

Environmental Court Roundup

PHASED DEVELOPMENT AND POINT SYSTEMS

The Environmental Court recently confirmed the constitutionality of using a point system for evaluating subdivision proposals under a system that allocates subdivision permits for phased development. (The number of permits granted depends on an annual study performed by the Planning Commission.)

The point system reviewed by Judge Merideth Wright in *Appeal of John Remy* is contained in the Town of Williston's Growth Management Review section of its subdivision regulations. *Appeal of John Remy*, Docket No. 93-6-03 Vtec. The purpose of using the point system is to ensure that residential growth is consistent with the Town's Comprehensive Plan and capacity for planned, orderly and sensible expansion of services. Additionally, Growth Management Review purports to ensure that subdivisions are selected pursuant to a clear and orderly evaluative procedure. Williston Subdivision Regulations Article V.

The appellant in *Appeal of John Remy* appealed the Development Review Board's (DRB) denial of his application for preliminary phasing allocation for his proposed subdivision. In particular, the appellant questioned the point value assigned to his proposal and its corresponding ranking among other subdivision proposals before the DRB. According to Article V of the Town of Williston's Subdivision Regulations, the DRB must conduct a "Growth Management Review" for all projects seeking subdivision approval. Projects can be awarded a total of 100 points based on a set of "Evaluation Standards." The first four standards the DRB will consider are subdivision location, open space planning, housing types, and town facilities. The subdivision proposal may be awarded up to 20 points under each of these standards depending on whether the DRB decides the project deserves a High, Medium, or Low rating with respect to each standard. The fifth standard the DRB will consider is the length of time the applicant has been seeking approval. Under this standard, up to 10 points may be awarded based on a High, Medium, or Low rating. Finally, up to 10 points may be awarded if the proposal furthers goals of the Comprehensive Plan that are not considered by the DRB under the first five standards.

Based on the Growth Management Review, the applicant's subdivision proposal in *Appeal of John Remy* was assigned a point value, ranked among other proposals, and denied preliminary phasing allocation due to a low ranking relative to other proposals that year. On appeal, Judge Wright held that this point system is constitutional, contrary to appellant's argument that the system should be held void for vagueness. Judge Wright explained that although the point system "could be revised to be more complete or more specific, it meets the test of providing sufficiently objective evaluation standards for the decision-maker to provide a score for each of the competing applications to enable those applications to be placed in a ranking or priority order."

Towns faced with large numbers of residential subdivision proposals might consider innovative techniques like this point system to more effectively manage growth. For a copy of the Town of Williston's Growth Management Review section of its Subdivision Regulations, contact VLCT's Municipal Assistance Center.

- Justin Sluka, Intern, VLCT Municipal Assistance Center

