

*Spring 2022 Planning &
Zoning Conference*



*Planning Board Roles &
Responsibilities*

Presented by:

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April 30, 2022

Planning Board Basic Organization



- Quorum. Majority of membership. RSA 673:10, III
- At least one regular meeting per month. RSA 673:10, II
- Chair and other officers elected from non-ex officio members for one-year term. RSA 673:8, 9
- Members appointed by governing body or elected
- One ex-officio select board member, up to 5 alternates as approved by town meeting.
- Rules of procedure. RSA 676:1
- RSA 676:4 mandates procedures for applications

Planning Board Finances: 673:16

- Board may appoint employees subject to the same employment rules as other corresponding civil employees of the municipality.
- The board may also contract with planners, engineers, architects, and other consultants for such services as it may require.
- The board may accept and use gifts, grants, or contributions for the exercise of its functions, in accordance with the procedures established for the expenditure of funds within the municipality.
- Fees collected by the planning board must be held in a separate, nonlapsing account, and not commingled with other municipal funds; such funds may be expended without approval of a local legislative body and must be paid out by the municipal treasurer only upon order of the local land use board or its designated agent.

Alternates - RSA 673:6



- ▶ Appointed Planning Board - Town Meeting can authorize 5 alternates
- ▶ Elected Planning Board may appoint 5 alternates
- ▶ Ex-Officio alternate appointed by city council, town council or select board
- ▶ Alternates may participate as non-voting members
- ▶ Chair designates alternate when regular member absent or is disqualified. RSA 673:11
- ▶ Only the Ex-Officio alternate may serve for the Ex-Officio member.

Planning Board members on other Boards



- ▶ Any two (2) appointed or elected members of a planning board in a city or town may also serve together on any other municipal board or commission, except that no more than one appointed or elected member of the planning board shall serve on the conservation commission, the local governing body, or a local land use board as defined in RSA 672:7. 15 *Land Use Planning and Zoning* § 27.06 (2021)

Preliminary Review

- ▶ Planning boards may mandate preliminary review, if authorized by legislative body. RSA 674:35, I
- ▶ Preliminary Conceptual Consultation, RSA 676:4, II (a): nonbinding, no abutter notification required, general discussion of type of development, etc.
- ▶ Design Review, RSA 676:4, II (b): still nonbinding, abutter and published notice required, but no public hearing, identify special studies that may be required, neighborhood or environmental impacts, specific issues with the parcel rough layout of lots and roads, topo maps, soils information

Formal Application, RSA 676:4, I



Completed application.



Regulations specify what is completed application.



Checklist can specify types of plans, studies, designs, etc. to minimize review and revisions.



Fees for costs & consultants' studies; detailed accounting. RSA 676:4-b



Application accepted by vote at meeting, with abutter and published notice.

Timeline for Decision, RSA 676:4, I



Preliminary Consultation No Set Time Limit



Application submitted 21 days before acceptance at meeting



Notice to Abutters and public 10 days before meeting for plan acceptance



Hold at least one public hearing and make decision within 65 days of plan acceptance



Issue written decision within 5 business days

New Statute - Planning Board deadline extended



- ▶ **Chapter 69 (HB 332)** extends the planning board's deadline by 30 days to act to approve, conditionally approve, or disapprove an application where the board determines that the development is one of regional impact. **Statute amended: RSA 676:4, I(c)(1). E.D. August 9, 2021.**

Alternative Site Plan Approval and Review Procedures



- ▶ The town meeting or town or city council may authorize the planning board to delegate its site review powers for minor site plans to a committee of technically qualified administrators. RSA 674:43, III.
- ▶ Establish Technical Review Group to provide advice to planning board applicants on their proposed projects.
- ▶ City Council or planning board establish thresholds based on the size of a project or a tract below which site plan review shall not be required. RSA 674:43, IV

Acceptance Vesting

RSA 676:12, VI

- ▶ No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this paragraph shall also apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.

DEVELOPMENTS OF REGIONAL IMPACT DRI DECISION PROCESS - RSA 36:54 - :57



Is it a DRI? Use RSA 36:55.I-VI (may include but not limited to):

- Relative size or number of dwelling units as compared with existing stock.
- Proximity to the borders of a neighboring community.*
- Transportation networks.
- Anticipated emissions such as light, noise, smoke, odors, or particles.
- Proximity to aquifers or surface waters which transcend municipal boundaries.
- Shared facilities such as schools and solid waste disposal facilities

If voted NO, not a DRI, proceed with application

If voted YES, considered a DRI then:

- ✓ Stop reviewing application, continue acceptance to next meeting
- ✓ Notice RPC and abutting town by certified mail, send minutes
- ✓ Resume consideration at next meeting with RPC and abutting Towns deemed to be abutters

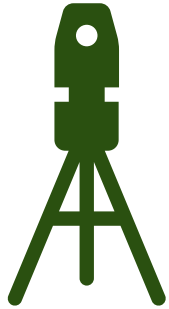
► Once a subdivision or site plan is disapproved by the Planning Board a second application for the same development project cannot be considered and approved unless it is materially different in nature and degree from the first application. *CBDA Dev. v. Thornton*, 168 N.H. 715 (2016)

► In order to permit the Planning Board to approve a site plan that was previously denied it is sufficient if the second site plan was modified to address the Board's specific concerns about the initial site plan. *Kulick's Inc. v. Town of Winchester* (9/16/16)

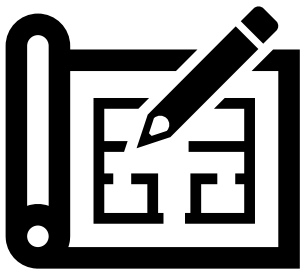
Only One
Bite of the
Apple



Third Party Consultants – RSA 676:4-b



- ▶ May require applicant to pay for third party consultant review and construction monitoring



- ▶ Cannot substantially duplicate same review at ZBA

Waiver of Regulations: RSA 674:36, II (n) - RSA 674:44, III (e)

- ▶ The basis for any waiver granted by the planning board shall be recorded in the minutes of the board.
- ▶ The planning board may only grant a waiver if the board finds, by majority vote, that:
 - (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations;

or

 - (2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Public Hearing Procedures



- ▶ Impartially follow rules of procedure
- ▶ Site visits are public meetings
- ▶ Riggins Rules

Public Participation at Hearings - RSA 676:4, I (e)



- ▶ “At the hearing, any applicant, abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing.”
- ▶ “Other persons may testify as permitted by the subdivision regulations or the board at each hearing.”

Deliberation & Weighing the Evidence



- Get all necessary information before closing public hearing
- Board can deliberate and vote at later meeting.
- Avoid ex parte contacts with parties or deliberation among members outside meeting
- Board may rely on personal knowledge of the area; and not bound to accept conclusions of experts, *Vannah v. Bedford*, 111 N.H. 105 (1971), only if some evidence and explained in written decision. *Malachy Glen Associates, Inc. v. Chichester*, 155 N.H. 102 (2007)
- Cannot ignore uncontradicted expert testimony, unless board can adequately explain in written decision. *Condos East Corp. v. Conway*, 132 N.H. 431 (1989)

Dartmouth v. Hanover

New Hampshire Supreme Court

November 6, 2018

- ▶ *Planning Boards cannot rely upon lay opinions and anecdotes refuted by uncontroverted expert evidence.*
- ▶ *Planning Boards cannot supplant the specific regulations and ordinances that control the site plan review process with their own personal feelings.*

Degree of Discretion



- ▶ *Summa Humma v. Town of Tilton*, planning board limited the height of a flagpole.
- ▶ Owner argued there was no local ordinance that prohibited his proposed 90-foot-tall flagpole.
- ▶ Where the role of site plan review is to ensure that uses permitted by the zoning ordinance are appropriately designed and developed, restricting the board's authority to the specific limitations imposed by ordinances and statutes would render the site plan review process a mechanical exercise.
- ▶ The planning board properly exercised its authority to impose conditions that are reasonably related to the purposes set forth in the site plan regulations.

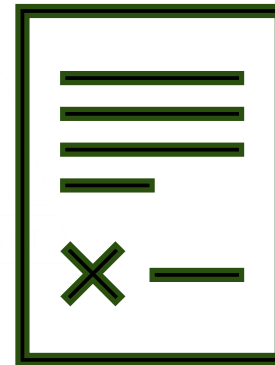
Three Ponds Resort, LLC v. Town of Milton



- ▶ The Supreme Court distinguished *Condos East* and *Continental Paving* ruling that the ZBA was entitled to question and reject the conclusions of the expert's traffic assessment by relying on objective facts provided through the testimony of town residents and the personal knowledge of board members
- ▶ Critical examination of the methodology of an expert traffic report, combined with direct evidence of objective evidence provided by abutters, residents and board members can support a land use board's decision to reject the conclusions of expert testimony and reports.

Written Notice of Decision

- ✓ Written decision is required, and written reasons in event of disapproval. RSA 676:3, I.
- ✓ RSA 676:4, I (c) (1) also requires decision to approve, approve with conditions or disapprove.
- ✓ Decision and meeting minutes must be on file for public inspection within 5 business days of vote. RSA 676:3, II.
- ✓ A tie vote is not a decision.



Conditional Approval

- ▶ *Representations by applicant are not binding unless clearly made a condition of approval.*
- ▶ *Conditions must reasonably relate to ensuring compliance with relevant criteria.*
- ▶ *Standard conditions.*
- ▶ *Conditions precedent.*
- ▶ *Conditions subsequent.*
- ▶ *Compliance hearing.*

“Grandfather Rights”



- Planning Board Regulations may define “substantial completion of improvements etc.” and “active and substantial development etc.” RSA 674:39, III.
- Failure to define “active and substantial development” awards 5-year exemption automatically.

Housing Appeals Board

- Went into effect July 1, 2020.
- Three members, appointed by the supreme court.
- Will hear appeals of final decisions of municipal boards regarding “questions of housing and housing development.”
- Party has option of appealing to superior court or HAB; appealing to one waives right to appeal to the other.
- Hearing procedure is identical to procedure in superior court.
- Standard of review is identical to that in superior court.
- Board must hold hearing on the merits within 90 days after receipt of notice of appeal and must make decision within 60 days after hearing.
- Decisions may be appealed to N.H. Supreme Court.





*For attending our
Workshop!*



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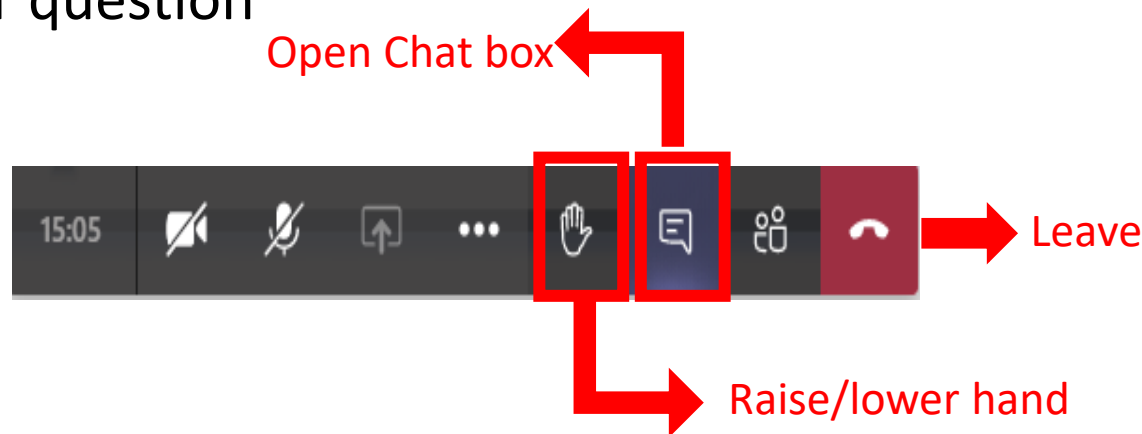


Questions?

Question and Answer Section

- If you would like to ask a question, please type your question in the Chat box.

For the phone, hit *5 to raise your hand and when we call your number hit *6 to unmute and ask your question



Thank you!

- All Conference Session slides and recordings will be available next week [online](#) on our webpage

Feedback Encouraged!

- Please fill our survey that can be found at link below

[Click Here for Feedback Survey](#)

**THANK YOU FOR JOINING
US TODAY!**

**Next Conference is
May 7, 2022
9:00 AM-Noon**

Planning Board, ZBA, & Housing Tracks