

3-523

From: Bernie Waugh
Sent: Sunday, September 09, 2012 3:28 PM
To: 'Kenneth Mills'
Cc: Linda; Bill Dowling; Donna Foster; Erik Bergun; Ernie Temple; Evan Karpf; Richard Nelson
Subject: RE: Carroll Planning Board

Dear Mr. Mills and other Board members:

Just a few clarifications of my original opinion, in response to yours (given that I'm in my office on Sunday afternoon). I'm sorry for any misunderstanding:

1. When I answered the E-mail from Linda I was assuming she meant lots fronting on an existing town road, and I was assuming any other wording was a typo.

2. I have attached a copy of RSA 674:36 to the end of this E-mail - see especially Paragraph III(b). Obviously I made a typo myself when I said 676:36, since there is no such statute. Very sorry. I meant 674:36.

3. In answer to your comment #2, the purpose of a subdivision bond is to guarantee to the Town the construction of roads or other improvements to whatever standards the Planning Board has imposed in a Planning Board decision. Unless the roads near your house are still subject to un-completed work which was required by the Planning Board in some past decision, then I can't see any reason those roads would still be covered by a bond or other security.

4. Most importantly, in response to your comment #3, nothing I said in my opinion was aimed at the question of what construction standards each roadway must be constructed to, and I haven't been given any information on any particular road, so I have nothing to say about construction standards. However I can't help saying, based on the consensus of modern planners, that I think that any town that has only one uniform set of road construction standards that applies both to main thoroughfares and also roads serving only 2-3 lots, should probably be looking to change that. No less a conservative authority than the American Society of Civil Engineers has officially stated over the years that requiring side roads to be built to the same standards as main thoroughfares is senseless and wasteful. Although this goes beyond my role as attorney, it is widely recognized today that roads can be built to different standards, depending on the function that a particular road serves in the overall system of the town, and what traffic counts each road is projected to have.

What I was saying (which is within my role as an attorney) is that the Board should not apply a different standard based on whether the road is expected to become public or remain private, since the Planning Board really has no final say over that issue (and for the other reasons mentioned in my first opinion).

So in summary, it makes complete sense that a road serving 30 lots should be required to be built to a different standard than a road serving 3 lots. But... a road serving 30 lots, which a developer intends to remain private should not be allowed to have a relaxed standard from a road intended to be public which also serves 30 lots. That was the intent of my comments.

Again, sorry for the misunderstanding. I would be glad to respond to any further comments or questions.

Sincerely,
Bernie Waugh

674:36 Subdivision Regulations.

I. Before the planning board exercises its powers under > RSA 674:35, the planning board shall adopt subdivision regulations according to the procedures required by > RSA 675:6.

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;

(b) Provide for the harmonious development of the municipality and its environs;

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

(d) Provide for open spaces of adequate proportions;

(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 submitted to the planning board for approval shall show a park or parks suitably located for playground or other recreational purposes;

(g) Require that proposed parks shall be of reasonable size for neighborhood playgrounds or other recreational uses;

(h) 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;

(i) Prescribe minimum areas of lots so as to assure conformance with local zoning ordinances and to assure such additional areas as may be needed for each lot for on-site sanitary facilities;

(j) Include provisions which will tend to create conditions favorable to health, safety, convenience, or prosperity; and

(k) Encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477.

(l) Provide for efficient and compact subdivision development which promotes retention and public usage of open space and wildlife habitat, by allowing for village plan alternative subdivision as defined in > RSA 674:21, VI.

(m) Require innovative land use controls on lands when supported by the master plan.

(n) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

III. The subdivision regulations of the planning board may stipulate, as a condition precedent to the approval of the plat, the extent to which and the manner in which streets shall be graded and improved

and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The regulations or practice of the planning board:

(a) May provide for the conditional approval of the plat before such improvements and installations have been constructed, but any such conditional approval shall not be entered upon the plat.

(b) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable letter of credit, or other type or types of security as shall be specified in the subdivision regulations; provided that in no event shall the exclusive form of security required by the planning board be in the form of cash or a passbook. As phases or portions of the secured improvements or installations are completed and approved by the planning board or its designee, the municipality shall partially release said security to the extent reasonably calculated to reflect the value of such completed improvements or installations. Cost escalation factors that are applied by the planning board to any bond or other security required under this section shall not exceed 10 percent per year. The planning board shall, within the limitations provided in this subparagraph, have the discretion to prescribe the type and amount of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

(c) May provide that in lieu of the completion of street work and utility installations prior to the final approval of the plat, the subdivision regulations may provide for an assessment or other method by which the municipality is put in an assured position to do said work and to make said alterations at the cost of the owners of the property within the subdivision.

IV. The planning board shall not require, or adopt any regulation requiring, the installation of a fire suppression sprinkler system in proposed one- or 2-family residences as a condition of approval for a local permit. Nothing in this paragraph shall prohibit a duly adopted regulation mandating a cistern, dry hydrant, fire pond, or other credible water source other than a fire suppression sprinkler system.