

Dealing with the New Preliminary Vesting Rule Chapter 285 HB 1508

Here's the text of the bill, showing the changes to [RSA 676:12,VI](#):

The provisions of paragraph I shall not apply to any plat or application which has been ~~formally accepted~~ **the subject of notice** by the planning board pursuant to RSA 676:4, ~~I(b)~~ **I(d)** prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application ~~formally accepted~~ **which has been the subject of notice** by the planning board pursuant to RSA 676:4, ~~I(b)~~ **I(d)** so long as said plat or application was ~~accepted~~ **the subject of notice** prior to the first legal notice of said change or amendment. **The provisions of this paragraph shall apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.**

First, recognize the distinction in [RSA 676:4,II](#) between "preliminary conceptual consultation" and "design review." Only the latter requires abutter notification and is subject to the new preliminary vesting rule. If a planning board has concerns under the new law about the possibility of a plan vesting prior to an actual application, it can simply refuse to engage in the design review process, and instead focus on preliminary conceptual consultation. Alternatively, the planning board can dispense with preapplication review altogether and concentrate its review in the formal application process.

If a planning board still wants to use the design review process, which it can either require (if authorized by the local legislative body) or offer as an option to the applicant, it should be careful to follow the necessary notification requirements. In this respect, design review is no different than a formal application — abutters, easement holders, professionals who stamp the plans, and the general public all are entitled to formal notification that design review will occur. Differences are that a public hearing is not required, much of the information needed in a formal application is not required, and the comments of the planning board are not generally binding.

The key to applying the new preliminary vesting rule will be for the planning board to determine when the design review process ends, because that marks the beginning of the twelve-month safe harbor period during which the applicant's proposal is protected from regulatory changes. If a planning board conducts a design review meeting that has been properly noticed, then at the end of that meeting the planning board should formally declare the process to have ended, or it should continue its discussion to a specific time, date, and place (care is exercised here to call it a discussion, and not to use the words "deliberate" or "hearing"). RSA 676:4,II is a bit ambiguous relative to design review, but it suggests that the failure of the planning board to continue its design review discussion would also mark the end of the process.

This new preliminary vesting rule will work to reward planning boards that pay attention to detail, and it will penalize and confound those that don't. By clearly identifying at an early stage the board's expectations of applicants and tightening up the preapplication processes, a planning board will be able to avoid costly disputes in the future.

- [Chapter Law 285, 2006 - \(HB 1508\)](#)

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