

Background Materials for November 27, 2019

Agenda Items #1 through #3

Agenda Item #1 – Approval of Outside Experts for Review of North Pole Estates under Chapter 44, Section 53G

As the Board is aware, Chapter 44, Section 53G of Mass General Laws allows communities to employ outside experts to assist in review of application and requires the applicant to cover the costs for such employment. This practice is codified in the Planning Board's General Rules and Regulations adopted and amended this summer. The adopted and amended Rules and Regulations are posted on the website at the following link:

<https://www.southhadley.org/DocumentCenter/View/5868/South-Hadley-Planning-Board-General-Rules-and-Regulations-2019-06-03-As-Amended-2019-08-19-and-Filed-with-TC-2019-08-22>

At the last meeting, the Board voted to select Weston & Sampson to provide the Peer Reviews for the North Pole Estates Definitive Plan submittals specifically including the following:

- Hydrogeological Assessment
- Traffic Impact Study
- Stormwater Drainage Report
- Definitive Plan details (all plan sheets)

However, the consultant for the applicant has stated that the Board did not vote “on the peer review proposal for the septic review as it was not provided until after the PB meeting” Further, they stated that “there was no discussion at the PB regarding legal fees for Town Counsel”.

They have voiced other concerns regarding scope and price. However, those concerns are not provided as potential bases for an appeal of the selection of the “outside experts” under Chapter 44, Section 53G and should not be discussed except in the public hearing which was continued to December 16, 2019.

Therefore, the Board should vote on whether to “select” the following “outside experts”:

- Legal - Town Counsel Lisa Mead of Mead, Talerman & Costa, LLC
- Septic System Feasibility & Design Peer Review – Weston & Sampson

The “legal” is interesting because it is my understanding that only the Selectboard can hire legal counsel for the Town. But, a Board vote would make clear that they are chosen to provide “outside” expertise pursuant to Chapter 44, Section 53G relative to the proposed development.

ACTION NEEDED: The Board should vote on the “outside experts” for the following:

- Legal
- Septic System Feasibility & Design Peer Review

Agenda Item #2 – Skyline Drive

Skyline Drive is a roadway approximately 1,100 feet in length which runs from Pine Street to Brainard Street (see aerial photo below). The plan for the development appears to date back to the



early 1960's. A representative of one of the current owners and a prospective purchaser of one of the existing properties has requested Release of a 1961 Covenant Agreement. Following the aerial photo is a brief summary of the actions regarding this development which are relevant to this agenda item.

- April 6, 1961 – Developer – Michael Ciolek – executed and filed a Covenant Agreement which limited the ability to build upon or convey any of the 18 lots in the subdivision until the Covenant Agreement is released. It would take effect upon “approval of the plan”.
- May 2, 1961 – Planning Board voted to approve the Skyline Drive Subdivision Plan.

- May 16, 1961 – Planning Board signed endorsement of the Skyline Drive Subdivision Plan.
- January 25, 1962 – Letter from Tighe & Bond Engineer regarding the status of the infrastructure and the cost for completing the roadway, treebelt, and sidewalk.
- February 5, 1962 – Planning Board “agreed to release the covenant posted by Mike Ciolek for Skyline Drive only after the developer had posted with the town a performance agreement and a performance bond of \$6,000” based on the January 25, 1962 letter.
- July –September 1967 – Correspondence regarding drainage issue.

The record appears to stop after the September correspondence. A review of street acceptance records failed to identify any record of Town Meeting having voted to accept Skyline Drive. If there had been an acceptance of the road by Town Meeting, the Covenant Agreement would not be an issue. Thus, the record is murky and unclear.

But, it is clear that all the lots have been built upon -in fact, most of the houses were constructed in 1963-1965 with all of the houses on lots created by the subdivision having been constructed before 1968. Most of the properties have been transferred multiple times over the past 50 years. The fact that the building permits had been issued and the houses occupied demonstrates that the Town officials – including the Planning Board – during the 1960’s “understood” that the Board released the Covenant Agreement.

This matter has arisen today because an attorney for a title insurer apparently discovered the Covenant Agreement when researching the property being purchased. For some unknown reason it had not arisen on the several dozen transfers which occurred over the past 50 years. However, without the Planning Board voting to Release the Covenant Agreement and signing such a Release and directing the party to record such a Release in the Hampshire County Registry of Deeds, the current pending sale will not go through and this problem will arise again.

Town Counsel has advised that “the only way to clear this is by release from the Board”

ACTION NEEDED: The Board should vote to Release the Covenant Agreement and then at least a majority of the Board should sign a “Release of Covenant Agreement”.

Agenda Item #3 – Other New Business

I have included this agenda item for Board members to bring up new items (for discussion and future consideration) that are not on the agenda and which the Chair could not reasonably expect to be discussed/considered as of the date which the agenda was posted.

Additionally, this is opportunity for the representatives on various committees and the PVPC Commissioner/Alternate Commissioner to make reports to the Board. The reports should be less than 3 minutes each.