

September 15, 2022

To Durham Conservation Commission,

On Monday night you will be reviewing our Gerrish Drive Extension subdivision application. Regretfully our attorney, Sharon Somers is in Ireland and will not be able to attend. However, we would like to share with you her legal interpretation of the court's remand, and her opinion regarding the narrow focus of your review. We would also like to address some recent comments made by abutters. First, we would like to provide a quick overview of our project.

On November 10, 2021, we were granted approval for a 55+ pocket neighborhood that consists of 18 single and duplex housing units, including our current home at 91 Bagdad Road. Only 3 acres of land will be developed, while 13 +/- acres will be placed in permanent conservation. The Conservation Area consists of the property's *higher value wetlands* and forest, which will remain untouched, with the exception of walking trails.

Our attorney Sharon Somers has advised us that the Conservation Commission and the Planning Board should be looking through a very narrow lens, which seems to echo the advice of Town Counsel Laura Spector. Attorney Somers believes there are only two questions to be considered at this point: One procedural and one substantive. The procedural question is whether or not the application is complete. Since our application now contains a stamped and reviewed HISS map, the answer is clearly yes. The second question is; were any material adjustments made to the HISS information contained in the original Site Inventory plan compared to the recently stamped and reviewed HISS map? Our experts indicate that the answer is no. According to Attorney Somers, these are the only questions the Commission should be considering.

Wetland Scientist Mark West performed a Wetland Functional Assessment of our entire property, plus the Gerrish Drive Extension in December of 2020. In his report he concluded that the Gerrish Drive Extension wetlands are of the lowest value (ecological integrity of 3.6) while the much higher value wetlands are in the area earmarked as Conservation land (ecological integrity of 7.5.)

John Carroll recently wrote, "It is incumbent upon you, therefore, the members of the Conservation Commission, to carefully consider ALL of the Mulhern property,

and, as well, to do a site walk on the Bagdad Access..." I would like to remind the Commission members that Mr. Carroll is not an expert, Town Official, attorney, Board or Commission member. He opposes our project under the guise of protecting wetlands. However, he proposes to build a road right through the higher value wetlands (coming in from Bagdad Road) rather than going through the lower value wetlands within Gerrish Drive Extension.

In regards to a site walk, Attorney Sharon Somers recently wrote, "The only new evidence being presented is the stamped HISS plan and the changes are so minimal that another site walk is not warranted." Finally, a HISS maps represents soils, which are not visible, therefore, a site walk would reveal nothing and its suggestion appears to be a tactic to further delay the process.

In her appeal to the Strafford County Superior Court Gail Kelley alleged, "Mr. Mariano said he had submitted a HISS map with the report and that it shows where a road is possible from the south to the north of the Mulhern parcel without going through any wetland." I asked Mr. Mariano to comment and his response was, "...just look at the soil/wetland map. Wetlands run the entire property north to south. Gotta cross it somewhere." His statement directly negates Ms. Kelley's claims.

We recognize that you are being pressured to take a wide view of our project. However, we appeal to your sensibility and ask you to follow the legal advice of Laura Spector and Sharon Somers, and to ignore the disingenuous demands of a few, non-representative abutters. Our current subdivision design was created with the guidance of Mark West, a highly regarded Wetland Scientist operating in New Hampshire for over 25 years. The current proposal represents the most ecologically sound design with the least impact to high value wetlands.

Durham is a wonderful town and we hope that the approval of our project will encourage others to invest in the housing our community so desperately needs.

Sincerely,

Marti and Mike Mulhern