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## Judge dismisses lawsuit against Atkinson

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ATKINSON — A judge has dismissed a lawsuit brought against the town by Town Moderator and Zoning Board Chairman Francis G. Polito, saying Polito does not have the legal standing to bring the suit forward.

The dismissal upholds a Planning Board decision that Polito had challenged, which allows developer Brian Boyle to install a fire hydrant in place of a gated emergency access road at his Winslow Drive project.

Polito said he was "disappointed" by the judge's decision and did not know whether he would file an appeal.

"I have not decided what my next step is," he said. "I am giving serious consideration to the impact an appeal would have on Mr. Boyle's ability to continue with his project without further delay. It is not my goal to create a financial hardship for him."

At a Rockingham Superior Court hearing last week, Polito questioned not only the safety implications of the Planning Board's 4-3 vote but also the way that the vote was conducted.

In March 2004, Fire Chief Michael Murphy had said that a secondary access road was needed for the proposed 27-home cul-de-sac. Polito said that when Murphy changed his mind last fall, in what amounted to "a backroom deal" with Boyle, it influenced two voters who are on-call firefighters.

Polito told Judge Robert E.K. Morrill that the third voter, Harold Morse, should not have voted because Morse's employer, Peter Lewis, stood to benefit from the installment of the fire hydrant. Lewis's Hampstead Area Water Co. will install the hydrant and provide its water.

Last month, the town's Code of Ethics Committee ruled that Morse did violate the town's Code of Ethics.

The decision issued by Morrill gave little inkling as to how he would have ruled if he had considered the case.

To bring the suit forward, Polito had to prove that he had sufficient interest in the board's decision. At the hearing, Polito admitted that he lived more than three miles from the Winslow Drive development. He argued that everyone in town has an interest in the way town business is conducted.

Morrill was not adequately swayed by that argument.

"(Polito) has not demonstrated how he may be injured by the decision to install a fire hydrant rather than maintain a fire access lane on Winslow Drive," Morrill wrote. "Furthermore, the record demonstrates that (Polito) did not participate in the public hearings."

Boyle said he was pleased that Morrill's decision came in so quickly. He also said he was dismayed that Planning Board Chairman Susan Killam and Selectman John Sapia provided written testimony to support Polito's case.

Polito gave the court sworn statements from Killam and Sapia that said he had approached them with his concerns about conflicts among certain board members. The statements were offered as proof that Polito was, despite not attending the hearing, involved in the process.

"I think it's a shame that the chairman of the ZBA and the town moderator sued the town," Boyle said. "And I found it even more surprising that the chairman of the Planning Board and a member of the Board of Selectmen were there in the courtroom ready to testify against the town."

"The defendant in this case was the town," Boyle said. "I was an affected party, but the true defendant was the town of Atkinson. And I was just surprised to see what length town officials would go to sue the town. There's a lot of things in Atkinson I don't agree with. But to take the town to court ...wow."

Sapia said Boyle had no right to question his motives or those of Killam. He said they were simply in court to testify to what had occurred — not to condemn the town or the Planning Board.

"We were there to testify to the truth, and Mr. Boyle should always appreciate the truth because the truth will set him free," Sapia said.

Killam did not return a call seeking comment.

Polito said last night that he hoped his suit would discourage the Planning Board from using safety decisions as bargaining chips in the future. He also said he hoped people would pay more attention to conflicts of interest beyond those that might exist among selectmen.

"I'm very concerned that this town was paying a lot of attention to conflicts of interest on (the Board of Selectmen)," Polito said. "But we have boards where far more is at stake financially, and it's just not in the public eye. But it's just as important, if not more important."