



## MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823

Tel: 603 742-5131 • Fax: 603 742-2502

19 July 2019

MEMORANDUM FOR MADBURY SELECT BOARD

FROM: MADBURY PLANNING BOARD

SUBJECT: Requirement for a Conditional Use Permit (CUP) for Nute Road Bridge Replacement Project

Recently it came to the attention of the Planning Board that a CUP may be required for the Nute Road Bridge replacement project in accordance with Madbury Zoning Wet Area Conservation and Shoreland Protection Overlay Districts. The Planning Board reviewed this issue during its 17 July 2019 meeting and offers the following input.

Initially the board believed that, in accordance with RSA Section 674:54, a CUP would not be required for the bridge since it is a "governmental use". However, RSA 674:54, paragraph III states that this section does not apply to the construction or layout of public highways bringing in to doubt that initial understanding.

Given this the Town's contract planning consultant, Liz Durfee, researched the CUP question to include surveying other planners and contacting New Hampshire Municipal Association (NHMA) legal advice. The results were evenly split between required and not required. However, the NHMA attorney recommended applying case law (*McGrath v. City of Manchester*) which held that a Town does not have to follow its own zoning unless an ordinance has been passed requiring it to do so or if the Select Board requires it to do so. Under this interpretation a CUP would not be required for the bridge construction.

The board also discussed what would be reviewed during a CUP application for the bridge and what the added benefit would be for the Town. The board concluded that added benefits would be limited since the State permitting process already covers the primary concerns of protecting wet areas and shoreland.

The Planning Board stands ready to review and process a CUP application if it's deemed appropriate. However, the board does not believe that it is essential given the NHMA legal advice. Please advise whether or not the Select Board would like the Planning Board to proceed with the CUP process.

Respectfully,

Mark Avery  
Chair, Madbury Planning Board