



October 25, 2021

**BY ELECTRONIC MAIL: hunterg@manchester.ma.us
AND FIRST CLASS MAIL**

Ms. Sarah Mellish, Chair
Manchester Zoning Board of Appeals
Manchester Town Hall
10 Central Street
Manchester-by-the-Sea, MA 01944-1399

Re: Application for Comprehensive Permit – School Street, Manchester

Dear Members of the Board:

This firm represents the Manchester Essex Conservation Trust, a non-profit land conservancy with nearly 600 members and a mission to conserve ecologically-important land and wildlife in Manchester and Essex, Massachusetts. MECT is also a neighbor of the vacant parcel of land identified as Manchester Assessor's Map 43, Lot 18 (23.32 acres), which is the subject of the above-referenced comprehensive permit application (the "Project" and "Project Site"). I am writing to provide the Board with our initial comments, concerns and recommendations for the Board's public hearing.

I. Introduction

By way of background, I have been practicing land use and zoning law for over 20 years and have represented public and private clients in over a hundred Chapter 40B projects over that time, including defending decisions at the Housing Appeals Committee and in Massachusetts courts. I currently serve as special municipal counsel to several municipalities on Chapter 40B matters.

Probably the most significant function of Chapter 40B is to empower the local zoning board to waive any local bylaw, regulation, policy or procedure that would render the construction of the project "uneconomic." G.L. c. 40B, §20. Thus, the most important task of the Board's public hearing is to evaluate the developer's waiver requests, and to determine whether the public health, safety, environmental or planning concerns presented by those waivers outweigh the regional need for housing (in which case they should be denied).

There is a prevailing myth that local bylaws and regulations do not apply to Chapter 40B projects. This is wrong. Local rules apply to Chapter 40B projects unless the developer can prove that waivers are needed to make the project economically viable, and that the need for

affordable housing outweighs the “local concerns” protected by the local bylaws and regulations for which waivers are sought. This balancing test was illustrated in the case of Reynolds v. Stow Zoning Bd. of Appeals, Appeals Court No. 14-P-663 (Sept. 15, 2015), where the Court ruled that it was “unreasonable” for the zoning board to grant waivers from a local water resource protection bylaw in light of demonstrated impacts from the 37-unit project’s septic system on nearby private drinking water wells. To put this standard in plain English, the Board need only grant waivers to the extent they are necessary to make the project economically viable, and then only if the waivers do not present insurmountable public health, safety, environmental or planning impacts that outweigh the need for housing.

II. General Comments

As the Applicant is aware, the Project Site is environmentally-sensitive, surrounded on three sides by Bordering Vegetated Wetlands, vernal pools, and tributaries to a perennial stream (Sawmill Brook). Sawmill Brook is a designated cold-water fishery and one of the only streams left in this region to support native Brook Trout. The Site is within the Zone III wellhead protection area for the Town’s Lincoln Street public water supply well, and is within the Town’s Water Resource Protection Overlay District. Stormwater runoff from the Project’s internal roadway and parking areas, and approximately 25,000 gallons per day of wastewater, will be recharged into the ground and ultimately discharge into Sawmill Brook, which is hydrologically connected to the Lincoln Street Well aquifer.

Manchester has never seen a project this large and impactful to its natural environment and public water supply. At 136 units, the Project would represent a 6% increase in the Town’s housing inventory. A project of this magnitude must be thoroughly vetted – all environmental impacts must be identified, quantified, and addressed. Compliance with state environmental laws must be confirmed, and local environmental laws must be preserved if there is any material threat of degradation.

Unfortunately, the Applicant has gotten off on the wrong foot. In order for the Board to evaluate the viability and suitability of the Project’s on-site recharge systems, it must have soil and groundwater elevation data in the locations of these proposed systems, typically collected in test pits. Test pit locations were shown on prior iterations of the Applicant’s site plans filed with the subsidizing agency, MassHousing, but were inexplicably removed from the plans filed with the Board earlier this month. Nor have any test pit data logs been provided to the Board, a material omission from any development permit application where subsurface recharge of stormwater and/or wastewater is proposed.

The Applicant appears to have adopted an adversarial posture even before the Board’s hearing has opened. In email exchanges with MassHousing, its manager, Geoff Engler, characterized local concerns with environmental damage as “fabrication and erroneous.” He also called Manchester “a very difficult town.” In the same email chain, he promised to meet “all statutory and programmatic regulations and obligations during the public hearing process,” but he filed a comprehensive permit application lacking in critical detail, containing no test pit data, and no details or descriptions of its wastewater treatment facility.

It is not too late for Mr. Engler to hit the reset button and adjust his approach to the permitting of the Project. To do so, Mr. Engler and his team of paid consultants should be prepared to be candid, forthcoming and transparent with every design detail. MECT promises to do the same with its technical review and comments. We are pleased to provide the Board with initial comment letters from Scott Horsley, a hydrologist with decades of experience working with federal and state environmental agencies impacts from recharge systems, and John Chessia, a civil engineer with the same level of experience designing and peer reviewing complex multi-family residential projects including wastewater treatment facilities.

Messrs. Horsley and Chessia identify specific design details that are incomplete or completely missing from the application materials filed to date. They also flag a number of apparent nonconformities with state regulations and guidelines governing wastewater treatment and stormwater management facilities. Mr. Horsley's comments raise a number of concerns with potential water quality impacts, and the need to properly characterize those through a robust hydrogeologic analysis. We look forward to discussing these issues with the Board during the public hearing, and urge the Board to retain qualified independent peer reviewers on civil design, hydrology, wetland science, and transportation engineering (due to the large volume of new vehicular traffic the Project is anticipated to generate).

In subsequent correspondence, we will provide more specific comments on particular issues and concerns, and hope that you will find them helpful and relevant.

Thank you for your time and attention to this very important development application.

Very truly yours,

/s/ Daniel C. Hill

Daniel C. Hill

Encs.

cc: Clients
Manchester Board of Selectmen
Manchester Planning Board
Manchester Conservation Commission