

ADDITIONAL FAQs RE: ZONING CONCEPTS

What zoning concepts are likely to be part of an Overlay District for the GCTS site?

The entire site is subject to R1-B zoning which is “*as of right*” under the Town’s Zoning Bylaw, absent adoption of an Overlay District that eliminates R1-B zoning. With the underlying R1-B zoning in place, a developer could create a *subdivision* on the entire site. If the underlying zoning is proscribed under a bylaw, however, then there must be at least one “*as of right*” or “*by right*” development on the site. Development of the site pursuant to an Overlay District, would be subject to *Special Permitting*, and *Site Plan Review* would apply the “*as of right*” development.

What is “as of right” or “by right” zoning?

It is what the name implies. Where a zoning bylaw specifically permits a proposed use and development of land, without the imposition of special conditions or the necessity of discretionary approval from a Planning Board or Zoning Board of Appeals, the proposed activity is said to be “*as-of-right*” or “*by right*.” The approval of an “as-of-right” use or development is deemed to be a “*ministerial*” act on the part of a local zoning or building official.

What is site plan review?

Site plan review is a *regulatory tool* that establishes criteria for layout, scale, safety and environmental impacts. It can provide a means for communities to control the aesthetics and environmental impacts of land use under their zoning bylaw. Site plan review is not expressly provided for under the Massachusetts Zoning Act, M.G.L. ch. 40A. Practices and procedures vary widely. In Hamilton, Site Plan Review is governed by Section 10. 6 of the Zoning Bylaw and can apply to “*as of right*” development.

What is a special permit?

Special permits are authorized under M.G.L. c. 40A, § 9. They are issued only for uses which are in harmony with the general purpose and intent of a bylaw and are subject to general or specific provisions that are set forth in that bylaw. In conjunction with issuance, conditions and safeguards may be imposed with respect to the use. The hallmark of special permitting is that it is *discretionary* on the part of the permitting authority, but in issuing a decision, the Planning Board is limited to consideration of the criteria set forth in the applicable bylaw. Section 10.5 of the Hamilton Zoning Bylaw provides general guidance for issuance of special permits.

What is an “ANR” lot, and how do such lots relate to the subdivisions under the Subdivision Control Law?

An *ANR lot* (“approval not required”) is the division of land into a lot with frontage on existing roads, whether public or private, or a simple reconfiguration of lot lines.

A *subdivision* is a division of land into two or more lots and involves the creation of a new road. The Planning Board endorses ANRs certifying that approval under the Town’s Subdivision

Regulations is not required. The laws governing ANR lots and subdivisions are complex and are in Chapter 41 of the Massachusetts *Subdivision Control Law*. M.G.L. ch. 41, §§ 81K-81GG.

What is the purpose of the Subdivision Control Law and what do Hamilton’s Regulations provide?

The purposes of the *Subdivision Control Law* are set forth in M.G.L. ch. 41, § 81M. They focus on “protecting the safety, convenience and welfare” of the inhabitants by “regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open area”

A Planning Board may not attach conditions to approval of a definitive subdivision plan unless its regulations authorize the Planning Board to impose such conditions. Hamilton’s Regulations set forth requirements regarding suitability for a subdivision with reference to soil conditions and natural drainage. It also requires that an applicant must show “*due regard*” for “all natural features, such as large trees, watercourses, boulders or rock outcrops, as well as for scenic points, historic spots and similar community assets, which if preserved will add attractiveness and value to the property.” With respect to open space, the Planning Board can in *proper cases* require the plan to show a part [sic] or parks or open area suitably located for playground or recreation purposes, for conservation or for providing light and air.” The park or parks, however, “shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land. *The Board may by appropriate endorsement on the plan require that no building be erected upon such park or parks without its approval for a period of not more than three (3) years.*” (Emphasis added).

Could the Planning Board impose conditions for public access, open space, and retention of historic landscapes and building on the GCTS site under the Subdivision Control Law?

No. The Planning Board’s ability to impose conditions is severely circumscribed. Although a developer must show due regard for “all natural features,” and open space is recognized as an amenity, Hamilton’s Regulations set forth no specific criteria for evaluating what constitutes a “*proper case*” or the extent of preservation of “scenic points and historic spots.” Accordingly, in view of the purposes of the Subdivision Control Law, **a developer most likely could remove all trees and develop most of the GCTS site, except for protected wetlands, without provision for permanent parks and community access.**

Would a Subdivision be more beneficial to the Town than an Overlay District?

No. Under the Subdivision Control Law, the Planning Board could not protect perimeter buffers, the Heritage Landscape, or the historic buildings on the site. Its conditioning of a subdivision to require parks and open space would invite legal challenge. Moreover, the Consultants engaged by the Town and Seminary indicated that there would be tax deficits attendant to a subdivision of single-family homes. An Overlay District Bylaw would afford significantly more protection of open space and cultural features as well as public access and could permit reasonable commercial development such as congregate care that would financially benefit the Town

without the traffic pulses associated with families traveling to work and school in the mornings and afternoons.

Is commercial development more beneficial to the Town than residential development?

No. Hamilton taxes residential and commercial development at the same rate. Accordingly, if the scale of development were the same, there would be no intrinsic benefit.

What is a form-based code?

A form-based code involves approving and incorporating up front all the zoning and design parameters for a particular development, including usage, density and height limits for structures and parking. It has the advantage of aligning developers' interests with those of the community and expediting the approval process by saving all constituencies time and money.