

## STAYS IN ZONING BOARD AND PLANNING BOARD APPEALS

By: Robert D. Ciandella, Esquire

This summarizes three provisions of our land use law describing the legal effect of the filing of a land use appeal. RSA 676:6 establishes the effect of the filing of an appeal with the Zoning Board of Adjustment; RSA 677:9 describes the effect of filing an appeal with the Superior Court from a decision of the Zoning Board of Adjustment and RSA 677:15 establishes the effect of filing an appeal with the Superior Court from a decision of the Planning Board. The zoning board side of this picture is clear; the planning board side is not.

Put simply, filing an appeal to the Board of Adjustment stays the facts on the ground. The lead sentence of the governing statute on this question, RSA 676:6, states: "The effect of an appeal to the board shall be to maintain the status quo." Absent a showing by the code enforcement officer or zoning administration officer that maintaining the status quo creates imminent peril to life, health, safety, property or the environment, the legal and practical affect of the filing of an appeal to take a matter before the Zoning Board of Adjustment is to freeze or stay the facts on the ground.

When appealing from a decision of the zoning board, the presumptions are reversed. There is no stay unless the Court, on application and notice, for good cause shown, grants a restraining order. RSA 677:9 states that an appeal "... shall not stay any

enforcement proceedings upon the decision appealed from, and shall not have the affect of suspending the decision of the zoning board of adjustment or local legislative body."

The statute governing appeals from a decision of the Planning Board establishes a discretionary review standard for the Superior Court. In practice, the Superior Court accepts appeals from decisions of planning boards perfunctorily.

RSA 677:15 states that a person aggrieved by a decision of the planning board concerning a plat or subdivision may petition the Superior Court to review that decision. The Court, upon presentation of such a petition, "may allow a certiorari order directed to the planning board to review such decision ...". RSA 677:15 goes on to state that the allowance of the certiorari order "... shall stay proceedings upon the decision appealed from." What this language means has not been settled by a decision of our Supreme Court. The result is that different Superior Court judges interpret this language differently.

Some judges interpret this language to mean the same as the language governing appeals to the Board of Adjustment, preserving the status quo and permitting no municipal or private activity. Some judges interpret this language to stay only municipal action, leaving the developer to proceed at his risk. Some judges interpret this language to stay neither the municipality nor the developer. The perfunctory nature by which the Court grants

certiorari in planning board appeals, certiorari orders are issued ministerially as part of the orders of notice, has the practical effect of weakening the stay language in the planning board appeal statute.