**STERLING WATER STEWARDS**

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**STATEMENT FOR TOWN OF STERLING PUBLIC HEARING**

**CONCERNING A MORATORIUM ON SPECIAL USE PERMITS**

**FOR BULK WATER EXTRACTION**

**June 21. 2021**

I am Joanne Hunt Piersma, a member of the Sterling Water Stewards and an attorney with long roots in this area, having been born and raised in the Town of Sterling. Although I now live in Hannibal, I have always been appreciative of both the beauty and the community spirit of this Town and so I joined with the Sterling Water Stewards to help protect its resources.

I am speaking tonight not in opposition to the proposed moratorium—it’s a good thing as far as it goes—but rather to explain some of the legal problems confronting the Town in its efforts to protect its water sources, problems that this moratorium does not address.

The existing land use regulations of the Town of Sterling provide that a water extraction and/or bottling facility is permitted in of the Town but subject to obtaining a “Special Use Permit.” This is in Section 5.L. You can find it on pages 55-58 of the published regulations.

The requirements for obtaining a permit for that purpose is that the applicant must show through testing, the requirements for which are laid out in detail, that the proposed use will not adversely affect other wells or the sustainability of the aquifer, will not cause undesirable changes in groundwater quality and will not negatively impact natural water resources.

But nowhere in the regulations is there any measurable definition of what constitutes adverse effect, negative impact or undesirable change. As a litigator with many years of dealing with forensic experts, it is easy to find one willing to generate the report that you need when there are no standards to guide that report.

If a permit were to be granted by the Town after a public hearing, then those opposing the permit would have to file what is called an “Article 78 proceeding,” which is just legalese for the procedures to be used to challenge any administrative determination in New York. In all likelihood, the grounds to challenge such a decision would be that it is “not supported by substantial evidence.” The standard for what amounts to substantial evidence is minimal and these court challenges are very hard to win. The New York Courts tend to favor the granting of special permits. Community opposition is not enough to overturn the granting of a permit—opponents must be able to show, both at the public hearing, and later in court, if necessary, that the permitted activity will cause actual harm.

While the Sterling Water Stewards have begun the process of compiling expert evidence to demonstrate the actual harm that a water extraction and bottling plant would cause, we believe that the better and more sensible approach is for the Town to take the time to strengthen its existing regulations by establishing a Source Water Protection Overlay Zone based on objective scientific analysis. That will protect Town water resources but it will take time, certainly more than six months.