

# Court Supports Jaffrey Mountain Zone

## *Rules that 28-unit project cannot be treated as one lot*

When a real estate developer proposed that his 28-unit project be considered one lot, eyebrows were raised in both Jaffrey and Concord. But when the Jaffrey Planning Board and Zoning Board of Adjustment concurred, a lawsuit was filed.

The Society for the Protection of New Hampshire Forests and a group of Jaffrey residents challenged the 28-unit condominium development planned for construction within the town's designated Mountain Zone. The Mountain Zone, which has been on the town's books for more than 16 years, was developed to protect wetland wildlife and maintain safe water conditions.

The proposed development includes 12 units along Cutter Brook Pond. However, if the standards of the town's Mountain Zone wetland ordinance are followed, only four units would be allowed along the same 900-foot shoreline.

Meeting the standards of the wetland ordinance would also reduce the total number of structures allowed on the property by more than half.

However, if the interpretation that the complex consists of only one lot is upheld, there would be no limit to the number of structures that could be built on a piece of land.

The Town of Jaffrey and the developer (Robert Van Dyke of Rindge, NH) claimed that the proposed development should be considered one lot, since it comprised 28 single family homes to be constructed and marketed as units in one condominium association. The Forest Society and local residents litigating the case argued that each house proposed must individually adhere to the minimum standard set by the Jaffrey Wetland Ordinance of 200 feet of frontage per dwelling lot adjacent to a wetland.

On June 9, 2008 Cheshire County Superior Court Judge John Arnold ruled that condominium developments cannot evade laws meant to protect environmentally sensitive areas by saying the development consists of a single communal lot. In his order, Arnold wrote, "Allowing Van Dyke to sidestep the regulations by describing the property as a single lot would undermine the purpose of the [Jaffrey] Wetlands Ordinance and render its language regarding main buildings meaningless."

The Court also ruled that the single-lot argument by Jaffrey's ZBA and Planning Board violates the state law on condominiums: "Even if the Court could find that Section X of the Wetlands Ordinance allows Van Dyke to develop the property in a manner normally impermissible by calling it a condominium, state law prohibiting disparate treatment of condominiums would preempt it."

Arnold ruled that the Jaffrey ZBA and Planning Board acted unlawfully by finding that Van Dyke does not need a variance from Section X of the Wetlands Ordinance. The Court ruled that Van Dyke would need to obtain a new variance if he planned to proceed with the 28-unit project.

"People who live in the area and can view Mount Monadnock feel strongly that this is a unique place in New Hampshire and the world," said Charles Royce, one of the Jaffrey petitioners. "I'm glad that the Court upheld what citizens said they wanted when they voted to put the Mountain Zone in place."

"Every town that relies on zoning to protect wetlands and traditionally scenic areas should be pleased with the Court's decision," said Will Abbott, vice president for policy at the Forest Society. "We have felt from the beginning that the proposed development is overly intensive for the Mountain Zone. We're pleased to see that at a minimum, it will need to be revisited."

On July 1 Mr. Van Dyke brought his development proposal back to the Jaffrey Zoning Board of Adjustment to request a variance from the 200-foot minimum so he can build the 28-unit development on 17 acres of land without having to meet the 200 foot frontage standard.

According to Jim Bassett with the Concord firm Orr & Reno, counsel for the petitioners, "Given the Court's opinion, coupled with the requirements under state law for obtaining a variance, we do not believe that Mr.

Van Dyke can lawfully obtain a variance for a development that is dramatically inconsistent with the spirit and intent of the ordinance.”

If the variance is denied, the maximum number of houses that could be constructed would shrink from 28 to 15 or less. “It’s satisfying to note that the principles and force of law underlying the Jaffrey Zoning Ordinance are being upheld,” said Abbott. “In this case, the protection afforded by the Mountain Zone designation supports the core set of values at stake.”