

ZONING BOARD OF APPEALS



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

DRAFT MINUTES February 18, 2016

Members Present: Alan Rubenstein, Richard Novak, Ron Steffek, and Paul Kerrissey

Others Present: Desheng Wang, Ben Stevens, Phil Paradis, Gino Carlucci, Dennis Murphy, Rebecca Hunnewell, Neil Kessler, Daryl Beardsley, Michael Lesser, Michael Barberio, Scott Horsley, Mark Kablack, Christopher Quinn, Rebecca Hunnewell, Ellen Hartnett, Mark Oram, Barry Levy,

Chairman Alan Rubenstein called the meeting to order at 7:00 p.m. in the Sherborn Town Hall, Room 204B.

PUBLIC HEARING FOR THE FIELDS AT SHERBORN

This is a continuation of the public hearing for the proposed 40B project, known as The Fields at Sherborn, which began on March 12, 2015.

Chairman Alan Rubenstein gave a brief overview of the hearing process and its progress so far. Mr. Rubenstein discussed the agenda to which he hopes to adhere at tonight's meeting, including discussion of the Independent Hydrogeologic Study by Nobis which was presented at the Board of Health meeting on February 11, 2016. Ben Stevens said he never received a copy of the study nor seen the power point presentation until the Board of Health meeting and needs time to respond to the report. Mr. Rubenstein also stated that this hearing was the deadline of closing the hearing process though he had been told that Ben Stevens had agreed to an extension of the hearing at the last Board of Health meeting. Mr. Stevens then agreed to an extension for the closing of the hearing date to March 7 at 7:00PM. Mr. Rubenstein stated at the end of that meeting, the hearing will be closed. Phil Paradis told the Board that Scott Horsley would not be available the night of March 7th. Mr. Rubenstein said that he expected to hear in detail from Mr. Horsley this night and that Mr. Horsley will not have to be at the meeting on March 7th. At this time the Board of Health members came to the meeting and announced that they were in session having posted for this meeting. Daryl Beardsley, Chair of the BOH, discussed the Norbis report. Mr. Rubenstein would like to hear from someone that there or there is not a definite impact on the environment including wetlands and wells. Steve Smith, a groundwater hydrologist who is a

subcontractor for the peer review firm, BETA, spoke on how groundwater flows and the flow patterns beneath the site. Extensive discussion on groundwater test data and how the testing was conducted.

Chairman Rubenstein reminded GeohydroCycle President Stephen Smith that the ZBA is seeking his professional opinion on the issue of the potential for impacts to health and safety as a result of this proposed project. Mr. Smith offered his opinion that the wells on site and on the abutters' properties may be at risk for negative health impacts and should be monitored very regularly for various potential risks. Should monitoring reveal any problem with the water quality in the wells, treatment in the form of disinfectant for viruses and/or bacteria would be relatively easy, according to Mr. Smith. Applicant Ben Stevens asked Mr. Smith if he is aware of the occurrence of nitrate poisoning in private, properly installed and maintained wells. Mr. Smith stated that he has heard of cases of nitrate poisoning in such conditions but that they are rare. Neil Kessler asked Mr. Smith about the behavior of the groundwater and its relationship to the nearby wetlands. Mr. Smith stated that it is his opinion that the wetlands are acting as a sink and accepting groundwater.

Scott Horsley, a Principal at Horsley Witten Group, gave a presentation on his analysis of the hydrogeology of the site at 247 Washington Street. Mr. Horsley submitted letters to the ZBA on November 18, 2015 and February 16, 2016 on his findings. Mr. Horsley said that it is his opinion that, while the area of influence of the site's wetlands may differ depending on the season, the more important measurements are the size of the area of influence and its distance to the wells on site and on abutters' properties. Chairman Rubenstein asked whether Mr. Horsley's calculations have been updated using the modified site plans submitted by the applicant in December 2015, to which Mr. Horsley responded that his calculations are based on the original site plans. Chairman Rubenstein requested that Mr. Horsley update his calculations using the most up-to-date site plans as this will provide the most useful data, and Mr. Horsley agreed to perform the recalculations. Mr. Horsley expressed concerns with the water table data used by the applicant and said that, because of the closeness of the well on the Ham property directly abutting this proposed project's property, better measurements, including a groundwater protection study, should be made. More accurate measurements would, in his view, alter the contour lines and flow direction being shown by the applicant. Because these wells are positioned in fractured bedrock, they receive groundwater input from many directions and, therefore, the safety of the water quality of the wells would benefit from more measurements and more data and should be closely monitored, according the Mr. Horsley.

This discussion led to one that the Board has had at previous hearings and has not yet resolved in this particular case: with whom does the burden of proof regarding the safety of this proposed project lie? Chairman Rubenstein questioned whether it is the burden of the applicant to provide evidence that the project will not pose public health and safety risks or whether it is, instead, the burden of the Town and of residents and their legal representation to provide evidence that the project will pose such risks. Attorney Dennis Murphy, representing Hill Law and concerned residents, stated that he believes, in the case of the Fields at Sherborn, that the burden lies with the applicant. Mr. Rubenstein and Mr. Novak expressed disagreement with that categorization but will look at examples of other 40B projects to provide guidance.

Rebecca Hunnewell spoke as a member of the BOH and discussed the issue of water quality and public health. She cited Jim Vernon's analysis of the site and echoed that there is a possibility of nitrate poisoning in the wells, especially since the wells are private and, therefore, not usually monitored regularly. Rebecca feels this possibility of potential threats to public health should be taken seriously when considering the project.

Desheng Wang provided the Board and the audience with an overview of his professional experience and credentials in engineering, wetlands science, and hydrogeology. He stated that public health and safety is his pride and his responsibility in this and all projects in which he is involved. He expressed appreciation for the residents' involvement in the project thus far as their push for safety and health have led to changes to the site plans which he feels are positive and progress toward a safer project overall. Chairman Rubenstein inquired about Mr. Wang's professional opinion of the project and whether or not it can be completed and maintained safely. Mr. Wang responded that he thinks the project can be completed safely. He stated that, based on his analysis and monitoring of the site, he feels his groundwater plume projection is the most likely plume scenario. He added that his study of the soil types on the site led him to believe that the groundwater plume and the wetlands on the site are connected and that the groundwater feeds the wetlands during high water periods. It is his opinion that his projected plume scenario demonstrates that the wells on this and on surrounding properties will not be negatively affected by this project. Some members of the audience called into question the data used by Mr. Wang as some of the data used are extrapolations rather than actual measured data. BOH Chair Daryl Beardsley stated that the site analyses done by the peer reviewer and other water scientists have used measured data only and not extrapolations and that measurements by the Town's Health Agent have not been allowed to be taken. Mr. Wang stated that he remains confident in his analysis and in the data used to reach his conclusions. Chair Rubenstein asked whether the Department of Environmental Protection requires that measurements are to be made by the Health Agent; the Health Agent was present and answered that he thinks he should take his own measurements. The Health Agent questioned the completeness and accuracy of the applicant-provided measurements.

Time was given for the public to add comments to the conversation. Neil Kessler emphasized the importance of considering the potential impacts of this project on the environment and the flora and fauna of the nearby wetlands and buffer zone. Michael Lesser, speaking as a resident, expressed concern about the potential for long-term impacts on the wells of surrounding residences. Those concerns include wondering about who will perform – and how frequently – testing of the water quality in the wells, what tests will be used, what the treatment plans will be if tests reveal unsafe water quality, and from where the funding will come for testing and mitigation. Additionally, Mr. Lesser inquired about where the increased nitrate output into the wetlands and buffer zone will go and what impacts it will have. Mr. Wang is of the opinion that the biochemical processes of the environment will mitigate the nitrates, while Mr. Kessler is of the opinion that the mitigation capabilities of the environment are limited. Mr. Stevens stated that he has no issues with monitoring the wells on the project's site and on the neighbors' sites. He suggested that the hydrogeologists who have considered the site plans and performed analyses meet and discuss their opinions. Chairman Rubenstein stated that he would not discourage such a meeting but would not require it as this hearing process is on a timeline and he is disinclined to request another extension of the hearings after the current deadline of March 7, 2016 to close the

public hearing. Mr. Rubenstein further stated that the BOH should expect to make their decisions and final recommendations to the ZBA by the end of their hearing on March 4, 2016 and that those decisions and recommendations should be based on the information that Board will have by that date and not on the potential for more information being received.

Phil Paradis, a representative of the Town's peer reviewer firm for this project, asked for guidance on the firm's role during the remainder of the public hearing process. Mr. Paradis reports that, as of tonight's meeting, the firm is approximately \$1,500 over budget for costs associated with the peer reviewing process. Mr. Rubenstein informed Mr. Paradis that he need not attend the ZBA public hearing on March 7, 2016 or provide a review of the anticipated hydrogeological report from Jim Vernon. Attorney Mark Kablack, representing the applicant, expressed concern that his client may not receive the report from Jim Vernon in a suitable amount of time before the March 7 hearing to be able to respond. Mr. Rubenstein encouraged Mr. Vernon to supply his report to the applicant prior to March 1, 2016. Mr. Stevens added that the location of three wells on the site will be changed and that he will provide this information, in writing, to the BOH no later than February 23, 2016. Michael Barberio responded that the BOH, at the time of their last meeting, understood that no further changes to the site plans would be made. Mr. Rubenstein stated that the location of the wells, along with all other site plan specifications, should be considered by the BOH and the ZBA as they are presented at the time of each Board's hearing.

Mr. Stevens provided a signed formal extension of the public hearing process for this project to March 7, 2016.

The next public hearing of the Sherborn ZBA for the consideration of the 40B project known as the Fields at Sherborn will take place on March 7, 2016 at 7:00 p.m.

The hearing adjourned at 10:10 p.m.

Respectfully submitted,
Samantha Shepherd