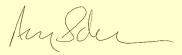


6-11-2020  
See margin order below.

  
Honorable Andrew R. Schulman  
June 11, 2020

Clerk's Notice of Decision  
Document Sent to Parties

on 06/11/2020

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Richard and Sanaz Anthony

v.

Town of Plaistow Planning Board

Case No. 218-2019-CV-00968

**MOTION FOR RECONSIDERATION AND CLARIFICATION AS TO JURISDICTION**

NOW COMES the Town of Plaistow Planning Board, by and through its attorneys, WADLEIGH, STARR & PETERS, PLLC and moves the Court to reconsider and/or clarify a portion of its Order dated May 19, 2020 (“Final Order”) as follows:

1. On July 19, 2019, Petitioner filed a Verified Petition for Certiorari Review of Planning Board Decision.
2. This Court granted Certiorari by Order dated July 22, 2019, the Planning Board subsequently produced the entire Certified Record of proceedings before the Planning Board, the Court held a hearing on the merits and conducted a sitewalk of the subject property in Plaistow, New Hampshire.
3. On May 19, 2020, the Court issued a Final Order which remanded the matter back to the Planning Board for further proceedings to explain its intent with respect to stipulations 3 and 7 of the Planning Board’s approval (the “Subject Conditions”) – conditions that required one last review of the applicant’s plans by the Town’s engineer. The Court interpreted the Subject Conditions to be “conditions precedent” because it believed that the Planning Board had intended to formally review the Town engineer’s work and “make a final decision” on the Site Plan Application following such review. (*See* Order, p. 5.) However, the Court realized that it might have misunderstood the Planning Board’s intent and that the Board might consider the

Town engineer's review as ministerial, not requiring any further review or action by the Planning Board. (*See* Order, p. 6.) Therefore, the Court concluded that the Planning Board, upon remand, should say whether it intended the Subject Conditions to be ministerial "conditions subsequent," if the Planning Board would not review or approve them.

4. However, while remanding to the Planning Board for clarification on this jurisdictional factual question, the Court also stated at the outset of its Order that it "lacks statutory jurisdiction over this appeal" because it deemed the Subject Conditions to be "conditions precedent," making the Planning Board decision not yet final and subject to review. To reconcile the Court's jurisdictional decision with its remand, the Planning Board interprets the Order to mean that the Court has reached only a preliminary and conditional jurisdictional conclusion, which will be either made final or revisited depending on what information the Planning Board provides the Court on remand.

5. The Planning Board believes that it issued a final decision without any conditions precedent necessitating Board involvement. The placement of the monitoring wells was to be determined by the Intervenor, in consultation with the Town Consultant Engineer, but without the need for further review by the Planning Board.

6. Based on the terms of the Final Order, the Planning Board has scheduled a meeting for June 17, 2020 to discuss and determine the intent and meaning of the Subject Conditions.

7. If the Planning Board clarifies that, based on custom, practice and/or intent, the Subject Conditions were ministerial only, required no further involvement or action of the Planning Board, and were essentially check the box conditions following which the Planning Board chair would unilaterally endorse the Site Plan, the subject Appeal would be properly

before this Court and in the interest of judicial economy and justice, this Court should retain jurisdiction of the case.

WHEREFORE, TOWN OF PLAISTOW PLANNING BOARD, respectfully requests this Court:

A. Reconsider the part of its Order on jurisdiction and rule that it retains jurisdiction over the case pending a further pleading from Respondent's counsel as to the Planning Board's decision on remand; and

B. Grant such other relief as may be just and equitable.

Respectfully submitted,

Town of Plaistow Planning Board

By Its Attorneys,  
WADLEIGH, STARR & PETERS, PLLC

May 29, 2020

By: /s/ Charles F. Cleary  
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#### CERTIFICATION OF SERVICE


I hereby certify that on this date a copy of the foregoing was sent to counsel for the Petitioners, Scott E. Hogan, Esquire and Intervenor, Derek D. Lick, via the Court's e-file system.

/s/ Charles F. Cleary, Esq.  
Charles F. Cleary, Esq.

6-11-2020

The Planning Board's approval was conditional. It required a new recommendation by the Town Engineer and the acceptance of that recommendation by the Planning Board as a body. To be fair, the court understands that the Planning Board thought of the remaining details as the equivalent of "punch list items" of a ministerial nature. Indeed, the court came close to saying precisely this and reaching the merits of the appeal. But the language used by the Planning Board cannot be read as anything other than a conditional approval requiring a further Board vote after the engineer's recommendation. The Planning Board chairperson can no doubt approve matters of form, but while perhaps perceived as picayune, the way the Planning Board's conditional approval was written, it reserved for itself the obligation of approving the initial location of the wells.

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Honorable Andrew R. Schulman  
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