HILL LAW

BREM 071 10-03-2014

October 3, 2014

William Risso, Chairman
Carlisle Board of Health
Carlisle Town Hall
66 Westford Street
Carlisle, MA 01741

James Persky
MassDEP Drinking Water Program
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Re: 100 Long Ridge Road Project – Public Water System Determination

Dear Mr. Risso and Mr. Persky:

This firm represents neighbors and abutters to the proposed 20-unit residential development located on approximately 9.8 acres at 100 Long Ridge Road, Carlisle (the "Project"). It has recently come to our attention that the Project proponent, Jeffrey Brem, has requested a determination from the Department of Environmental Protection ("DEP") that the nine wells that are proposed to serve the 20-unit project will not constitute a Public Water System for purposes of 310 CMR 22.00, et seq..

Since several of my clients have existing private drinking water wells in close proximity to the nine proposed Project wells, they will be uniquely affected if the Project goes forward. Given the sensitivity of our groundwater resources in terms of both quality and quantity, my client are naturally very concerned that the appropriate level of scrutiny and regulation be applied to the Project's proposed water system. **As such, my clients respectfully request that their undersigned attorney and their hydrologist, Scott Horsley, be allowed to attend the proposed meeting between Mr. Persky, the Carlisle Board of Health and Mr. Brem.** Additionally, we offer the following preliminary comments for your consideration.

As you know, DEP's regulations generally define a Public Water System as a water system that has at least 15 service connections or which serves on average 25 persons daily. However, the definition section also provides that:

> The Department reserves the right to evaluate and determine whether two or more wells located on commonly owned property, that individually may serve less than 25 people, but collectively serve more than 25 people for more than 60 days of the year should not be regulated as a public water system, taking into account the risk to public health.

The Project would be comprised of 20 single-family homes (including an existing home), but will be served by shared septic systems and shared private wells. All of the land not occupied by buildings is proposed to be "common area," owned collectively by the 20 unit owners under the rubric of a homeowners' association. Until (and if) the Town accepts the dead-end road, the homeowners' association will be responsible for the maintenance of the roads and associated drainage infrastructure. Mr. Brem has represented in public meetings that the wells and septic system will be managed by the homeowners' association, presumably pursuant to an operation and maintenance plan which to date we have not seen.

There is a heightened risk to public health given the unique factual circumstances. First, the Project is will be served by private wells and private septic systems, making the Project site a "nitrogen sensitive area." 310 CMR 15.214(2). The site is also classified as a "private well area" under DEP's *GUIDELINES FOR TITLE 5 AGGREGATION OF FLOWS AND NITROGEN LOADING* (the "*Guidelines*"). Given its density (20 units on 9.8 acres), the Project does not comply with the nitrogen loading standard of 440 gallons per day, per acre. 310 CMR 15.214.

Second, we are concerned that Mr. Brem has already exhibited, this early in the permitting process, an indifference to the regulatory process and substantive provisions of Title 5 and the Guidelines. On September 8, 2014, he appeared before the Board of Health asking for approval of a Nitrogen Loading Restriction that he intended to receive from the owner of abutting land (land that he owned up until May of this year ago, subdivided off, and sold to a homebuilder), that would purportedly give him the necessary land area to meet the equivalency 440 gpd standard. Mr. Brem has stated in public meetings that he will meet this equivalency standard through the use of alternative technology septic systems but has refused to disclose which system he is proposing. He requested approval of the restriction despite the fact that he had not presented a Facility Aggregation Plan to the Board of Health, or any data to establish that the credit land combined with the alternative technologies would meet the equivalency standard.

Further, Mr. Brem was attempting to use wetland areas as credit land, which is not permitted under the regulations. Credit land cannot "be covered by any surface water body including, but not limited to, a river, stream, lake, pond or ocean." DEP's regulatory definition of "surface water" includes wetlands. 310 CMR 10.04; *In re Michael Newman*, Docket No. WET-2010-16, Recommended Final Decision, p. 26. n.12. The recorded ANR plan referenced in the proposed Nitrogen Loading Restriction (Book 237, Plan 76) clearly shows a stream and associated wetland running through the 33,000 square-foot area delineated as the "Proposed Nitrogen Loading Restriction and Easement" area.

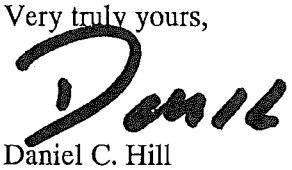
Mr. Brem's premature and inappropriate request for approval of the Restriction on September 8th is even more troubling given that Mr. Brem was, until December 3, 2013, the chairman of the very board from which he was seeking approval of the Nitrogen Loading Restriction. G.L. c. 268A, §18(b) prohibits former municipal board members from appearing before their former boards as agents for clients on matters that were within their official responsibilities within one year of their resignations. We do not know whether the Project was

"before the Board" at all before Mr. Brem's resignation, but at the very least his representation of his development entity before the Board of Health on September 8, 2014 raises serious "revolving door" questions. On the face of it, it appears that Mr. Brem thought he could use his influence as the former chairman of the Board to push through a significant Title 5 approval. Fortunately, the Board of Health made the right decision and postponed any ruling on this issue.

Given these unique set of facts, we think the Department would be amply justified in treating the Project's nine drinking water wells as a Public Water System, to protect the eventual users of these wells and the abutters who rely on the same groundwater resources. The added layer of protection afforded under 310 CMR 22.00, et seq. would go a long way to allay my clients' reasonable concerns given the political and environmental issues presented.

Thank you for your attention to this matter.

Very truly yours,



Daniel C. Hill

cc: Doug Deschenes, Esq.
Thomas Harrington, Esq.
Board of Selectmen
Zoning Board of Appeals
Planning Board
Conservation Commission
Clients