

*Our town amended the zoning and subdivision bylaws recently. A couple of applications for preliminary subdivision review were heard under the previous bylaws. Which bylaws should the Development Review Board apply to final plat applications?*

If the application has been pursued in good faith, the board should review the final plat application under the subdivision bylaws in effect at the time the preliminary subdivision application was filed. The confusion occurs because state law enables a multi-step subdivision review process, which could include separate applications for each step. 24 V.S.A. § 4418 (2) (B). Some towns incorporate such procedures to allow for incremental design, and review.

In the Vermont Supreme Court case *Smith v. Winhall Planning Commission*, 140 Vt. 178 (1981), the Court held that a subdivision permit application must be evaluated under the zoning ordinance in effect at the time of the application, and not under later amendments, as long as the application is validly brought and pursued in good faith.

In a later Vermont Supreme Court case, *In re Appeal of Patricia Carroll, et al*, 2007 VT 19, the Court explored whether each step of the subdivision process was considered a separate proceeding for purposes of determining participation. The Court concluded that an interested party who participated in a preliminary subdivision hearing had the right to appeal a final plat approval, even if he or she didn't participate in the final plat hearing. The Court said, "[w]e think that ... subdivision review is one proceeding from application to preliminary plat review to final plat review." The Court relied upon the definition of "proceeding" in Black's Law Dictionary 1241 (8th ed. 2004) which is "(t)he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment."

These two cases demonstrate that so long as the initial application has been brought and pursued in good faith, the applicant has a vested right to have all steps in the subdivision review process (sketch, preliminary, and final review) evaluated under the zoning ordinance in effect at the time of the application, and not under later amendments.

In contrast, applications for development subsequent to subdivision approval, such as site plan or conditional use review, would be reviewed under the bylaws that were in effect at the time of that separate application. The Vermont Supreme Court has held that submission of a subdivision application does not vest rights in the zoning bylaw in effect at the time a subdivision application is submitted. *In re Taft Corners Associates*, 171 Vt. 135 (2000).

[Note: This article does not specifically address review of applications after the selectboard warns its first hearing on bylaw amendments. 24 V.S.A. § 4449 (d).]

Stephanie Smith (AICP), Senior Associate  
VLCT Municipal Assistance Center

**VLCT News, July 2009**