

From: Steve Hart  
Sent: Thursday, March 11, 2021 3:42 PM  
To: PB Chair; Town Selectmen; Amy Tierney; Town Administrator  
Subject: Fwd: Long Island - Planning Board

Here is the response from the MMA.

We have work to do on clarifying the issues here.

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From: Legal Services Department <legal@memun.org>  
Date: Thu, Mar 11, 2021 at 3:14 PM  
Subject: RE: Long Island - Planning Board  
To: Steve Hart <wsh9171@gmail.com>

Good afternoon, Chairman Hart.

To begin, my counsel is conditioned on the assumption that the covenants are private covenants and restrictions, and are not conditions of approval of the subdivision imposed by the planning board in its review of the subdivision. I say this because the planning board cannot adjudicate on matters arising from privately imposed covenants. Were these restrictions conditions imposed by the planning board, my advice would change. But based upon the documents you sent, it appears that the covenants and restrictions are privately imposed.

In response to your questions below, I quote from the MMA Planning Board Manual, which provides in relevant part,

"Relevance of Deed Restrictions, Title Disputes, Constitutional Issues, Other Code Violations, and Related Lawsuits. The board cannot deny an application because the proposed use would violate a private deed restriction if the use otherwise would be in compliance with the applicable ordinance/statute. Whiting v. Seavey, 188 A.2d 276 (Me. 1963); Our Way Enterprises, Inc. v. Town of Wells, 535 A.2d 442 (Me. 1988). Cf., Southridge Corp. v. Board of Environmental Protection, 655 A.2d 345 (Me. 1995)."

In answer to your questions, then, no, the planning board may not deny the application based upon the private covenants. The planning board must issue or deny the conditional use permit based solely upon applicable ordinance criteria. The board's authority as a quasi-judicial body is limited to the application of town ordinances and regulations. Any conditions imposed must be based upon the town's ordinances. For the same reasons, the board may not deny a permit because the town is a property owner. If, as property owner, the town (presumably through the board of selectmen) wishes to challenge the issuance of a permit, the town may assert its rights in the same way any individual would. This also means that the town, as property owner, may challenge any permit issued just as a private resident may.

I trust this is responsive. Please contact me if you have additional questions.

Kind regards,

MLS

Michael L. Stultz, Staff Attorney  
Legal Services Department

Maine Municipal Association  
60 Community Drive, Augusta, ME 04330  
1-800-452-8786 (in-state)  
207-623-8428  
FAX 207-624-0187  
[legal@memun.org](mailto:legal@memun.org)