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The comprehensive plan and zoning ordinance conflict - by Jeffrey Gladstone

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Jeffrey Gladstone, Partridge Snow & Hahn LLP

As Rhode Island experiences an uptick in new commercial development from its capital city to its many vacation destinations, once settled land use issues have become a new challenge. The Rhode Island legislature passed the Comprehensive Planning and Land Use Regulation Act back in 1988 which established a system of statewide planning to ensure consistency and uniformity in municipal land use regulation. Under the Act, a municipality's comprehensive plan became the primary regulatory document.

The Act was amended in 2011 during slow economic times when major developments were scarce. It is only now, with the increase of major development projects in the state, that issues related to the 2011 Amendment have arisen. Although municipalities regularly update their zoning ordinances to meet current conditions, some of these new zoning amendments are either inconsistent, or may be interpreted as inconsistent, with that municipality's comprehensive plan.

In applying the new provisions of the 2011 Amendment, municipalities have taken differing positions when dealing with inconsistencies between its comprehensive plan and its zoning ordinance. Some municipalities continue to treat the comprehensive plan as the primary land use document while others have interpreted the 2011 Amendment as changing well-established Rhode Island law and now gives primacy to the zoning ordinance.

The "confusion" related to the 2011 Amendment arises, in part, out of the elimination of the eighteen-month time requirement for bringing a zoning ordinance into compliance with the municipality's comprehensive plan. The 2011 Amendment added to the confusion by including a provision that states that in instances of conflict, "the zoning ordinance in effect as of the time of the comprehensive plan adoption" controls until the "zoning ordinance is amended to achieve consistency with the comprehensive plan." Troubles arise when a municipality takes no action to achieve consistency, or amends its zoning ordinance inconsistently with its comprehensive plan. This type of municipal action leads to the seemingly unanticipated result of undermining the Act's stated purpose of establishing a uniform system of statewide planning, creating confusion for developers and land owners over which requirements control.

Importantly, the 2011 amendment to the Act also reiterated two well-established principles: (1) that "[e]ach municipality shall amend its zoning ordinance and map to conform to the comprehensive plan in accordance with the implementation program"; and (2) that "[i]n instances of uncertainty in the internal construction or application of any section of the zoning ordinance or map, the ordinance or map shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable content of the adopted comprehensive plan." It is this author's opinion that the history of land use and zoning in Rhode Island, coupled with the two above

principles, supports the continued primacy of a municipality's comprehensive plan over its zoning ordinance.

Litigation has ensued challenging certain developments that have obtained zoning and planning board approvals based on a determination by the municipality that the developments are in compliance with all zoning requirements, despite being in conflict with the comprehensive plan. The litigation raises the once settled issue of the primacy between a municipality's zoning ordinance and its comprehensive plan. Hopefully, the Rhode Island Supreme Court will resolve this conflict in its upcoming session.

So, how can a developer best protect itself when undertaking due diligence before committing to put shovels in the ground? Based on the status of Rhode Island land use law, particular attention must now be spent analyzing the interplay between the municipality's comprehensive plan, the zoning ordinance, the subdivision regulations, the present and future land use maps, and applicable overlay districts. Developers must ascertain whether relevant land use maps have been updated to bring them into conformity with changes to either the zoning ordinance or the comprehensive plan. The applicable overlay districts must be determined and the municipality's land use maps must be reviewed and compared. If the project is a benefit to the community, the municipality should be willing to take any necessary steps required to ensure that the competing land use requirements are properly satisfied.

Jeffrey Gladstone is a partner at Partridge Snow & Hahn LLP and a member of the Real Estate group, Providence, R.I.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540