Now, what EXACTly Are You Asking For?

Mitigation and Exactions: How Much is Enough?

Or

How Much is Too Much?

Citizen Planner Training Collaborative March 2019

Barbara J. Saint André
Judi Barrett
Question 1

You live on a busy tree-lined residential street in Figgleburg. There are no sidewalks. One mile down the road is a neighborhood business district and a dangerous intersection. A developer plans to build 200 multifamily units on 10 acres about 300 feet from your property. (This is not a 40B.) You and your neighbors object, citing traffic safety problems that prevent you from walking to the stores nearby or allowing your kids to bicycle there. You testify that adding 200 more housing units will make an already unsafe situation even worse.

What is the developer’s responsibility?
What EXACTly would you ask for?
What information does the Planning Board need?
Question 2

About ten years ago, Figgleburg agreed to rezone land for a large commercial project in exchange for traffic improvements on a busy street. Memorialized in a development agreement, the deal called for phased mitigation triggered by increments of new construction. The project was stalled, and meanwhile the street went from busy to severely congested several times a day. Now the developer wants to start building the new access road so he can sell a lot to a car dealership. The new town manager says OK, but only if he makes all the traffic improvements now, at once, instead of phasing them.

What do you think? What EXACTly would you do?

How would you advise the town manager?

Bonus question: what do you think the developer did?
Question 3

Your town has decided to update your inclusionary zoning bylaw. You currently require developers of 6 or more housing units to apply for a special permit and make 10 percent affordable. Developers can pay a fee in lieu to your affordable housing trust instead of building affordable units. The bylaw hasn’t produced any affordable housing and your town is well below 10%. The Planning Board decides to reduce the trigger to 2 units, allow a payment in lieu for up to 6 units, and require projects with 6 or more homes to create actual affordable units.

Developers packed the Planning Board hearing to oppose the change. Housing advocates said it’s needed to provide affordable housing and protect Figgleburg from Chapter 40B.

What is the developer’s responsibility? What’s the nexus?

What EXACTly would you ask for?
A subdivision for 10 very high-end homes has been proposed in your rural neighborhood. The property is owned by a non-resident. Like most of your abutters, you own horses and you like to ride a trail through the pasture that is destined to become a new development called Equestrian Way. Attempting to address neighborhood concerns, the Planning Board asks the developer to change the plans to preserve the trail and allow public access. He may be able to do so without sacrificing lots, but he says the revised layout will make the lots less valuable. He wants to stay with the proposed plan.

What can the Planning Board do? What is the developer’s responsibility? What EXACTly would you ask for?
Question 5

Figgleburg has an open space-residential development bylaw with a density bonus in exchange for more open space or senior housing “or other public benefits.” A developer applies for a special permit to build an OSRD with extra open space. The Planning Board doesn’t think the proposed open space has value, but a mile away, the same developer owns a beautiful piece of land. They offer to grant his special permit with the density bonus and reduce the amount of open space he has to preserve on-site if he agrees to a CR on the off-site open space. He says no.

What EXACTly would you say if you were on the Board?

Is the developer being unreasonable?
Question 6

Figgleburg’s Design Review bylaw gives the Planning Board and Design Review Board broad authority to regulate design in any nonresidential project involving new construction or exterior alterations. There is no local historic district. The owner of an old mill proposes to redevelop his property. Part of the plan involves installing new vinyl-clad windows with white trim throughout. He also needs to relocate the main entrance and construct a new walkway to it for disability access. The Planning Board denies the new windows unless he agrees to dark green trim, and they will not approve the relocated entrance without a colorscaping plan and 1:1 tree replacement for all trees removed for the walkway.

Authority? Nexus? Proportionality?

What is the developer’s responsibility?

What **EXACTly** would you advise the Planning Board to do?