



*Assessment* should take place as a next step in which he would conduct additional research about the project, and identify and interview key informants from various stakeholder groups. Some level of cross-stakeholder meetings may be held at this stage as well, as a means to test and refine what could become the formal mediation process design. Afterwards, Mr. Sachs would provide a recommendation to the Town about whether moving forward with the process is advisable.

Mr. Sachs' schedule allows for approximately five- to seven-days to accomplish the aforementioned tasks between now and January 2015. As of now his schedule is more open beginning in February 2015, which would allow for scheduling of the formal meeting(s) if the process does move forward.

Lake Hogan Farms process:

For Lake Hogan Farms, staff found that the project did go through a public hearing prior to mediation. The application for the project involved a request for a Conditional Use Permit only, thereby making the matter quasi-judicial only in nature. The Board of Aldermen held a public hearing to consider the application and chose to deny the permit request. Subsequently, the applicant sued the Town over the denial. In Orange County Superior Court, the judge determined that the Town did not establish legally valid grounds to deny and the permit was remanded back to the Town for further consideration.

Prior to further consideration at the Board level, a facilitated discussion of the project was chosen as a means for all parties to consider possible changes to the design. The participants in this case included four Board members, two Hogan family members, the developers, and the architect / engineering firm. Two days of mediation took place, with the Town Manager and Planning Director available as resources during the meetings. An additional impartial party worked with the facilitator to suggest changes to and a redesign of the site plan.

Additional negotiation sessions took place after the two days of mediation were completed. The Board subsequently approved the Conditional Use Permit on September 27, 1994. Additional details regarding the process are found on pages 4 and 5 at the following link:

<http://sogpubs.unc.edu/electronicversions/pdfs/pmb02.pdf>

Information from Town Attorney:

As noted by Town Attorney Mike Brough, the Land Use Ordinance will need to be amended to allow this application to proceed forward as a Conditional Rezoning request, rather than as a Conditional Use Rezoning request, in order for Board members to formally participate in facilitated discussions or mediation should that be desired.

**FISCAL & STAFF IMPACT:** If the Board directs staff to move forward, the Proposed Memorandum of Agreement provided by Dispute Settlement Center describes their fees for this stage as follows: \$1,000 per 8-hour day (\$125/hour) with a maximum of 15 days under the contract, or \$15,000.00 total, unless both DSC and the Town agree explicitly to additional hours. Cost estimates associated with the formal facilitated meeting / mediation stage, if it occurs, would be developed as a part of Mr. Sachs' recommendation at the conclusion of the *Situation Assessment* stage. Staff asked Mr. Sachs whether it is possible to provide an estimate of what the total costs may be, if the project moves beyond the initial stage, based on previous similar projects or experiences. If this information becomes available it will be shared during the Board meeting.

Since this item was not included in the Fiscal Year 2014-2015 budget, a source of funding needs to be identified. If the Board directs staff to move forward, staff expects to identify a source and bring a budget amendment and resolution directing staff to enter the contract with Dispute Settlement Center to the Board at its

December 2 meeting. Staff has asked the developer about their willingness to participate in costs associated with the process. They are currently considering the question and will be prepared to address it during the Board meeting.

**RECOMMENDATION:** Staff recommends that the Board consider the information provided and direct staff on whether to move forward with the process.