

Opinions of Town Counsel from Chat Session – Oct. 11, 2022

- judithkohn to Everyone:

It would be to take back the vote of the Select Board so that the entire town can weigh in and vote their Yea or Nay

In my opinion, G.L. c. 128A, Section 13A provides that if a petition signed by 12% of the voters in the Town protesting a vote of approval by the BOS is submitted to the Town Clerk, then the BOS must immediately hold a vote to reconsider the approval. If the BOS votes to uphold the approval, then the question of such approval shall be submitted to the voters of the town at a special election which shall be called by the BOS within 45 days after the vote to uphold the approval.

- judithkohn to Everyone:

If 300 signees are gathered in the petition then the Select board shall call a Town Meeting so we citizens can vote.

See above.

- Bara to Everyone:

This is Barbara Page. How much time do we have to gather signatures for a petition?

G.L. c. 128A, Section 13A does not state a time limit for gathering signatures.

- Neil Dawson: It seems that the timeline you are considering is dependent on the Field's group's timeline. Is that correct?

The BOS maintains the discretion to determine when to hold a vote, in my opinion. The timeframes applicable to the applicant's license applications pending before the Gaming Commission are one of many factors the BOS will consider when deciding when and how to vote.

- Pam Youngquist to Everyone:

Did Alex say earlier that this is a town election and not a town meeting?

See above.

- From Lauren Mace to Everyone:

Have the police voiced opinions about this in regards to their staffing levels, possible extra work entailed by this, etc?

In my opinion, police opinions will play an important role in the development of the Host Community Agreement.

- Lauren Mace to Everyone:

I feel like it would be something important to consider (police thoughts) before a host agreement was approved/denied.

See above.

- Michael to Everyone:

Can we require a binding Community Host Agreement before a vote? That seems reasonable. Things like a traffic study, police, fire, ems, and other understandings should be taken into consideration when approving a location

In my opinion, there is no need for a Host Community Agreement if the location is not approved. Accordingly, it makes sense to first hold a vote whether to approve the location and then negotiate a HCA if the location is approved.

- Barbara Kellogg to Everyone:

128A does not require a HCA, so can be before your vote (and should be)

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Alex: can you cite where that is in MA law?

Pursuant to 205 CMR 119.01(4), a copy of a fully executed HCA must be submitted to the Gaming Commission as part of a complete application for a Phase 2 license. It is my understanding that the applicant intends to apply for a Phase 2 license.

- Bill Cole to Everyone:

The property needs no rezoning to proceed right? Thus there is likely to be no Town election on the matter unless it is driven by the petition following BOS OK of 13A? BOS could choose, as other towns have, to have a town vote first, right?

The BOS has the authority to approve the location of the racetrack pursuant to G.L. c. 128A, Section 13A. The Planning Board has the authority to issue site plan approval and issue a special permit as may be required under the Zoning Bylaw.

- EllenKC1ETL to Everyone:

The use "racetrack" is not allowed by right and requires a

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sorry - requires as special permit. It is not an agricultural use. If it were it would be allowed by right. Is that correct?

It is my understanding that the project will require site plan approval and a special permit from the Planning Board.

- Michael to Everyone:

Is the community host agreement something that is voted on by the BOS, can the BOS defer that to town meeting

The HCA is approved by the BOS.

- EllenKC1ETL to Everyone:

I thought this was an agricultural use as required by the APR. But it requires a special permit because it is not agricultural. Is that correct?

In my opinion, the Planning Board will determine which aspects of the proposed use of the property are exempt agricultural uses and which aspects of the use require a special permit and/or site plan approval.

- Kaeli Raymond to Everyone:

Roger Raymond: If "adjacent properties" are purchased by the racetrack. Then made into extended uses of the racetrack. Would those properties need rezoning?

More information would be required about the current zoning of such adjacent properties and the type of use proposed in order to accurately answer this question.

- EllenKC1ETL to Everyone:

Is this property classified under Chapter 61A. The property has to be offered to the town, right?

I am not aware of the Chapter 61A status of this property. However, assuming that the property is designated as farmland pursuant to Chapter 61A, in my opinion, the Town's right of first refusal would only trigger if the applicant were proposing to change the primary use of the property to a commercial or industrial use rather than an agricultural use.