

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

Re: Chester Pasho Findings of Fact,  
RR1 - Box 152 Conclusions of Law, and Order  
Hartland, VT 05048-9723 Application #3W0635-EB

This decision pertains to an appeal by the Applicant, Chester Pasho, from a decision of the District #3 Environmental Commission denying his application for construction of a duplex in the Town of Hartland, based on its conclusion that the proposed project does not conform with the Town Plan of Hartland. As is explained below, the Board denies the application because it is not in conformance with the Town Plan.

I. SUMMARY OF PROCEEDINGS

On May 7, 1990, the District #3 Environmental Commission issued Findings of Fact and Conclusions of Law #3W0635, denying an application for a project described as a subdivision of 0.53 acre from a 1.09-acre parcel and the construction of a duplex on the 0.53-acre parcel with related utility services and parking area. The project is to be located on Mill Road in the Town of Hartland. The District Commission denied the application pursuant to Criterion 10 of Act 250 because it found that the application does not conform to the Hartland Town Plan. See 10 V.S.A. § 6086(a)(10).

On May 31, 1990, the Applicant filed an appeal of the District Commission's decision with the Environmental Board. On July 5, Acting Chair Stephen Reynes convened a prehearing conference in Hartland, Vermont. On August 9, the Board issued a prehearing conference report and order. On October 25, Acting Chair Revnes convened a hearing as hearing officer, with the following parties participating:-

The Applicant  
Bradford S. and Laura Weeks (adjoining landowners) by  
Bradford S. Weeks  
Hartland Planning Commission by Dexter Cooper

After taking a site visit and hearing testimony, the Acting Chair recessed the hearing pending submission of proposed findings, review of the record and issuance of a proposed decision.

On November 20, 1990, the Applicant filed proposed findings of fact and conclusions of law. On November 21, the Planning Commission and Dr. and Mrs. Weeks filed proposed findings of fact and conclusions of law.

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A proposed decision was sent to the parties on April 19, 1991, and the parties were provided an opportunity to file written objections, and to present oral argument before the full Board. No party submitted objections to the proposed decision or requested the opportunity for oral argument. The Board deliberated concerning this matter on May 28, 1991. On that date, following a review of the proposed decision and the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

## II. ISSUE

The issue before the Board is whether, pursuant to Criterion 10, the application conforms with the **Hartland** Town Plan.

## III. FINDINGS OF FACT

1. The proposed project consists of the subdivision of 0.53 acre from a **1.09-acre** parcel and the construction of one duplex building on the **0.53-acre** parcel with related utility services and parking area. There already exists a two-family dwelling on the remaining land (0.55 acres). The project is located on Mill Road in the village of North Hartland.
  2. In North **Hartland** there are approximately 70 house **lots**. Forty-nine percent of these house lots are of a size half an acre or less, 39 percent are between half an acre and one acre, and 12 percent are greater than one acre.
  3. Nine buildings in the village contain more than one dwelling unit. Most of these buildings are duplexes.
  4. The Town of **Hartland** has a duly adopted Municipal Plan, approved by the Board of Selectmen on September 6, 1988 after preparation by the **Hartland** Planning Commission.
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5. The Municipal Plan for the Town of Hartland, Vermont states at page 5:

Historically the villages of **Hartland** Three Corners, **Hartland** Four Corners, and North **Hartland** have had the most intensive development. Each of these centers contains a variety of housing types mixed with small retail businesses.

6. The Town Plan includes the following objectives on page 2:

B. [T]o facilitate orderly growth of the villages while preserving the rural character and attractiveness of the **Hartland** scene.

C. To encourage the most desirable and appropriate use of land, to minimize the adverse impact of one land use upon another . . . .

E. To plan for the continuation of the present pattern and distribution of population by density allocation and to protect residential and agricultural land from undue concentration of population and buildings, traffic problems, and loss of peace, quiet, and privacy.

7. On page 4, the Town Plan states as a land use planning policy, the following:

As the majority of **Hartland** citizens have indicated their approval of the present arrangement, future development should be guided by and related to the existing pattern of settlement.

8. On page 12, the section of the Town Plan entitled "Housing Density Planning Policy," states:

Generally, a **minimum of one acre per** family dwelling unit is required throughout the town. Sub-division of any

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parcel will be limited to the overall housing density permitted in the district in which it is located. It is important to note that there are factors that may reduce permitted density within a given district. These include physical site features, historical and aesthetic value, and agricultural and forestry land uses.

Mobile home parks regulated by a Mobile Home ordinance, and Planned Residential Developments approved by the Planning Commission, may have smaller lot sizes and higher housing density than otherwise permitted.

A. Higher Density Areas

Overall housing density of one or more acres per family unit should occur in areas closely related to the existing villages.

9. On page 34, the Town Plan defines "family dwelling unit" to mean "a one- or two-family house."
10. On page 10, the Town Plan includes an Affordable Housing Planning Policy which lists "[e]xamples of possible planning policies that could lower the cost of housing."
11. A map entitled "Proposed Density Areas" dated April 1988 is appended to the Town Plan. The map shows North Hartland as a high density area.

IV. CONCLUSIONS OF LAW

Prior to issuing a permit, the Board must find that an application is in conformance with the applicable local plan. 10 V.S.A. § 6086(a)(10). The Applicant argues that his application conforms with the Town Plan because the Plan states as a main objective the continuation of the present pattern in distribution of population, noting that the Village of North Hartland is fairly densely settled and includes many residences which are located on tracts which are less than one.

acre. The Applicant argues that his project conforms with **the** existing density pattern in North **Hartland** because he proposes to divide his greater than one-acre tract **into two tracts of** approximately one-half acre each and to build a duplex on one of them. He also argues that the Town Plan is sufficiently vague **concerning** lot size so as to make it unreasonable to preclude his proposal on that basis.

The Town Planning Commission and Dr. and Mrs. Weeks argue that the proposed project does not conform with the Town Plan's requirement that there be a minimum of one acre per family dwelling unit. They assert that the proposed duplex is a single family dwelling unit as defined by the Town Plan.

A common rule of statutory construction is that, where two provisions deal with the same subject matter, and one is more general and the other specific, the more specific provision is to be given effect. State v. Jarvis, 146 Vt. 636, 638 (1986). While the Town Plan is not a statutory enactment, this rule of construction is helpful in resolving this dispute.

The provisions cited by the Applicant are more general than the provisions cited by the other parties. The Town Plan does state that "future development should be guided by and relate to the existing pattern of development" (Town Plan at 4) and that it is an objective "[t]o plan for the continuation of the present pattern and distribution of population ..." (Id. at 2). But that objective goes on to state that it is to be achieved **"by density allocation."** That brings the analysis to the more specific section on Housing Density and its Housing Density Planning Policy. The relevant language of the housing density policy is set out in full in Finding 8, above. While the Applicant points to its opening word ("**Generally**") and the fact that there are exceptions to the acreage minimum, reading the policy and the Plan as a whole, it becomes clear that **"a minimum of one acre per family dwelling unit is required throughout the town,"** except that **"[m]obile home parks regulated by a Mobile Home ordinance, and Planned Residential Developments approved by the Planning Commission, may have smaller lot sizes and higher housing density than otherwise permitted."** Many other portions of the plan use words such as **"should"** and **"guide,"** while the above more specific housing density policy uses the word **"required"** and states unequivocally that "Sub-division of any parcel will be

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limited to the overall housing density permitted in the district in which it is located." The only stated exceptions are for mobile home parks and planned residential developments, and this project is neither. Id. at 12.

Further, the Town Plan also specifically states that a family dwelling unit "means a one- or two-family house," which this proposal is, and that such dwelling units should occur on lots of one or more acres. Id. at 12, 13, 34.

Lastly, the Applicant points to language in the Affordable Housing Planning Policy as indicating another exception to the density provisions. But a reading of that policy and page 10 of the Plan also shows that it is less specific and does not help the Applicant. It is a list of "possible planning policies that could lower the cost of housing" (emphasis added). That list includes a "density bonus. if the Planning Commission determines a residential development would provide affordable housing" (which has not occurred here), and allowance of smaller minimum lot sizes for mobile home parks, pursuant to an existing Town ordinance.

In conclusion, a review of the most pertinent and specific provisions of the Town Plan leads to the conclusion that the proposed project does not conform with the Town Plan because it would be on a tract of less than one acre and is not a mobile home park or planned residential development. And even if affordable housing constitutes a further exception to the housing density policy, there is no showing that this project qualifies for that status. Accordingly, the application is denied.

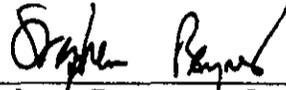
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V. ORDER

Application #3W0635-EB is denied. Jurisdiction over this matter is returned to the District #3 Environmental Commission.

Dated at Montpelier, Vermont this 11th day of June, 1991.

ENVIRONMENTAL BOARD



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