

**CHAPTER 71**

**HB 761 - FINAL VERSION**

07Jan2004... 0293h

04/15/04 1075s

2004 SESSION

03-0351

06/01

HOUSE BILL **761**

AN ACT enabling municipalities to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.

SPONSORS: Rep. Spang, Straf 72; Rep. Akins, Graf 18; Rep. Twombly, Straf 67; Rep. C. Christensen, Hills 58; Rep. Shultis, Rock 86; Sen. Sapareto, Dist 19;

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill:

- I. Adds density rights to innovative land use controls.
- II. Enables municipalities to require innovative land use controls on certain lands, when supported by the master plan.
- III. Gives planning boards the power to require preliminary subdivision review.
- IV. Removes an applicant's option to forego a preapplication review when such review is required by subdivision regulations.

-----  
-----

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

07Jan2004... 0293h

04/15/04 1075s

03-0351

06/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Four*

AN ACT enabling municipalities to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

71:1 Innovative Land Use Controls; Transfer of Development Rights; Density Added. Amend RSA 674:21, I(d) to read as follows:

(d) Transfer of **density and** development rights.

71:2 Innovative Land Use Controls; Use When Supported by Master Plan. Amend RSA 674:21, II to read as follows:

II. An innovative land use control adopted under RSA 674:16 **may be required when supported by the master plan and** shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

71:3 Power to Regulate Subdivisions; Preliminary Review Added. Amend RSA 674:35, I to read as follows:

I. A municipality may by ordinance or resolution authorize the planning board **to require preliminary review of subdivisions, and** to approve or disapprove, in its discretion, plats, and to approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions shall be graded and improved and to which streets water, sewer, and other utility mains, piping, connections or other facilities within subdivisions shall be installed.

71:4 New Subparagraph; Innovative Land Use Controls Required. Amend RSA 674:36, II by inserting after subparagraph (l) the following new subparagraph:

(m) Require innovative land use controls on lands when supported by the master plan.

71:5 New Subparagraph; Site Plan Review Regulations; Requirement for Innovative Land Use Controls Permitted. Amend RSA 674:44, II by inserting after subparagraph (h) the following new subparagraph:

(i) Require innovative land use controls on lands when supported by the master plan.

71:6 Board's Procedures on Plats; Election to Forego Preapplication Review Removed. Amend RSA 676:4, II(c) to read as follows:

(c) ~~[The applicant may elect to forego or engage in preapplication review or either phase thereof as provided in subparagraphs (a) and (b).]~~ Preapplication review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

71:7 Effective Date. This act shall take effect 60 days after its passage.

(Approved: May 7, 2004)

(Effective Date: July 6, 2004)

**CHAPTER 199**

**SB 414-FN - FINAL VERSION**

03/04/04 0515s

22Apr2003... 1201h

05/06/04 1552eba

2004 SESSION

04-3138

06/01

SENATE BILL ***414-FN***

AN ACT clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations.

SPONSORS: Sen. Green, Dist 6; Sen. Clegg, Dist 14; Sen. Foster Dist 13; Rep. Patten, Carr 7; Rep. Gillick, Rock 85; Rep. Osborne, Merr 40

COMMITTEE: Public Affairs

ANALYSIS

This bill clarifies:

- I. The authority of municipalities to adopt impact fees.
- II. The authority of municipal planning boards to impose exactions for off-site impacts.
- III. How the rights of property owners may vest.

This bill also codifies the holding of the New Hampshire Supreme Court in Frisella v. Farmington, 131 N.H. 78 (1988), recognizing the authority of municipal planning boards to waive provisions of subdivision regulations.

-----  
-----

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/04/04 0515s

22Apr2003... 1201h

05/06/04 1552eba

04-3138

06/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Four*

AN ACT clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

199:1 Four-Year Exemption; Impact Fee Exception Added. RSA 674:39 is repealed and reenacted to read as follows:

674:39 Four-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 4 years after the date of approval; provided that:

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 12 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;

(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and

no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 4-year exemption described in paragraph I. The planning board may, for good cause, extend the 12-month period set forth in paragraph I(a).

199:2 Innovative Land Use Controls; Impact Fees. RSA 674:21, V(d) is repealed and reenacted to read as follows:

(d) All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision plat or site plan. When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. Impact fees shall be intended to reflect the effect of development upon municipal facilities at the time of the issuance of the building permit. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment of impact fees in effect at the time of subdivision plat or site plan approval by the planning board. If an alternate schedule of payment is established, municipalities may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of the assessed impact fees.

199:3 New Subparagraph; Innovative Land Use Controls; Off-site Exactions. Amend RSA 674:21, V by inserting after subparagraph (i) the following new subparagraph:

(j) The failure to adopt an impact fee ordinance shall not preclude a municipality from requiring developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development. For the purposes of this subparagraph, "off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. The amount of any such exaction shall be a proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the

improvements financed by the exaction. As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to bonding and timing conditions as may be reasonably required by the planning board. Any exaction imposed pursuant to this section shall be assessed at the time of planning board approval of the development necessitating an off-site improvement. Whenever the calculation of an exaction for an off-site improvement has been predicated upon some portion of the cost of that improvement being borne by the municipality, a refund of any collected exaction shall be made to the payor or payor's successor in interest upon the failure of the local legislative body to appropriate the municipality's share of that cost within 6 years from the date of collection. For the purposes of this subparagraph, failure of local legislative body to appropriate such funding or to construct any necessary off-site improvement shall not operate to prohibit an otherwise approved development.

199:4 New Subparagraph; Subdivision Regulations: Waiver Provision.  
Amend RSA 674:36, II by inserting after subparagraph (m) the following new subparagraph:

(n) Include provision for waiver of any portion of the regulations in such cases where, in the opinion of the planning board, strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations.

199:5 Effective Date.

I. Section 2 of this act shall take effect June 1, 2005.

II. The remainder of this act shall take effect upon its passage.

(Approved: June 7, 2004)

(Effective Date: I. Section 2 shall take effect June 1, 2005.

II. Remainder shall take effect June 7, 2004.)