

A Development Attorney's Perspective on RI Land Use Laws

Andrew M. Teitz, Esq., AICP
Ursillo, Teitz & Ritch, Ltd
2 Williams Street
Providence, RI 02903
zoning@utrlaw.com

A. I've looked at zoning from both sides now

(with apologies to Judy Collins)

- Actually 4 sides:

1. Member of Original Land Use Commission (a/k/a Weygand Commission) 1990-1992 and member of three-member drafting subcommittee (with Derry Riding and Blanche Higgins) for ZEA of 1991 and DRA of 1992.
2. Drafter or co-drafter of dozens of municipal land use ordinances, from complete zoning ordinances and development review regulations to specific projects such as impact fees, airport zoning, and transferable development rights.
3. Municipal attorney for several towns over 35 years.
4. Developer attorney in the the other cities and towns for over 35 years.

4. Developer Attorney (continued) - Representative Development Clients

- Fortune 500 corporations, such as CVS
- Developers of sites (such as Stephen Lewinstein) for national retailers including CVS, Walgreens and Shake Shack
- National corporations (local counsel) like Topgolf, Pick-n-Pull, and LA Fitness.
- Cellular Communications companies
- Housing developers such as Trinity Financial
- Churches and museums, such as Beneficent Congregational Church and the Art Institute of Chicago
- Educational Institutions, including Brown University, Moses Brown School and Wheeler School
- Selected neighborhood opposition groups

B. Those were the days, my friend, we thought they'd never end: RI land use law before 1988?

(with apologies to Mary Hopkin)

1. A comprehensive plan could be as short as an economic development brochure, or not exist at all.
2. Comprehensive plan consistency thus meant nothing.
3. Subdivisions were defined by what they were not.
4. The process for a “subdivision approval not required” stamp could equal a major subdivision application.
5. Delay was a major tool for growth management by towns.
6. Much of zoning law was not in the General Laws, but had been created by the courts, such as abandonment and of course “Viti Variance.”

C. If he knew what he wanted, we'd be giving it to him: What do developers really want?

(with apologies to The Bangles)

1. Tell me what are the rules of the game.
2. Don't change the rules in the middle of the game!
3. Tell me how long it's going to take for me to develop this project (because time is money), and don't make it too long.
4. If the answer is "no," tell me soon, before I waste a lot of money.

1. Rules of the game “as applied” - Teach your children well (with apologies to Crosby, Stills & Nash)

- Education for all lay board members
- Education in person for the lay board members who think they know it all
- Recruit better board members, by making it easier for people other than the “usual suspects” to serve (Virtual and/or hybrid meetings – the time has come)

1. Rules of the Game (continued) – Objective Standards

- What can I do with my property? – Zoning Certificates should mean something and be appealable.
- Dimensional Variances – What does “More than a mere inconvenience” really mean?

2. Don't change the rules in the middle of the game.

- Vesting is reasonably well set forth in the existing DRA. Just need to add it to things like minor subdivision.
- Uniform statewide vesting provisions needed for zoning.

3. How long must I wait? (with apologies to Dr. Dog)

- Rationalize the Major/Minor Subdivision time frames, and standardize with Comprehensive Permit time frames.
- Mandatory (but reasonable) time frames for zoning boards, with approval by default if not met.
- Certificates of Completeness (or Incompleteness) for Zoning Applications too.

4. Tell me no (with apologies to Whitney Houston)

- Mandatory Pre-application meetings for more applications, including zoning board.
- Increased use of Technical Review Committees.
- Enforce restrictions on the limits of expensive plans (such as drainage and traffic) at Master Plan, while making clear that vesting does not apply at Master Plan for such components.

D. You were on my mind – some other specific suggestions (with apologies to The We Five)

1. Mailed notice with certificate of mailing, for all forms of zoning and development review applications and amendments – Certified mail is way too expensive and the least likely way to give actual notice; and (sadly) first class mail alone just isn't reliable anymore.
2. Diversity and Inclusion - As per above, use modern technology of virtual and hybrid meetings to recruit more than just the “usual suspects.”

Other suggestions (continued)

- Quorums
 - You don't have a significant quorum problem.
 - State-wide enabling legislation, requiring alternates for ALL ZB's and PB's will easily "cure" it.
 - Other items (such as virtual/hybrid) will easily "cure" it.
 - Unintended Consequences: If you eliminate the absolute majority (PB) and 4/5 majority (ZB) requirements, you could actually make it worse for developers in the "don't change the rules in the middle of the game" category, because the decision could now be determined solely by which few board members decide to show up on any given night, and that can cut both ways.