COMMENTARY

ETHAN ALLEN INSTITUTE

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Showdown at Bradford Square

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A mile and a half south of the Connecticut River village of Bradford, a land use case is unfolding that may have widespread repercussions throughout the state. First, some background.

When Act 250 was hurriedly passed in 1970, it included as one of its criteria for obtaining a permit that the proposed development "is in conformance with any duly adopted local or regional plan…" (Criterion 10).

Not long afterwards, the Environmental Board began to wonder if this meant that a project fully compliant with local zoning could be denied an Act 250 permit because the Board didn't think the plan conformed to the town plan or the regional plan. The Board thus sought an advisory opinion from Attorney General James Jeffords, a co-author of Act 250.

That opinion, authored by Asst. Attorney General John Hansen, said: "a member of the general public cannot be denied a land development permit or prosecuted in court because his activities or proposed activities do not comply with a duly adopted *plan*. Rather, it is non-conformance or failure to comply with the *bylaws* implementing the plan that provides the basis for administrative and enforcement actions of this nature."

As a result of this opinion, for 18 years the Environmental Board shied away from rejecting an application for failure to conform to a local or regional plan. Then the Board cautiously began to allow town plans, usually in combination with other factors, to defeat development applications.

But in 1994 the Vermont Supreme Court dropped a bomb on the Board. In a Manchester office building case, the Court overturned the Board's rejection of a permit for failure to conform to the town plan. Said the Court, "The [town] plan is a general guideline to the [town's] legislative body, an overall guide to community development…The [zoning] regulations control

the plan...[The Environmental Board] may not give non-regulatory abstractions in the town plan the legal force of zoning laws." Ouch!

Now to the Bradford Square case. A developer seeks to put a commercial development (grocery, bank, restaurant etc.) on a 5.7 acre field half a mile down Route 5 from the town's I-91 access road.

The 2003 regional plan designated this area an "interchange development area." The developer took this to mean that it allowed "development". So did the town of Bradford, which had planned and zoned the area "commercial" since 1974. The selectboard has been fully supportive of the proposed development.

But in May the Two Rivers Regional Planning Commission, based in Woodstock 45 miles away, amended its regional plan, allegedly without even informing the Bradford selectboard. According to the new plan the Bradford Square area is now a "rural area" unsuitable even for such small-scale development. The Commission has appeared before the District Environmental Commission to oppose the developer's Act 250 application.

The Bradford Square case thus squarely presents the question posed in 1970: can an application be denied solely because a Regional Planning Commission declares that the projected development does not conform to the regional plan?

If the answer is yes, the backers of the long-deceased State Land Use Plan and Gov. Kunin's Act 200 dream of 246 state-approved town plans "uniform in standards, specific in requirements, and tough on delinquents" will have taken a giant step toward their goal of almost 40 years.

That does leave open the question of large developments of "substantial regional impact." A case can be made for carefully defining very large development projects – IBM, Taft's Corners, and Killington-Pico come to mind - whose effects would be felt many miles away. The legislature did just this in the case of large industrial-style farms. Such mega-projects should be subject to review by some accountable body at a level higher than a single town.

Bradford Square is quite far from being such a mega-project. If town voters vote to approve their zoning bylaws, and a development obtains a zoning permit under those bylaws, then that matter should be settled, regional plan or no regional plan.

In the Bradford Square case, the Regional Planning Commission is trying to veto even a small development of little or no "substantial regional impact." The legislature is long overdue to take regional planning commissions out of the land use micromanagement game. It should amend Act 250 to require developments to conform with voter-adopted zoning bylaws, instead of with the idealistic and often vague "regulatory abstractions" contained in local or regional plans.

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