

January 22, 2024

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

We are writing to express our concerns regarding the proposed development on Greenwood Street. As abutters, we have serious concerns over the risks the proposed project poses to the health and safety of our family, our neighbors and the residents of the proposed new houses.

Chief among our concerns is the risk of increased nitrogen levels being introduced into the ground water, and therefore our well, as a result of the waste disposal systems required for the new properties. It is uncontroverted that elevated levels of nitrogen in water poses a public health threat and are possibly indicative of other pollutants in the water.

Our understanding and belief is that the application at hand requests, among other waivers, a waiver of town regulations requiring specified distances between wells, septic systems and neighboring wells and septic systems.

Although the ZBA may grant a permit that waives local regulations to further the important need for affordable housing, it may not waive regulations if those regulations are reasonable, even in light of the need for affordable housing, to protect the health and safety of occupants of the proposed housing and the residents of the Town. Therefore, it is reasonable, and consistent with what the courts in Massachusetts have decided, for the BOH and ZBA to require that these regulations be followed in granting the comprehensive permit.

We draw the BOH and ZBA’s attention to the decision in *Reynolds v. Zoning Board of Appeals of Stowe*. In this case, abutters to a development raise serious concerns regarding increased nitrogen levels due to the septic system required for a development. Notwithstanding those concerns, the Zoning Board of Appeals for Stowe issued a comprehensive permit for the project. Much like Sherborn, Stowe’s sewage disposal system regulations are more protective than the State’s standards. And, much like Sherborn, the applicant in the Stowe case requested waivers from the town’s sewage disposal system regulations. The court considered whether it was reasonable for the board to waive the more restrictive local provisions of the bylaws in granting the comprehensive permit, concluding that it was unreasonable in light of the important public health protections the local regulations offered, and found that the risk posed by failing to abide by those regulations did not outweigh the need for affordable housing. The similarities to the Greenwood project cannot be ignored.

To put a finer point on it, we note that while the BOH and ZBA are entitled to waive requirement with town regulations under the regime offered by 40B, the BOH and ZBA are also “justified in denying an application for a comprehensive permit by identifying a health or other local concern that (i) supports the denial, (ii) is not adequately addressed by compliance with State standards, and (iii) outweighs the regional housing need” (See *Reynolds v. Zoning Board of Appeals of Stowe*; *Zoning Board of Appeals of Holliston v. Housing Appeals Committee*, among others). In the case of the Greenwood project, maintaining the quality of the groundwater servicing adjacent wells poses an important health issue that is not adequately protected by compliance with state standards. The addition of one affordable unit does not outweigh these risks.

The proposed site for the Greenwood Street development has a high water table. There are documented and delineated wetlands. The proposed lots are undersized and do not meet town regulations requiring specified distances between wells, septic systems and neighboring wells and septic systems. These distances are minimum distances, yet the proposed development does not satisfy them. However, the new homes, as well as all those adjacent to them, all rely on private wells to supply safe, potable drinking water.

Construction of the new wells and septic systems will require rock blasting; each time the rock is blasted, there is a real risk of contaminants being introduced into the groundwater. And, while we appreciate that the percolation testing done by the applicant (done at a single spot on the multi-acre parcel during a historic drought) was found sufficient, we also raise the point that this lot has long been the subject of proposed development plans for the past decade and has previously failed percolation testing. Therefore, we have serious concerns over the veracity of the testing and the impact the project will have on nitrogen levels in the ground water.

Finally, abutters are being asked to accept these risks all to add one affordable housing unit to the town. We fail to see how this risk is outweighed by the Town's need for affordable housing and, consistent with guidance provided by Massachusetts courts, the ZBA and BOH are well within their rights to deny the application (or, at a minimum, add conditions to granting the permit) to balance protecting the health and safety of Town residents.

Therefore, we ask that any comprehensive permit include the following:

1. No variances from the town regulations should be granted in issuing the comprehensive permit
2. Require additional percolation testing be required, now that water levels are closer to historical norms, to ensure that the water percolates sufficient to ensure proper filtration.
3. Require that as the wells are drilled, test holes be drilled around the site to monitor the flow of water, plumes and impact on the ground water and that the developer monitor the water level of the wells as they are installed.

A comprehensive permit should not be granted without addressing these items and, should an extension to the deadline to grant a permit be required address the concerned raised by us, and other abutters, we ask the applicant agree to such extension.

Our concerns are not without merit: we have already seen the effects of contaminated wells in town. A Meadowbrook Road resident found, in a matter of eight days following the blasting of rock to install a well, that the lead levels of the resident's own well had increased 60x. This resident has now had the expensive, time-consuming process of remediating the now contaminated well (while living with no potable water) foisted upon them, due to no fault of their own.

As members of the Board of Health and the Zoning Board of Appeals, it should go without saying: as a town that relies exclusively on private water and sewage systems, it is your duty to ensure the health and safety of the town's residents, including through requiring that town regulations designed to protect the health and safety of residents be complied with.

Thank you for your consideration of our concerns.

Tia and Max Wallach  
29 Greenwood St.