

Q. "Is 'scattered and premature' a valid reason for a planning board to disapprove a development proposal?"

A. Yes. A determination that an application is "scattered and premature" can be a valid reason for denial. This phrase is contained in RSA 674:36, II (a).

The following is from *Handbook of Subdivision Review* (OSP 1996):

Disapproval

When denying an application, the planning board must vote to disapprove specifying the reasons for denial and citing the sections of the regulations that were not satisfied. The reasons for denial must be clearly stated in the board's minutes and other records of its actions. The board must notify the applicant, in writing, of the reasons for the denial. While the applicant may disagree with the board's decision, s/he should be able to understand the basis for the decision. Such careful documentation will support the board's action if the decision is appealed.

The option to disapprove an application can be taken by a planning board in the following situations.

- The proposal does not or could not meet the local requirements due to specific factors relating to soils, road conditions, lack of state permits, or the inability to meet zoning requirements.
- The proposal cannot adequately address the legitimate concerns raised at the public hearing, such as drainage, traffic, or other health or safety issues.
- The applicant failed to provide information required by the board.
- The proposal would result in a "premature or scattered" subdivision. This determination would be based on the goals and objectives in the master plan that are referenced in the subdivision regulations. A statement of intent for the particular zoning district would lend further support to such a finding. An analysis of the timeliness of the proposal in light of actions outlined by the capital improvements program would also be an important factor in determining whether a proposal is premature.

On the flip side, there was a recent Supreme Court case, [Ettingen Homes v. Town of Derry](#) (1996) where the town denied a subdivision based on the "scattered and premature" nature citing that the school system was overcrowded and this subdivision would just be too much of a burden for the town and the court reversed the ruling. The following is from the 1997 Case Law Update by Atty. Tim Bates at the May 31, 1997, OSP Planning & Zoning Conference:

TOWNS MAY NOT USE SUBDIVISION POWER TO IMPOSE GROWTH CONTROL

Ettingen Homes, In. v. Town of Derry, 141 N.H. ____ (August 12, 1996).

The plaintiff sought approval for 23 residential lots on its eighty acre parcel. The planning board denied the application, finding it was "scattered and premature" under the town's subdivision regulations and RSA 674:36, II(a). The plaintiff lost his challenge to the denial in superior court, but the supreme court agreed that the planning board's denial was unlawful, because it constituted illegal growth control.

The critical factor in the planning board's denial was the inability of the Derry schools to accommodate even the existing level of students. After all, RSA 674:36, II(a) explicitly provides for consideration of the adequacy of school facilities in determining whether a subdivision is premature. But the supreme court ruled that the statute does not serve to replace comprehensive growth control regulation, and that the circumstances of the school facilities do not constitute a "danger . . . to health, safety or prosperity by reason of the lack of . . . schools." The denial was plainly intended to control growth, and it thus exceeded the board's authority under the statute.

However, the court reaffirmed that the proper "scattered and premature" inquiry from earlier cases, is "upon the effect of the **proposed development** on the community, not the effect of future **development in general** on the community." (emphasis added.)

Lastly, probably the best discussion of this topic can be found in section 29.08 of NHP Vol. 15, *Land Use, Planning and Zoning* by Atty. Peter Loughlin (Lexis Publishing, 3rd Edition, 2000). That section discusses the concept of "scattered and premature" and gives some good direction about how it may or may not apply given the specific development proposal.

