

[Plan-link] Five Year Exemption for Site Plans

Friday, April 15, 2016 8:52 AM

Good Friday morning!

RSA 674:39 is related to recorded subdivisions and site plans. What if the town doesn't record site plans? Can the town's own regulations specify the same kind of five year exemption and rules regarding active and substantial and substantial completion of improvements? Or is the plan automatically given the five year exemption from 674:39, IV and could then be subject to changes to the regs?

Nic Strong
Town of Alton

Friday, April 15, 2016 8:58 AM

Good morning to you!

I know Rockingham County will not accept site plans unless they also show a change in a lot boundary.

In reading the RSA, it appears that the exemption would apply even if the site plan is not recorded. There is that wording "...and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt....."

The municipal regulations have to state what is deemed 'substantial completion' or it should be in the notice of decision. There should be some sort of benchmark so that there is no question, five years from now, whether the applicant has met the 'substantial completion'. It could be as simple as meeting all the conditions of approval or the pulling of a building permit.

Elizabeth Robidoux
Planning Assistant, Town of Derry

Friday, April 15, 2016 9:15 AM

Thank you Liz,

I guess I don't read the statute to mean that it automatically applies to non-recorded site plans. I always read it to mean that the language you point out is specifically related to recorded site plans and it doesn't go on to say how the statute would apply to unrecorded ones! I always just thought that wording affirmed the town's right to decide to record site plans or not.

Nic Strong
Town of Alton

Fri 4/15/2016 9:27 AM

Here's the relevant language:

[674:39 Five-Year Exemption](#)

I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that . . .

Regarding site plans I think you should read it this way, which would be consistent with what the legislature intended (I was party to those discussions back in 2004):

- The five-year exemption applies to all approved site plans, but
- If the board's regulation or town's ordinance requires recording of site plans, then the five-year exemption applies only after the plan is recorded.

This language was intended to clarify an ambiguity that existed in the prior law. But now with the plat law having been passed there's a new ambiguity that should be clarified - most site plans aren't eligible for recording.

Ben Frost
NHHFA