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BY: EMAIL DELIVERY

August 10, 2020

Town of North Hampton  
Public Library, Library Trustees  
233 Atlantic Avenue,  
North Hampton, NH 03862

**RE: Homestead Lot Library Project – Access From Existing Library Property  
Opinion Letter**

Dear Chairwoman Kilgore,

I have reviewed the materials that you provided to me relative to the most recent library plan on the so-called “Homestead Lot” in North Hampton, including but not limited to opinions from Town counsel, engineered plans associated with the project, warrant articles relative to the public library, deeds and various communications between the Town and its elected officials and employees and the Library Trustees and their agents. You specifically asked me to offer an opinion to the Library Trustees on issues surrounding the access to the proposed library. Please find my opinion below.

It is my opinion that the access that is currently proposed and shown on the Site Plan prepared by Wilcox and Barton, dated 5/15/2020, is legally permissible. No license, easement, agreement or other approval from the Selectmen is required to formalize it. Contrary to the opinion expressed by Attorney Reimer’s in his letter to the Selectmen dated July 23, 2020, Warrant Article 9 has no bearing on the location of the proposed access. It is perplexing to me that he could conclude otherwise. I can only assume that he was not presented with the same level of information that was delivered to me when reviewing this matter. The proposed access and existing parking were formally dedicated to a library use long ago and no action has ever been taken by the voters to negate that.

My understanding from reviewing the Site Plan and from my communications with you and the professionals associated with the library project is that no new access is being created or constructed through the existing library property, contrary to what Attorney Reimers indicates in his letter. Instead, existing access would be utilized so that vehicles can enter the Homestead Lot along its northeast boundary from the current library property. This is due, at least in part, by the fact that there is a substantial amount of ledge in the front of the Homestead Lot which would require significant site-related work, including grading and drainage improvements. I also understand from reviewing correspondence from the Library’s engineer (and from Roger

Appleton of NHDOT) that constructing access to the front of the Homestead Lot could create queuing and other traffic safety issues. Thus, creating separate access to the front of the property is infeasible given the costs, environmental and public safety impacts associated with it. It is in the public's interest to continue access through the existing library property.

As you have indicated to me, the Library Trustees are not proposing to expend any funds appropriated via Warrant Article 9 on any access-related improvements, except those that would be contained entirely within the Homestead Lot, contrary to what was stated in Attorney Reimers opinion letter. The existing accessway would remain the same as it is now. In the end, utilizing access over the existing library property allows the Town to avoid the significant costs and headaches associated with attempting to create a new accessway on the Homestead Lot. I also note that the access to the Homestead Lot that is currently proposed over the existing library property is the same as what Altus Engineering presented on behalf of the Selectmen when it proposed the creation of a new library on the Homestead Lot versus an expansion/renovation of the existing library on the shared municipal lot.

The Library Trustees do not dispute the fact that there is no express statutory authority pursuant to RSA 202-A granting them the right to convey or obtain real property or rights therein. The Library Trustees are merely an extension of municipal government, operating essentially as an "arm" of the Town. They do not function independently from the Town, but rather have the statutorily delegated authority to manage the public library and all property related thereto. The Town owns both properties that the proposed access would service. It logically follows, under basic principles of real estate law, that the Town cannot grant an easement to itself. It can certainly reserve an easement for itself should the Town ever vote to convey one of the two properties, but that is a topic that is not relevant to this letter.

I am not aware of any deeded restrictions associated with the existing library property that would prohibit the proposed access. Furthermore, the continued use of the existing access is a reasonable use of municipal property that is not prohibited under any law that I am aware of. Thus, for the reasons set forth in this letter, the proposed access is lawful, and no further action is required by the Town to allow it to be shared with the Homestead Lot.

Please do not hesitate to contact with any questions.

Sincerely,



Derek R. Durbin, Esq.