

28. Criterion 9(H) (Costs of scattered development)

I. Requirements for Issuance of a Permit

10 V.S.A § 6086(a)(9)(H) provides:

Costs of scattered development. The district commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

This criterion thus involves a three-step process: the applicant must demonstrate that the project is either (1) contiguous to an existing settlement; or (2) a settlement in itself; or (3) the additional costs arising from the project do not outweigh the projects benefits. 10 V.S.A § 6086(a)(9)(H).

II. Burden of Proof

The burden of proof under this criterion is on the applicant. 10 V.S.A § 6088(a).

III. Analysis

Purpose

Development that becomes sprawl, or scattered development, arises when development is not contiguous to an existing settlement. Because scattered development has adverse primary and secondary impacts, this criterion requires stricter review over development that does not occur within or adjacent to existing communities. *Re: St. Albans Group and Wal*Mart Stores, Inc., #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 40 - 41 (Jun. 27, 1995), aff'd, In re: Wal*Mart, 167 Vt 75 (1997).*

This criterion is intended to “preserve the viability of the traditional community centers of Vermont, to channel growth into such centers, to keep the growth proportionate to the existing size of Vermont’s towns and villages unless a locality seeks otherwise, and to ensure that any growth outside of the traditional centers would not have an adverse impact on state and local government.” *Id.*

Definition of existing settlement

Whether or not a project is or is contiguous to an existing settlement is a question that must be decided on a case by case basis. *Re: Stratton Corp., #2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 20 (May 8, 2001).*

An “existing settlement” means an extant community center similar to the traditional Vermont center in that it is compact in size and contains a mix of uses, including commercial and industrial uses, and importantly, a significant residential component. It is a place in which people may live and work and in which the uses largely are within walking distance of each other. *Re: St. Albans Group and Wal*Mart Stores, Inc., supra, at 40 – 41.*

Existing settlements do not need to follow neat political boundaries. Existing settlements can extend through one political boundary to the next as long as they contain a balance of uses not only commercial but industrial and residential. *Re: The Home Depot USA, Inc., #1R0048-12-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Aug. 20, 2001).*

A development, such as a ski resort or a mixed use development might be so comprehensive that its operation would be tantamount to an existing development. That is, its design would be such that the project would not cause or contribute to sprawl. *Re: Okemo Mountain, Inc. et al. (Master Plan), #s 250351-30(2nd Revision)-EB, 250351-31EB, and 250351-25R-EB, Findings of Fact, Conclusions of Law, and Order at 69 (Feb. 22, 2002).* However, the potential of development such as ski resorts to become settlements unto themselves rests primarily on the residential component of the settlement. The residential component does not include short-stay hotels or seasonal housing units such as condominiums. An “existing settlement” must have significant year round residential population. *Re: Killington, Ltd., et al. (Master Plan), #1R0835-EB, Findings of Fact, Conclusions of Law, and Order at 12, 16 - 17 (Jul. 20, 2000) and Re: Stratton Corp., #2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order (May 8, 2001).*

Changing Nature of Project

An analysis of an initial application may determine that there will be no significant costs, or that any costs will be outweighed by benefits. However, this balancing may change due to a physical expansion or other changes in the permitted project. When such a change would cause a shift in the 9(E) balancing, a permit amendment is required by law. *Re: CVPS and Verizon New England (Jamaica), #2W1146-EB, Findings of Fact, Conclusions of Law, and Order (altered) at 13 (Dec. 19, 2003).*

Analysis Applied

In *Okemo Mountain*, the Board first determined that the applicant's project was not a settlement in itself. Though the ski village had residential and commercial areas tied closely together, the residential areas were not sufficient year-round dwellings to create the type of village or town envisioned by the statute. Because the project was not a settlement in itself, the Board next asked whether the project was physically contiguous to an existing settlement. The Board determined that it was not contiguous because the nearest existing settlement was two miles away. Because both of the above questions were answered in the negative, the Board needed to analyze the final element: whether the additional costs of public services and facilities caused directly or indirectly by the project outweigh the tax revenue and other public benefits. Since the applicant was paying for significant parts of the infrastructure for the new development, the Board concluded that the additional costs of public facilities were minimal. Furthermore, the Board concluded that the project would bring in significant tax revenues and recreational opportunities. Thus, the project satisfied criterion 9(H). *Re: Okemo Mountain, Inc, (Master Plan), supra.*

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