

**Summary of Legal Advice Regarding
Zoning Ordinances,
Article IX-A, Aquifer and Wellhead Protection District
(16 Dec 20)**

The following summarizes advice from the Town's Attorney on Section 6 of Zoning Article IX-A.

1. The Town Attorney agreed with the Planning Board's interpretation that the current Section 6 could lead to Regulatory Taking.

Note: Under regulatory taking, government regulations effectively deprive a property owner of reasonable use of their property to such an extent that it deprives them of value of that property without compensation.

This could happen when the current ordinance's set 400 ft. standard extends onto a neighbor's property making such property essentially unusable.

2. The Town Attorney suggested that the current ordinance could invite a lawsuit. He also suggested that the basis for the current ordinance's set 400 ft. standard is questionable if it had to be argued in court.
3. The Town Attorney concurred with the proposed change to ordinance:
 - a. He agreed that aligning the Town's ordinance with state standards, which the proposed change does, is appropriate.
 - b. He suggested adding language to Section 5 indicating that requirements of Section 6 must be complied with.

Respectfully Submitted by Mark Avery, Chair Madbury Planning Board