



DESAUTEL LAW

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VIA USPS MAIL

Chairman Paul A. Croce
And Members of the Town of Middletown Planning Board
350 East Main Rd
Middletown, RI 02893

**RE: Application of Horan Building Company; 208 Howland Avenue,
TAP 129, Lot 53**

Dear Chairman Croce and Members of the Planning Board:

This correspondence serves as further response to recent statements made by Attorney Leys in the above matter. As previously discussed in our prior letter and by Attorney Leys, the Zoning Board in its Decision discussed the considerations required of both the conventional and conservation subdivisions when it came to the evaluation of the number of lots permissible. Recently, Attorney Leys asserted correctly that the Zoning Board indicated that the submitted conventional plan must be supplemented to depict the lots with the relevant constraints. Attorney Leys correctly cited that “[t]hese constraints could be such things as (i) the need for septic and wells properly spaced apart from each other and from wetland features (ii) how dramatic changes in grade will be handled; (iii) that setbacks, frontage and other dimensional requirements are met; etc.”

Further however, Attorney Leys suggested that “[a]s the determination of developability and the existence and effect of land development constraints will involve technical engineering considerations, the newly-submitted plans should be referred to the Technical Review Committee (TRC) for review with the aid of the Town’s consulting engineers, Crossman Engineering, before the Planning Board considers the application again.” This again overstates the degree of specificity and review at the Master Plan stage. As previously cited, the statute guides explicitly that “[a] master plan is defined as “[a]n overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, **rather than giving full engineering details.**” R.I.G.L. §45-23-32(23) (emphasis added).


A preliminary plan is "[t]he required stage of land development and subdivision review which requires detailed engineered drawings and all required state and federal permits." R.I.G.L. §45-23-32(35). A final plan consists of "[t]he final stage of land development and subdivision review." R.I.G.L. §45-23-32(13). See also Green Development, LLC v. Town of Exeter Zoning Board of Review, C. A. WC-2018-0519 (April 20, 2020, fn. 6) (only "conceptual" plans are required, and more detailed plans come later.)

While the Zoning Board in its appellate review emphasized this Board's discretion when it comes to the consideration of these matters, there is no reason why the Planning Board can't undergo these steps, but only with the understanding of the statutory guidance that full engineering details are NOT necessary at this juncture. Attorney Leys' request exceeds the scope *necessary* in a Master Plan review.

Finally, Attorney Leys assumes a re-hearing in this matter. As previously discussed, additional hearing is not necessary "if the current board members can glean the findings of facts and conclusions of law from the transcript of testimony and any other evidence presented to the Planning Board." Veronneau v. Cumberland Planning Bd. of Appeals, C.A. 02-1150 (R.I. Super. Dec. 22, 2004). The Planning Board may hold such additional hearing in their discretion if needed to "issue findings of facts in support of its conclusions of law." Id.

I hope this clarifies any questions in regards to the submissions to this Board.

Sincerely,



Marisa Desautel, Esq.