

## Opportunity statement

**In an effort to foster greater economic growth and development, municipalities are encouraged to create more uniform, reliable and transparent third party engineering review and construction monitoring policies which avoid unnecessary cost and time constraints to development projects.**

## Background

Third party engineering reviews are an essential part of the Planning Board subdivision and site plan review processes. Today's regulations tend to be very comprehensive and design specs for new streets, storm water runoff calculations, lighting standards, etc., are highly technical and require review by professional engineers. The services provided by these third party consultants are often most valuable for the majority of land use boards comprised of "citizen planners" who do not have benefit of "in house" staff to guide them. Indeed, very few communities have staff engineers and even those that do, do not, generally speaking, have staff with expertise in all necessary disciplines. As such, review by outside engineering firms is required.

Third party engineers can and generally do add value to the outcome of land development projects. In a majority of instances, land use boards rely on the objective advice given by their third party engineers and planners to help move an application along to approval, and ultimately construction, within a reasonable time frame and at reasonable cost.

In some cases, however, the costs and delays associated with and resulting from this practice have come under increased criticism from the development community.

In 2009, the New Hampshire General Court passed House Bill 156 to create RSA 676:4-b, which sought to add a degree of transparent accountability to third party engineering reviewers who work on behalf of municipal land use boards. While most firms providing such services also serve the private sector and are generally fair in both their billing and reviews, abuses to the system can occur. House Bill 156 was meant to reduce the amount of excessive charges and lengthy review by requiring detailed invoices with reasonable task descriptions for services rendered by third party engineering review firms. Upon request of an applicant, a planning board is instructed to promptly provide a reasonably detailed account of expenses, or corresponding escrow deductions, with copies of supporting documentation. In addition, and of primary concern to the construction process, third party inspectors are required by statute to "promptly report" to the municipality and the applicant "any perceived construction defect or deviation from the terms of the approval or approved project plans."

To date, it remains to be seen whether or not the law has had any significant impact in improving the process. Indeed, there is some fear that the law might actually scare third party reviewers into charging more time for inspections, not less.

## Best practices

To ensure third party reviewers work objectively and efficiently on behalf of municipal land use board clients, and do in fact add value at or beyond the cost of their services to land development projects, both in terms of time and dollars, municipalities are encouraged to adopt policies that include the following provisions:

- Third party engineering review contracts should be reviewed regularly as a part of a process that includes a public comment session and let out to bid periodically with consideration for cost, timeliness of reviews, experience and areas of expertise.
- Communication between applicants and third party reviewers should be encouraged. However, as it is the municipalities that are the third party reviewers' clients, municipalities should ensure that all communications between applicants and third party reviewers flow through staff or the planning board so that staff/the board is always aware of the status of application review process and to ensure that written communications and plan amendments become a part of the public record. If a third party reviewer plans a meeting with an applicant there should always be a prior notification to the municipality. If there is a pre-application review, the consultant should be included where warranted.

- Ensure prospective third party engineering review firms include in their proposals any subcontractors, such as traffic engineers, that they intend to use regularly. In consultation with the applicant, larger projects should be considered as candidates for a bid process in order to assure cost-effective, timely and focused review.
- Provide an applicant with the general scope, schedule and fees of third party reviews up front. With regard to scope, it should be noted that the third party reviewer is not the designer of record, but only conducts the technical review of the plans in keeping with good design practice, not necessarily how the third party reviewer would design it. The schedule for the third party review needs to be timely and spelled out up front so that applications do not come to the planning board before a review is complete, but at the same time applicants have a reasonable expectation of when comments will be received. Fee estimates should be generated based on reasonable criteria, including how many reviews/responses will be included.
- Ensure that all invoices from third party reviewers to municipalities on behalf of applicants are seen by the planning board by including the invoices in members' packets.
- If all escrowed funds are not used during a third party review, they should be returned to the applicant, but if additional reviews are required, additional escrow funds should be requested prior to initiating any new reviews.
- If construction monitoring is included in a third party engineering review contract, inspections should take place only at pre-determined and agreed upon milestone events. If necessary, changes can be made to that schedule based on what happens in the field.
- A pre-construction meeting between staff, the applicant and the third party engineering review firm should take place to set a budget for and agree on a scope of work for required construction review.
- Construction review protocols should designate contact parties for the municipality, the applicant and affected contractors in order to ensure prompt reporting of potential defects and other issues and the ability to find prompt and cost effective resolutions to problems.
- Fees for construction monitoring should be deposited in a separate escrow account from that of the third party review escrow. Such fees should be based on a defined number of site visits or construction events (e.g. excavation, drainage, grading, drainage, etc.), including travel time and mileage expenses. Documentation and observations/findings of site visits should also be required.

### The In-House Alternative

At some point it might be worth examining an in-house approach to engineering reviews. For example, the Town of Goffstown has found that, even as a smaller community, the creation of a new in-house engineering position whose time is charged to developers on a cost-plus basis, not only provides efficiencies and economies for developers, but also provides consistency in process, procedures and policies for the community. The position is budgeted to pay for itself, while also affording availability of engineering expertise for other Town and public projects. In Goffstown, third party consulting engineers are still used for specific technical tasks and some construction monitoring, but an in-house engineer also has the advantage of being always available to the Planning Board and other local authorities.

### Summary

While third party engineering reviews will be needed for as long as land use applications are administered at the municipal level, there must be a balance between quality control for the municipality and economy and efficiency for the applicant.

By adopting the best practices listed above to enhance its development processes, a municipality can ensure a fair and reasonable third party review which minimizes undue cost overruns and reduces the timeframe of the process.

### Access Greater Manchester

An initiative of the Greater Manchester Chamber of Commerce, the Southern New Hampshire Planning Commission and the New Hampshire Division of Economic Development, Access Greater Manchester is a regional economic development initiative whose mission is to encourage communities to look beyond individual borders, foster positive relationship building and cooperation among individual communities, promote and drive economic development initiatives for sustainability of the region, and collectively promote the region as a desirable place to "live, work, and play."