

# Today's Speakers

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- Ross Moldoff, Planning Director, Town of Salem, NH  
[rmoldoff@salemnh.gov](mailto:rmoldoff@salemnh.gov)
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# Planning Process

•RSA 673:2

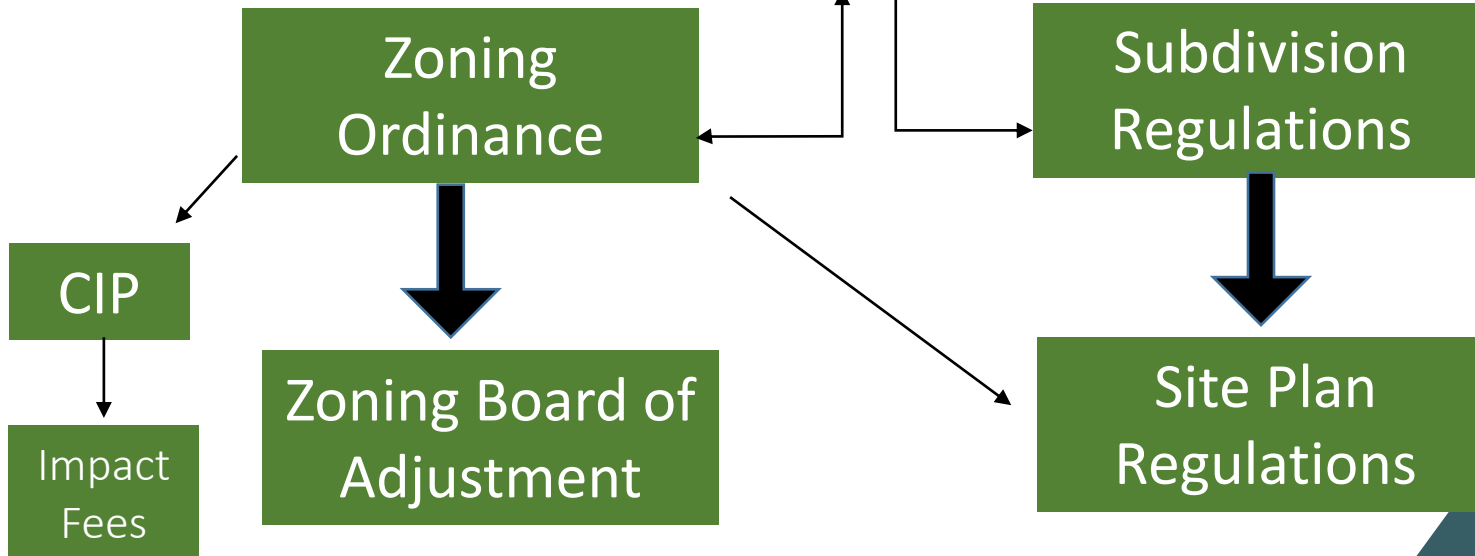
Create Planning Board

•RSA 676:1

Elect Officers and adopt  
Rules of Procedure

•RSA 674:2

Adopt Master Plan



# Planning Board Duties

- Master Plan - RSA 674:2
- Subdivision Regulations - 674:36
- Site Plan Regulations – 674:44
- Zoning Ordinances and Amendments - RSA 675
- Excavation Regulations – 155-E:1 (III)(a)
  - Capital Improvements Program (CIP) - 674:5
  - Innovative Land Use Controls (674:21)
  - Acceptance of Streets (674:40); Scenic Roads (231:157-158)
  - Driveway Regulations – (236:13)
  - Class VI or Private Roads (674:41)
  - Innovative Land Controls (674:21)

# Rules of Procedure

## **RSA 676:1: Board MUST Adopt Rules of Procedure**

- Outline Method of Conducting Business
- Lays out the rules the board must follow
- Be available to the public

[The Planning Board in NH-A Handbook For Local Officials](#)

# Formal Application

Completed application 676:4,I (b)

Regulations specify what is completed application

Checklist itemize types of plans, studies, designs,

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

[Planning Board Handbook-Checklist template](#)

# Site Plan Regulations

## May include-

- Traffic
- Parking
- Utilities
- Landscaping
- Building location
- Signage
- Lighting
- Noise

## Must include-

- Procedures
- Purpose
- Standards
- Performance Guarantees
- Waiver Provisions

# Site Plans & Regs Cont'd

- Minor Site Plan Review Committee
- PB determine thresholds for MSPRC to review
- Establish MSPRC to provide advice to planning board applicants on their proposed projects.
- May have final authority to approve or disapprove site plans unless the local legislative body deems that final approval shall rest with the planning board
- All provisions of RSA 676:4 shall apply to actions of the special site review committee

# Subdivisions & Regulations

## **MAY Address:**

- Services
- Street Layout
- Utilities
- Health
- Open Space
- Lot Configuration
- Thresholds for major and minor subdivisions

Scattered and Premature..?



# Regulation Amendments

- Boards should adopt the checklists and applications as part of their regulations.
- Amendments to the site plan and subdivision regulations can be amended by the board at any time- they are not subject to the legislative body amendment process.
- Final adoption of the amendments has to be done at a public hearing
- Notice to the public is the same as for applications



# Site Plan and Subdivision Regulation

## *A Small Town Perspective*

NH Office of Planning and Development  
2022 Spring Planning and Zoning Conference



May 7, 2022

[NHHousing.org](http://NHHousing.org)

# Rules of Procedure (RSA 676:1)

- Keep them simple (do not use Robert's Rules!)
- Follow them (be consistent, but be flexible)
- Give instructions (to applicants, the public, and yourselves)
- Things to include
  - Conduct of meetings
  - Treatment of alternate members
  - Procedure for joint hearings
  - Reconsideration of decisions
- See OPD's model (Appendix C in the Planning Board Handbook)

# Application Completeness (RSA 676:4)

- Start with the checklist
  - Identify/address waiver requests (should be in writing)
- Ask the question: “Is the application sufficiently complete for the board to accept the application for consideration?”
  - Lack of required permits from other entities is not a reason to refuse
- If yes, even with ungranted waivers or the prospect of changes to the plan, you must accept the application
  - That only means that you’ve begun review
  - Then you’re ready for the public hearing

# Waivers (RSA 674:36, II(n); RSA 674:44, III(e))

- Subdivision regulations may include waiver provisions; site plan regulations must include; standards are the same

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/site plan, or conditions of the land in such subdivision/site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.
- “Hardship” is not the same as for variances
  - Second standard is the “common sense” rule

# Incomplete/Repetitive Applications

- If you reject an application as incomplete, state in writing what was missing (including fees)
  - No public hearing required for incomplete applications
- Reject applications that are repetitive – that is, not materially different (whether previously denied or rejected as incomplete)
  - What’s “materially” different? Significant and relevant changes to the application or the law
  - For ZBAs, this is known as the *Fisher v. Dover* doctrine; clearly applied to planning boards by *CBDA Development v. Thornton* (2016)

# Site Walks

- Why do them? Part of the fact-finding process
  - How familiar are you with the site?
- If a quorum of the board is present, it's part of the public process
  - It's a meeting
  - Notice is required; public must be allowed to attend
  - Minutes must be taken
- Individual members may go on their own
  - Each member's knowledge is different (and that's a good thing!)

# “Third Party” Review (RSA 676:4-b)

- When needed, hire experts to help you
  - Complex applications, controversial issues, unusual subject matter
  - Get an estimate, establish an applicant-funded escrow (separate account)
- Role of your expert
  - Work with applicant’s expert to develop an improved plan
  - Provide alternative review of the same facts
  - Establish a basis for approval or denial
- Your opinion is important, but shouldn’t be the unsupported basis of a decision (see *Trustees of Dartmouth College v. Hanover* (2018))



# Motions

- Motions may be made by any regular member (chair included) or alternate serving in place of a regular member
- Motions should contain the complete action
  - All conditions of approval; reasons for denial
  - Require second; require deliberation; require vote
- Planning board – majority of the quorum (differs from ZBA)
- A failed motion (not a majority of yeas\*) is not an approved action to do the opposite! E.g., failure to approve is not a denial; a new motion must be made

***\*Abstentions should be strongly discouraged***

# **NH Planning and Zoning Conference**

May 7, 2022

Ross Moldoff, Planning Director, Town of Salem, NH

## **Site Plan Regulations**

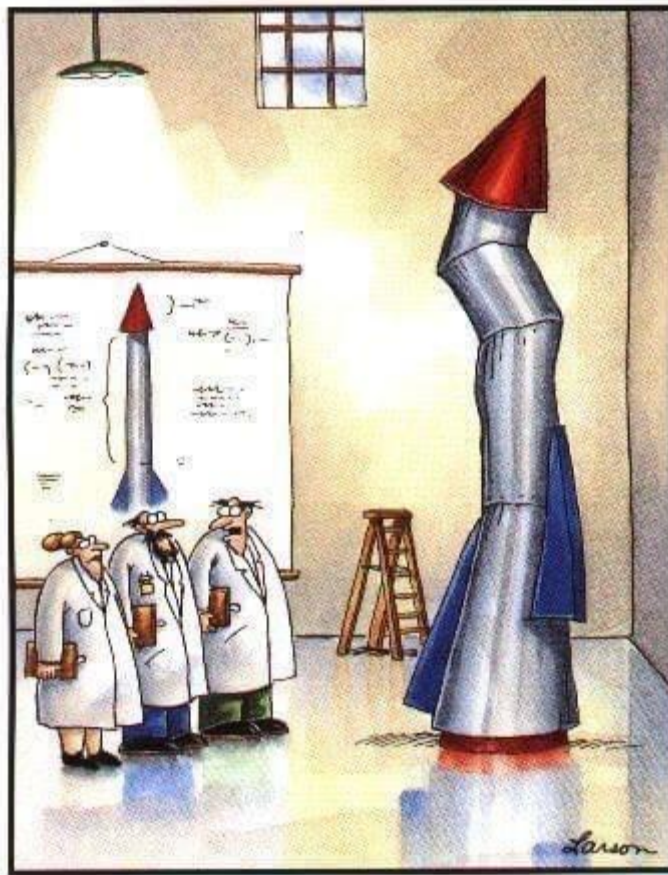
- **Pre-application review**
- **Conceptual Plans**
- **Enforcement**

## **Subdivision Regulations**

- **Lot shape**
- **Rural Character**

## **Rules of Procedure**

- **Ethics**
- **Meeting Management**




"It's time we face reality, my friends. ...  
We're not exactly rocket scientists."

**Prior to the submission of a formal site development plan, the applicant or his agent must appear in person before the Planning Board Agent to discuss the proposed site development plan.**

In accordance with RSA 676:4II, an applicant may **submit a conceptual site plan in order to get suggestions from the Planning Board on meeting requirements and regulations** of the Town. Conceptual plans shall show existing site conditions and proposed development, including general information on topography, soils, utilities, buildings, and other items necessary for consideration by the Board. Such consultation shall not bind either the applicant or the Board and statements made by the Board members shall not be the basis for disqualifying said members or invalidating any action taken.



NO.	DESCRIPTION	BY	DATE
REVISIONS			
<b>CONCEPTUAL PLAN</b>			
SALEM PROPERTY MAP 151 - LOT 9491			
PROPERTY ADDRESS - 23 POND STREET			
PREPARED FOR:			
DIPRIMA ETHERAL LIGHT, LLC			
16 EXETER AVENUE			
METHUEN, MA 01844			
 <b>DIPRIMA</b> Design Consultants, Inc.		44 Stone Road, Suite One Salem, New Hampshire 03079 (603) 893-0720 ENGINEER • PLANNING • SURVEYORS www.diprima.com	
SCALE: 1" = 50'		DATE:	
DIVISION OF RECORD DIPRIMA ETHERAL LIGHT, LLC 16 EXETER AVENUE METHUEN, MA 01844 SALEM, NH 03079		SALEM PLANNING BOARD APPROVAL	
ZONE: RURAL			
DESIGNED BY:	DRAWN/CHECKED	DWG. NAME:	PROJECT No.
DRL	CCC/2RL	33089P.dwg	330813
		SHEET No.	







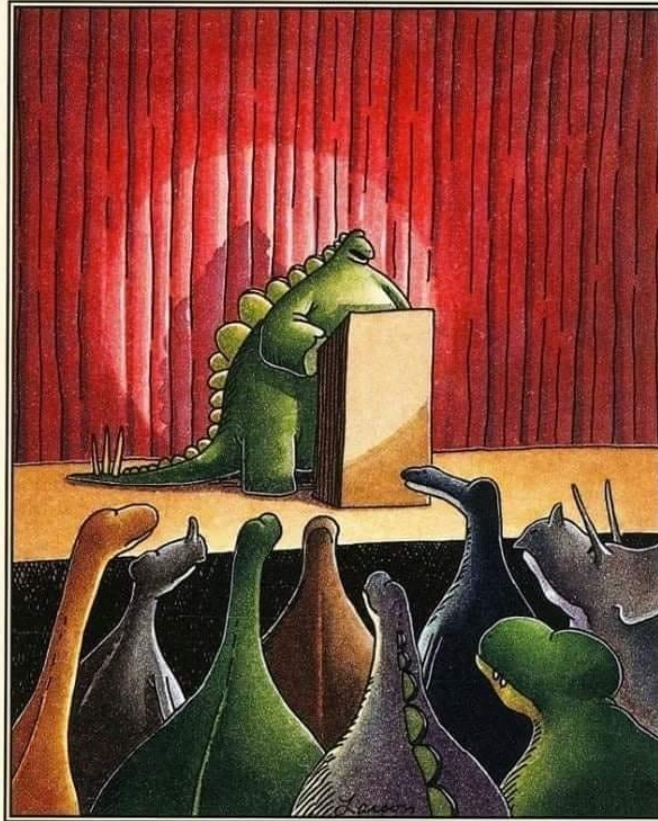
# Enforcement

In order to confirm that various improvements delineated on approved plans are in fact constructed in accordance with those plans or with applicable codes and standards, **the Planning Board shall require the applicant to establish an appropriate escrow acceptable to the Planning Board, which will be used by the Town of Salem to retain appropriate engineering or other consultants to confirm that construction is in conformance with the approved plans** or applicable codes and standards. (The Town will establish a uniform fee schedule based on size and complexity of the project.)

No certificate of occupancy may be issued for a building or structure that is within the purview of the regulations contained herein until:

**An as-built plan** prepared by a professional engineer and/or a licensed land surveyor, and a certified wetland scientist (when applicable), showing the actual location of all improvements including, but not limited to, grading, utilities (water, sewer, gas, electric, telephone, cable, etc.), road work, drainage, landscaping, parking spaces, wetland impact, floodplain impact, and wetland/floodplain mitigation areas, shall be filed with the Town. Any discrepancies from the approved site plan shall be identified on the 'as-built' plan, and a statement from the reviewing design professional that the improvements as constructed meet the design intent, and will function as designed, shall be added to the 'as-built' plan. The plan shall be reviewed for completeness by the Town Engineer and Planning Board agent prior to acceptance by the Town.

11/7/85

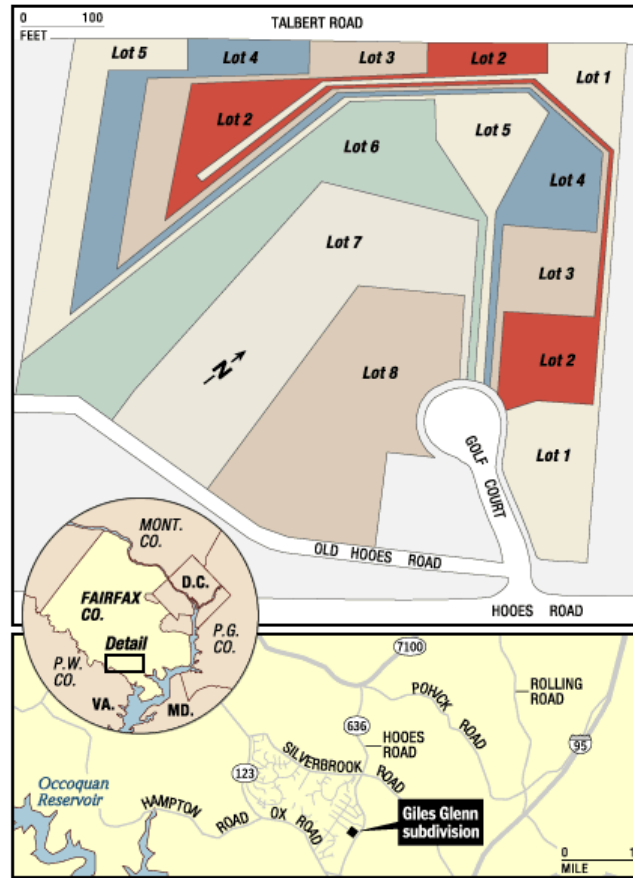


“The picture’s pretty bleak, gentlemen. ... The world’s climates are changing, the mammals are taking over, and we all have a brain about the size of a walnut.”

The lot size, width, depth, shape, and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and the type of development and use contemplated. Lots shall provide satisfactory sites for buildings and be properly related to topography. **Lots should generally be square or rectangular in shape. Lots shall not contain irregular shapes or elongations solely to provide necessary square footage.**

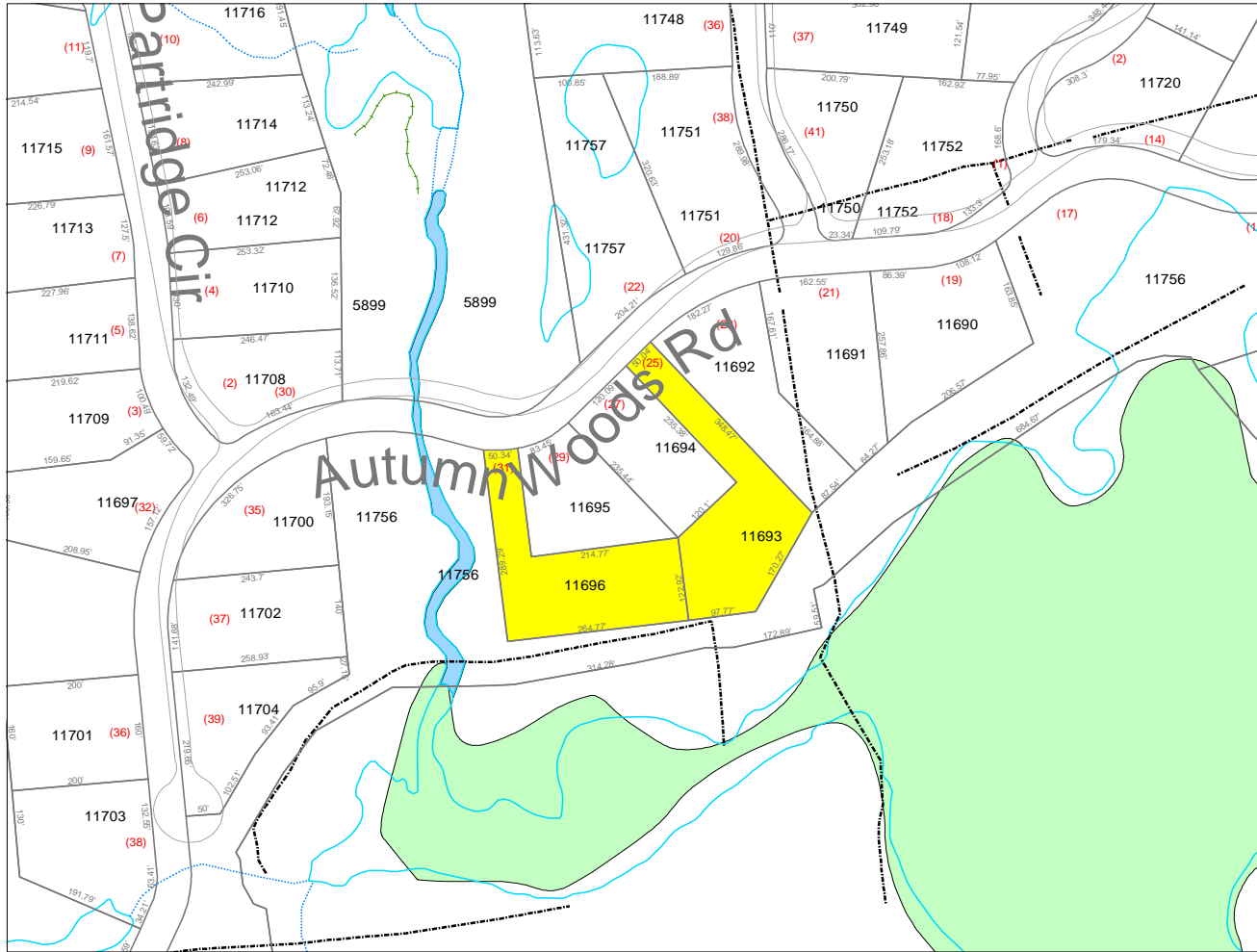
## Suburban Growth

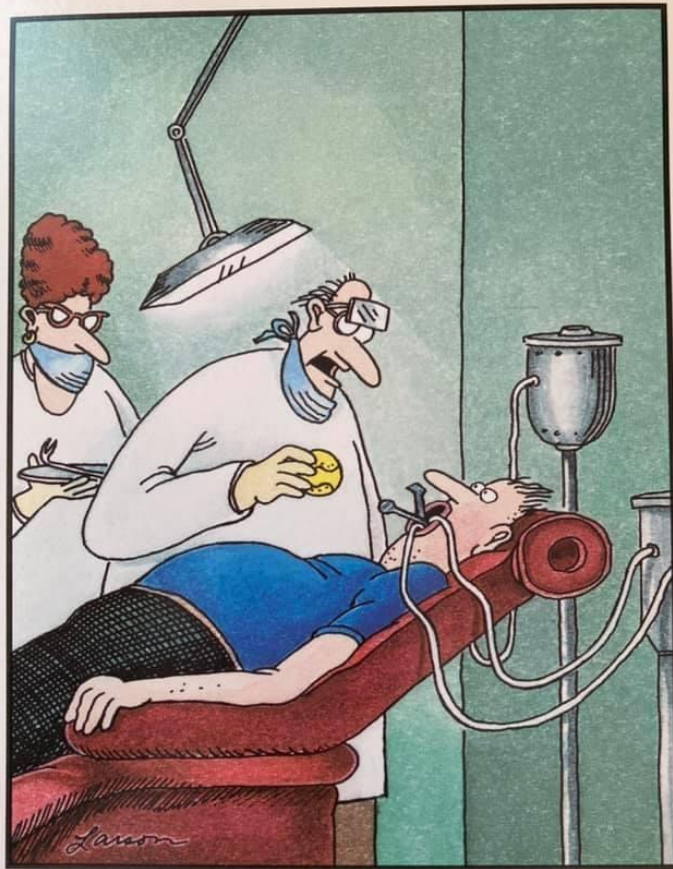
Land scarcity and rising prices are driving some developers to carve up a given landscape in an unusual way to create as many lots as possible and still meet county regulations. The planned Giles Glenn subdivision in southern Fairfax County is an example of this practice: Here, some side lots and back lots are connected to front lots by small strips of land.



Each lot shall contain a **building envelope** meeting all setback requirements which includes, at a minimum, a contiguous area of useable land (non-wetland, no more than 25% of envelope with slopes greater than 25%) equal to 15,000 square feet in the Rural District and 7,500 square feet in other districts. The building envelope shall be configured such that a rectangle with minimum dimensions of 75 x 100 feet, or a circle with a diameter of 100-feet can be contained within it.

**Side lots lines** shall be substantially at right angles or radial to street lines (within 5 degrees) for at least 150-feet back from the front property line.





"Now open even wider, Mr. Stevens. ...  
Just out of curiosity, we're going to see if we can  
also cram in this tennis ball."



**New subdivisions in the Rural District shall maintain a wooded buffer strip, when existing, of no less than 50-feet in width along all existing public roads. The buffer may be broken only for new driveways and roads. The Board may allow a combination of berms and new plantings to create the same affect as a wooded buffer strip.**

**When a proposed subdivision road traverses open fields or yards, plans shall include the planting of street trees at least 2-inches in diameter at breast height, and no more than 50-feet apart.**

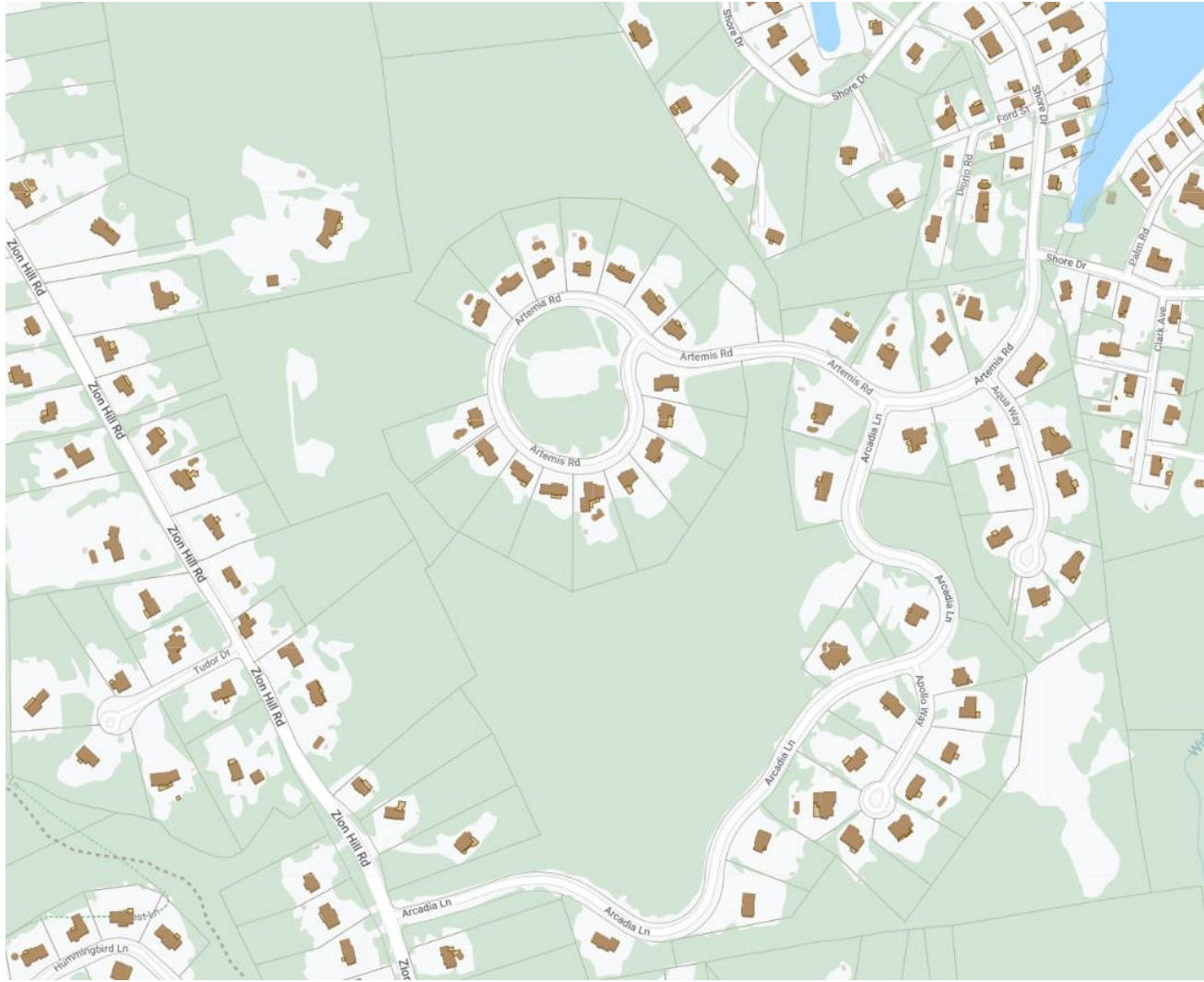
































**The primary obligation of Planning Board members is to serve the public interest and to conduct themselves so as to maintain public confidence in the Planning Board and the conduct of its business.**

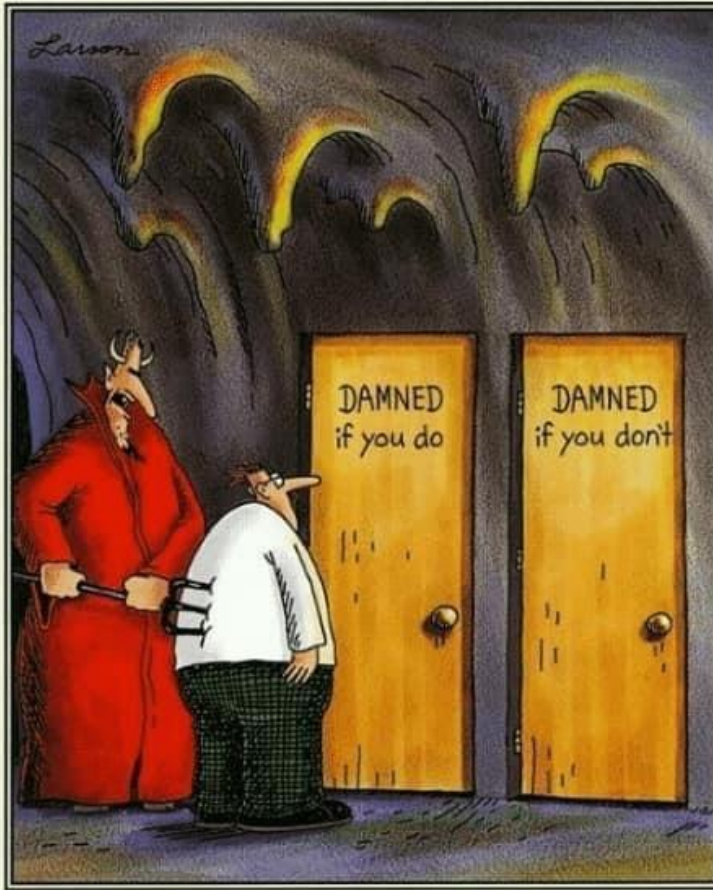
**All discussions between Planning Board members and applicants or their agents regarding matters to be decided by the Board shall take place at public hearings as part of the public record.**

**ZBA members who have legal or other problems that reflect poorly on the Board should step down at least temporarily until their problems are resolved.**

Per RSA 673:14, no member shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or **if that member would be disqualified for any cause to act as a juror** upon the trial of the same matter in any action at law.

The Board generally will not approve a plan unless **approvals from staff and outside consultants are received at least one week prior to the meeting**. Applicants are advised not to return to the Board after the first presentation until such approvals are received, unless the applicant needs advice on specific plan review items.

7/10/85



“C’mon, c’mon—it’s either one or the other.”



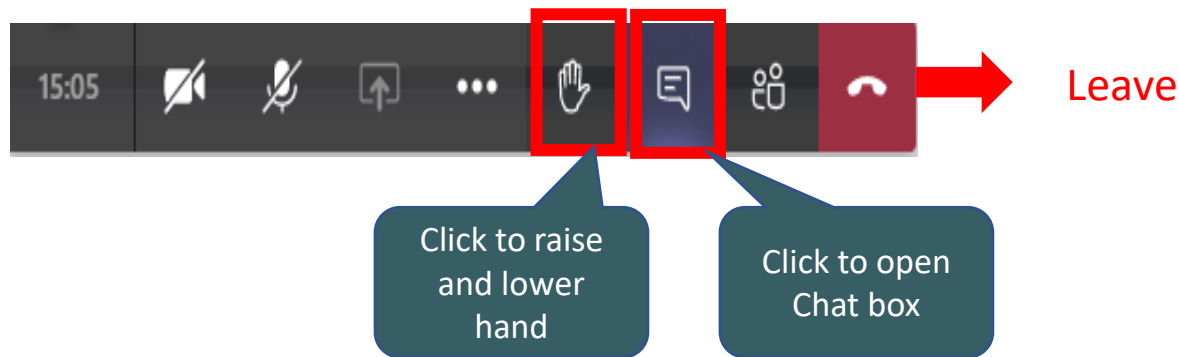


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“I never got his name, but he sure cleaned up  
this town.”

# Question and Answer Section

- If you would like to ask a question, please either raise your hand and unmute yourself or type your question in the Chat box. If on the phone, lines have been unmuted



# Thank you!

- All Conference Session slides and recordings will be available next week.
- More information, slides, future webinars, and recordings of all webinars available [online](#)

## **Feedback Encouraged!**

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

[May 7<sup>th</sup> Survey](#)