



GRAFTON
Massachusetts

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Natalia Alward <alwardn@grafton-ma.gov>

October 21, 2020

Fwd: Joint Hearing

Planning Board

Exhibit 24

Don Borenstein <Don@jblclaw.com>

Grafton, MA

Wed, Oct 21, 2020 at 10:28 AM

To: Peter Hingorani <trustcorp@aol.com>

Cc: "mcgoldrickc@grafton-ma.gov" <mcgoldrickc@grafton-ma.gov>, "tbbuilding@aol.com" <tbbuilding@aol.com>, "koshivosk@grafton-ma.gov" <koshivosk@grafton-ma.gov>, "billmccusker@charter.net" <billmccusker@charter.net>, "alwardn@grafton-ma.gov" <alwardn@grafton-ma.gov>, "r.hassinger@ieee.org" <r.hassinger@ieee.org>

Mr. McGoldrick,

At the last Planning Board session I believe the Board Chair asked to see the communication from town counsel determining that my client's subdivision completion certification request should be referred to the Planning Board and not the Zoning Board. Please see below for that communication. Would you please make it available to the Chair as requested. Thank you.

Regards,
Don Borenstein

Begin forwarded message:

From: Ginny Kremer <ginny@bbhlaw.net>

Date: June 10, 2020 at 3:19:26 PM EDT

Subject: RE: High Point Estates, Grafton, MA - street acceptance issue

Hi Don:

I did discuss this with both Mark Bobrowski and Paul Haverty, both of whom as you know have extensive 40B experience. They both disagree with your assessment. As roadway acceptance is outside of the 40B process, they are both of the opinion that this matter is under the purview of the Planning Board. I will inform the Town of our conclusion.

Thanks,

Ginny

Ginny S. Kremer, Esq.

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From: Don Borenstein <Don@jblclaw.com>
Sent: Tuesday, June 9, 2020 12:53 PM
To: Ginny Kremer <ginny@bbhlaw.net>
Subject: High Point Estates, Grafton, MA - street acceptance issue

Ginny,

Thanks for speaking with me earlier today. As we briefly discussed, I have recently been retained by the developer of the High Point Estates Comprehensive Permit project, Mr. Hingorani, to assist him with efforts to have the project's subdivision roads considered for acceptance by the Town of Grafton as public ways. Towards that end, I believe the reporting and recommendation role of the Planning Board described in Mass.Gen.Laws c. 40B, § 21, is to be undertaken by a municipality's Zoning Board where the roads proposed for acceptance were created by action of the Zoning Board under the authority invested in that Board by Mass.Gen.Laws c. 40B, s. 21.

In the case of High Point Estates, the definitive subdivision plan was approved and endorsed "*Approval by the Town of Grafton Zoning Board of Appeals acting as Planning Board in its capacity as the Comprehensive Permit granting authority under G.L. c. 40B.*" Similarly, the Zoning Board has continued to act in the role of the Planning Board throughout the now long history of the project, releasing the project's subdivision covenant; joining as a party to the project's Tripartite Agreement; authorizing reduction of the subdivision security; monitoring subdivision construction; retaining and directing a review engineer; and, most recently, directing an evaluation of the subdivision roadways in connection with the Town's consideration of their acceptance as public ways. The Zoning Board is uniquely qualified to report and recommend on the status and condition of the project's roadways, given its experience with and oversight of the project.

I understand there may be some question as to whether the Planning Board itself must perform the reporting and recommendation role called for in Mass.Gen.Laws c. 40B, § 21. Although the Planning Board should certainly be invited to submit information and comments to the Zoning Board (as recommended by the Comprehensive Permit regulations, 760 CMR 56.05(3)), the report and recommendation to be made to the Town's Select Board regarding public acceptance of the project's roadways should be made by the Zoning Board pursuant to its authority under Mass.Gen.Laws c. 40B, s. 21 and as a natural and practical continuation of its oversight over the development of the project's roadways.

I would be happy to discuss this further with you or your colleagues, particularly if you do not fully agree with my assessment. I understand the Zoning Board is scheduled to continue their consideration of this matter at their meeting scheduled for this Thursday evening and will look forward to resuming our discussion before then.

Thank you.

Regards,

Don

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To: don@jblclaw.com	Message Score: 1	High
From: ginny@bbhlaw.net		(60): Pass
	My Spam Blocking Level: Custom	Medium
		(75): Pass
		Low
		(90): Pass
	Block this sender	Custom
	Block bbhlaw.net	(68): Pass

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On Oct 20, 2020, at 10:51 AM, Peter Hingorani <trustcorp@aol.com> wrote:

[Quoted text hidden]

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To: don@jblclaw.com
From: trustcorp@aol.com

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