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May 26, 2021

**BY EMAIL**

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

Re: 40B Applications: 41 North Main Street and 31 Hunting Lane (“Pine Residences” & “Apple Hill Estates”)

Gentlemen:

This letter is submitted to the Sherborn Zoning Board of Appeals (the “ZBA”) on behalf of the abutters to the 31 Hunting Lane property, as well as a number of other Hunting Lane residents. We believe that if the Applicant on the two above-referenced 40B applications (“Pine Residences” and “Apple Hill Estates”) is unwilling to extend the hearings on these applications beyond the current May 31<sup>st</sup> deadline, the ZBA should deny both of these applications.

This is because there are still a number of significant open or unresolved issues from the Town’s peer reviewer studies which have still not been adequately addressed by the Applicant’s consultants.

In addition, there are a number of areas of concern which were highlighted by MassHousing in granting its Letter of Eligibility for these projects. These are listed below. The Applicant was directed to “fully explore” during the public hearing process, but he has not.

**1.) Site Control**

Clearly, one of the most crucial threshold issues included in the MassHousing Letter of Eligibility was a resolution of the “site control” issues. These relate to the Town’s right of first refusal to purchase the 61B portions of the 31 Hunting Lane property under the Massachusetts Chapter 61 statute. As this is currently the subject of litigation between the Applicant and the Town, we assume that any decision by the ZBA at this time would be conditioned on a resolution of that litigation.

**2.) Relocation of Apple Hill Dwelling Units Away from Abutters and Exploring Options for Additional Screening or “Buffering”:**

Another issue highlighted by MassHousing, that of relocating the dwelling units at Apple Hill Estates away from the abutters and/or exploring possibilities for additional buffering or screening, has not been addressed at all during the public hearing process. We have submitted a separate letter to the ZBA describing an initial exploratory meeting that was held last week

between abutters and representatives of Mr. Lybarsky. It is important to note that this meeting was held a week before the deadline and was requested by Lynne Sweet, Mr. Lybarsky's consultant, within hours after we notified the ZBA on May 14<sup>th</sup> that the Applicant had refused to meet with the abutters despite numerous requests.

### **3.) Health and Safety Concerns Related to Sherborn's Reliance on Private Wells and Septic Systems:**

This is the most crucial issue for the ZBA to consider: the potential impacts of these two developments on Sherborn's water resources, including the health and safety of the surrounding areas and potential impacts on adjacent wells and septic systems. While the Applicant's groundwater management plan has been submitted and reviewed, there are many open issues still highlighted by our hydraulic engineer and wetland specialist. ***It is clear that these important issues have not been "fully explored" at this point.*** There is no better evidence for that than the "Summary & Recommendations" of the Town's own hydrogeological engineer, Nobis Engineering, submitted to the ZBA at the last hearing, on May 6th:

#### **Town Hydrogeological Assessment by Nobis Engineering –**

#### **SUMMARY AND RECOMMENDATIONS** (emphases added)

Based on the information reviewed to date, here is a summary of Nobis' preliminary opinions on the objectives listed above:

1. Adequacy of the new wells drilled to serve the proposed PWS for The Pines and Apple Hill – **There is not yet enough information to assess this objective**, but there is reason for caution. Relatively thin overburden, great well depths, and modest yield for existing wells are causes for concern, but not necessarily fatal flaws.
2. Possible impact of new wells on existing wells – **There is not yet enough information to assess this objective**, but the same concerns listed for item 1 pertain. Also, investigations such as a photolineament analysis and monitoring neighboring wells during required pumping tests of the new wells will be needed to answer this question.
3. Possible impact of proposed wastewater system on existing (and new) wells – **Additional investigations such as groundwater level and flow direction mapping, photolineament analysis, mounding calculations, etc. will be needed to assess this possibility.**
4. Provide support at ZBA and other Town hearings or meetings – **Nobis believes that the information described above and to be obtained during Phase 2 will provide initial help to the ZBA and other Town boards to assess the potential impacts of the project, focus additional questions and investigations, and ultimately help the ZBA and other Town boards to make informed decisions.**

Nobis offers the following recommendations:

- If information on the new wells intended to serve the proposed PWS is not already available at the Sherborn BOH, **Nobis recommends that the Town request this information from the Applicant ASAP.**

- **Nobis should continue the investigations begun in Phase 1 and do the following for Phase 2:**

- o Review information on the new PWS wells for the project, including driller's logs, WCRs, results of any pumping or airlift tests, and results of any water quality sampling performed to date.
- o Expand the Table of existing well information to include the new wells and WCRs available from the EEA database.
- o Add abutter well information to a site map such as Figure 1 or Figure 4.
- o Conduct a photo lineament (fracture trace) analysis using a range of available air photos.
- o Visit the site for reconnaissance and to measure orientations of bedrock fractures in nearby outcrops.
  - Nobis should then prepare a Phase 2 written report summarizing the information described above and in this Phase 1 email report.
  - Regardless of Mass DEP requirements and timing, Nobis recommends that a sustained pumping test be conducted on the new wells soon. ***If sustainable quantities of potable groundwater cannot be obtained from these wells, the project will not be feasible as designed.***

Based on this summary alone, we believe it is clear that these crucial health and safety issues have not been "fully explored" during these hearings as directed by MassHousing, and that if the Applicant is unwilling to extend the hearings, the ZBA should deny these applications.

If the Applicant refuses to extend these hearings, and based on its deliberations, the ZBA decides to issue a Comprehensive Permit, there are a number of "conditions" that, at a minimum should be attached to any Permit which is issued. First and foremost these include the three large areas of concern highlighted above:

- 1.) **Site Control:** Any permit should be conditioned on a resolution of the current litigation between the Town and the Applicant regarding the Town's right of first refusal to purchase the 61B portions of the 31 Hunting Lane property under the Massachusetts Chapter 61 statute.
- 2.) **Apple Hill Estates Site Plan:** As more fully discussed in our May 24 letter to the ZBA, any permit should contain a condition requiring the Applicant to engage with abutters and the Town to explore options for relocating the Apple Hill dwelling units and Waste Water Treatment Plant away from the abutters and to consider all options to reduce the impact of the development on the surrounding area – including relocation of the leaching field from the top of Paul Hill, reducing the number of dwelling units, moving the circular portion of the driveway further away from the abutters, planting vegetative screening between the dwelling units and the abutters, and relocating the septic pipes from immediately behind the stone wall separating the abutting properties from the 31 Hunting Lane property.

- 3.) **Impact of These Two Projects on the Town's Limited Water Resources.** At a minimum, it should be a condition of any permit issued by the ZBA that the issues highlighted for further study in the preliminary May 6<sup>th</sup> report from Nobis Engineering (#1-4 listed in the "Summary and Recommendations" of that study, as well as a full Phase II investigation – to be paid for by the Applicant) as well as the issues raised in reports by our hydraulic engineer and certified wetland scientist, Creative Land & Water Engineering, LLC, receive full and thorough examination prior to the issuance of a building permit.
- 4.) **Protections for Abutters and Others with Wells and Septic Systems in the Immediate Area, in the Case of Future Damage to the Abutters' Properties:** Any permit should require the Applicant to provide and guarantee adequate monetary compensation to abutters and others in the immediate vicinity of the projects, in the event that either the construction or operation of the wells and septic system for these projects, or the stormwater runoff from the Applicant's properties, causes damage to the neighboring properties, wells, or septic systems. Alternatively, the Applicant, at the Applicant's expense, should provide the opportunity for any properties in the vicinity of these two projects which suffer negative impacts to their wells and/or septic systems as a result of the projects to connect to the water supply and waste water treatment system for the projects.
- 5.) **Possible "Vernal Pool" Located on the 31 Hunting Lane Property at the Location of the Leaching Field:** Visual evidence, as well as the testimony of the abutting residents, indicates a recurring seasonal feature on the 31 Hunting Lane property which could possibly qualify under State guidelines as a "vernal pool". This is at the location of the leaching field at the top of Paul Hill. The Applicant has refused to pay for a Town study of this feature and has also refused access to his property to allow further study. Before any work can proceed in that area, the Applicant should be required to provide access to the area – and at the appropriate time of year – to representatives of the Sherborn Conservation Commission and other experts from the State, to determine whether the feature qualifies for protection as "vernal pool".
- 6.) **Apple Hill Stormwater and Drainage Issues:** There should be a condition requiring the Applicant to resolve the remaining "open issues" and comply with all the recommended "conditions" in the peer reviewer's Stormwater Management review and subsequent memoranda: Items include obtaining DPW approval for the piped connection to the catchbasin system in Hunting Lane, and obtaining easements from the abutters for the areas of indicated stormwater discharge onto their properties.
- 7.) **Traffic and Safety Issues:** It should be a condition of approval that any remaining "open issues" in the peer reviewer's review of the Applicant's Traffic Impact Assessment be resolved and all "conditions" complied with. These requirements would include obtaining written concurrence of the Fire Department with both site plans and adequately addressing the Fire Chief's concerns regarding emergency access to the Pine Residences via Powderhouse Lane.
- 8.) **Site Work:** There should be no site clearing or tree removal or any permanent "damage" until all required permits and approvals are obtained.

If the ZBA decides to proceed to issue a Comprehensive Permit in spite of the lack of these crucial pieces of information, all of the issues above should be attached as conditions to the Permit, in addition to the many other “conditions” cited in the Town’s peer review studies and by Town officials, including the Planning Board, Board of Health, the Conservation Commission, and the Historical Commission.

Thank you,

John Garrison  
33 Hunting Lane

cc: Zoning Board of Appeals  
Jeanne Guthrie  
Marian Neutra, Sherborn Planning Board  
Brian Moore, Sherborn Groundwater Protection Committee  
Daryl Beardsley, Sherborn Board of Health  
Neil Kessler, Sherborn Conservation Commission  
Craig D. Mills  
Paul Bochicchio