

To: Members of the Planning Board
Members of the Board of Selectmen
From: Michael Lombardo, Town Manager
Marc Johnson, Selectman
Re: Questions posed by Bill Dery/Rosemary Kennedy as Hamilton Watchdog Group
Date: March 16, 2015

In correspondence to the Massachusetts Attorney General's Office, letters read to the Selectmen and to the Hamilton Planning Board, letters to Hamilton citizens and a variety of online postings citizens Bill Dery, Rosemary Kennedy, and Beverly attorney John Hamilton have floated questions about the 'process' of developing the housing at the Patton Property.

To answer these questions we have relied extensively upon Special Town Counsel's memos "Determination of Application of Zoning Bylaw Provision / Ground Water Protection Overlay District", dated January 16, 2015; "Proposed Development of Patton Parcel /Legal Authority of Board of Selectmen to Sell and Develop Same", dated October 6, 2014 and revised November 21, 2014; Town Counsel's memo to the Planning Board dated February 17 2015; Attorney Latham's letter to the Planning Board dated January 16 2015; as well as our Town of Hamilton bylaws We have also relied upon the Hamilton Building inspector's letter dated January 19, 2015. These documents will be posted on the town website shortly. We encourage everyone interested in the answers to read these documents in full and not rely solely on the paraphrased answers provided below.

We have also relied on the text of the 2012 and 2014 Annual Town Meeting Patton Property votes.

While the citizens' questions are wrapped in issues of process, these questions actually reflect their stated positions that they are trying to stop the development of the senior housing at the Patton property. Answers to their questions have already been provided in publically posted BOS and Planning Board meetings and will be addressed again in due course as these issues are brought up during the Special Permit process, however, here is a unified response:

1. May the Board of Selectmen sell a portion of the "Patton Property" for the purpose of developing senior housing?

Quoting from Special Town Counsel's November 21st 2014 memo:

"The Patton Property was put in the care, custody and control of the Board of Selectmen by the vote of Town Meeting May 12, 2012"

".... When it assumed the care, custody and control of the property, the Board had the authority to act in a manner which they deemed appropriate according to the Town Meeting vote. Indeed, the Board was required to obtain further authority to sell the property in accordance with G.L. c. 40 sec. 15A and they received that authority in April of 2014 by a vote of the Town Meeting. The Town Meeting directed them to undertake that transaction on terms and conditions which they deemed appropriate."

The answer is yes, the BOS is authorized by town meeting to sell a portion of the Patton Property for senior housing.

2. May the Town of Hamilton/Board of Selectmen be a co-applicant in the permitting process and use a portion of the Patton Property as part of the application? Is it ethical or legal?

Quoting from Special Town Counsel's November 21st 2014 memo:

"The Board may participate as a co-applicant in the proposal from CP Berry and the Board may request a division of the Patton Property to further their proposed sale and development of the property. As noted above, the Board may dedicate portions of the Patton Property for various public uses. The Town Meeting put the property in the Board's care, custody and control."

"Therefore, in this case, the Board is acting wholly consistent with the authority they were provided by Town Meeting, and there is nothing prohibiting the Board from being a co-applicant nor is there any prohibition on the Board using a portion of the Town Land and dedicating it to either open space or park land."

The answer is yes, the Town of Hamilton may ethically and legally be a co-applicant and use a portion of the Patton Property that it will retain as open space to enable the development of senior housing on the parcel consistent with the 2012 Town Meeting authorization.

3. Doesn't the modification of the gift Agreement (to allow a shift in the location) need to go back to town meeting for a new vote?

The 2012 ATM Article 5-1 unanimously authorized the Selectmen to accept the gift of land ... *"on such terms and conditions as are acceptable to the Board of Selectmen"*.

The 2014 ATM Article 2-12 authorized the Selectmen to sell the property ... *"on such terms and conditions as the Selectmen determine to be appropriate..."*

The BOS thus has the broad authority to negotiate changes to the gift agreement that are consistent with the Annual Town Meeting votes in 2012 and 2014.

4. What authority, if any, does the Board of Selectmen have to designate portions of the Patton Property for a particular use?

Quoting from Special Town Counsel's November 21st 2014 memo:

"As noted above, the Board has full authority to designate portions of the Patton Property to uses which would be considered general municipal uses and which of course are consistent with the deed into the Town. Here the dedication of a portion of the land for open space or parkland is in fact entirely consistent with the overall concept of the Patton Property and related uses in the area. The mere fact that the dedication is in relation to an application the negotiations of which the Board was authorized to undertake as part of the sale, does not negate the Board's authority, nor do they need any further authority."

Thus BOS thus has the broad authority to designate portions of the Patton property as open space, and doing so is consistent with the Annual Town Meeting votes in 2012 and 2014.

5. Does the Ground Water Overlay District restrict the number of housing units being proposed for the Patton Property or does the proposed development violate the GPOD?

This issue is entirely addressed in Special Town Counsel's four page extensive memo "Determination of Application of Zoning Bylaw Provision / Ground Water Protection Overlay District", dated January 16, 2015. The memo unequivocally concludes that the 12 units of proposed housing is completely compatible with the town's GPOD, and in fact, it determines that the Planning Board does not even have the authority to determine whether the GPOD is applicable to the project.

The proposed 12 unit development to be built under our senior housing bylaw is not restricted to fewer than 12 units by our GPOD bylaw. The Building inspector is the entity to determine the applicability of the GPOD and Mr. Brett's letter dated January 19th conclusively determines that the proposed housing does not need any further GPOD special permits.

6. Location of proposed development is not as specified in the deed the Town voted to accept in 2012.

The Town of Hamilton now owns the Patton land and, subject to the Gift Agreement (and the modified Gift Agreement) the BOS thus has the broad authority to negotiate a sale of a portion of the site that is consistent with the Annual Town Meeting votes in 2012 and 2014. The deed was modified for consistency with the gift agreement.

The 2014 ATM vote very specifically included a projected site plan showing the town meeting attendees the current location of the proposed development.

7. Four acres does not qualify for high-density development under the Senior Housing by-law.
The Town's bylaws are extremely specific as to the conditions under which the proposed developer and the Town of Hamilton, as co-applicants, may develop 12 units of senior housing. The proposed development has already been subject to extensive Planning Board input through the pre-application conference procedures and meets all of the exacting criteria of our bylaws. **Twelve units on over 4 acres, or on approximately 12 acres or as located on the larger 27 acre parcel is not 'high-density' under any conventional land use terminology.**
8. Shouldn't the Town have a comprehensive overall plan for the property?
Following the Town's acceptance of the property, a vocal subset of our fiscally conservative residents was very insistent that the Town not use general fund expenditures toward the re-use of the Patton Homestead. The plan to identify an appropriate management structure for the property and to capitalize the property for potential re-use was described at the April 2014 ATM. The first step was to complete the sale of the land for the 12 units to CP Berry so that ¼ of the sale proceeds (\$250,000) can be used to create a capital fund for the property. These funds will be used to get a series of matching grants in a parallel process to determine and deploy an acceptable re-use of the Patton Homestead.
9. Since the BOS has hired Special Counsel to represent them in the Patton permitting process, shouldn't the Planning Board have legal representation?

The Planning Board has its own counsel on this matter, Town Counsel, Donna Brewer of Miyares & Harrington. The Town of Hamilton, through its Town Manager (not the BOS) has hired Special Town Counsel so that Town Counsel can fully represent the Planning Board.