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Town Planner's Review
Wednesday, May 6, 2020

- VI. **Compliance with Subsequent Conditions.** Discussion about process for ensuring compliance with subsequent conditions specified on project approvals.

Planning Board member Barbara Dill asked how subsequent conditions are followed up on. For both site plans and subdivision approvals there are what we call precedent conditions and subsequent conditions.

Precedent conditions are tasks which the applicant must complete before I sign the plans. In most every case (except the occasional situation where no building permit is required such as construction of a parking lot) enforcing these conditions is easy. The applicant cannot obtain a building permit on a site plan until I sign the plans. In the case of a subdivision, the registry of deeds will not record a plat unless I sign the plans and the applicant cannot sell a lot until the plat is recorded. Precedent conditions can include making changes to final plans, adding notes to final plans, obtaining state permits, getting approval from a utility, submitting financial sureties, submitting additional necessary documentation, and sometimes getting a final okay from a staff member. These matters are usually fairly straightforward administrative functions. When a particular precedent condition is complex or subject to significant judgment, it can be brought back to the board for okay of that condition (rather than my reviewing it).

Subsequent conditions may include completion of the project as approved, submitting as built drawings, submitting additional sureties (like for landscaping), paying final fees (like the school or parking impact fee), and recording notices and easements. These items are usually also pretty easy to enforce because the applicant will not receive their certificate of occupancy or return of their surety without compliance.

I think Barbara is asking about those relatively few subsequent conditions that require the developer to do something after the project is completed such as maintenance of landscaping and permeable pavement, continuing to rent only to seniors or people who qualify for workforce housing (in rare situations where that is a condition), and continuing to recycle as approved. We can hold a financial surety only for a few years so that guarantee is time limited whereas some requirements apply in perpetuity (such as maintaining landscaping).

Because of limited time and resources I do not routinely check in outlying years that the project is maintained as approved. If the owner fails to maintain the landscaping or has stopped recycling then I usually will not initiate action but rather will respond to a complaint. In those situations it becomes an enforcement situation. We do not have leverage other than good will and the threat of going to court to force compliance. Generally, we are successful in persuading the owner to correct the situation. If they do not comply then we can bring in the Town Attorney to pursue those legal remedies.