
2nd February 2024

Dear Members of the Sherborn Zoning Board of Appeals ("ZBA") and Board of Health ("BOH"):

The undersigned is a group of families who own homes close to the Washington/Greenwood development (Map 7, parcel 49), including direct abutters.

Collectively, we have taken time to investigate and understand the process related to the proposed 4 single family homes and 40 apartments on Map 7, parcel 49 - a development plan that must be considered as a phased development.

The term "phased development"¹ refers to (a) more than one project proposed for (b) a single piece of property (or an assemblage of contiguous properties) (c) under consideration for development by the same person (or by related persons), that will (d) begin and be completed at different times.

Each hallmark of phased developments as they pertain to the Washington/Greenwood project - points (a) through (d) - are detailed below.

- (a) More than one project: Mr. Bob Murchison has submitted plans for (1) a set of 4 houses (referred to as "Greenwood Homes" on the Sherborn Land Development Projects website and referred to as "Phase 1" herein) and (2) a 40-unit apartment complex (known as "Washington Street Homes" on the same website and referred to as "Phase 2" herein).
- (b) Single piece of property: Phase 1 and Phase 2 plans, although submitted separately, would be built side-by-side on Sherborn Assessor's Map 7, parcel 49 (enclosed herein). This parcel is currently under agreement as a single property sale option.
- (c) Under consideration for development by the same person: Mr. Murchison is the developer for both projects. Mr. Murchinson has submitted to the ZBA an application for a comprehensive permit, as well as other materials, for Phase 1 through a limited liability company called Fenix Partners Greenwood Street Development LLC ("Greenwood LLC"). Mr. Murchinson is the managing member of Greenwood LLC (as a member of the limited liability company, he holds an ownership interest in Greenwood LLC). Mr. Murchinson personally represents the interests of Greenwood LLC and Phase 1 in on-

¹ At this time, we have been unable to locate a definition for this term in Massachusetts statutes, regulations, or caselaw. Therefore, we refer the ZBA and the BOH to the following for appropriate definitions: <https://www.lawinsider.com/dictionary/phased-development>. Though we are happy to discuss any legal definition that may have been adopted by Massachusetts courts that we may not be aware of.

going ZBA meetings. Mr. Murchinson has submitted to the ZBA an application for a comprehensive permit, as well as other materials, for Phase 2 through a limited liability company called Washington Street Sherborn Homes, LLC ("Washington LLC"). Mr. Murchinson signs for Washington LLC as the managing member (as the member of the limited liability company, he holds an ownership interest in Washington LLC). Mr. Murchinson personally represents the interests of Washington LLC and Phase 2 in ZBA meetings. Furthermore, Mr. Murchinson and his development team members have supplied all relevant Phase 1 and Phase 2 development documents submitted to date to the Sherborn Planning Board, Board of Health, Conservation Commission, and Zoning Board of Appeals, and regularly attends these Board/Committee/town meetings related to both Phase 1 and Phase 2 of this development. It is clear that although Mr. Murchinson formed separate limited liability companies to apply for the two comprehensive permits, Phase 1 and Phase 2 are under consideration for development by the same person or related persons due to Mr. Murchinson's ownership and control of both companies.

- (d) Begin and be completed at different times: the approval process for Phase 1 and Phase 2 commenced on different dates, with Phase 1 beginning on August 18, 2023 and Phase 2 beginning on January 23, 2024.

We are concerned that the ZBA is not giving due weight to the environmental impact of this project as a phased development, and instead is viewing Mr. Murchinson's applications for Phase 1 and Phase 2 under wholly separate lenses. **The ZBA should review the two applications for comprehensive permits as a single, phased development.** This includes:

1. Considering the impact of Phase 1 and Phase 2 on abutting water supply on a collective basis.

The parcel is a MassDEP-designated nitrogen-sensitive area² as well as an EPA-defined area of high septic density and region of potential groundwater contamination³. Phase 1 does not include any state- or federally-recognized wetlands but does encroach on the 100-ft. wetlands buffer zone extending from the northwest side of the parcel. Phase 2, which covers 14.2 acres of the parcel, includes designated wetlands covering 14% of its area; additionally Phase 2 is home to a NHESP Certified Vernal Pool. The aquifer and surface water supply and flow of Phase 1 and Phase 2 are entirely interconnected, and lie together in the Dirty Meadow Brook sub-watershed. Our concerns (as expressed in other letter submissions) regarding the impact on the safety of our well water due to drilling wells and installing areas of high septic field density close to designated wetlands (including the associated risk of contamination through bedrock blasting and septic leaching) is compounded by this phased development.

² MGL 310 Title V Section 15.214 - Designation of Nitrogen Sensitive Areas, p. 38
<https://www.mass.gov/doc/310-cmr-15-state-environmental-code-title-5-standard-requirements-for-the-siting-construction-inspection-upgrade-and-expansion-of-on-site-sewage-treatment-and-disposal-systems-and-for-the-transport-and-disposal-of-septage/download>

³ EPA Report to Congress: Waste Disposal Practices & Their Effects on Ground Water (1977), p. 192 & 194.

Compliance with Title V is understood as a minimum requirement. MassDEP is explicit about the expectation that each municipality expand upon Title V to address specifics of local conditions. It is incumbent upon the ZBA to uphold MassDEP's mandate.

Under Phase 1, Mr. Murchinson is requesting waivers of setbacks regarding spacing between wells and septic tanks and leach fields. We don't know yet what waivers will be requested for Phase 2 and what risk these waivers will pose on the safety of our drinking water.

Therefore, **we ask the ZBA *first*, require further action be taken to understand the overall ground water capacity and aquifer recharge rate, septic effluent flows and surface water flow on and off the entire 18.5 acre parcel** (e.g. consider the impact of both phases as a whole), and ***second*, require that Phase 1 and Phase 2 comply with critical local Board of Health and Conservation Commission septic regulations.**

It is our understanding that any any test pit testing for septic and stormwater controls was done during the second half of 2022, which included a period of drought not seen in Massachusetts for 138 years prior⁴. This testing should be repeated to take into consideration both typical and extreme precipitation (particularly given the standing water currently found within the property boundaries) and we request that the ZBA require the same.

The foregoing is consistent with the Sherborn Select Board's recommendations from December 3, 2022 to the MassHousing Office of Planning & Programs and the Sherborn Board of Health recommendations from November 21, 2022.

2. Consider the environmental impact of Phase 1 and Phase 2 on a collective basis.

A. Stormwater Management.

This is a phased development that includes multiple areas of wetlands. There is a large pond on Washington St. opposite of Phase 2 on the parcel. Although we have many concerns about the environmental impact of this phased development, one of these concerns - appropriate stormwater planning near a wetlands area - has clear regulatory weight behind it. As described below, ***these regulations require delay or discontinuation of the Phase 1-specific approval process*** that commenced on August 18, 2023. Quoting the MassDEP's Wetland Protection regulations:

310 CMR 10.05 (n) "***For phased projects the determination of whether the Stormwater Management Standards apply is made on the entire project as a whole including all phases*** [emphasis added]. When proposing a development or redevelopment project subject to the Stormwater Management Standards, proponents shall consider environmentally sensitive site design that incorporates low impact development techniques in addition to stormwater best management practices."⁵

⁴ <https://www.usgs.gov/publications/2022-drought-new-england>

⁵ (<https://www.mass.gov/doc/310-cmr-10-wetlands-protection/download>)

Sherborn has seen a significant amount of flooding in recent months, including along both sides of Washington Street, along Greenwood Street, and within the proposed Phase 1 and Phase 2 sub-parcels. As abutters, we see this now-standing water within the development site, visible from both Greenwood St. and the Bailey Trail, following heavy rainfall. At present, Bailey Trail is impassable due to flooding, and the surface-water area of the wetlands and vernal pools within the parcel extend well beyond many of the blue flags placed to delineate their edges. Flooding within the parcel, along Washington Street, and potentially on Greenwood Street has the risk of magnifying following completion of a phased development of the entire parcel due to the increase in impervious surfaces (buildings, driveways, etc), increased pressure of buildings on surface groundwater, and increased groundwater base-flow and recharge rates due to septic systems⁶.

We note that in the January 2024 Waiver List for Phase 1, Mr. Murchinson requests a waiver of Chapter 25. **We request the ZBA reject any request to waive the requirement to obtain a Stormwater Management Permit from the Planning Board for either Phase 1 and Phase 2**, and that Mr. Murchinson's Stormwater Management Plan address, comprehensively, the impact of Phase 1 and Phase 2 on stormwater.

B. Environmental Health Impact Report; Environmental Impact Study.

Additionally, **we request that the ZBA require the preparation of an Environmental Health Impact Report (EHIR) for Phase 1 and Phase 2** as it is a requirement (per BOH regulation III.3.1) that would apply to this project if not for its 40B status and, per the letter from the Board of Health to the DHCD on December 29, 2022, confirmed such requirement has been applied to other multi-unit projects in Sherborn.

The BOH also included that its "Requirements include the performance of hydrology evaluations of septic effluent influences on groundwater and surface water quality over time. Given that the concentrated plume of effluent from the project's proposed septic systems is most likely to affect the wells of Washington Street Sherborn by virtue of proximity, it is in the interest of safe affordable housing that the EHIR is required. Prior modeling of effluent impacts from another project's large septic system revealed that a steady state of contaminants in groundwater could reach 2 to 3 times the drinking water standard. Although the results are situation-specific, it nonetheless highlights the value of such evaluations."

Further, the MEPA requires that in determining whether a Project is subject to the jurisdiction of or meets or exceeds any review thresholds, and during MEPA review, "

the Proponent [*i.e., Mr. Murchinson*], any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. **The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review.** The

⁶ <https://pubs.usgs.gov/sir/2008/5220/>

Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. 301 Mass. Code Regs. 11.01(c).

MEPA requires, among other things, an environmental impact study for any Project that falls within its purview. Mr. Murchinson must be required to deliver such study for Phase 1 and Phase 2 on a comprehensive basis, as a phased development.

The fundamental reason we, as a neighborhood and more broadly as a town, have reached this period of frequent debate over specific planned developments is not because of the type of development being proposed, but rather because an apparent or real gap in regulatory standards crops up in certain cases, and puts community housing needs & water/environmental protection needs in direct conflict. And it is not clear if an actual gap genuinely exists - relevant legal precedent does not appear to have had time to sufficiently develop. We know that regulations that **can** allow these multiple community needs to exist in balance **do** exist at the local level, as Sherborn has had continued development over the course of hundreds of years.

The Commonwealth of Massachusetts has historically encouraged what is referred to as "Home Rule" governance, described in M.G.L. Chapter 40A. As such, local governments have developed through town boards, referendums, legal clashes - all number of democratic efforts over the course of hundreds of years - regulations that work for their specific town, including those pertaining to local geology and hydrology. That character of governance - Home Rule - has been a source of pride within the Commonwealth. At first glance, it seems as though the authors of Chapter 40B, as thorough and well-intentioned as they were, did not foresee the issues towns like our's, where we in essence still 'live off the land' with regard to water and waste management, would come up against.

That apparent lack of foresight has, in part, led to disputes over large 40B developments that lack access to water and sewer lines, because without that kind of municipal infrastructure, land is being expected to carry more than it can through planning of enormous wells and septic fields. In fact, the authors of 40B **could not** have foreseen our specific issues because Chapter 40B was enacted in 1969, while two of the most relevant water and environmental legislative acts that our town regulations address, EPA's Clean Water Act and MA's Wetland Protection Act, were both enacted in 1972. We need to resolve this regulatory authority issue, both for us and for the other 30+ Massachusetts communities that rely wholly on private water and on-site waste disposal systems. As a town, we have a need for affordable housing and we have a need to maintain water quality and environmental protection. The primary authority that currently has the ability to resolve cases where these needs come into conflict is found only at the local level.

Although Chapter 40B allows developers to side-step many local zoning requirements, those related to water and environmental-protection must be maintained and defended in the current absence of adequate county or state guidance.

To quote the BOH in the same Dec. 22, 2022 letter:

"An overarching concern of the Board of Health is that it be permitted to exercise local regulations for this project due to Sherborn's atypical combination of water supply issues, widespread septic system use, shallow unsaturated soils, and extensive wetlands. ***It would not be equitable to reduce public health protections for an affordable housing project.***" [emphasis theirs]

We refer the ZBA and the BOH to the email correspondence from the undersigned to the ZBA on February 2, 2024 and enclosed herein. The issues and questions for the ZBA and Mr. Murchinson set forth therein are hereby incorporated by reference thereto, as if fully set forth herein.

We support a reasoned development process for Map 7, parcel 49 - a here-to-fore unbuilt lot largely due to the lot's unfavorable physical characteristics. If it can be developed while still meeting basic water quality and environmental standards, we support inclusion of needed affordable housing in the development plan. At this juncture, however, there are considerable unresolved issues regarding the phased development and, following the addition of a second phase of development (that is substantially larger, with a greater environmental impact), any diligence and analysis done to date is no longer determinative on the risks of the project to the healthy and safety of residents.

We ask that the ZBA address the concerns set forth in this letter during its open hearing on Monday February 5, 2024 and request that that Mr. Murchsinon agree to extend the deadline, perhaps even combining Phase 1 and Phase 2 approval processes as they should be, to grant the comprehensive permit afford the ZBA the time it needs to conduct necessary analysis and resolve these unanswered questions.

Sincerely,

Meredith & Steve Wesolowski

Tia & Max Wallach

Katy & Mark Shannon

Brian & Helena Delgado

Michael & Crista Mahoney

Katie & Patrick Garvey

Kelly & Alex Adduci

Megan & Todd Stoessell

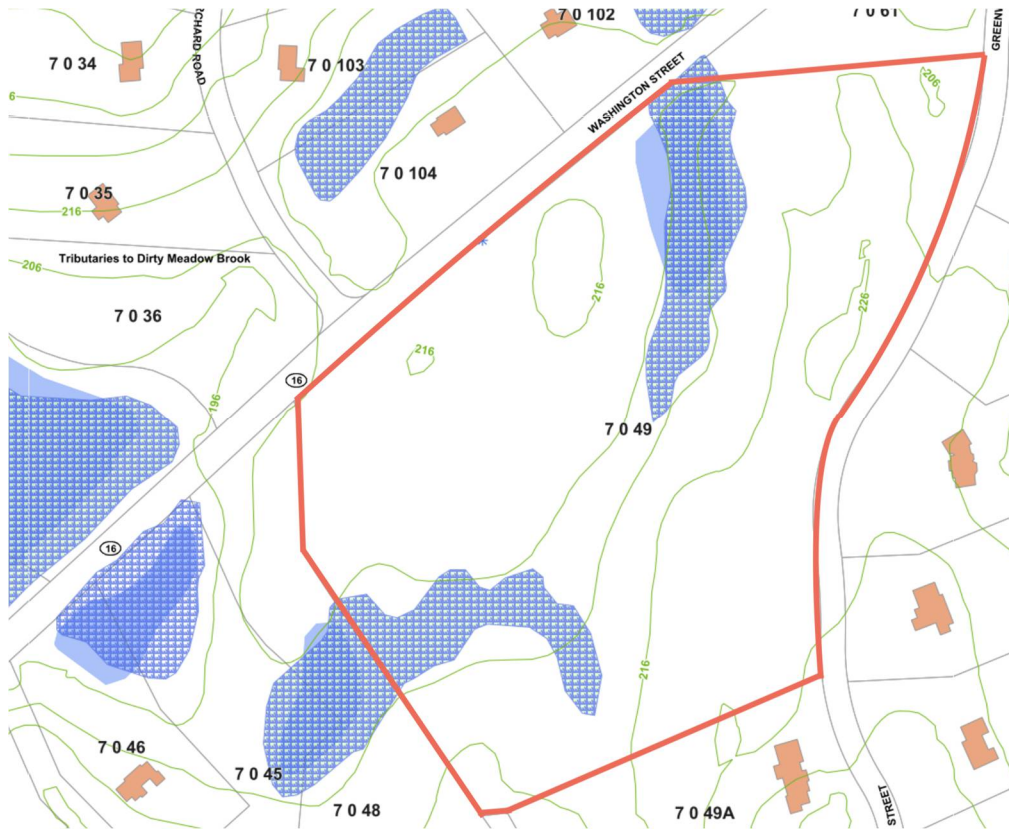
Jennifer Bradley

Carol & Mark Sennot

Mark and Kathleen Beaudouin

Enclosures

Map 7, parcel 49 outlined in red, with MassDEP-designated wetlands (~2.1 acres)⁷ and National Wetlands Inventory “Freshwater Emergent Wetland” (0.81 acres)⁸ shaded blue. Additionally, a NHESP Certified Vernal Pool⁹ is located on the Washington Street edge of the parcel (noted by a blue asterisk, and encompassing the smaller “216” contour close to Washington St.).



⁷ <https://maps.massgis.digital.mass.gov/images/dep/omv/wetviewer.htm>

⁸ <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper>

⁹ <https://www.mass.gov/info-details/massgis-data-nhesp-certified-vernal-pools#displaying-the-data->



Tia Wallach <tiacwallach@gmail.com>

Fw: Greenwood Street 40B - abutter letters and the Stow case

Tia Wallach <tiacwallach@gmail.com>

Fri, Feb 2, 2024 at 10:50 AM

To: Rick Novak <Rick.Novak@sherbornma.org>

Cc: "katyckshannon@gmail.com" <katyckshannon@gmail.com>, "mcw@udel.edu" <mcw@udel.edu>, "mlisagor@yahoo.com" <mlisagor@yahoo.com>, "bradleyja@comcast.net" <bradleyja@comcast.net>, "kelly.adduci@gmail.com" <kelly.adduci@gmail.com>, "mark.beaudouin@gmail.com" <mark.beaudouin@gmail.com>, "michael179@gmail.com" <michael179@gmail.com>, "ksgarvey@hotmail.com" <ksgarvey@hotmail.com>, "delgado.brian@gmail.com" <delgado.brian@gmail.com>, Julie Dreyfus <julie.dreyfus@sherbornma.org>, Jeanne Guthrie <jeanne.guthrie@sherbornma.org>, Daryl Beardsley <Daryl.Beardsley@sherbornma.org>, Ellen Hartnett <ellen.hartnett@sherbornma.org>, Jeremy Marsette <jmarsette@sherbornma.org>, Paul Haverly <paul@bbhslaw.net>, "bob.murchison@me.com" <bob.murchison@me.com>, Jonathan Fitch <Jonathan.Fitch@sherbornma.org>, Todd Labbe <todd.labbe@gmail.com>, Zachary McBride <zfdmcbride@gmail.com>, Max Wallach <maxwallach@gmail.com>, Todd Stoessell <tstoessell@gmail.com>, Crista Mahoney <crista.mahoney@gmail.com>, Mark Shannon <m.andrew.shannon@gmail.com>, Helena Hrabáková <hhrabakova@gmail.com>

Rick,

Thank you for your email. Please note that abutters and interested neighbors are working on a joint letter to be submitted in advance of Monday's meeting, as well as a presentation on relevant science. However, given your email, we thought we should respond to preview a subset of issues that will be set forth in our letter.

We note that Mr. Murchinson has recently filed an application for the 40-unit apartment complex on Washington Street (referred to as Phase 2 below). As we will outline in our letter, the Greenwood homes (referred to as Phase 1 below) and the Phase 2 apartments must be viewed as a single phased development.

As a phased development, the determination of whether the *Stormwater Management Standards* apply is made to the entire project, as a whole, including all phases. When proposing a development or redevelopment project subject to the *Stormwater Management Standards*, proponents shall consider environmentally sensitive site design that incorporates low impact development techniques in addition to stormwater best management practices. 310 Mass. Code Regs. 10.0.

It is our understanding that Mr. Murchinson has not undertaken any efforts to comply with the *Stormwater Management Standards* for Phase 1. He is similarly seeking a waiver of Chapter 25 of the Town General By-Laws (regarding comprehensive stormwater management). Our understanding is that any stormwater management contemplated in the plans for Phase 1 only takes into account the impact of stormwater from 3.68 acres of the 18.5 acre property, or less than 20% of the entire parcel.

It is therefore appropriate that Mr. Murchinson be required to develop a stormwater management plan for Phase 1 that accounts for the impact on stormwater, inclusive of any impact from Phase 2.

We also note that you have asked for any scientific studies regarding the risk of groundwater contamination. The facts and scientific impact of the project has changed with the addition of Phase 2. The expectation that scientific evidence be immediately available to support our site-specific concerns is unreasonable. And that is part of the folly of this whole process, which extends far beyond Sherborn, its people and its land – the source of these many planning disputes originated decades ago and we will be providing what we believe to be a generalizable defense for maintaining some local control of regulatory authority to help alleviate the worst outcomes of these disputes. That said, we'd like to raise a couple of specific issues related to stormwater management and compliance with the Massachusetts Environmental Protection Act, as this topic has clear statutory and regulatory weight at the state level:

- Stormwater runoff results from rainfall and snow melt and represents the single largest source responsible for water quality impairments in the Commonwealth's rivers, lakes, ponds, and marine waters. New and existing development typically adds impervious surfaces and, if not properly managed, may alter natural drainage features, increase peak discharge rates and volumes, reduce recharge to wetlands and streams, and increase the discharge of pollutants to wetlands and water bodies. This is from the *Massachusetts Stormwater Management Standards*. The additional phase of development on the subject parcel is a new change to the characteristics of

the parcel and it is our view that Massachusetts guidelines require a proper stormwater management plan be put in place.

- In determining whether a Project is subject to MEPA [*i.e., the Massachusetts Environmental Protection Act*] jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent [*i.e., Mr. Murchinson*], any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. **The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review.** The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. 301 Mass. Code Regs. 11.01(c).
- Given the new application for construction of Phase 2 on the same parcel of land, any ground water testing, analysis or other relevant information as to Phase 1 to date is insufficient for purposes of concluding the impact on groundwater from the development and any risk of water contamination. We expect to send further information in support of this statement prior to the meeting, but our expectation is that there will be a reasonable basis to conclude that the groundwater is interconnected and drawing from the same sources, given the extremely close proximity of the projects (all contained on the same parcel of land), the vernal pools that constitute the portion of the parcel to be used to construct Phase 2, the wetlands that run between the two phases of developments, and the location of the large pond immediately opposite the proposed site for Phase 2. Therefore, while we are still continuing to work on the scientific side of things, the now staggered start of Phase 2 site planning renders any prior testing of limited value.

We would like these concerns addressed at the Monday meeting. Specifically:

- What steps has Mr. Murchinson taken to comply with the *Massachusetts Stormwater Management Standards* for Phase 1? If none, why does he think none are required? If any, do plans for Phase 1 take into account the impact on stormwater management due to the construction of Phase 2? If not, what is Mr. Murchinson's basis for concluding that Phase 2 will not create issues with stormwater management?
- What studies has Mr. Murchinson taken to ensure compliance with the *Massachusetts Stormwater Management Standards* for the entire development, taken as a whole? If none, why not?
- Has Mr. Murchinson delivered, or does he plan to deliver, an environmental impact report under the MEPA for the entire project (*i.e., Phase 1 and Phase 2*) collectively, as we believe is required by the MEPA? If not, why not?
- Phase 2 is being added to what we expect is a shared water resource. What analysis has Mr. Murchinson conducted to determine the additional impact on nitrogen and other contaminants in the ground water applicable to Phase 1 (and abutters) on a collective basis, due to the additional septic systems, bedrock blasting, and other actions that risk contamination of the groundwater? If none, why not?
- In its letter from December 3, 2022, the Sherborn Planning Board stated that the environmental impact of Phase 1 and Phase 2 must be considered together. The Planning Board noted that it will be important to understand the overall groundwater capacity and the recharge, septic effluent and surface water flow on and off the entire 18-acre site that includes Phase 1 and Phase 2, including after periods of extreme precipitation. What specific steps has Mr. Murchinson taken to address these concerns?

Unfortunately, the addition of Phase 2 (and the associated well drilling, bedrock blasting and septic leeching for 70 additional bedrooms) substantially changes the environmental impact and the risk to groundwater contamination as was previously understood and explained by Mr. Murchinson to the Sherborn Board of Health and the ZBA. Collectively, we consider many public health issues unresolved and warranting further consideration and analysis.

It is inappropriate to view these constructions in their own vacuum. Mr. Muchinson is the lead developer on both, holds a single option to purchase the entire lot in his name, controls and is the owner of the two limited liability companies that have applied for the comprehensive permits, and the two projects are on the same parcel of land, separated only by delineated wetlands. While we hope we are wrong, and want to give the benefit of the doubt to Mr. Murchinson, we cannot help but assume and worry that the cleavage of the two projects into separate applications is a strategic attempt by Mr. Murchinson to minimize the environmental impact of his proposed development and avoid asking the hard questions as to the impact of phased development on both the residents of the new homes and abutters. Particularly because discussions by the ZBA and BOH as to the impact of this project to date have been wholly focused on Phase 1.

We'd like a reasonable amount of time to speak at the meeting to raise these concerns and hope by previewing them we are able to be efficient with the Board's time. However, we think it is appropriate to ask that Mr. Murchsinon agree to extend the deadline, perhaps even combining Phase 1 and Phase 2 approval processes as they should be, to grant the comprehensive permit and extend the public hearings to afford the ZBA the time it needs to conduct necessary analysis and resolve these unanswered questions.

We ask that this email response be added to the ZBA sites for both the Greenwood Homes and the Washington Street homes.

Best,
Tia & Max Wallach
Steve & Meredith Wesolowski
Katy & Mark Shannon
Brian & Helena Delgado
Michael & Crista Mahoney
Katie & Patrick Garvey
Kelly & Alex Adduci
Megan & Todd Stoessell

On Thu, Feb 1, 2024 at 12:43 PM Rick Novak <Rick.Novak@sherbornma.org> wrote:

[Quoted text hidden]