



State of Vermont

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Agency of Natural Resources

MEMORANDUM

TO: Elizabeth Lord, Esq., Land Use Attorney; Jon Groveman, Esq., General Counsel

FROM: Jen Mojo, AICP, Regulatory Policy Analyst

DATE: 12/9/2014

RE: Criterion 9L Analysis for Application #1R0948-2, Saxon Partners, LLC.

The applicant is proposing an 81,000 square foot wholesale club, restaurant and gas station on a ~20 acre parcel at the intersection of Routes 4 and 7 in Rutland Town. The project will be served by municipal water and sewer. The proposed site is a "greenfield" (undeveloped, open land) surrounded by Class II wetlands, of which a portion were conserved as part of an earlier Act 250 permit associated with the Diamond Run Mall.

The Agency has an interest in protecting lands outside of existing village and urban centers on many levels, not just in regards to direct resource impacts. There is much research which shows that strip development outside of population centers contributes to increases in greenhouse gas emissions through increases in vehicle miles traveled, places development pressure on working landscapes, fragments larger habitat blocks which contain wildlife corridors, increases stormwater runoff associated with new roads/impervious surfaces, and places additional physical and financial burden on municipal utility systems.¹

Criterion 9L was included as part of Act 147 and came into effect on June 1, 2014. The goal of criterion 9L is to support historic settlement patterns (compact villages/downtown centers surrounded by rural countryside) through limiting strip other inefficient development patterns outside of existing settlement areas. In order for a District Commission to make positive findings under criterion 9L for a project outside of an existing settlement area, the applicant must demonstrate that the project will:

- i. Make efficient use of land, energy, roads, utilities and other infrastructure **and:**
- ii. (I) will not contribute to strip development, or
(II) If the project is "confined to" existing strip development, it incorporates infill and minimizes the characteristics of strip development.

10 V.S.A. §6086 (9)(L)

¹ Smart Growth America – Measuring Sprawl 2002 & 2014:

<http://www.smartgrowthamerica.org/documents/MeasuringSprawl.PDF>,

<http://www.smartgrowthamerica.org/documents/measuring-sprawl-2014.pdf>

As part of these proceedings regarding application #1R0948-2, the Natural Resources Board hired Ms. Julie Campoli to review the project for conformance with the newly revised criterion 9L. Ms. Campoli's report was provided to parties on November 10, 2014. I reviewed her report as a professional land use planner and generally agree with her evaluation of the project under criterion 9L. The purpose of this memorandum is to highlight questions that ANR believes should be considered by the Applicant and Commission based on a review of Ms. Campoli's memorandum and the application under 9L.

Existing Settlement

The first question to ask is if the project is within an "existing settlement." Existing settlement is defined as:

- i. A designated center under 24 V.S.A. chapter 76A. These are State approved designations for downtowns, village centers, growth centers, and neighborhood development areas, or
- ii. An existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas and public parks or greens.
 - a. Strip development outside an area described above shall not constitute an existing settlement.

10 V.S.A. §6001(16)

In determining whether a project is located within an "existing settlement," the District Commission should ensure that the area under consideration meets all of the factors listed in the definition. I concur with Sections 1 and 2 of Ms. Campoli's report regarding the characteristics of the existing settlement area in downtown Rutland City and the strip development within the vicinity of the project site. Also, not mentioned in Ms. Campoli's report is the Commission's earlier finding under criterion 9H (scattered development) for permit 1R0948 which states "the project is not physically contiguous to an existing settlement and is therefore scattered development as that term has been interpreted by appellate panels."

Based on these factors, it is my opinion that the project in this case is located outside of an existing settlement area because it does not meet all of the enumerated statutory factors, the existing development within the vicinity of the project constitutes strip development, and previous findings indicate the project is not physically contiguous to an existing settlement.

Efficient Use of Land, Energy, Roads, Utilities, and Other Infrastructure

Because 9L is applicable to the project, the project must make "efficient use of land, roads, utilities and other infrastructure." Although the legislature did not provide a test for what constitutes "efficient use," the concept of efficient use of land, energy, roads, utilities and other infrastructure is already apparent in Vermont's villages and downtowns. Compact neighborhoods with interconnected street networks, mixtures of land uses, access to transit, and a concentration of retail and services are considered the most efficient places. Development outside of the existing settlement areas increases land and energy consumption, and demand on municipal services and road networks. Other factors and questions to consider in the efficient use analysis are outlined below.

Efficient Use of Land – I agree with Ms. Campoli’s analysis of the project under Section 3a. Efficient use of land can be demonstrated through clustering development, reusing existing abandoned sites, as well as avoiding and minimizing impacts to natural resources. The ability for the site to accommodate future infill development and density should also be considered a factor of efficient use, as there is much research indicating dense mixed use versus single use developments are more efficient and sustainable in terms of land and energy consumption, as well as financial costs. In this situation, the ability for the site to accommodate future density and development is limited by the existing conservation easements and Class II wetlands. Other questions to consider for efficient use of land include a project’s compatibility with surrounding uses. Does the project (or the project’s intended users) compliment, support and enhance surrounding uses and resources such as the conserved wetlands? Are there existing developed sites available which could meet the Applicant’s development goals? These are all questions that the applicant must adequately address to obtain positive findings under criterion 9L.

Efficient use of Energy and Roads– I agree with Ms. Campoli’s analysis of the project under sections 3b and 3c.

Efficient Use of Utilities - Although not addressed in Ms. Campoli’s report, poorly planned and random extensions of municipal systems can lead to inefficient use of land and utilities through leapfrogging of low density, single use, strip/sprawl development. Extensions of services can allow projects to connect to the systems in a linear fashion without considerations for better planned nodal development patterns. As stated in the *2003 Vermont Agency of Natural Resources: Growth Center and Growth Management Guidance*, “the high cost of wastewater treatment and collection facilities which, typically funded through user fees, encourages revenue generation through the connections of the greatest number of users that system capacity permits, regardless of their location....” Extensions of utility systems to unplanned areas outside of existing settlements can also increase municipal maintenance costs for each additional linear foot. Although there are existing sewer and water lines adjacent to the site, based on the future land use map, permitted uses, and lot sizes outlined in Rutland Town’s Town Plan, similar strip development could be permitted on the west side of Route 7 at the proposed project location as well as south of the Route 4 and 7 intersection.

Strip Development

Even if the Commission finds the project makes efficient use of land, energy, roads and utilities, Criterion 9L also requires the Commission to find that the project does not contribute to strip development. If the Commission determines the project is “confined to” existing strip development, it must incorporate infill and minimize the characteristics of strip development.

Does the project contribute to strip development?

A project is considered strip development if it has three or more of the following characteristics:

- Broad road frontages,
- Predominance of single story buildings,
- Limited reliance on shared highway access,
- Lack of connection to any existing settlement except by highway,
- Lack of connection to surrounding land uses except by highway,
- Lack of coordination with surrounding uses, or
- Limited accessibility for pedestrians.

See 10 V.S.A §6001(36) definition of strip development

Ms. Campoli's analysis under Section 5 which addresses infill could also be used to address the question "does the project contribute to strip development?" Infill is a development tool used to increase density, provide multimodal connections, and concentrate development to limit development pressures on open resource lands. Characteristics of infill projects are the opposite of those identified in the statutory definition of strip development as the purpose of infill is to reinforce traditional development patterns found in existing settlement areas. I concur with Ms. Campoli's report, and it is my opinion that the project displays characteristics of strip development, as well as potentially contributes to and extends the existing strip development north of the project site.

Is the project confined to strip development? Does the project incorporate infill and minimize the characteristic of strip development?

I agree with Ms. Campoli's analysis in Section 4. The question "is the project is confined to strip development" also depends on how the Commission interprets the term "confined to" - what are considered the confining features and what are their relative proximity to the project? As described in the *Natural Resources Board Criterion 9L Guidance*, the legislative intent of "the "confined to" requirement ensures that this provision can apply only to sites fully within existing strip development, to guard against leapfrog development, rural sprawl, and any extension of existing strip." I also agree with Ms. Campoli that in general, highways could be considered as open space or an element of strip and potential confining feature. However in this instance, because of the existing water and sewer utilities which run south of Route 4, the future land use parameters outlined in the Rutland Town Plan, and open areas south of Route 4, it is my opinion that Route 4 should not be considered a confining feature of strip development because of the ability for future similar strip development to occur south of the Route 4/7 junction. If Route 4 is not viewed as a confining feature, the project would not be a candidate for the infill provision.

If the Commission decides the project is a candidate for infill, I agree with Ms. Campoli's analysis under Section 5 regarding the general characteristics of infill projects (increases connections to surrounding mixes of uses, density, and pedestrian access) and the project's design which "will likely reinforce auto-dependency."

Conclusion

The Applicant has not yet presented a full application to address all of the ten criteria. Consequently, the Agency has not yet conducted a full review to determine whether this project presents impacts to natural resources. The Agency is concerned however, that the project affects the Agency's broader interests regarding greenhouse gas emissions, protection of working lands and resources outside of existing settlement areas, and funding for maintenance and upgrades of municipal infrastructure projects. Based on the information submitted to date by the Applicant, and Ms. Campoli's analysis, ANR agrees that the project constitutes an inefficient use of land, roads and utilities, as well as contributes to a pattern of strip development regardless if the project is eligible for the infill provision. Additionally, as set forth above, a number of questions remain unanswered by the Applicant which should be considered in the 9L analysis.