

Scattered or Premature Developments Relative to Site Plan Review

Plan-link posting and reply, October 14, 2011

Posting:

I had reason to read the planning board and selectmen minutes of a site plan review in our town.

I found that there was concern about whether the proposal would constitute "premature or scattered development."

The statutory authorization for subdivision regulations requires consideration of this concern, but the statutory authorization for site plan review is silent, as are our local site plan review regulations.

Is there a basis for considering "premature or scattered development" in site plan reviews? Is this commonly considered in other municipalities?

Reply:

Curt, you're correct that the language "scattered or premature" is included only in the subdivision enabling legislation, and as such would not apply to site plans.

But the concept of a development being found by a planning board to be "scattered or premature" is really a legal term of art that must be supported by clear factual findings by the board. This is the relevant language from RSA 674:36:

II. The subdivision regulations which the planning board adopts may:

(a) Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

Generally, where a specific development would cause such problems and is denied by the planning board, such a decision will be upheld on review by the courts – provided the planning board clearly documents the reasons for its decision. But where there is a general problem with existing services and a development might only somewhat worsen that existing problem the planning board might not be able to rely on this as a basis for denial. See [Ettlingen Homes v. Derry](#).

Now compare that with the language of RSA 674:44, which enables the adoption of site plan regulations:

II. The site plan review regulations which the planning board adopts may:

(a) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:

- (1) Inadequate drainage or conditions conducive to flooding of the property or that of another;
- (2) Inadequate protection for the quality of groundwater;
- (3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and
- (4) Inadequate provision for fire safety, prevention, and control.

(b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.

(c) Provide for open spaces and green spaces of adequate proportions.

(d) Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;

(e) Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;

(f) Require, in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the planning board for approval;

(g) Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health;

(h) Include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity;

(i) Require innovative land use controls on lands when supported by the master plan; and

(j) Require preliminary review of site plans.

The same problems that would legitimately compel a planning board to deny a subdivision as "scattered or premature" could serve as the basis for denial of a site plan without using those magic words. Clear fact-finding by the board is the key to a proper decision in either instance.

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