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April 10, 2007

Via Email and Federal Express
Scituate Conservation Commission
Scituate Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

RE: 126 & 132 Chief Justice Cushing Highway
DEP#: SE 068-1988

Dear Commission Members:

Citizens for the Protection of First Herring Brook ("Citizens") understand that Ms. Coyle and Mr. Bleakie are co-leading the enforcement investigation into the unlawful resource alteration at the above property. They look forward to working with them in the effort. This letter briefly provides information relevant to that investigation and the related NOI hearing.

Enclosed are the sworn affidavits of six abutters to the proposed project. Each confirms that he/she is not aware of any corn planting or other agricultural use of the property (i) for at least five years prior to the 2003 unlawful alteration *and* (ii) since 2003 to the present. The latter is an important clarification in that one on my April 2 letters to the Commission intimated that corn production occurred after 2003. Based on the enclosed affidavits, my statement was in error and should be noted as corrected.

"Land in agricultural use means land within resource areas or the Buffer Zone *presently and primarily used* in producing or raising [specific] agricultural commodities for commercial purposes..." 310 CMR 10.04. Land in agricultural use may not lie inactive for more than five consecutive years unless it is under a USDA contract pursuant to the Conservation Reserves Program or is used for "forestry purposes". Neither of those exceptions applies here. It is the applicant's burden to establish *continuous*, as opposed to claimed or intermittent, agricultural use. "The issuing authority may require appropriate documentation, such as a USDA Farm Plan or aerial photography, to demonstrate agricultural use." 310 CMR 10.04.

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Rather than simply claiming corn production, already in direct contradiction to testimony in the enclosed sworn affidavits, the applicant should be required to provide its farming records and practices. Who did it buy seed from? When? At what cost? Who performed the planting and harvesting? What machinery was used, and where was it purchased and serviced? To whom were the products ultimately sold? What was the income stream from the sale? In addition evidence of governmental filings related to agricultural use (permits, tax breaks, etc.) should be filed with the Commission.

Given that the regulation requires (i) *present* and (ii) *primary* use for (iii) *commercial* agricultural purposes, there must exist substantial billing and payment records to support this key corn production business. Commercial farming is not a part-time business, and even if it were, the regulations do not sanction winter rye gardening as “agriculture”. Given that the exemption allows some alteration of resources that otherwise are subject to substantial protection (draconian, in the case of Riverfront Area), the bar for establishing the exemption must necessarily be a high one.

The agricultural exemption is designed for the continuation of agricultural use. The use proposed by the applicant involves intensive real estate development for profit, rather than traditional New England farming. The agricultural exemption was no more intended to apply to the present situation than to placing a WalMart on “agricultural” land. In addition it is unclear, were the exemption to apply, whether it would excuse alteration to every kind of resource identified by the applicant at the property. Again, given Mr. Giacomozzi’s testimony that the property was wholesale altered in 2003, the question has to raised whether the exemption broadly allows destruction of every kind of resource admitted by the applicant (e.g. Confirmed Habitat for Rare and Endangered Species).

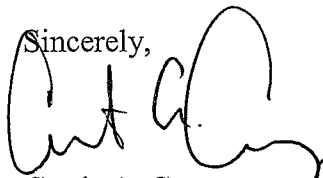
Citizens hope that any enforcement action by the Commission target the “strategist” violators, versus the field hands. In terms of Mr. Giacomozzi, in particular, his cooperation should be deemed penance, and Citizens request that the Commission look to him and others like him primarily as sources of responsive information that leads to prosecutable persons, including the landowner. The Commission likely is aware that it may be faced with a deadline of April 30, 2007, for seeking enforcement against the culpable landowner. *See* M.G.L. c. 131, §40 (three years from recording of the deed). Of course, each new violation at the property also triggers a new two-year statute of limitations for broader enforcement. *See* M.G.L. c. 131, §91.

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Please contact me with any questions.

Sincerely,

Curtis A. Connors

cc: Scituate Zoning Board of Appeals, John Danehy, Chair (via email)
Neil Duggan, Zoning Enforcement Officer (via email)
Scituate Board of Selectmen (via email)
Christine Odiaga, DEP (via email)
Alexandra Dawson, Massachusetts Association of Conservation Commissions (via email)
Citizens for the Protection of First Herring Brook (via email)
Mario DiGregorio (via email)
Janet Stearns, Esq. (via email)