

Carolyn M. Kiely, Esq.
11 Parkland Lane
Acton, MA 01720
978-287-4808
cmkiely@msn.com

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Ms. Katie Green
Chair
Acton Board of Selectmen
472 Main Street
Acton, MA 01720

Subject: Require Modified Variance Prior to Selectmen Re-Opening Hearings
on Concord's Special Permit Requests for Nagog Pond

Dear Chairwoman Green:

As you know, the next Board of Selectmen hearing on the Nagog Pond Project proposed by the town of Concord is scheduled for April 11, 2016 – slightly more than a week after Acton's upcoming Town Meeting.

As we have pointed out (see attached letter), Concord seeks to bypass the legal and proper procedure required for permitting Concord's proposed project. Concord's present ozone facility exists at the Nagog Pond site only because a variance was obtained from the Board of Appeals for the facility on October 18, 1994 (Decision No. 94-19). It was only AFTER the variance was obtained that Concord proceeded to obtain their site plan special permit approvals¹ from the Selectmen on November 23, 1994. It is noteworthy that the variance had been granted prior to action by the Board of Selectmen.

For the proposed Nagog Pond Project to be properly permitted:

1. Concord should first obtain a modified variance from the Acton Zoning Board of Appeals prior to appearing before the Selectmen requesting special permits, and
2. Concord should provide proof that they properly recorded their original 1994 variance with the Registry, otherwise they should apply for a new variance for the entire project (because the original variance was not legally made effective).

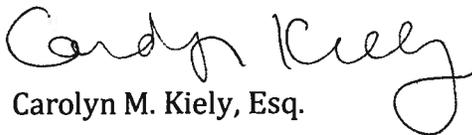
¹ Site Plan Special Permit under Section 10.4, Special Use Permit under Section 10.3, and a Flood Plain Special Permit under Section 4.1.8 of the Acton Zoning Bylaw.

The legal justifications for the above requirements are contained in the attached letter which was provided to you on February 4, 2016. We urge you to inform Concord of this as quickly as possible, and to require the Concord project to be properly acted upon by the Zoning Board of Appeals.

Please note that it will be the zoning laws that will be the primary drivers of this process as it moves forward under your jurisdiction. Concord is aware of this – Concord is presently hiring a top-tier zoning lawyer to steer Concord through this process. I urge you to provide your counsel with whatever specialized assistance is needed to properly handle the difficult zoning questions that will likely arise throughout this permitting process. The environmental issues will primarily be addressed by the state, through the MEPA review of the Environmental Impact Report that Concord is presently preparing, as well as by the Acton Conservation Commission. Zoning rules will primarily govern the permitting of this project as it moves forward under the Zoning Board of Appeals and your jurisdiction.

I understand that you and the entire Board of Selectmen are presently swamped with work as you prepare for the upcoming Town Meeting. I respectfully request that you task Town Counsel with examining this issue and to inform Concord that they must first go before the Zoning Board of Appeals prior to any hearings being held by your Board. Thank you for considering this request.

Sincerely,


Carolyn M. Kiely, Esq.

Attachment: February 4, 2016 Letter – “Permitting Procedure and Variances”