EXHIBIT #16

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Elizabeth Burdick

From: Steve Studer <sstuder@berchemmoses.com>
Sent: Wednesday, May 8, 2024 5:11 PM
To: Elizabeth Burdick
Cc: Harry Heller; Robert Avena; Gaudet, Ronald; Karl Acimovic (acimovick@grotonutilities.com); Michael Giggey; Peter Gelderman; Kym Haury; French, Maureen
Subject: Application of Avery Brook Homes LLC for 18 lot resubdivision on Stoddards Wharf Rd.
Attachments: Notice of Intervention 5-8-2024.pdf

You don't often get email from sstuder@berchemmoses.com. Learn why this is important

Hi Liz, attached pls find a fully executed Verified Notice of Intervention by the City of Groton seeking to intervene as a party in the above referenced application pursuant to CGS 22a-19. Please forward the Notice and the attached report by Mr. Giggey to the Planning and Zoning Commission. The original of this document will be mailed to the PZC. By a copy of this email, I am providing a copy of the Notice to both the applicant's attorney and the town's attorney. Per the certification, a hard copy will be mailed to both Attorney Heller and Attorney Avena. Please don't hesitate to contact me should you have any questions. Thank you, Steve

BERCHEM MOSES PC

Stephen W. Studer

75 Broad Street Milford, CT 06460
(203) 783-1200 http://www.berchemmoses.com
sstuder@berchemmoses.com

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VERIFIED NOTICE OF INTERVENTION

TO: Town of Ledyard Planning and Zoning Commission

RE: Application for 18 lot, Section 8-30g Affordable Housing Development on Stoddards Wharf Road (the "Proceeding")

APPLICANT: Avery Brook Homes, LLC

PREMISES: Assessor's Map 65, Lots 96, 98 & 100, Ledyard, Connecticut (collectively, the "Subject Premises")

The City of Groton (the "Intervenor") is a municipal corporation with an address at 295 Meridian Street, Groton, CT 06340. The Intervenor owns and operates a public drinking water supply reservoir (the "Billings-Avery Reservoir") on approximately 144 acres of land at 70 Stoddards Wharf Road which adjoins the Subject Property. The Intervenor hereby intervenes in the above referenced Proceeding pursuant to Section 22a-19 of the Connecticut General Statutes and represents as follows:

1. The Intervenor, through its Department of Utilities ("Groton Utilities") is a water company as defined in CGS § 25-32a providing public drinking water to numerous residents and various municipalities in southeastern Connecticut, including Ledyard.

2. The northerly property line of the Subject Premises is approximately 105 ft. from the high-water line of the Billings-Avery Reservoir, and inland wetlands connecting directly to the Billings-Avery Reservoir are situated on property adjacent to the Subject Property.

3. Section 22a-19 of the Connecticut General Statutes states, in pertinent part, that "[i]n any administrative…proceeding, and in any judicial review thereof made available by law,…any person,…corporation…or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." *Conn. Gen. Stat. § 22a-19.*

4. The Intervenor intends to submit information from multiple experts, including Karl F. Acimovic and Michael Giggey, both professional engineers licensed in Connecticut with extensive experience in watershed protection and management. A copy of Mr. Giggey's preliminary report, dated May 8, 2024, is attached to this Verified Notice of Intervention. The Application is missing critical information and analysis without which the Intervenor believes the activities presently proposed to be conducted by the Applicant are reasonably likely to have one or more of the following results:

   a. The Application, with its significant increase in intensity of use on the Subject Premises (including the proposed addition of 18 new single family building lots, 18 new drinking water wells and 18 new underground sanitary septic systems on approximately 6.38 acres) and inadequate management, treatment and detention of stormwater runoff from 18 proposed new homes, roadway and other impervious surfaces, is reasonably likely to have the effect of unreasonably polluting and impairing the Billings-Avery Reservoir and its associated wetlands which are a source of public drinking water, including, without limitation, a diminution of existing water quality (i) through the discharge and introduction of insufficiently treated septic effluent, pathogens and other pollutants, and (ii) through the discharge and introduction of lawn chemicals, solids and salt from roadways, driveways and home sites on the Subject Premises.

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b. The Application, with its significant increase in intensity of use on the Subject Premises, including 18 proposed new sanitary septic systems, and the use of fertilizers, herbicides and pesticides on 18 proposed single-family building lots of approximately 1/3 acre each, is reasonably likely to unreasonably pollute and impair the shallow ground water on the Subject Premises and, as a consequence, to unreasonably pollute and adversely impact the water quality of the Billings-Avery Reservoir and its associated wetlands which are downgradient from, and directly connected to, ground water flowing from beneath the Subject Premises.

c. The Application, with its significant increase in the intensity of use of the Subject Premises and inadequate management, detention and treatment of stormwater runoff is reasonably likely to unreasonably pollute and impair the public drinking water supply, including associated wetlands, on the Intervenor's property through the discharge and introduction of sediments, salts and other non-point sources of pollutants from proposed roadways, driveways and home sites on the Subject Premises.

d. The Application, with its significant increase in the intensity of use on the Subject Premises, including 18 proposed new sanitary septic systems and the use of fertilizers, herbicides and pesticides on 18 proposed single family building lots of approximately 1/3 acre each, is reasonably likely to unreasonably pollute and impair the shallow ground water on the Subject Premises and, as a consequence, to pollute and contaminate all or substantially all of the 18 proposed private drinking water wells on the Subject Premises.

5. In 2022, Avery Brook Homes, LLC applied to the Ledyard Inland Wetlands and Watercourses Commission (the "IWWC") for a permit for a 26 lot resubdivision on a slightly larger piece of property which included the Subject Premises. After conducting a public hearing, the IWWC denied the 2022 application as incomplete because the Applicant failed to provide the agency with a subsurface effluent renovation analysis as requested. The current Application lacks even the incomplete analysis previously submitted to the IWWC. The Application contains absolutely no information regarding the impacts on public health and safety, including the impacts on the public drinking water supply, from 18 subsurface sanitary disposal systems in such a concentrated area close to the reservoir.

6. The IWWC also denied the 2022 application of Avery Brook Homes, LLC based upon substantial evidence in the hearing record. Specifically, in that prior matter the IWWC found, *inter alia*, that the proposed activity (i) "... will likely have an adverse impact on regulated areas, including the drinking water resources ... on adjacent property" and (ii) "... is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in wetlands, watercourses and public drinking water supplies all of which are natural resources of the State." Since the activities proposed in the Application are substantially similar to the activities proposed in the 2022 application, there is no reason to believe that the effects of the Application will be any different or any less harmful.

7. The activities proposed to be conducted by the Applicant upon the Subject Premises, as described above and in its application to this agency, are reasonably likely to have the effect of unreasonably polluting, impairing and/or destroying the public trust in the ground water, surface water, wetlands and watercourses on both the Subject Premises and on the Intervenor's adjacent land or other natural resources of the State of Connecticut.

8. There are feasible and prudent alternatives to the proposed development including a significantly smaller development with fewer proposed on-site drinking water wells, fewer on-site sanitary septic systems, less impervious surface, a more efficient and effective system for the treatment, management and detention of stormwater runoff and less total site disturbance.

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9. The Intervenor, pursuant to Section 1-227 of the Connecticut General Statutes, also requests written notice by mail of all meetings and/or hearings to be held, conducted or issued in connection with the Proceeding. Such notices should be sent to counsel for the Intervenor: Stephen W. Studer Esq., Berchem Moses PC, 75 Broad Street, Milford, CT 06460, sstuder@berchemmoses.com and Peter Gelderman, Esq., 1221 Post Road East, Suite 301, Westport, CT 06880, pgelderman@berchemmoses.com.

WHEREFORE, on this 8th day of May, 2024, the Intervenor hereby intervenes in this Proceeding pursuant to this Verified Notice of Intervention and requests notice of any and all meetings and/or hearings conducted in connection with this Proceeding.

THE INTERVENOR,
CITY OF GROTON

By: _____
Ron Gaudet
Director of Utilities
City of Groton
295 Meridian Street
Groton, CT 06340

Verification

STATE OF CONNECTICUT :

: ss: Groton

COUNTY OF NEW LONDON :

I, Ron Gaudet, being duly sworn, do depose and say that:

1. I am the Director of the Department of Utilities of the City of Groton, (aka Groton Utilities).

2. The City of Groton owns the premises located at 70 Stoddards Wharf Road, Ledyard, Connecticut and operates it as part of its public drinking water supply watershed.

3. I have read the foregoing Verified Notice of Intervention and the allegations contained therein are true to the best of my knowledge, information and belief.

_____
Ron Gaudet, Director

Subscribed and sworn to before me this 8th day of May, 2024

MAUREEN ANN FRENCH
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES 09-30-2028

_____
Notary Public
Commissioner of the Superior Court

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Certification

The undersigned hereby certifies that a copy of the foregoing Notice of Intervention was sent, via email and by first class mail, postage prepaid, this 9th day of May, 2024 to the following:

Harry Heller, Esq.
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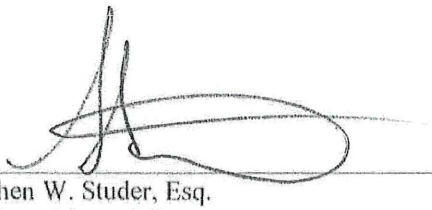

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WRIGHT-PIERCE
Engineering a Better Environment

Memorandum

Date: **May 8, 2024**

Project No.: **21347**

To: **Stephen Studer and Peter Gelderman, Berchem Moses**

From: **Michael D. Giggey**

Subject: **Avery Brook Homes Re-subdivision, Ledyard CT**
Revised Project--2024
Initial Review of Water Quality Impacts

Introduction

Groton Utilities has requested that Wright-Pierce undertake a review of potential water quality impacts of a proposed residential subdivision that would be located adjacent to the Avery Billings Reservoir in Ledyard. In early 2023, I reviewed an earlier (2022) proposal by the same developer at this location. My March 7, 2023 memorandum summarizes my serious concerns on that earlier project, and those concerns were presented to the Inland Wetlands and Waterways Commission at its March 7, 2023 hearing on that prior project. The same developer has modified the earlier plan and submitted it to the Ledyard Planning & Zoning Commission on March 28,2024 for approval. This current memorandum provides my initial comments on that revised project.

The 2022 Project

Avery Brook Homes, LLC proposed a 26-home re-subdivision to be located on four existing lots (9.2 acres in aggregate area) off Stoddards Wharf Road in Ledyard, within the watershed of Groton Utilities. All of the single-family homes would be served by individual private drinking water wells, and individual subsurface wastewater disposal facilities. The average lot size would be about 0.35 acres.

The 2024 Project

The developer's revised project, submitted on or about March 28, 2024, is an 18-lot re-subdivision to be located on three of the four existing (albeit re-configured) lots off Stoddards Wharf Road , with a project area of 6.38 acres. The proposed lots are of about the same size as the previous proposal and would be situated in the westerly portion of the original site, within the watershed of Groton Utilities. As in the prior proposal, all the single-family homes would be served by individual private drinking water wells and individual subsurface wastewater disposal facilities. The development would have the same set-back (about 105 feet) from the high-water mark of the reservoir.

Findings Related to 2022 Project

In residential projects with on-site wastewater disposal, on-site private potable wells and stormwater collection facilities, the important potential contaminants are:

- Nitrogen compounds, particularly in the nitrate form for which there is a drinking water standard of 10 mg/l. Nitrogen sources include wastewater disposal, lawn and garden fertilizer and stormwater runoff.

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- Phosphorus compounds which can cause eutrophication of fresh surface waters. Sources include wastewater disposal, lawn and garden fertilization and stormwater runoff.
- Pathogenic organisms, particularly bacteria and viruses. These organisms are found in wastewater effluent and in stormwater that carries pet wastes.
- Suspended solids, such as silt, sand and debris that are conveyed to surface waters by storm runoff.
- Petroleum products, such as oil and gasoline. These are commonly found in stormwater runoff.
- Other organic compounds such as those found in wastewater effluent, lawn care products and stormwater runoff. Personal care products, pharmaceuticals and other persistent organic compounds can be expected to reach the groundwater from septic systems. One class of these pollutants is Volatile Organic Compounds (VOCs). Another class includes PFAS compounds, so-called "forever chemicals".
- Heavy metals found in stormwater runoff.
- Sodium resulting from the use of de-icing chemicals.

These contaminants are all associated with residential activities, and their water quality impacts must be dealt with, particularly in this very sensitive setting.

A dense residential development on this site would create all of these contaminants in close proximity to the Avery Billings Reservoir. The developer's technical team addressed nitrogen, viruses and suspended solids, but did not address the other contaminants of concern. The developer's assessment of nitrogen and virus impacts was incorrect, using incomplete groundwater flow information, underestimated travel times and incorrect contaminant loadings. While the developer's technical team attempted to show that these contaminants would not have a significant impact on the groundwater and the reservoir, the corrected data demonstrated that use of on-site wastewater disposal at this location would be detrimental to the public water supply and would lead to widespread contamination of the proposed 26 private wells. My March 2023 review revealed several key points:

1. A full assessment of potential impacts was not provided.
2. The assessments I reviewed were incomplete and/or significantly understated the project's impacts.
3. Unacceptable impacts from nitrates and viruses were certain to occur.
4. While the viability of on-site private wells had not been directly addressed, the developer's assessments indicated that on-site wastewater disposal would preclude the use of private wells on this project.

Concerns about the Revised Project

The developer's recent application to the Planning & Zoning Commission includes the Application for the Subdivision of Land, a Subdivision/Resubdivision Checklist, an 8-sheet set of engineering drawings, an out-of-date letter from the Ledge Light Health District and numerous legal documents related to land ownership and easements.

The prior application to the Inland Wetlands & Waterways Commission was accompanied by technical studies addressing water quality issues. The current application includes no such information.

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While the new project would include 18 homes (30% fewer than the prior proposal), those homes would be located on 6.38 acres (30% less than the prior 9.21-acre project). Given that the proposed project density is the same as the earlier project, and the proximity to the reservoir is the same, the revised project is no less of a threat to public and private water quality.

The Town of Ledyard's *Regulations Governing the Subdivision of Land* were last amended on April 1, 2023. Those regulations "are designed to provide that land to be subdivided shall be of such character that it can be used for building purposes without danger to health or public safety and that proper provision shall be made for water drainage and sewage...". Based on the findings of the prior proposal, and the fact that the revised project is of similar density and proximity to the reservoir, the developer's new proposal should be deemed incomplete until these water quality concerns are professionally and thoroughly addressed.

Conclusion

The prior project was shown to have significant detrimental environmental impacts and to be unsuitable for this location. The revised project is of the same density and same proximity to the reservoir. It is unlikely that the developer will be able to show that the revised project is any more acceptable. Given these facts, the Town of Ledyard should consider this application to be significantly incomplete.