Rallis v. Town of Hampton

-----Original Message-----
Sent: Wednesday, October 09, 2002 10:28 AM
To: plan-link@maillist2.nh.gov
Subject: [Plan-link] Amendments to regulations and submission of applications

If an applicant submits a subdivision application to the board prior to the posting of the first legal notice regarding proposed changes to the subdivision regulations, would that application become subject to the new regulations should they be adopted? I always thought that if you submitted after the first posting you ran the risk of being subject to the new changes, but one of the Board members thinks that it is the acceptance of the application as complete by the Board that is the important date. In this instance, the application was submitted in May, the hearing for adoption of the changes took place in June. The submission date was prior to the first posting of the proposed amendments, but the acceptance date was not. It would not seem fair for an applicant to have prepared plans under one set of regs, not have notice that the regs were being changed, and then be made to redo the plans to the new requirements. What statute governs this matter? Is it RSA 676:12? Any thoughts greatly appreciated.

-----Reply-----

From: Benjamin Frost
Sent: Wednesday, October 09, 2002 12:15 PM
To: plan-link@webster.state.nh.us
Subject: RE: [Plan-link] Amendments to regulations and submission of applications

This is a complex question. You correctly cite RSA 676:12, but you also need to take a look at a recent case, Rallis v. Town of Hampton and RSA 675:6.

The important sequence of events in Rallis was this:

Sept 5: subdivision amendment posted
Sept 9: subdivision application deemed "complete" in meeting of applicant, PB chair, and town planner
Sept 16: subdivision application submitted to planning board
Sept 17: planning board holds public hearing on subdivision amendment, amendment adopted
Oct 1: planning board denies subdivision application as incomplete (failure to meet new standards (late waiver request), and design flaws)
Oct 2: planning board submits certified subdivision amendment to town clerk.

Look now at RSA 675:6, III, which states "No master plan, regulation, amendment or exception adopted under this section shall be legal or have any force and effect until copies of it are certified by a majority of the board or commission and filed with the city clerk, town clerk, or clerk for the county commissioners." This includes amendments to subdivision regulations.

The statute you cite, RSA 676:12, V, says this: "No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application formally accepted by the planning board pursuant to RSA 676:4, I(b) so long as said plat or application was accepted prior to the first legal notice of said change or amendment."

The court in Rallis drew a sharp distinction between (1) accepting jurisdiction over an application and (2) formally considering its merits. Therefore, the court said that the town couldn't rely on RSA 676:12,V to deny the application, because the application hadn't been accepted yet. BUT, the court also said that because the application hadn't been accepted before the first posting of the amendment, the "application may not be protected from the amendment."

This, ultimately, answers your question. You're correct that the new subdivision standards apply to the application, but the board can't use the new standards as a means to avoid accepting jurisdiction over the application. The way I read Rallis is this: subdivision amendments aren't legally effective until a certified copy has been delivered to the town clerk, but once that delivery has been made, the amendment applies (retroactively) to all pending applications that were ACCEPTED by the board after the first posting of the amendment. In the case you're dealing with, the result may be unfair to the applicant but I think that is the correct reading of the law.

The hidden gem in this case (not germane to your question) is that the representations of the planning board chair and town planner had the effect of accepting the application as complete. On this basis, I think the court was predisposed to finding in favor of Rallis, apparently feeling that he'd been mistreated by the town.