

Petition For Administrative Review
To Request An Administrative Hearing
Appeal of Permit Approval No. 20953 - Pulte Homes of Indiana, LLC
And Request That The Action Be "Stayed"

Dr. & Mrs. Marion E. Ayers
 9901 Cumberland Rd. * Fishers, Indiana 46037

Represented by Counsel
 Attorney Rick E. Lathrop
 5959 N. Olney, Indianapolis 46220 * (317) 259-4752

OFFICE OF

APR 28 2014

ENVIRONMENTAL ADJUDICATION

April 28, 2014

The Indiana Office of Environmental Adjudication (OEA)
 Indiana Government Center North
 100 North Senate Avenue, Room N501
 Indianapolis, IN 46204

Dear OEA:

Comes now Dr. and Mrs. Marion E. Ayers via counsel, Rick E. Lathrop, and would show the OEA as follows:

Dr. Marion & Mrs. Nancy Ayers are homeowners whose land is involved in the construction plans for Permit #20953. And, the Ayers' land value will be damaged if the current permit (20953) plan is adopted. Thus, the Ayers family requests that the action (permit 20953) be stayed until the following appeal issues are resolved.

There are two appeal issues which Dr. & Mrs. Marion E. Ayers (**hereinafter "Petitioners"**) wish to raise:

- With regard to the first issue detailed below, Petitioners (Ayers) believe that practical and relatively easy to implement changes to the current plan will alleviate any damage/negative impact to their land and not have a negative impact upon the Pulte Homes of Indiana, LLC (Haven) sewage system, permit 20953.
- With regard to the second issue detailed below, Petitioners' homeowners association ('The Cumberland Road Homeowners Association) has hired a renown Hamilton County Engineer, Richard O. Albright, and he has made an insightful and appropriate engineering suggestion regarding the Haven, Section One, Sewer System, asking that the plant operators meet State legal requirements as certified plant operators.

APPEAL ISSUE 1

ATTACHMENT #1: The layout drawing of the construction plan for the Pulte Homes of Indiana, LLC's Haven, Section One, Sewer System is **ATTACHMENT #1** to this appeal.

In the **Attachment #1** layout drawing, it is the placement of pipe number P-17 (primary cause of damage) and pipe P-24 (pipes P-17 and P-24 are highlighted in yellow) that Petitioner asserts will cause unnecessary damage to their undeveloped land (2 adjacent lots in Woodlands at Windermere); And, practical, relatively easy and lawful changes in the placement of these pipes will alleviate this damage without causing any significant negative impact on the Pulte Sewer system (permit 20953) as currently planned.

ATTACHMENT #2: is a drawing of Petitioners' (Ayers') lot in Woodlands at Windermere through which pipe(s) P-17 (and P-24) will pass through according to the current proposed path (as shown in Attachment #1). The current proposed path for P-17 and P-24 is highlighted in RED on **Attachment #2**.

Petitioners (Ayers) own both adjacent lots 32 & 33 on Attachment #2. And, a note on **Attachment #2** documents the assurance given to Petitioners by Woodlands at Windermere subdivision which states:

"These homesites [lots 32 & 33] will be recorded as one home site #32 on the final plat"

The best use of Petitioners (Ayers') single combined lot #32 (drawn as two lots 32 & 33 on Attachment #2) is to not have Petitioners' land divided down the middle by the placement of pipe P-17 (as planned). This placement of pipe P-17 in the center of Petitioners land would seriously damage Petitioners' best future home building/basement site which is also located in the center of Petitioners' land.

Therefore, Petitioners (Ayers) request that pipe P-17 be rerouted and placed so that it instead runs along or near the property line that runs between Petitioners' property (lot 33) and their neighbor's property (lot 34) as depicted on a third attached drawing, ATTACHMENT #3.

ATTACHMENT #3 shows Petitioners' (Ayers) new requested path for pipe P-17 highlighted in yellow. And, Petitioners request that the OEA direct Pulte Homes of Indiana, LLC to reroute P-17 (and by implication pipe P-24) so that pipe P-17 runs along or near the property line that runs between lot 33 and lot 34, as highlighted in yellow on **Attachment #3** (thereby avoiding damage via P-17's division of Petitioners' combined lots 32 & 33).

APPEAL ISSUE 2

Petitioners' homeowners association (The Cumberland Road Homeowners Association) has hired Engineer Richard O. Albright and he has made an insightful and appropriate engineering suggestion (regarding the Haven, Section One, Sewer System) asking that the plant operators meet State legal requirements as certified plant operators. Thereby reducing the long term negative impact to the Haven residents and neighboring residents.

ATTACHMENT #4 is Engineer Richard O. Albright's report, on page 2 of Albright's report it states as follows:

"The system will belong to and will be operated by The Haven Homeowners Association when a majority of the homes have been constructed. The documentation says the Association will contract for the operation. The intent is that whatever entity owns and operates the system will contract with Fishers to accept and treat the sewage for a charge. There are already two residences not in The Haven that are supposed to be connected; so I assume the operating entity will charge them for the service. Future additions to The Haven, and perhaps other future additions might be added to the system by contract.

My point is that there will be more to managing and operating the system than the usual home owners' association officers would be capable of, or interested in, doing.

My suggestion is that whatever entity accepts the responsibility for managing and operating the system should agree to hire qualified and certified plant operators. The fact that the collected sewage will receive pre-treatment by the feeding of chemicals suggests the operators should meet State requirements as certified plant operators. This requirement will work to the advantage of the residents of The Haven and neighboring residents, as well as to the City of Fishers. It should be a condition for constructing, operating and managing the system." (underline emphasis added).

Petitioners request that OEA direct Pulte (in permit 20953) to implement the Indiana State law requirements as laid out in the above underlined quote/suggestion by renown Engineer, Richard O. Albright.

Wherefore, Petitioners, via counsel, seek a ruling by the OEA granting their appeal, their stay, the above requested relief and all other relief which is just and proper in the premises.



Rick E. Lathrop, Attorney at Law
5959 N. Olney
Indianapolis, Indiana 46220
Attorney No. 17419-49
Phone (317) 259-4752

Attorney for Petitioners
Dr. Marion & Mrs. Nancy Ayers
9901 Cumberland Road
Fishers, Indiana 46037

CERTIFICATE OF SERVICE

I do here certify that a copy of the foregoing Petition For Administrative Review, To Request An Administrative Hearing, Appeal of Permit Approval No. 20953 - Pulte Homes of Indiana, LLC, And Request That The Action Be "Stayed" has been duly served upon the parties listed below on this April 28, 2014 by US First Class Mail.

Dale T. Schnaith, Chief
Facility Construction & Engineering Support Section
Indiana Department of Environmental Management
100 N. Senate Avenue, Indianapolis, Indiana 46204

And

Mr. Matthew Lohmeyer
Pulte Homes of Indiana, LLC
11590 North Meridian Street, Suite 530
Carmel, Indiana 46032



Rick E. Lathrop
Attorney No. 17419-49
5959 N. Olney
Indianapolis, Indiana 46220
Telephone: (317) 259-4752