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August 14, 2008

Doreen Connor, Chair
Zoning Board of Adjustment
Town of Henniker
18 Depot Hill Road
Henniker, NH 03242

Re: Application of Laidlaw Energy Group, Inc., 2008-104

Dear Ms. Connor:

We represent REACH, a group of concerned citizens from Henniker and Hopkinton who have objected to the pending applications for a use variance and a dimensional variance, seeking deviation from the Zoning Ordinance in order to construct a Biomass facility and to erect a boiler and stack which far exceed the height limitations for the zone. This letter is written to recap our points on the five use variance criteria. We note as a threshold matter that the applicant had the burden of proof on this application, and that their failure to meet that burden means as a matter of law that their application must be denied.

To date, the Zoning Board has proceeded with the use variance, which if denied, will render the dimensional variance application moot. However, we respectfully reserve the right to be heard on the dimensional variance in the event that the ZBA reaches that issue.

Unnecessary Hardship

The applicant has failed to demonstrate that it meets the criteria for unnecessary hardship. The character of the zone has not created any hardship, nor does the character of the parcel create a hardship. The property is not burdened by single use structures, and there is no

August 14, 2008

Page 2.

unnecessary hardship imposed on the owner. The owner maintains a viable use on the parcel, which is a permitted use in the zone. In Garrison v. Henniker, the State Supreme Court stated that “the landowner must show that the hardship is a result of specific conditions of the property and not the area in general.” The landowner has not done that in this case, and it cannot, because there are no specific conditions pertaining to this property that constitute an unnecessary hardship.

Public Interest

The applicant had a burden to demonstrate that granting this use variance is in the public interest of the Town of Henniker, as expressed in the Henniker Zoning Ordinance and Master Plan. First, Henniker has no need for a power generator in that zone. Had there been such a need it would have been expressed in the Zoning Ordinance or the Master Plan. There is a strong public interest in protecting the Henniker view shed, and this massive boiler and stack will be contrary to that pervasive public interest. The net adverse impact of this proposed use is far more detrimental than any of the other uses permitted in the zone, and as such, is contrary to the general public interest expressed for both the zone and the Town in general. The applicant has suggested two adjacent uses that will benefit financially from this use, but private financial benefit should never warrant a detriment to the public’s interest.

Spirit of the Ordinance

The Master Plan well expresses the spirit of the ordinance. It includes such values as preserving the overall rural character of the town, isolating the Heavy Commercial uses, and preserving the view shed from the key elevations in the Town. The proposed use is inconsistent with each of these elements of Henniker Zoning, and thus it is contrary to the spirit and intent of the ordinance. Moreover, the Town has limited its heavier uses to Heavy Commercial uses, and has not created a Heavy Industrial zone. The absence of the zone is indicative of the intent of the Town not to become an industrial community.

Substantial Justice

Each of the arguments made above, and those expressed by REACH at the prior hearing are subsumed by this broad category. There was no evidence that denying this variance would be an unjust exercise of the Town’s zoning authority or that it would result in any form of an unconstitutional taking. Instead, denying the variance furthers the interests of justice as embodied by the overall interests of the citizens adversely impacted by the requested relief.

August 14, 2008

Page 3.

Diminution in Value

Not one professional opinion was proffered to the ZBA on this element of the applicant's burden. On the other hand, mere common sense demonstrates that the highly intrusive boiler, stack and plume, will have a detrimental effect on the value of numerous properties in, and out of the zone.

Conclusion

We respectfully request that the ZBA dispassionately weigh the evidence in this case and carefully consider whether the applicant has met its burden. It has not, and thus the application should be denied.

Very truly yours,



Dean B. Eggert

/ajm