

CONFIDENTIAL LEGAL MEMORANDUM

To: Town of Hopkinton Planning Board

From: Office of Hopkinton Town Solicitor (Kevin McAllister, Esq. and Sean Clough, Esq.)

Date: March 30, 2020

Re: Legal Ruling on Acceptable Uses in a Commercial Special District

Planning Board Members: On the evening of Wednesday February 5, 2020, the Planning Board (the Board) held its regularly scheduled meeting. During the meeting the Board held a pre-application hearing on a major land development project entitled Stone Ridge at Hopkinton. During that discussion a question arose regarding the applicable uses in a commercial special district. The following memorandum provides an overview of the history of this zone, the pertinent law, and legal analysis supporting this ruling. The determination of the Hopkinton Town Solicitor is that a commercial special district allows for all current commercial uses, including use 486 allowing PSES installations.

I

HISTORY OF COMMERCIAL SPECIAL ZONE AND PALMER CIRCLE

Prior to the July 2, 1990 Zoning Amendment, Article II, § 3 of the Hopkinton Zoning Code provided for a Commercial zone. *See Exhibit A* (Zoning Code § 3). Subsection A of that code, provided for a number of permitted uses, numerated 1 – 15. Some uses are very specific while others are very broad, particularly item 15 which allows “other uses as the zoning board of review may determine to be similar, not more objectionable and not specifically listed in items 1 to 12 above.”

On July 2, 1990 the Hopkinton Town Council (Town Council) entertained a Zoning Amendment to facilitate the proposed Brae Bern project of Palmer Circle. That amendment sought to create a Commercial Special District, adopt by reference the Commercial permitted uses, and create additional permitted uses. Permitted Use 16 allows for a “[m]ixed-use planned development combining any of the permitted uses listed in items 1 through 15 above and . . .” other commercial, recreational, and water distribution/treatment facilities. *See Exhibit B* (Zoning Amendment). It further states that “dimensional regulations otherwise set forth in this chapter shall not be applicable to the construction of” the planned development”. *Id.* The Amendment also requires that “[a]t least forty (40%) of the total area of the planned development, exclusive of wetlands, ponds, marshes, protected natural areas, but inclusive of golf courses and similar open outdoor recreation areas shall be set aside as open space.” *Id.*

During the hearing on the Zoning Amendment, the Town Council discussed and debated several aspects of the project. One item of debate was the Planning Board’s recommendation that the applicants be subject to a not yet adopted Planned Unit Development Ordinance if the application was granted. *See Exhibit C* at ¶ 6 (July 2, 1990 Town Council Hr’g Transcript). A motion was made to include this requirement, but then was subsequently removed along with other language in the ordinance expressly referring to Planned Unit Development. *Id.* at ¶ 11. The final

motion permitted a maximum number of structures and uses in connection with the project. *Id.* at ¶ 11(b) (one hotel and on conference center having a combined total of 200 rooms; one country club; 165 units of residential housing; one 18 hole golf course). Additionally, it adopted by reference the Zoning Amendment establishing Commercial Special for the tract. *Id.* at ¶ 11(d). The amended motion and ordinance by reference was adopted by a majority of the Town Council.

Subsequently, in 2011, the Hopkinton Building and Zoning Official requested an opinion from the Assistant Town Solicitor regarding what uses would be permitted on property classified as a Commercial Special District. The Assistant Town Solicitor rendered a decision allowing that a property classified as Commercial Special District could be used by right or by special use permit in any manner permitted by the current [2011] District Use Table for tracts in a Commercial District unless limited by the Town Council. *See Exhibit D* at 2 (2011 Assistant Solicitor's Opinion). In his opinion he goes on to say that the Town Council did create certain use limitations, conditions and/or restrictions for Plat 11, Lot 47D, if the intended use was for a "Mixed-use planned development as the term is used in the amendment." *Id.* This opinion was then relied on by the Building & Zoning Department when providing an opinion to Roy Dubs who was seeking to develop properties located on Palmer Circle.

Currently, in connection with a pre-application hearing, the Planning Board has requested the Solicitor's opinion regarding the use by right in any manner permitted by the current District Use Table as it relates to this property.

II ANALYSIS

To determine what uses are permitted in a Commercial Special District the Planning Board must first look to the Zoning Ordinance to understand how special districts are governed. The Zoning Ordinance, Section 4, *Division into districts*, provides the following language:

The . . . Commercial Special . . . zoning districts are composed of parcels of property which heretofore were the subject of a zoning map boundary change or amendment to the text of the prior zoning ordinance and in connection with which the town council imposed use limitations, conditions, and/or restrictions. The terms of such limitations, conditions, and/or restrictions shall continue to be applicable to each said property and shall be deemed readopted and incorporated herein. Except as the limitations, conditions, and/or restrictions as individually applicable to the property within each said zoning district are controlling the use and dimensional regulations of [the zoning code] from the . . . Commercial district [shall apply] to the Commercial Special district.

Hopkinton Zoning Code, App. A § 4 (editing and abbreviations made for clarification purposes).

When analyzing the meaning or intent of an ordinance the Court will look to the language of the ordinance and when such language “is clear and unambiguous, the Court must interpret the [ordinance] literally and must give the words of the [ordinance] their plain and ordinary meaning.” *Mancini v. City of Providence*, 155 A.3d 159, 162 – 63 (R.I. 2017). However, the plain meaning approach does not require “myopic literalism, and it is entirely proper for [the Planning Board] to look to the sense and meaning fairly deducible from the context.” *Id.* Accordingly, a plain reading of Section 4 of the Zoning Ordinance allows for all commercial district uses to apply in a commercial special district, subject to any express limitations, conditions, and/or restrictions as applied to any individual property. Therefore, the Planning Board must next look to the applicable ordinance to discern if there are express limitations, conditions, and/or restrictions as applied to the property at hand.

Turning to the Zoning Ordinance Amendment, there is an adoption by reference of all permitted uses in a commercial zone. Further, there is the creation of a 16th use, that will be referred to as “mixed-use planned development.” The mixed-use planned development states in part, “mixed-use planned development combining any of the permitted uses listed in items 1 through 15 above and hotels or motels, conference centers, golf courses, swimming areas, country clubs and central facilities for water distribution and waste treatment.” Ex. B. At first, a literal reading of this portion of the ordinance may lead a reader to assume that only permitted uses are those as detailed within the ordinance and some mix of commercial uses 1 through 15, as defined as the commercial use table in existence in the year 1990. However, the overall context of the amendment and applicable zoning code provides a more natural and fair reading of the ordinance.

Incorporation into the ordinance of the entirety of the commercial use table indicates an intent to allow any commercial use on the property, as defined by the commercial use table. Certainly, the Council could have used more obvious language such as “any commercial use as defined in the commercial use table,” nevertheless it does not follow that absent that particular language the Council intended to restrict commercial use to the commercial use table of the 1990s. If the ordinance had specified uses, such as commercial use 1, 5, or 7, as opposed to the entirety of the commercial use table, the ordinance could perhaps be interpreted to restrict commercial use to those explicit uses. However, the ordinance does not do this. Similarly, the Council could have specifically allowed for “any of the current permitted uses listed in items 1 through 15” or “any of the permitted uses listed in items 1 through 15 of the 1990 zoning code.” Again, this was not the language chosen by the Council.

As a matter of interpretation, it is assumed that the Council at the time, as do all councils, understood that use tables and dimensional regulations are periodically amended. Therefore, the Planning Board can infer from the lack of express language cementing in place the 1990 zoning code within the zoning amendment that there was no intent to do so. If the Council had such an intent it would have acted much like it did in the second paragraph of the ordinance which explicitly states that the “dimensional regulations otherwise set forth in this chapter shall not be applicable to the construction of said planned development” Nowhere within the ordinance are commercial uses set forth in the zoning code explicitly written to not apply. Instead, the

Council incorporated the entire commercial use table suggesting that they wished to incorporate all commercial uses plus other specific uses as delineated within the Amendment.

While it is true that the Town Council adopted a maximum number of structures and uses in connection with the Brae Bern project, it does not follow that those limitations exist for any new application seeking to utilize that particular tracts under the commercial special district. If it were the case that the limitations of paragraph 11(b) were controlling on this particular tract for all future applications, it would directly conflict with the adopted ordinance language. 11(b) states, that

The maximum number of structures and the uses in this zone permitted in connection with this project shall be as proposed:

- i. One hotel and one conference center having a combined total of 200 rooms;
- ii. One country club;
- iii. 165 unites of residential housing;
- iv. One 18 hole golf course.

Ex. C at ¶ 11(b) (emphasis added). Conversely, the Zoning Amendment as adopted in paragraph 11(d) states that Commercial Zone 16 permitted uses are:

Mixed-use planned development combining any of the permitted uses listed in items 1 through 15 above and hotels or motels, conference centers, golf course, swimming areas, country clubs and central facilities for water distribution and waste treatment.

Ex. B at ¶ 11(d).

If paragraph 11(b) were to be controlling for any project on this tract then the language of paragraph 11(d) of the zoning ordinance would be superfluous. Courts will presume that the Town Council “intended each word or provision” of its ordinance “to express a significant meaning, and the Court will give effect to every word, clause or sentence, whenever possible.” *Rhode Island American Federation of Teachers/Retired Local 8037 v. Johnston School Committee*, 212 A.3d 516, 159 (R.I. 2019). Therefore, under this common method of interpretation any conflict in the ordinance provisions should be read to reduce superfluous language and give effect to both 11(b) and 11(d). Accordingly, it is natural to read 11(b) as restrictions “in connection with” the particular Brae Bern project and 11(d) as allowing additional uses under the commercial zone use 16 for future applicants.

Moreover, to the extent there is any doubt or ambiguity as to the intent of zoning ordinance provisions, it is to be resolved in favor of the landowner. *Earl v. Zoning Board of Review of City of Warwick*, 191 A.2d 161, 96 R.I. 321 (R.I. 1963); *City of Providence v. O’Neill*, 445 A.2d 290 (R.I. 1982). As such, a Court, out of respect for property rights, will likely resolve this question

of ambiguity, to the extent one exists, in favor of the landowner so that land uses for the property are not restricted to the four uses in 11(b).

Further, in this particular case, a Court will likely resolve any ambiguities regarding uses in favor of the landowner under the doctrine of equitable estoppel. The doctrine of equitable estoppel prevents a municipality or board from reversing an action or determination to the detriment of others who have relied upon that original action or determination. *Ferrelli v. Department of Employment Security*, 106 R.I. 588, 592 (R.I. 1970) (the R.I. Supreme Court recognizing that the doctrine of estoppel may in a proper case be invoked against a public body to prevent injustice or a loss would result). In essence, a municipality or board cannot make a decision, have others trust and rely upon that decision, including the investment of money and resources based on that decision, and then subsequently change that decision causing those who relied upon that decision harm.

Here, there have been previous determinations as to the appropriate uses within a commercial special zone. That previous determination in 2011, made by the Hopkinton Town Solicitor at the time, emphatically determined that other commercial uses were available in this commercial special zone. The town zoning officer and landowner at the time relied upon that opinion. That opinion has not been contested or altered since its initial determination. In fact, no changes have occurred to the material provisions in question. Further, in 2019 another zoning officer made a determination, which was provided to the current applicant, confirming that the intended use of the property is in accordance with provisions of the Hopkinton Zoning Ordinance including use category 486 PSES. As such, the applicant's reliance interest on this reaffirmation of the 2011 determination is understandable and likely easy to document. Moreover, the landowner has already invested large sums of money with reliance upon this determination. Accordingly, a reversal of this 2011 determination would likely be estopped (or barred) by the Courts and the previous determination allowing other commercial uses within the commercial special zone likely will be found controlling.

III

CONCLUSION

If the Planning Board were to determine that commercial uses, such as category 486 PSES, were not a use by right it would trigger a court challenge that would result in an overruling of the Board. As explained above, this is because the Courts attempt to give every ordinance a fair and natural reading that gives the meaning of the words of the ordinance their plain and ordinary meaning while giving affect to each word and provision without reading provisions in a way that renders them superfluous. Further, the Courts tend to defer to landowners in cases of ambiguity.

Here, language adopted by the Town Council in § 11(b) should be read to apply to the Brae Bern project specifically. Section 11(d), incorporating the zoning ordinance amendment, is naturally read to include all current commercial uses. To read the incorporation of commercial

uses as limited to 1990 commercial uses is to read words into the ordinance that simply do not exist. Whereas, to read the incorporation of the entire commercial use table into the ordinance as incorporating the entire commercial use table with future changes is a more natural interpretation, particularly when it is considered that the Town Council understands that commercial use tables are amended from time to time and the Town Council chose not to expressly cement the 1990 commercial use table into the amendment.

Accordingly, given the language of the ordinance before the Board and the fact that courts tend to defer to landowners in cases of ambiguity, the Planning Board should read the Commercial Special district as allowing all current commercial uses, including use 486 PSES.

EXHIBIT 'A

Section 3. Compliance with this ordinance.

No building, structures or land located within the Town of Hopkinton shall be used and no building, structure or part thereof shall be erected, constructed, reconstructed, moved or structurally altered unless in conformity with the provisions of this ordinance.

(Ch. 134, § 3, 12-19-94)

Section 4. Division into districts.

For the purposes of this ordinance the Town of Hopkinton is hereby divided into those zoning districts the location and boundaries of which are as shown and depicted on that certain map entitled: "Town of Hopkinton Zoning Map" prepared by Cherenzia & Assoc., Ltd., October 1994, Scale 1"=1200' and that set of maps entitled: "Town of Hopkinton Zoning District Maps," prepared by Cherenzia & Assoc., Ltd., October 1994, sheets 1—31, which maps are on file in the records of the town clerk of the Town of Hopkinton and which are adopted and made a part of this ordinance. The boundary lines of said districts are intended and are to be interpreted to follow the boundary lines of existing lots of record and the centerline of roadways, except as is clearly depicted to the contrary.

The Residential Special, Neighborhood Business Special, Commercial Special and Manufacturing Special zoning districts are composed of parcels of property which heretofore were the subject of a zoning map boundary change or amendment to the text of the prior zoning ordinance and in connection with which the town council imposed use limitations, conditions, and/or restrictions. The terms of such limitations, conditions, and/or restrictions shall continue to be applicable to each said property and shall be deemed readopted and incorporated herein. Except as the limitations, conditions, and/or restrictions as individually applicable to the property within each said zoning district are controlling the use and dimensional regulations of this ordinance from the Rural Farming Residential - 80 district shall apply to the Residential Special district, the Neighborhood Business district shall apply to the

Neighborhood Business Special district, the Commercial district to the Commercial Special district, and the Manufacturing district to the Manufacturing Special district.
(ch. 134, § 4, 12-19-94)

Section 5. District use regulations.

The following District Use Table establishes in each district those uses permitted and those uses permitted by special-use permit. All uses not so permitted in a district are prohibited therein. Any accessory use customarily incident to a use permitted in a district and located on the same lot shall be permitted; any accessory use customarily incident to a use permitted in a district by special use permit and located on the same lot shall be permitted upon the grant of the special-use permit unless limited by a special condition attached to the grant of the special-use permit. It shall be the responsibility of the zoning enforcement officer to determine which use classification a proposed use is governed by.
(Ch. 134, § 4, 12-19-94)

EXHIBIT "B"

Use Zone

TOWN OF HOPKINTON
RHODE ISLAND

CHAPTER 110

AN ORDINANCE IN AMENDMENT OF CHAPTER 28 OF THE ORDINANCE OF THE TOWN OF HOPKINTON ENTITLED "ZONING AMENDMENT", AS AMENDED;

The Town of Hopkinton hereby ordains the following:

Section 1: Chapter 28 of the Ordinance of the Town of Hopkinton Entitled "Zoning Ordinance", as amended, is further amended as follows:

ARTICLE II - District Use Regulations

Section 3. Commercial Zone

A. Permitted Uses:

16. Mixed-use planned development combining any of the permitted uses listed in items 1 through 15 above and hotels or motels, conference centers, golf courses, swimming areas, country clubs and central facilities for water distribution and waste treatment.

The dimensional regulations otherwise set forth in this chapter shall not be applicable to the construction of said planned development provided that within the tract described below there shall be no more than one hundred and sixty five (165) residential units, in any combination of single family housing units, two family (duplex) housing units, and four family (quadruplex) housing units, and that such housing units may be served by a central water distribution system and/or a conventional or packaged waste treatment facilities, where appropriate.

At least forty (40%) of the total area of the planned development, exclusive of wetlands, ponds, marshes, protected natural areas, but inclusive of golf courses and similar open outdoor recreation areas shall be set aside as open space. Such open space shall remain in private ownership, either through an association of private owners of housing or retained in single ownership, and shall be restricted from any future building or use except where it is consistent with the provision of landscaped open space for aesthetic and recreational satisfaction of the surrounding residences.

The hotel and conference center shall be sized to accommodate no more than two hundred (200) rooms or suites and no more than fifteen thousand (15,000) square feet of meeting space and support facilities consisting of commercial, retail, recreational and dining components and may be served by an approved central water supply and/or central sewage disposal system.

Building permits shall be issued for any of the herein mentioned uses only after the Hopkinton Planning Board conducts a site plan review of the preliminary and final development plan and approves same in accordance criteria of the Hopkinton Cluster Ordinance, Article II, 5.1N and O.

Regulations of the State of Rhode Island Department of Environmental Management regarding septic systems sewer treatment facilities and wetlands protection, and the State of Rhode Island Department of Health regarding water supply shall apply to said tract (s)

or parcel (s) which are bounded and described as follows:

Those certain tracts or parcels of land with all buildings and improvements thereon, located on the westerly side of Palmer Circle, so-called, in the Town of Hopkinton, County of Washington and State of Rhode Island, described as follows:

First Tract: That certain tract or parcel of land described in Deed from Mary E. Palmer, et als to Brae Bern, L.P. recorded in Book 181 at Page 120.

Second Tract: Those certain tracts or parcels of land described in two Deeds to James Romanella & Sons, Inc., recorded in Book 86 at Page 11 and Book 86, Page 14.

Third Tract: That certain tract or parcel of land bounded and described as follows:
A certain parcel of land located on Palmer Circle Road in the Town of Hopkinton, Washington County and State of Rhode Island is bounded as described as follows:

Beginning at a monument on the westerly streetline of Palmer Circle Road, said monument being the point and place of beginning for herein described parcel; thence running N 79-31'-57" W along land now or formerly of Wilcox, a distance of 465.69' to a drillhole; thence running N 61-36'53" W a distance of 83.80' to a point; thence running N 61-11'-15" W a distance of 190.57' to a drillhole; thence running N 09-37'-27" E a distance of 83.23' to a point; thence running N 09-56'-08" E a distance of 157.32' to a point; thence running N 04-08'-30" E a distance of 19.67' to a point; thence running N 09-47'-57" E a distance of 55.36' to a point; thence running N 06-22'-37" E a distance of 68.44' to a point; thence running N 06-05'-15" E a distance of 32.04' to a point; thence running N 65-09'-15" W a distance of 11.66' to a point; the last nine mentioned courses being along land now or formerly of Reynolds; Thence running N 71-55'-31" E along land now or formerly of State of Rhode Island, a distance of 105.72' to a R.I. Highway bound; thence running S 08-17'-22" E a distance of 99.96' to a R.I. Highway bound; thence running S 52-36'-03" E a distance of 59.93' to a R.I. Highway bound; thence running N 72-58'-26" E a distance of 85.98' to a R.I. Highway bound; thence running S 52-39'-53" E a distance of 202.64' to a R.I. Highway bound; thence running S 47-14'-03" E a distance of 207.92' to a R.I. Highway bound; thence running N 58-58'-56" E a distance of 6.43' to a point; thence running S 23-40'-17" E a distance of 47.27' to a point; thence running S 16-20'36" E a distance of 80.42' to a point; thence running S 12-57'-36 E a distance of 43.09' to a point; thence running S 11-54'-16" a distance of 80.72' to a point; thence running S 15-16'-15" E a distance of 54.65' to a monument, said monument being the point and place of beginning for herein described parcel, the last eleven mentioned courses being along the westerly streetline of Canonchet Road and Palmer Circle respectfully.

ADOPTED: July 2, 1990

ATTEST: *Jenarita F. Aldrich*
Jenarita F. Aldrich
Town Clerk

EXHIBIT “C”

Town Council Meeting - July 2, 1990 - continued

for five year terms; the authorization for the Town Clerk to advertise for bank run gravel, overlaying sections of town roads, washed sand for oiling of town roads, winter sand for salt delivered to the Highway Department, five 30 yard dumpsters, removal of paper & tires containers for recycling, monitoring of wells, and survey of landfill; authorization for the Town Clerk to advertise for a clerk for the Planning Board; set July 16, 1990 as a date to meet with John Loiselle of Fleet National Bank as requested by the Town Treasurer. UNANIMOUS

SO VOTED

The Council opened bids for the Hope Valley and Ashaway Tennis Courts as follows:

Cit Cape & Island Tennis

Copeland

Joyce Construction Co.

Jerry Coffee Com.

A motion was made by Councilor McGiveney and seconded by Councilor Henson to refer the bids to the Recreation Commission for a recommendation. UNANIMOUS

SO VOTED

↙
A motion was made by Councilor Henson and seconded by Councilor Corrigan, In accordance with our authority under 45-24-5 of the General Laws, I move that we approve the application of Brae Bern Limited Partnership and Mary Palmer and James Romanella Son, Inc. for a change of zoning district for lots 47, 47A, 47D, 38, and 39 on Assessor's Plat 11 from Light Industrial and RFR, to a mixed-use zone as requested for the following reasons and with the following restrictions and/or conditions:

1. The developer, Hal Henry, testified that he proposed

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to construct on this almost 300 acres of land just off Routes 95 and 3, a "destination resort" comprised of a golf course, a hotel and conference center with a combined maximum of 200 rooms, a country club, and 165 units of cluster residential housing. Mr. Henry provided the demographic and economic statistics that indicate the need for these services and their excellent likelihood of success in this location.

2. The proposed uses will be in accordance with the Town's comprehensive plan in that they are appropriate to the area, will not have any detrimental impact on the surrounding properties as testified to by Petitioner's expert Stephen McAndrew, and will be constructed in such a way as to preserve the rural flavor of the area. Mr. McAndrew further testified that the proposed use is more in harmony with the surrounding area than a light industrial use, and that the proposed uses would merely be expanding on current uses, not introducing entirely new uses.
3. The proposed uses will be a less intensive drain on the land, and will pose far less of an environmental risk than the currently permitted light industrial use to areas of critical concern to the town: the nearby ground water aquifer, glacial outwash and wetlands. The project's Manager, John Hart testified that approximately 90% of the site is outside any protected areas or zones of concern and that the proposed site plan was created in such a way that development

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has been directed away from these areas of concern.

4. Raymond Schwab, a civil engineer with over 30 years experience, testified with respect to the care taken to develop appropriate ISDS systems for the project, which systems have been designed in cooperation with DEM personnel who have approved the concepts. He further testified to the attention given to surface water run-off issues and intended water recirculation.
5. C. Richard Sgogle, a turf grass agronomist for 30 years, testified that the types of pesticides, fungicides, insecticides, and herbicides necessary for maintenance of the golf course would pose no danger to either the ground water supply or other environmental concerns. John J. Kupa, the Director of graduate curriculum in Community Planning and the Environment at URI, similarly testified that the use of the land in this planned and considerate way would pose no hazards to the environment, and was sufficiently removed from the aquifer to pose no threat at all.
6. The Planning Board, while not specifically approving the project at this stage, did state that the Board approved of the concept and its application to this site, but wished the Council to adopt and subject the applicants to a Planned Unit Development Ordinance if the application is granted so that the Planning Board will have the tools necessary to appropriately evaluate and manage this project. The Board stated that if the Council

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so acted, it would have no objections to the applicants' requested zone change.

7. The Conservation Commission expressed concern with the use by the applicants of the golf course to meet their open space requirements and suggested that there may be more wetlands on the site than is shown on the applicants' diagrams. Sarah Porter stated that the Commission was not opposed but had strong reservations. The Planning Board assured the Council that an ERT would be a necessary requirement of their consideration of the specifics of this project.
8. The applicant further presented an unnotarized petition containing approximately 250 names in support of the project.
9. It is clearly in the best interest of the Town to attract beneficial and clean businesses to appropriate locations in Town. This project when completed will boost tourism in the entire South County area, will provide approximately \$720,000.00 in various types of tax revenue and add approximately 53 million dollars, and 46%, to Hopkinton tax base. It will further create 283 new jobs.
10. The project as proposed bears a reasonable relationship to the public health, welfare, and safety by promoting growth in an area ideally suited to this project without offering any associated problems for either the surrounding community or the balance of Hopkinton.

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11. This application is granted subject to the following restrictions:

a. The applicants recognize that the Town is in the process of adopting a Planned Unit Development and a Site Plan Ordinance. If a Planned Unity Development and a Site Review Ordinance is adopted by the Town at any time during the course of this project, the applicants will be subject to all of the design and placement criteria and procedural requirements thereto contained therein.

Notwithstanding the above, the applicants shall not be required to appear before this Council again for the zone change or design aspects of this application.

b. The maximum number of structures and the uses in this zone permitted in connection with this project shall be as proposed:

- i. one hotel and one conference center having a combined total of 200 rooms;
- ii one country club;
- iii 165 units of residential housing;
- iv one 18 hole golf course.

c. The Planning Board, pursuant to ordinance, shall be responsible for all final decisions regarding the proposed placement, design, and implementation of the various aspects of this project in accordance with the requirements established in subsection b above. No building permits are to be issued until final detailed site plans, building layouts, traffic control plan,

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water run-off control plans, building plans, and other documentation shall be presented to the Planning Board for their consideration and approval.

- d. The text of the amendment to the zoning ordinance shall be in the form attached hereto and incorporated as Exhibit A.

Hal Henry and Attorney Naccarato expressed concern about being made subject to a PUD Ordinance, yet to be reviewed and adopted. They stated they felt comfortable with being subject to the Cluster Subdivision Ordinance and felt their compliance with that ordinance would afford the town protection and the Planning Board tools with which to work.

A motion was made by Councilor Henson and seconded by Councilor McGiveney to amend the motion and delete item 11.a. and add to item c. An ERT shall be required. The text of the Ordinance to be changed to delete the underlined portion 16, paragraph 5, to delete from the words, "or if a Planned Unit Development etc".

Councilor Corrigan stated he was being forced to vote against something he was very much in favor of since the project would not be required to comply with the proposed PUD and Site Review Ordinances. He said he had serious concerns about the Boards and Commissions not having the elements in place to control a project of this magnitude.

IN FAVOR OF THE AMENDMENT: Johanson, Henson, McGiveney

OPPOSED: Corrigan

AMENDMENT SO VOTED

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IN FAVOR OF THE MOTION AS AMENDED: Johanson, Henson,
McGivney

OPPOSED: Corrigan

AMENDED MOTION SO VOTED

The record is to note that Councilor Devin was not present
for the Brae Bern decision.

The Council opened a hearing on Sub-division Ordinance
102 recommended by the Planning Board and the subject
of a previous workshop.

A motion was made by Councilor McGivney and seconded
by Councilor Henson to adopt Chapter 102 as presented.

UNANIMOUS

SO VOTED

A motion was made by Councilor Henson and seconded by
Councilor Corrigan to grant the request of the Chief
of Police for use of 9 MM Semi-Automatic weapons by
the Police Department subject to them being purchased
by the individual members of the Police Department.

Councilor Henson explained that the request had the
approval of the Police Commission, that it is done in
other departments, the chief has all intentions of being
sure the officers qualify with the weapons and the town
would not be liable.

Councilor McGivney stated that he did not feel weapons
of this nature were required in a town the size of
Hopkinton.

Joseph Fish of Evans Lane, a town resident questioned
why they would buy 9 MM weapons when 10 MM is better
and safer. He stated that new automatic weapons are

EXHIBIT “D”

**CONFIDENTIAL AND LEGALLY PRIVILEGED
ATTORNEY/CLIENT COMMUNICATION**

To: Brad Ward, Building and Zoning Official
From: Todd J. Romano, Assistant Town Solicitor
Re: Commercial Special Zone -
Permitted Uses Generally and at Plat 11, Lot 47D
Date: January 18, 2011

You recently requested an opinion as to what uses were permitted in a Commercial Special district and what uses were permitted at Plat 11, Lot 47D, a Commercial Special parcel.

As to uses permitted in a Commercial Special district, Section 4, Division into Districts, governs. The Commercial Special district is composed of parcels of property which were previously the subject of a zoning map boundary change or amendment to the text of the prior zoning ordinance and for which the Town Council imposed use limitations, conditions or restrictions. The terms of the Town Council imposed use limitations, conditions or restrictions shall continue to apply to parcels in the Commercial Special district. Otherwise, the use and dimensional regulations of the present Zoning Ordinance for the Commercial District shall apply to parcels in the Commercial Special district.

Plat 11, Lot 47D, has been represented to me to be in part the subject of the July 2, 1990 amendment to Article II – District Use Regulations, Section 3 Commercial Uses. Further, there have been no other amendments to the Zoning Ordinances that affect this lot.

Because this lot was the subject of an amendment to the Commercial Zone section of the prior Zoning Ordinance, and the Town Council imposed certain limitations, conditions and/or restrictions on the lot, the lot is properly classified as Commercial Special. This is also how the lot is listed on the current Zoning Map. Therefore, the lot can be used (by right or by special use permit) in any manner permitted by the current District Use Table for lots in a Commercial District unless limited by the Town Council when it amended the Zoning Ordinance in July 1990.

As to Plat 11, Lot 47D, the Town Council amendment created certain use limitations, conditions and/or restrictions if the intended use was for a "Mixed-use planned development" as that term is used in the amendment. In the event that the lots were used for this "Mixed-use planned development" then there were certain size limitations imposed by the Town Council. The clear inference from the amendment is that each of the lots identified would be combined to create this mixed use planned development that included hotels, conference centers, golf courses, swimming areas, country clubs and central facilities for water distribution and waste treatment. Nonetheless, the Town Council did not require, and I don't believe that it could, that the lots be used for the singular purpose of the "Mixed-use planned development."

Thus, any of the uses permitted by right or by special use permit in a Commercial District are applicable to Plat 11, Lot 47D. The only restrictions are those imposed by the Aquifer Protection Ordinance or if Plat 11, Lot 47D is to be used for a "Mixed-use planned development", as the term is used in the July 2, 1990 amendment to the prior Zoning Ordinance.

Please contact me if you have any questions concerning this issue.