

## **HOMETOWN HEALTH CENTER CORRESPONDENCE SINCE LAST MEETING**

**10/12/21**

**10/13/21** Email from applicant regarding the town's meeting with the town attorney on Thursday about the LOA. They stated the importance of the legal discussion be attorney to attorney. They stated the suggestion for a Plan B between HHC and Tractor Supply be after a discussion between the Town's attorney and Adrian Kimball regarding the existing easements. They asked if it would be helpful if Adrian Kimball attend the town's meeting.

**10/13/21** I responded in email that I sent the request to the Planning Board and Select Board for a reply.

**10/13/21** I sent email to the applicant stating the Town Administrator states the meeting will be just between Palmyra and our attorney.

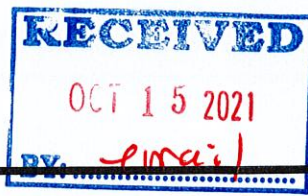
**10/13/21** Applicant responded receiving the email decision.

**10/14/21** Email to the applicant stating the Select Board approved the Town attorney to coordinate with the applicant's legal counsel, Tim Pease from Rudman and Winchell.

**10/14/21** Adrian Kendall, attorney for the applicant, responded by email that he will contact Tim.

**10/14/21** Applicant responded by email that they will proceed according to my email.

**10/14/21** Received DEP Site Location of Development Act/Natural Resources Protection Act Permit dated October 14, 2021.



## Palmyra Town Office

**From:** Timothy A. Pease <tpease@rudmanwinchell.com>  
**Sent:** Friday, October 15, 2021 4:01 PM  
**To:** 'Palmyra Town Office'  
**Cc:** Jodi L. Tager; Edmond J. Bearor; Stephen W. Wagner; Rachel E.S.Thompson  
**Subject:** ATTORNEY-CLIENT PRIVILEGE - Opinion regarding proposed performance guarantee

Good afternoon,

You requested our opinion as to the sufficiency of a proposed Irrevocable Letter of Credit ("ILOC") offered by HHC as part of its subdivision amendment application. The ILOC and supporting documents were included on pages 25-37 in a packet of materials dated August 31, 2021 submitted to the Town by Harriman.

It is our opinion that the proposed ILOC does not adequately protect the Town's interest for the following reasons.

First, the purpose of an irrevocable letter of credit is to protect the Town in the event a developer fails to complete required actions, causing the Town to have to step in and complete the actions. A letter of credit allows the Town to draw on those funds to complete the actions. In this case, HHC's proposed ILOC fails to specify what items must be completed by the developer. Rather, it merely says the reasons for drawing on the line of credit are "restricted to those outlined in the Note pertaining to default." I saw no such Note in the materials provided to me. **Our recommendation is that the ILOC specifically list the actions that must be completed.**

Second, the ILOC has an expiration date of June 30, 2023, which does not seem to be tied to completion of required items. **Our recommendation is that the ILOC specifically say it can be drawn upon in the event the developer fails to complete the required actions on or before \_\_\_\_\_ months/years (expiration date) from the date of final plan approval.**

Third, the ILOC does not contain any notice provisions. **Our recommendation is the ILOC state that the ILOC expires when the Town acknowledges to HHC that the work required in the ILOC has been completed in accordance with the Town's ordinances and approved plans. Any funds remaining in the account on the expiration date specified for required actions which have not been completed and approved by the Town will be released to the Town to complete such work.**

In sum, it is our opinion that the proposed ILOC does not adequately protect the Town's interests, and suggest it be modified in accordance with the recommendations listed above.

**Tim Pease | Partner**  
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COUNSELORS AT LAW



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