

September 9, 1998

The Honorable Franklin C. Bishop
108 Prescott Road
Raymond, New Hampshire 03077-2653

Re: 1997 Session, HB 160-LOCAL

Dear Representative Bishop:

Enclosed please find a copy of the final opinion issued of August 13, 1998 regarding 1997 Session, HB 160-LOCAL, together with a replacement page 5.

Very truly yours,

Walter L. Maroney
Senior Assistant Attorney General
Consumer Protection and Antitrust Bureau
603-271-3643

WLM:lj

Sent Sytek's letters to Betsy Miller, Esq. Speaker's Office

September 3, 1998

The Honorable Franklin C. Bishop
108 Prescott Road
Raymond, New Hampshire 03077-2653

Re: 1997 Session, HB 160-LOCAL

Dear Representative Bishop:

Enclosed please find a copy of the opinion issues regarding 1997 Session, HB 160-LOCAL, together with a replacement page 5.

Very truly yours,

Walter L. Maroney
Senior Assistant Attorney General Consumer Protection and Antitrust Bureau
603-271-3643

WLM:lj

September 3, 1998

The Honorable Donna Sytek
Speaker of the House of Representatives
State House
Concord, New Hampshire 03301-4988

Re: 1997 Session, HB 160-LOCAL

Dear Representative Sytek:

Reference is made to the opinion issued on 1997 Session, HB 160-LOCAL dated August 13, 1998.

It has been noticed that there was a typographical error in the fifth paragraph on page 5 of the letter. It should have read, "It does not effect a taking of property . . ."

I am enclosing a corrected page 5 for you to substitute for the previous page.

We apologize for any inconvenience this error may have caused.

Very truly yours,

Walter L. Maroney
Senior Assistant Attorney General
Consumer Protection and Antitrust Bureau
603-271-3643

WLM:lj

August 13, 1998

The Honorable Donna Sytek
Speaker of the House of Representatives
State House
Concord, New Hampshire 03301-4988

Re: 1997 Session, HB 160-LOCAL

Dear Representative Sytek:

You have asked our opinion regarding the validity of 1997 Chapter 2, HB 160-LOCAL.

As you are aware, 1997 HB 160-LOCAL ("HB 160-LOCAL" or "the statute") was enacted by the Legislature during the 1997 Session and authorized the governing body of the Town of Raymond to commission a corrected assessor's plat to clarify property ownership at the Green Hills Trailer Park in Raymond. Subsequently, the Town of Raymond took steps to complete the process established by the statute for creating and recording a corrected assessor's plat. However, despite the action by the Town pursuant to the statute, certain title insurance companies continue to refuse to issue title insurance on

properties within the park. The issue raised by title examiners concerns the constitutional authority of the Legislature to take or authorize actions affecting recorded descriptions of real property except as authorized under the takings clause Part I, Article 12 of the New Hampshire Constitution.

In order to clarify this issue, you have requested our opinion with respect to the following issues:

1. Is the Legislature empowered to correct inaccuracies in a recorded subdivision plan by establishing a process for creation and recordation of a corrected assessor's plat, which supersedes, corrects and amends the existing and recorded subdivision plan and all deeds and instruments of conveyance which refer to or are based on the original subdivision plan?
2. Does HB 160-LOCAL satisfy the constitutional and common law requirements for enactment of a local law?
3. Is the process for the amendment of an original subdivision plan established by HB 160-LOCAL adequate to establish marketable title in lots within the Green Hills Trailer Park affected by the corrected assessor's plat recorded in conformity with that law?

I. History of HB 160-LOCAL

Green Hill Estates is a manufactured housing community located in Raymond, New Hampshire. It contains approximately 362 lots with 200 individual homes. An original subdivision plan and assessor's plat, laying out road locations and lot dimensions was recorded in 1965. However, after the recordation of the subdivision plan, the main road of the park was laid out at a different angle than that depicted in the original plat.

As a result, virtually all lots in the park are laid out in configurations which were at variance with the recorded plan. Nearly all deeds to lots within the park, to the extent they reference or incorporate the original subdivision plan, contained inaccurate descriptions of lots.

In recent years, the existence of an inaccurate site plan and the prevalence of inaccurate deeds caused title companies to raise questions of marketability with respect to several lots within the community. In consequence, residents of the community sought abatement of taxes from the Town of Raymond to reflect the systemic defects in title affecting lots within the community. See, HB 160-LOCAL, sec. 1, I(b),(c),(d) (Statement of Purpose).

HB 160-LOCAL was enacted to address this issue in a systemic manner. As enacted, the statute authorizes the Town of Raymond to address and cure this localized problem. The statute provides that, upon the petition by a majority of the residents of the park, the Town may, by warrant article approved by the board of selectmen or town meeting, cause an amended assessor's plat to be created for the purpose of conforming the actual dimensions of all lots in the subdivision with dimensions recorded on a valid assessor's plat. HB 160-LOCAL, sec. 2, 3, 6.

The statute further provides for acceptance of the plat by the Town Planning Board after public hearing, Id., sec. 7, I, and states that notice of the application for acceptance shall be given to owners of record of lands in the plat, the applicant, abutters, the public and to mortgagees according to the procedure set forth in RSA 676:4, I (d), Id., sec. 7, III. Any person aggrieved by a decision by the Planning Board regarding approval of an assessor's plat may appeal such decision to the Superior

Court pursuant to RSA 677:15. Id., sec. 8, IV. The statute provides that, upon acceptance by the Town in conformity with the procedures discussed above, the plat shall be placed on record. Id., sec. 8, I. The corrected plat shall supersede any existing and inaccurate plat and that such existing plat shall be vacated to the extent it is included in or altered by a new assessor's plat. Id., sec. 3, III.

II. Legal Analysis.

1. HB 160-LOCAL is a valid exercise of the State's power to address localized problems through local legislation.

HB 160-LOCAL is a special or local statute designed and enacted to address a specific local problem -- i.e., the inaccuracy of descriptions contained in recorded instruments of the dimensions and location of lots within the Green Hills Estates manufactured housing community. As such, it is a valid and appropriate exercise of the State's power to enact reasonable special laws to address local issues.

Under New Hampshire law, the Legislature has long been understood to possess broad power to enact special or local legislation to fulfill a particular need or to alleviate local problems. See, *Opinion of the Justices*, 102 N.H. 240, 242 (1959), citing 2 SUTHERLAND, *Statutory Construction*, § 2101. See also, *State v. Griffin*, 69 N.H. 1, 29 (1896), (local law prohibiting conduct of sawmill on tributary on Lake Massabesic); *Charter of Manchester*, 47 N.H. 277, 279 (1867), (legislative amendments to Manchester City Charter); *Scott v. Wilson*, 3 N.H. 321, 328 (1825) (legislation regulating transport and storage of timber on Connecticut River). This power derives, not from any provision of the State Constitution, but from the absence of any limitation of the legislatures' power to address local issues through appropriate legislation. See *Canaan v. District*, 74 N.H. 517, 547 (1908) ("no clause in the Constitution prohibiting legislation applicable to a particular place or subject is pointed out."); *Scott v. Wilson*, supra, 3 N.H. at 328 (no clause in Constitution prohibits enactment of general law in relation to a particular place). See also, 2 SUTHERLAND, *Statutory Construction*, sec. 40.20 (1993); BINNEY, *Restrictions Upon Local And Special Legislation In State Constitutions*, Chapter 2.

Similarly, the New Hampshire Constitution does not prohibit the Legislature from adopting local option laws under which a municipality may choose to take actions that are authorized, but not required, by a legislative enactment. *State v. Noyes*, 30 N.H. 279, 283 (1855) (legislature clearly empowered confer upon cities, towns and other municipal corporations the power to pass local regulation); see also, *Opinion of the Justices*, 109 N.H. 396, 399-400 (1969) (authorizing municipality to finance cost of construction of public parking facilities by assessment and surcharge to motor vehicle registration fees).

HB 160-LOCAL devolves from these two constitutionally permissible forms of statutory enactment. It should be noted that HB 160-LOCAL is not a purely local law, in that it does not itself operate to reconfigure lots or lot descriptions within the affected community. Rather, the statute empowers the governing body of the Town of Raymond, upon petition by its citizens, to commission a corrective assessor's plat to conform recorded descriptions of lots within the community to their actual configurations and placements. As such, the statute is well within the state's traditional powers to prescribe local options for the purpose of addressing a particularized local problem. Our research provides no basis to distinguish HB 160-LOCAL from any other valid exercise of that power.

2. The statute conforms to and satisfies the constitutional requirements for enactment of a local law

A local or special law enacted by the Legislature is valid if (i) it does not contravene any constitutional limitation or prohibition against such enactments; and (ii) the classifications or effect of the statute are reasonable in view of the issue or matter addressed. Here, there is no constitutional limitation on, or prohibition against the Legislature's power to address local problems by special enactment. Thus, the inherent power of the Legislature to adopt reasonable measures in such circumstances should be viewed as plenary, subject only to constitutional or statutory limits applicable to the specific subject or effect of the law in question. *Canaan v. District*, 74 N.H. 517, 547-48 (1908); 2 SUTHERLAND, *Statutory Construction*, sec. 40.20 (1993).

In this case, the Legislature enacted the statute to cure a long-standing problem affecting both the residents and the taxing authorities of the Town of Raymond caused by the original Green Hills subdivision plan's inaccurate description of road and lot locations within the community. See, HB 160-LOCAL, sec. 1, I(b),(c),(d) (Statement of Purpose). The method selected to address this issue is narrowly tailored to permit the Town to take steps to conform the subdivision site plan to the actual layout of lots within the community. See, HB 160-LOCAL, sec. 1, II (legislation designed "to provide a strict and narrow means to cure the recognized defects" in community lot depictions).

The statute is also carefully designed to avoid constitutional issues potentially arising from a legislative adjustment of property rights. The statute establishes an extensive process by which the application for an amended plat must be approved by the Town's governing authority, HB 160-LOCAL, sec. 2, and further provides that the plat as finally drawn must be accepted by the planning board after a public hearing, with notice to all affected owners, abutters and mortgagees. *Id.*, at sec. 7, I, III. Persons aggrieved by the decision of the planning board to accept an assessor's plat retain full appeal rights to the Superior Court in conformity with RSA 677:15. *Id.*, sec. 8, IV.

In adopting these procedural protections, the statute is broadly consistent with the procedures attendant on a municipality's adoption or amendment of an official map laying out the location and dimensions of streets and other public lands. See, *Burgess v. Concord*, 118 N.H. 579, 581 (1978) (recognizing due process requirement for abridgment of property rights by official map; requiring public hearing for amendment). The extensive due process protections built into the statute appear to be sufficient to satisfy constitutional requirements.

3. The process for correcting an original subdivision plan established by the HB 160-LOCAL is a reasonable method within the authority of the Legislature to address the tax assessment and marketability problems which the statute is designed to remedy.

Finally, the process mandated by HB 160-LOCAL for approval and recordation of a corrected assessor's plat is a reasonable response to the problems the statute seeks to correct. The statute does nothing more than authorize the Town to create and record an assessor's plat that accurately depicts the real boundaries of lots within the Green Hills Estates community. It does not effect a taking of property for public purpose and it is structured to ensure a constitutionally satisfactory level of due process, including notice to all affected parties, public hearings and appeal rights.

In addition, the statute is structured to ensure that purchasers and title examiners reviewing the title history of affected parcels will have on record a chain of documentation to correlate the corrected metes and bounds description of any affected lot with prior recorded documents. Thus, the statute

mandates that the assessor's plat shall be placed on record in the county registry of deeds and shall contain, among other information, book and page number of the metes and bounds description of any affected parcel, as well as reference to the existing plat and any prior recorded plat, and any tax map, parcel number or original subdivision lot number as practical in the judgment of the surveyor. HB 160-LOCAL, sec. 6, II. As an aid to future title searches, the statute requires the filing of a companion document to the assessor's plat which contains a comparative listing of old and new subdivision/tax map numbers of each lot depicted in the assessor's plat, as well as current owners of record of each such lot. Id., sec III. Finally, the statute provides for the establishment of new monumentation sufficient to set the metes and bounds of all lots in the plat.

4. Issues relating to the authority of the Legislature to enact HB 160-LOCAL should not constitute an impediment to assessment or marketability of lots depicted on an assessor's plat created and recorded in conformity with the statute

It has been brought to our attention that certain title examiners have raised the question of the Legislature's authority to enact HB 160-LOCAL. As set out above, it is the view of this office that the Legislature had authority to enact HB 160-LOCAL and to prescribe the procedures and methods for creation and recordation of an assessor's plat contained in that statute. Therefore, questions concerning the authority of the Legislature to enact this statute should not preclude a finding of marketability of title. I trust the foregoing is responsive to your request. Please feel free to contact me with any further questions or comments.

Very truly yours,

Walter L. Maroney
Senior Assistant Attorney General Consumer Protection and Antitrust Bureau
(603)-271-3643

WLM:lj