPC”) relied on the Reynolds case in its September 18, 2023 memo to the ZBA urging you “to not waive any Sherborn by-laws protective of groundwater, surface water, and stormwater.” (9/18/23 GPC memo, p. 7, ¶ 1) Similarly, the Conservation Commission also recommended mitigation and testing to protect the

wetlands from elevated nitrogen leaching from the project's septic effluent. (10/31/23 Conservation Committee memo, p. 4)

Based on the Appeals Court Reynolds decision, a copy of which is enclosed, this Board has solid precedent on which to rely to implement the recommendations of its fellow land use boards. We ask the Board to please follow the recommendations of the GPC, Conservation Commission, as well as your own peer reviewers, all of whom expressed concerns about the effect of excessive nitrogen from the large septic system.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: Paul Haverty, Esq.
Scott Horsley
Brian & Mary Moore