

Agenda

| Time | Planning Board Track | Zoning Board Track |
|-------------------|--|--|
| 9:00 to 9:10 AM | Welcome and Introductory Remarks | |
| 9:10 to 10:30 AM | Planning Board Basics | Roles and Responsibilities of the Zoning Board |
| 10:30 to 10:40 AM | Break | |
| 10:40 to 12 PM | Roles and Responsibilities of the Planning Board | Zoning Board of Adjustment Decision Making Process |

Planning Board Roles and Responsibilities

NH Office of Strategic Initiatives
27th Annual Planning and Zoning Conference
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Today's Roadmap

- Finding the Law
- A Map of the NH Planning World
- The Three Realms of the Planning Board
 - Planning
 - Legislative
 - Regulatory

Finding the Law

Finding the Law

NH Statutes and Bills

- Revised Statutes Annotated (RSA)
 - www.gencourt.state.nh.us/rsa/html/indexes/default.html
- Search for Bills
 - http://www.gencourt.state.nh.us/bill_status/

NH Supreme Court Decisions

- www.courts.state.nh.us/supreme/opinions/index.htm

For Other Jurisdictions

- Cornell Law School
 - <https://www.law.cornell.edu/>
- Google Scholar
 - <https://scholar.google.com/>

Join Plan-link Nation! Confer with over 700 of your best friends

- <https://www.nh.gov/osi/planning/services/mrpa/plan-link.htm>

NH Municipal Association Legislative Bulletins

- www.nhmunicipal.org

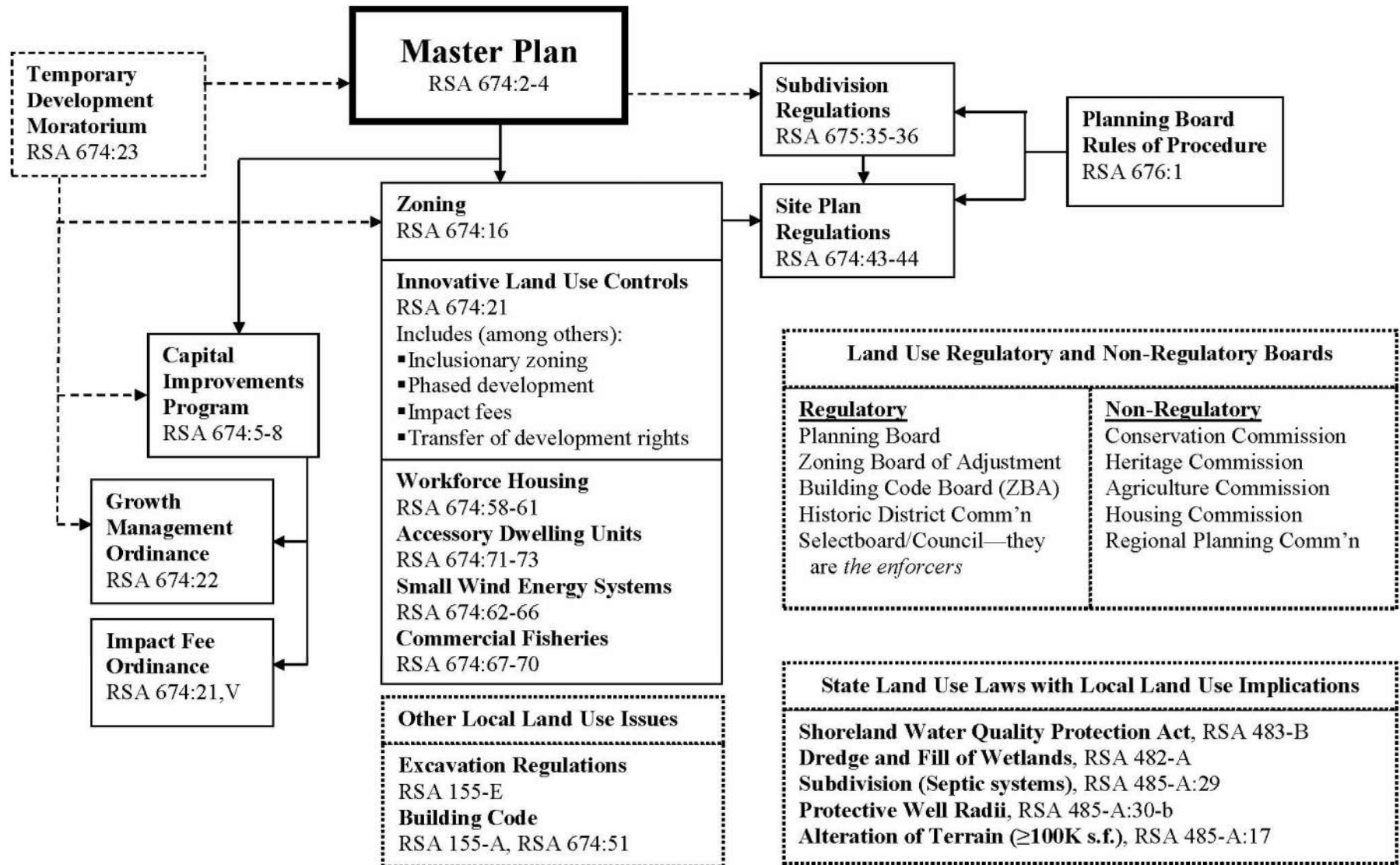
Other Sources

- *Land Use, Planning and Zoning*. Peter Loughlin, Esq. New Hampshire Practice Series, vol. 15. LexisNexis. Updated annually
- NHMA's "Town and City," online searchable index and full-text articles
- ***Don't forget to talk with your municipal attorney.*** That's the person who will be defending you in court! ...and who can help keep you out of court in the first place.

"An ounce of prevention..."

A Map of the NH Planning World

NH Municipal Land Use Regulation



The Three Realms of the Planning Board



1. The Planning Role

The Planning Role

■ ***Master Plan***

- ❑ Required – vision and land use
- ❑ Optional – everything else
- ❑ Must you limit yourselves to the enumerated chapters? Just how creative can you get?
- ❑ Also consider the broader purposes of planning – *and its limitations*
- ❑ There's no required schedule for updates
- ❑ Adopted by the planning board; should involve extensive public engagement and input
- ❑ The master plan is strictly advisory; it has no regulatory weight

The Planning Role

■ ***Capital Improvements Program***

- ❑ A schedule of municipal capital improvements for at least the next six years – levels of urgency, need
- ❑ What's a capital improvement?
- ❑ “Sole purpose” is to guide the governing body and the budget committee as they develop the annual budget
- ❑ But the CIP is also a statutory prerequisite for impact fee and growth management ordinances
- ❑ Adopted by the planning board (or a CIP committee, as decided by the local legislative body)

The Planning Role

■ ***Growth Management Ordinances and Moratoria***

- These are ordinances, but they're for the purpose of promoting better planning
- GMO (RSA 674:22) requires a study substantiating its need, annual review of progress
 - Appropriate “only if there is a demonstrated need to regulate the timing of development, based on the municipality’s lack of capacity to accommodate anticipated growth...”
 - Must have a sunset date – recommendation: 5 years max
- Moratoria (RSA 674:23) are appropriate only in “unusual circumstances” that impact adequate provision of services
 - One year only
 - May only be proposed by the planning board



2. The Legislative Role

The Legislative Role

■ ***Zoning Ordinance (RSA 674:16-20, Ch. 675)***

- ❑ In most communities (cities may differ), the planning board recommends changes to zoning – you are the authors (the ZBA is the interpreter).
- ❑ Citizen petitions are another way – signatures of 25 registered voters in the municipality.
- ❑ The planning board must hold at least one public hearing
- ❑ Note that certain types of amendments may require property owner direct notice
- ❑ Relationship with the master plan
- ❑ Innovative land use controls (RSA 674:21)
- ❑ Accessory dwelling units (RSA 674:71-73)
- ❑ Workforce housing?

The Legislative Role

■ ***Subdivision Regulations (RSA 674:35-38)***

- ❑ Authorization required
- ❑ Relationship with zoning – shouldn't be used by planning boards to do things that zoning is supposed to do
- ❑ What is a subdivision?
- ❑ What should your regulations include? Standards for identifying property boundaries; lot configurations; road construction standards
 - Note: bonds for improvements are controlled by the planning board
- ❑ Adopted by the planning board, public hearing required

The Legislative Role

■ ***Site Plan Regulations (RSA 674:35-38)***

- ❑ Authorization required; zoning is a prerequisite
- ❑ Relationship with zoning – shouldn't be used by planning boards to do things that zoning is supposed to do
- ❑ What is the planning board's jurisdiction?
- ❑ What should your regulations include? Standards for parking, landscaping, visual aesthetics, environmental impacts, neighborhood impacts – make your standards clear
 - Note: bonds for improvements are controlled by the planning board
- ❑ Adopted by the planning board, public hearing required

The Legislative Role

■ ***Workforce Housing (RSA 674:58-61)***

- Requirement of all municipalities to provide a “reasonable and realistic opportunity” for the development of economically viable workforce housing, as defined
- Many communities assert that they’re providing their “fair share” of their region’s need (some actually do provide it)
- What is the “collective impact” of all land use ordinances and regulations adopted under RSA Ch. 674?
 - It’s not just about zoning – making these assessments is a **planning** function of the planning board
 - Make necessary changes to ordinances and regulations – this is a **legislative** function of the planning board
 - In applications for workforce housing developments, be aware of the requirements of this law – this is a **regulatory** function of the planning board



3. The Regulatory Role

The Regulatory Role

■ ***Subdivision and Site Plan Review (RSA 676:4)***

- ❑ Preapplication
 - 1. Preliminary Conceptual Consultation
 - ❑ Non-binding, no public hearing, no abutter notification
 - ❑ Napkin sketch ideas
 - 2. Design Review
 - ❑ Non-binding, no public hearing, but abutters are notified
 - ❑ Preliminary engineering, options for discussion and advice from the board
 - ❑ **Vesting** of 12 months from the end of design review
- ❑ You can choose whether to do this; if your local legislative body authorizes, you can require applicants to do preapplications (one or both)

The Regulatory Role

■ ***Subdivision and Site Plan Review (RSA 676:4)***

□ Formal Application

- Notice to abutters (see RSA 672:3)
- Development of regional impact? (RSA (36:54-58)
- Acceptance of application as “sufficiently complete”
- Public hearing – who gets to speak?
- Approval within 65 days (subject to extension)
 - Conditions precedent – approval isn’t final until they’re met
 - Conditions subsequent – ongoing conditions after final approval
- **NOTE:** the planning board may not refuse to accept or approve an application on the basis that state or federal permits have not been issued

The Regulatory Role

- ***Subdivision Regulation Waivers (RSA 674:36, II(n))***
Site Plan Regulation Waivers (RSA 674:44, III(e))
 - Basis for waivers to be recorded in the minutes. The planning board may grant a waiver if it finds 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 site plan, or **conditions** of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.
 - What does “hardship” mean?

The Regulatory Role

■ ***Impact Fee Ordinances (RSA 674:21, V)***

- An impact fee may be imposed on new development to account for the impact of that development on municipal and school capital facilities
 - Based on study and development of a schedule
 - Adopted like a zoning ordinance
 - Not for operations and maintenance; not to rehabilitate aging infrastructure; not for open space acquisition
 - Must be expended within 6 years; refunded thereafter
- The law embodies the constitutional principles of “rational nexus” and “rough proportionality” *

* See Nollan v. California Coastal Commission, 483 U.S. 825 (1987)(“rational nexus”) and Dolan v. City of Tigard, 512 U.S. 374 (1994)(“rough proportionality”).

The Regulatory Role

■ ***Off-Site Exactions (RSA 674:21, V(j))***

- In the absence of an impact fee ordinance, monetary exactions may be imposed on development approvals by planning boards on a case-by-case basis for impacts of those developments
- Where the improvements are “necessary for occupancy of any portion of the development.”
 - **Limited to** highways, drainage, water, and sewer
 - Monetary exaction is inappropriate when the developer agrees to make the improvement
 - If the municipality will fund a portion of the improvement, you have 6 years to do that; after that, refund must be made of money collected
 - Otherwise, no statutory time limits, but remember that the development should not be “occupiable” without the improvement. *Be reasonable!*

The Regulatory Role

■ ***Vesting of Development Rights (RSA 674:39)***

- ❑ Planning board approval confers 24 months' exemption from most local regulatory changes
- ❑ During that time, “active and substantial development or building” secures an additional 3 years' exemption (vesting) – 5 years total
- ❑ In its approval (or by regulation), if the planning board doesn't define what is meant by active and substantial, 5-year exemption is automatic
- ❑ ***This does not mean that planning board approvals expire after either of these time periods have elapsed!***
- ❑ Substantial completion of the improvements shown on the plan secures permanent vesting

Planning Board Case Study #7

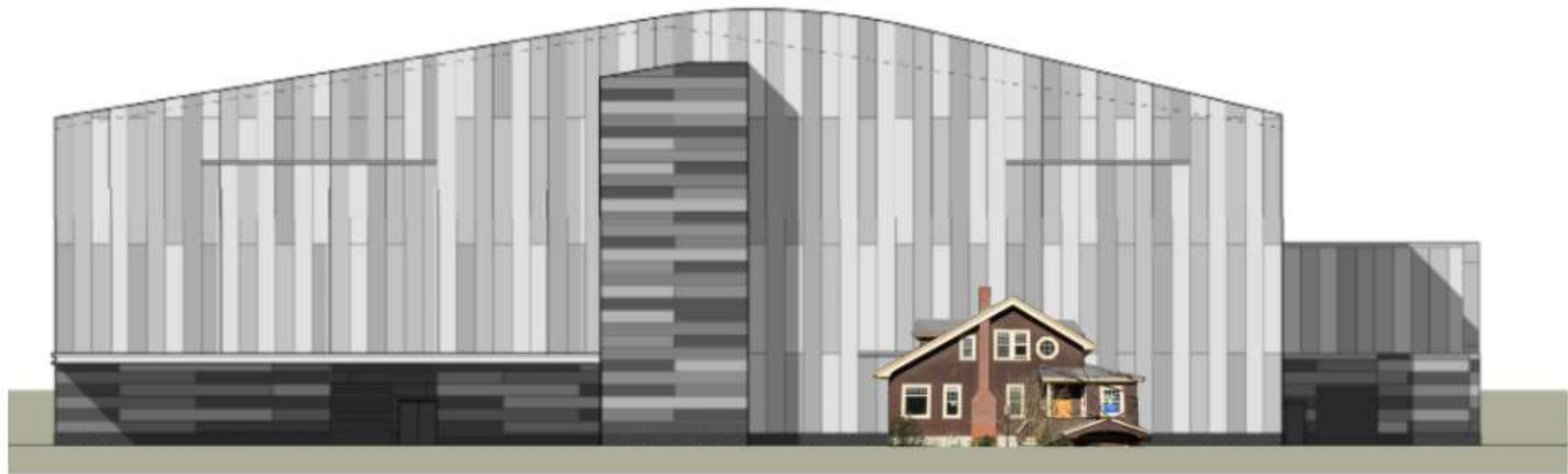
■ ***Dartmouth College v. Hanover (2018)***

- Dartmouth proposes 70K s.f. indoor practice facility (IPF) adjacent to existing facilities in “Institutional” zoning district created by Hanover for the College and other similar entities
- Location abuts residential zone with single-family homes
- Ultimate design of IPF fully conforms to “stringent height limitations and setback requirements”
 - Setback of 150 feet for buildings with a maximum average height of 60 feet that abut a residential zone
- Six months of hearings in 2016









NORTH ELEVATION

The IPF North Elevation (which faces the neighborhood) compared to a neighborhood home



EAST ELEVATION

S A S A K I

How the IPF East Elevation compares in size to a Boeing 747-400

Planning Board Case Study #7

■ ***Dartmouth College v. Hanover (2018)***

- Abutters complain of impact on neighborhood:
 - Loss of property value
 - Noise, pollution, impact on town's stormwater system
 - Lack of architectural detail
 - Building will block the winter sunlight from reaching their homes
- Dartmouth conducts a “shadow study”, which the abutters interpreted to show how many hours each house would be impacted
- Zoning Administrator determines proposal to be fully compliant; staff recommends approval with 21 conditions; Dartmouth agrees to comply with conditions

Planning Board Case Study #7

■ ***Dartmouth College v. Hanover (2018)***

- Planning Board denies application 4-1, citing sections of Hanover's site plan regulations ("general considerations")
 1. Does not conform to the Hanover Master Plan
 2. Negatively impacts the abutters, neighborhood and others, town services and fiscal health
 3. Does not relate to the harmonious and aesthetically pleasing development of the town and its environs
- [**Note:** these partly echo RSA 674:44, SPR enabling law]
- Dartmouth appeals, abutters intervene; town sits it out
- No dispute that the IPF complies with zoning

Planning Board Case Study #7

■ ***Dartmouth College v. Hanover (2018)***

- Trial court upholds planning board's decision
 - Project's impact on abutting properties – blockage of sunlight
 - [Implied] Facts support a decision on board's personal feelings
- Supreme Court
 - Trial court unreasonably relied on facts not in the record
 - Abutters' analysis of College's shadow study inconclusive regarding 5 closest residences – but court relied on it anyway
 - Planning board was mixed on the issue of sunlight –
 - One thought that existing trees contributed; two mentioned sunlight, but without conclusion; two didn't mention any objective criteria (it's just “an affront to the neighborhood”)

Planning Board Case Study #7

■ ***Dartmouth College v. Hanover (2018)***

□ Supreme Court

- Board's site plan regulations require the board to assess a variety of "general considerations"
 - Board reason 2: Negatively impacts the abutters, neighborhood and others, town services and fiscal health
 - Trial court erroneously construed the record to support the Board's conclusion regarding sunlight
 - Board reason 3: Does not relate to the harmonious and aesthetically pleasing development of the town and its environs
 - IPF is a permitted use in the Institutional zone and is consistent with existing adjacent uses
 - Protection of the abutters' interests is precisely the purpose served by height limitations and setbacks

Planning Board Case Study #7

■ ***Dartmouth College v. Hanover (2018)***

- ❑ What is this case really about? Heed the warning of the dissenting Chair of the Planning Board – takings!
- ❑ The Court: “...a planning board cannot use the site plan review process to require a landowner to dedicate its own property as open space for essentially public use without proper compensation.”
- ❑ **NH Constitution Part 1, Article 12:** “...no part of a man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.”
- ❑ **US Constitution, Amendment V:** “...nor shall private property be taken for public use without just compensation.”

Planning Board Case Study #7

■ *Dartmouth College v. Hanover (2018)*

- “We do not suggest that site plan review should be reduced to the mechanical process of determining conformity with specific zoning and site plan regulations. In this case, however, the planning board’s reliance solely upon general considerations to override the site plan’s conformity with specific regulations and ordinances, without sufficient evidentiary support for doing so, was unreasonable. Sustaining the board’s decision here would sanction a denial of a property owner’s site plan application simply because board members felt that the owner’s permitted use of its own property was inappropriate. Such a finding would render zoning ‘obsolete, as it would afford no protection to the landowner.’”
- **Result:** decision reversed; builder’s remedy awarded – meaning no return trip to town boards for further proceedings.

Life Lessons from Dartmouth v. Hanover

- Especially in controversial cases, there should be thorough findings of fact developed to the board's decision; this makes it clear what served as the basis of the decision
- Abutters interests are important, but they don't reign supreme – *the applicant has rights too*, even if it's a huge "institution"
- Be mindful of your own clear standards; if an applicant is meeting them, reasons for a denial must be supported by compelling evidence and analysis
- As a member, your observations are important – but they are factually insufficient in the face of uncontroverted expert evidence.

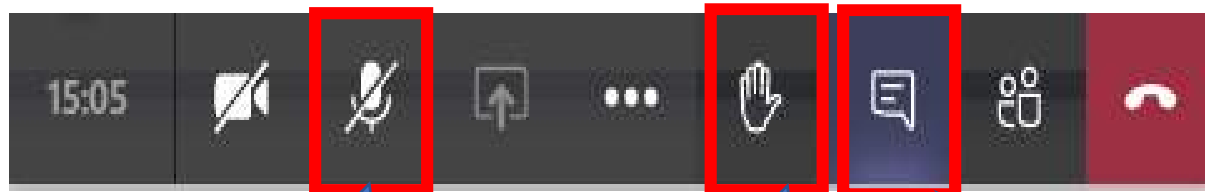
Questions?

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Question and Answer Session

- 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.



Click to mute
and unmute

Click to raise
and lower hand

Click to open
Chat box

Thank you!

- All Conference Session slides and recordings will be available next week
- Feedback Encouraged!
 - See chat box for link to brief survey, which also can be found at link below

[Click Here for Feedback Survey](#)