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## RE: Jurisdiction Question for Madbury Plan Board

1 message

Mark Avery <madplanboard@gmail.com>

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Wed,

Oct 6, 2021 at 11:53 AM To: "Christopher A. Wyskiel" <cwyskiel@wbtblaw.com>, "madplanboard@gmail.com" <madplanboard@gmail.com>

Hi Mark,

I've researched your questions below. After discussion with Chris, we feel that you could possibly "stretch" Madbury's definition of "Subdivision" to include condominiums by hanging your hat on the part of the definition that says "**or other divisions of land** for the purpose, whether immediate or future, of sale, rent, lease, or of building development." (emphasis added). A Condominium is arguably a division of land, which would then be sold, leased, etc. However, the statute you noted below (RSA 356-B:5) requires that the subdivision regulation "by its express terms" apply to condominiums in order to be able to regulate condominiums. Further research (in particular, reading the "green book" by Peter Loughlin (a local attorney who is widely considered a land use expert)) indicates that municipal regulations defining "subdivision" are pretty strictly construed, so it is unlikely the "stretch" argument would go far enough to bring this development within the definition of subdivision, especially in light of the statutory language requiring that the "express terms" of the subdivision regulation state that it applies to condominiums.

Therefore, we agree with your planning consultant that Madbury lacks the jurisdiction to regulate (using the subdivision regulations) this development. Of course, it must still comply with all applicable zoning ordinance provisions (and site plan review regs, but where the portion of the development within Madbury is open space and a portion of road, I'm not sure there's really a "site" to review).

Since you do not have jurisdiction to regulate under the subdivision regulations, you should write to the applicant and explain that the PB will not review the subdivision application as it does not have jurisdiction to do so. Chris and I recommend that you include in that letter a statement to the effect that while the Town cannot regulate it under the Subdivision regs, it is required to comply with all applicable zoning ordinances, and further that you would appreciate the developer keeping the Town informed as to what is approved by Durham and when it is approved, as Madbury will ultimately need to tax the portions of the condominium that are within Madbury. Presumably the Association will foot the bill for that.

I hope this is helpful; if you have other questions or concerns, please do not hesitate to let Chris or I know.

Best, Abby

**Abigail Sykas Karoutas, Esq.**

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