

June 19, 2020

Via Email

Michael J. Tully  
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**Re:**

Dear Michael:

After receiving my June 8, 2020 letter, the Town of North Hampton Select Board (“Select Board”) sent me three follow-up questions regarding RSA 674:54.

On May 20, 2020, the North Hampton Public Library Board of Trustees (“Trustees”) submitted a Preliminary Consultation Application to the North Hampton Planning Board (“Planning Board”) for the construction of a new library on the Homestead property in North Hampton. It is my understanding that this submission was not submitted by the Trustees directly to the Select Board and did not include a proposed construction schedule. At its June 2, 2020 regular meeting, the Planning Board voted to recommend that the Select Board submit all construction plans to the Town engineer for review. On June 12, 2020, the Trustees submitted the proposed construction schedule to the Select Board. It is my understanding that in the days prior to June 12 the Trustees submitted construction plans (and perhaps other plans) to the Select Board, but that these prior submissions did not include a proposed construction schedule.

RSA 674:54 applies to governmental uses of property. As relevant here, it provides that a “town . . . shall give written notification to the governing body [*i.e.*, Select Board] and planning board . . . of any proposed governmental use of property . . . which constitutes a substantial change in use or a substantial new use.” I have looked into the issue, and it is my opinion that “town” includes the Trustees. Also, the building of a new library certainly “constitutes a substantial change in use or a substantial new use.” Thus, RSA 674:54 applies to the construction of the new library.

RSA 674:54 requires that the Trustees provide written notification to the Select Board and the Planning Board. Although it appears that the Trustees’ May 20 submission to the Planning Board may have found its way to the Select Board, the statute’s plain language requires that the Trustees “*give written notification to*” the Select Board. RSA 674:54, II (emphasis added). It is my opinion that this language requires

that the Trustees provide the written notification directly to the Select Board (as well as the Planning Board).

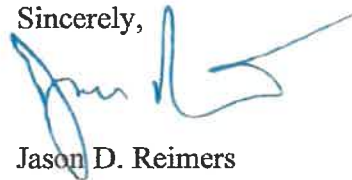
The statute is specific about what the written notification must contain: “Written notification shall contain plans, specifications, explanations of proposed changes available at the time, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule.” RSA 674:54, II. The statute further requires that “[s]uch notification shall be provided at least 60 days prior to the beginning of construction.” RSA 674:54, II. It is my opinion that the 60-day clock does not begin to run until all the required components of the written notification are given by the Trustees to the Select Board and the Planning Board. Thus, if the proposed construction schedule was the final component provided, and that it was provided on June 12, 2020, then I think the 60-day clock begins to run on June 12, 2020. Sixty days after June 20 is August 11, 2020.

In order to follow the requirements of RSA 674:54 and protect the Town of North Hampton against a procedural legal challenge, I suggest that construction not begin until August 11, 2020 or after. I cannot predict what the legal repercussions would be if construction started sooner, but starting before August 11 would provide an opportunity for someone to make an argument that the proper procedure was not followed. If this argument were made in the context of a lawsuit in Rockingham Superior Court, it would likely cause significant delay even if the Town ultimately prevails in the lawsuit.

To specifically answer the questions posed to me by the Select Board, based on the information known to me, (1) I do think the Town (*i.e.*, the Trustees) provided the notification required by RSA 674:54, II; (2) I think the operative date of notification was June 12, 2020, because that is the date that the final notification requirement, namely, the proposed construction schedule, was provided by the Trustees to the Select Board; and (3) I do not believe that the Trustees have to do anything further to notify the Select Board or the Planning Board because I understand that, as of June 12, 2020, the Trustees provided both boards with all of the notification components required by RSA 674:54, II.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Jason D. Reimers