From: **Laura Spector-Morgan** laura@mitchellmunigroup.com
Subject: RE: Mill Plaza - CONFIDENTIAL
Date: January 24, 2020 at 8:56 AM
To: Rick Taintor rtaintor@ci.durham.nh.us
Cc: Michael Behrendt mbehrendt@ci.durham.nh.us, Todd Selig tselig@ci.durham.nh.us

Hello gentlemen. I've reviewed the supreme court rules re: citations to 3JX decisions, and I have spoken with both Ari Pollack and Mark Puffer. None of that has changed my original opinion--that the latest iteration of the Mill Plaza application is not a new application which is subject to current zoning. Let me explain:

First, 3JX decisions are decisions made by a panel of 3 supreme court justices. Those they have no precedential value, the supreme court rule does provide that they "may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state." These decisions are not worthless--they provide guidance on how a majority of justices would rule on a particular issue. Therefore, there is nothing inappropriate about my citation to Limited Editions Properties, Inc. v. Town of Hebron.

Atty. Puffer explained that he believes this is a new application because Mill Plaza is specifically including the leased spaces on the abutting lot as part of its application. As I opined earlier, it is true that Mill Plaza is including these leased spaces on its application. However, these spaces are required neither to satisfy the town's regulations nor the settlement agreement; they are necessary to satisfy another tenant on the property. The town could approve the application without the leased spaces, and Hannaford could appeal that (though I suspect it would lose).

For this reason, I continue to believe that this is not a new application. I do not recommend that the approval of either plan be contingent on approval of the other because each is approvable on its own.

Please let me know if I can be of additional assistance. Thank you.

Laura

Laura Spector-Morgan, Esquire
Mitchell Municipal Group, P.A.
25 Beacon Street East
Laconia, NH 03246
(603) 524-3885
fax (603) 524-0745
www.mitchellmunicipalgroup.com