



Steve Hart <wsh9171@gmail.com>

RE: Long Island - Planning Board

1 message

Legal Services Department <legal@memun.org>
To: Steve Hart <wsh9171@gmail.com>

Thu, Mar 11, 2021 at 3:16 PM

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

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From: Legal Services Department
Sent: Wednesday, March 10, 2021 1:48 PM
To: Steve Hart <wsh9171@gmail.com>
Subject: Long Island - Planning Board

MMA Legal Services has received your inquiry. It has been assigned to one of our attorneys, who will respond as soon as possible. Our response time may vary depending on the volume of inquiries, the nature and complexity of your inquiry, and current staffing. We appreciate your understanding and cooperation.

If you have a specific deadline, please let us know.

Thank you.

Regards,

Jackie Kresser, Administrative Assistant
Legal Services Department

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From: Steve Hart [mailto:wsh9171@gmail.com]
Sent: Wednesday, March 10, 2021 1:30 PM
To: Legal Services Department <legal@memun.org>
Subject: Long Island - Planning Board

My name is Steve Hart and I am the Chair of the Long Island Planning Board. I need some guidance on handling a potential upcoming issue for the Board.

A landowner has applied to the Maine Department of Environmental Protection (MDEP) and the U.S. Army Corps of Engineers (ACE) for permits to build a dock. Both agencies are in the process of reviewing the applications - both have indicated in a conference call last week they are likely to approve the applications, possibly with conditions or stipulations.

The next step for the property owner would be to apply for the necessary permits from the town. The property is located in a zoning district which allows for a dock as a conditional use. The first attachment (Article-3_IR-1.pdf). The second attachment (Article-14_Planning-Board.pdf) lays out the procedural steps the Planning Board must take in considering whether to grant the conditional use permit. If the Planning Board approves a conditional use permit, the property owner would then have to be given a construction permit by the town's Code Enforcement Officer (CEO).

To this point, this seems like a routine matter. that may not be the case.

The property is in a subdivision which has restrictions on development on individual properties per the third attachment (Northland_II_Covenant.pdf). Several neighboring property owners in the subdivision have raised concerns with the proposed dock saying, in part, that construction would not be in compliance with the subdivision covenants. As a twist, the Town owns several properties in the subdivision.

Questions

- 1) Can the Planning Board deny the conditional use permit based on a determination that the dock would violate the Northland II covenants?
- 2) Can the Planning Board impose conditions on the construction or use of the dock based on the Northland II covenants?
- 3) Can the Planning Board deny the conditional use permit based on the Town's assertions that as a Northland II property owner it is opposed to the construction of the dock?
- 4) Can the Town overturn a decision by the Planning Board to grant the conditional use permit based on its status as a Northland II property owner?

Thank you for your consideration of this matter.

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Steve Hart, Chair

Planning Board, Town of Long Island

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