

## "Incomplete applications"

August 2008 Plan-link posting and reply regarding "Incomplete applications."

**Posting:** I have a question about how other communities handle 'incomplete' applications.

RSA 676:4(c)(1) states that: "Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete."

RSA 676:3 [Issuance of Decision] refers to Boards issuing ". . . final written decisions which either approves or disapproves an application for a local permit."

When an application is deemed incomplete, does your community consider that a "disapproval" or is the project essentially placed "on hold" until the remaining information (or whatever triggered the incomplete determination) is submitted? If it's considered a disapproval (and the applicant really does wish to proceed), do you require a new application, fees, etc? For tracking purposes, do you issue a new application number and submission dates? On the other hand, if the application is "on hold", do you require the abutters to be re-notified and the application re-advertised of the next time completeness will be considered? Do you charge any administrative fees to cover the costs of staff time?

In the past, if an application seems incomplete, we have generally recommended that the applicant request a continuation and not have the PB make any determination on completeness at the scheduled hearing.

**Reply:** If an application is truly incomplete, the planning board (or other land use board) cannot assert jurisdiction over it and hence, cannot "disapprove" it - that is a judgment on the substance of the application. The board's recourse is to reject the application as incomplete and not to accept it and open the public hearing; that is, send the applicant packing.

If the application is "sufficiently complete" (a legal term of art), the board may assert jurisdiction and tend to the substance of the matter. Defects of notice are fairly common, so what the planning board did is perfectly appropriate, fair, and legal. But if there is so much information missing that the board cannot reasonably begin its deliberations (even after correction of notice defects), then it should reject the application as incomplete. Other than the costs of notice (both to abutters and to the public), it seems that application fees should be returned to the applicant, though it can be argued that staff time/cost has been expended in reviewing applications prior to acceptance by the board.

RSA 676:4 deals with this issue in some detail, and I encourage people to take some time in a quiet room to read it.

The Supreme Court has dealt with this issue a couple times, most recently in [DHB, Inc. v. Town of Pembroke](#) (2005). Here's a germane excerpt:

The plaintiff argues that it did not need to complete all of the required information because the Board had "sufficient information to enable [it] to make an informed decision." The plaintiff refers us to our decision in *Rallis v. Town of Hampton Planning Bd.*, 146 N.H. 18 (2001). Not only does the plaintiff misconstrue our holding in *Rallis*, it misinterprets the statutorily provided standards for a completed application. In *Rallis*, we stated that an application was sufficiently complete where the record indicated that both the planner and board chair considered the application sufficiently complete and the application included "detailed subdivision plans and the other items required by the subdivision regulations." *Rallis*, 146 N.H. at 21. In the present case, neither the planner nor the board chair nor any member of the board considered the application sufficiently complete, nor has the plaintiff provided the items required by the subdivision regulations. *Rallis* does not support the plaintiff's position.

Nor does the statutory scheme support the plaintiff's position. As referenced above, RSA 676:4, I(b) provides: "The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision." (Emphasis added.) The first sentence provides that a planning board in its regulations determines whether or not an application is sufficient to invoke jurisdiction. The second sentence, defining a completed application, merely provides guidance for the planning board in constructing its regulations. As the plaintiff has not presented any proof that it satisfied the requirements for a completed application as set out in the subdivision regulations, the plaintiff did not submit sufficient information to enable the board to make an informed decision.

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