



Innovative Land Use Planning Techniques

A HANDBOOK FOR SUSTAINABLE DEVELOPMENT

OCTOBER 2008

COMPILED BY

New Hampshire Department of Environmental Services

New Hampshire Association of Regional Planning Commissions

New Hampshire Office of Energy and Planning

New Hampshire Local Government Center

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October 2008

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INTRODUCTION

With growth comes change. Many New Hampshire communities express in their master plans the desire to grow or to reduce the tax rate while maintaining the community characteristics that distinguish one town from another and that identify with the regional characteristics of New England. Master plans typically call for preservation of rural character, thriving downtowns, and a sustainable working landscape. These quality of life issues depend on a healthy environment and a thriving economy.

Often, land use regulations fail to implement these goals.

The Department of Environmental Services (DES) established the Regional Environmental Planning Program in 1998 to work with the nine regional planning agencies on environmental planning projects. Recognizing the need for more comprehensive guidance on land use planning techniques, DES and the regional planning agencies decided to develop a handbook with model ordinances and guidance on innovative land use regulations authorized in state law. For legal and planning expertise, the New Hampshire Local Government Center and the New Hampshire Office of Energy and Planning were invited to participate on the editorial board.

The authors have written the guide with the New Hampshire Association of Regional Planning Commission's principles for good planning in mind. The planning principles are organized into four general categories:

1. **Prosperity** – that planning for economic development should be fully integrated into the planning process.
2. **Sustainability** – that a central role of planning is to ensure the long term value and sustainability of the environment that maintains choices for future generations.
3. **Livability** – that good planning principles should be applied to local decisions to direct development in ways that maximize public benefit and contribute to the quality of life.
4. **Mobility** – that to have prosperous and livable communities, we must have a transportation system that provides for the safe and efficient movement of people and goods, and livability.

LEGAL AUTHORITY

In 1983, New Hampshire law authorized towns and cities to use innovative land use controls to deal with complex planning issues. While RSA 674:21 listed a number of techniques, little guidance has been available to help planning boards, citizens, and developers figure out how to use them. The law gives municipalities a great deal of power to adopt and administer – and even require – innovative land use controls; we selected the most relevant techniques for this handbook.

Municipal planning boards and staff should be mindful of the legal requirement to have a basis for zoning ordinances in the master plan, as required by RSA 674:18. Some of the techniques recommended in the handbook are best implemented through subdivision and site plan review regulations. State law grants planning boards authority to enact subdivision and site plan review regulations that require innovative land use controls *when supported by the master plan* (RSA 674:36 and 674:44).

When crafting innovative land use controls, municipalities should consider the different ramifications of adopting zoning ordinances versus subdivision and site plan review regulations. Zoning ordinances are adopted by the local legislative body – town meeting in most towns and town council in some towns, and city council, or board of mayor and aldermen in cities – while subdivision and site plan review regulations are adopted by the planning board.

Granting relief from specific requirements also differs substantially between zoning ordinances and subdivision and site plan review regulations.

State law empowers the zoning board of adjustment to grant variances where literal interpretation of the ordinance will result in unnecessary hardship and where certain other criteria are satisfied. For subdivision and site plan review, power to grant waivers is vested in the planning board where strict conformity would pose unnecessary hardship, provided such waiver provisions are included in the planning board's regulations.

An important legal provision applicable to innovative land use controls is that administration of the ordinance, including the granting of conditional or special use permits, can be granted to the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If administration is not vested in the planning board, any proposal submitted under the ordinance or regulation shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board provides its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

Another important legal distinction regarding innovative land use controls is that where administration of the ordinance is delegated to the planning board, as is typical, decisions of the planning board cannot be appealed to the zoning board of adjustment, but may be appealed to the superior court (RSA 676:5, III).

PURPOSE AND USE OF THE HANDBOOK

The purpose of the handbook is to offer sound technical advice about innovative land use techniques, including model ordinances and regulations. Municipalities are

encouraged to seek the advice of legal council prior to adopting land use regulations and to contact their regional planning agency for technical assistance.

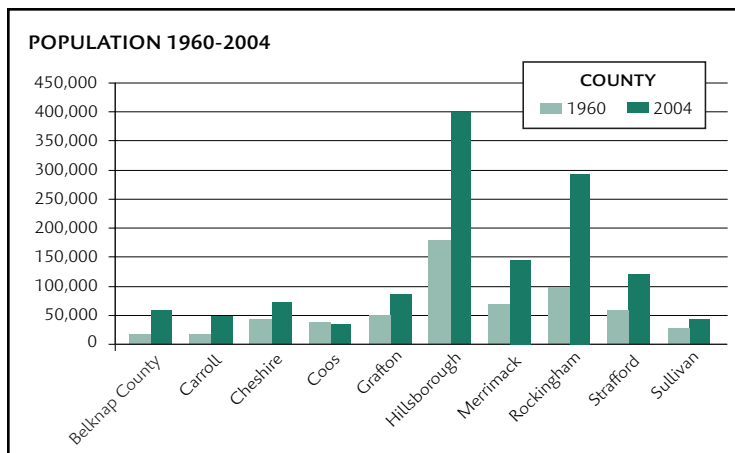
The handbook is intended as a reference manual to which users can turn for information on any topic without having to read through the entire manual. Each chapter is written with the same outline to facilitate ease of use.

The model ordinances and regulations include explanatory notes and provide guidance where planning boards may wish to consider alternatives for regulatory language.

Since planning models are dynamic, it is expected that the model ordinances in this guide will be updated continuously. While the printed version of the guide will not be updated frequently, the most current versions of the models will be available on the DES web site. Please refer to www.des.nh.gov/repp for the most current version of the models.

GROWTH IN NEW HAMPSHIRE

From 1960 to 2004, New Hampshire’s population more than doubled from about 600,000 to over 1.3 million people. Today, New Hampshire grows by about 17,500 new residents and adds about 9,900 new jobs each year. (U.S. Census, OEP, Bartlett)^{1,2} This translates to about 7,100 new households per year, about 14,000 additional vehicles on our roadways, and many new and expanded commercial, industrial, and retail businesses to serve our growing population.^{3,4} New Hampshire’s population is expected to top 1.6 million residents by 2025.



New Hampshire’s population is not only growing – it is spreading out. We are losing our traditional pattern of development of densely developed city and town centers separated by wide, open, undeveloped spaces. In 1960, half of our population was concentrated in our 12 largest cities. In 2003, half of the state’s population was spread between 23 of the largest cities and towns.⁵ From 1990 to 2004, New Hampshire’s smaller communities grew more than twice as fast as the largest cities and towns.⁶ In addition, more development is occurring in the rural areas between the city and town centers. Every year, many more large parcels of land are sub-divided into two and three acre lots for new homes

¹ Annual population growth estimated based on population change from 2000 to 2004. 2000 population data from US Census. 2004 population estimate from 2004 Population Estimates of New Hampshire Cities and Towns, New Hampshire Office of Energy and Planning, July 2005.

² New Hampshire Employment Security, Economic and Labor Market Information Bureau, email from Peter Bartlett, Economist, January 10, 2006.

³ Annual growth in number of households estimated based on change in number of households from 2000 to 2004 from 2004 Household Estimates for New Hampshire Cities and Towns, New Hampshire Office of Energy and Planning, March 2005.

⁴ Number of additional vehicles estimated based on US Census statistic for average number of vehicles per household for New Hampshire.

⁵ Achieving Smart Growth in New Hampshire, New Hampshire Office of State Planning, April 2003.

⁶ From 1990 to 2004, communities that had populations of less than 10,000 in 1990 grew by 23.3%, while the 10 largest cities and towns (with population of greater than 20,000 in 1990) grew by 10.3%, based on population data from US Census for 1990 and 2000 and population estimates from New Hampshire’s Office of Energy and Planning for 2004.

⁷ Community Rules: A New England Guide to Smart Growth Strategies. Conservation Law Foundation and Vermont Forum on Sprawl.

⁸ A Handbook on Sprawl and Smart Growth Choices for Southern New Hampshire Communities, Southern New Hampshire Planning Commission, August 2002.

and more commercial and retail development appears along the major roadways connecting communities.

As a result of the sprawling nature of the new growth and development, New Hampshire is consuming increasing amounts of land for development. In ten case study towns examined in “Managing Growth in New Hampshire: Changes and Challenges” (*Managing Growth*), a report prepared by the then Office of State Planning (OSP) and the Growth Management Advisory Committee in 2000, population grew by 71 percent from 1974 to 1992, while the amount of developed land

increased 137 percent. The results of the *Managing Growth* analysis are confirmed by more recent data from the Natural Resource Conservation Service (NRCS) and Southern New Hampshire Planning Commission. Based on land cover data produced by the NRCS from satellite imagery and data from the U.S. Census, New Hampshire’s population increased by 35 percent from 1980 to 2000, while the amount of developed land statewide increased by about 56 percent.⁷ The Southern New Hampshire Planning Commission found that, in their region, population increased by 25.6 percent from 1986 to 2000, while residential land use increased by 58 percent and commercial land use increased by 76.8 percent.⁸

WHY IS GROWTH AND THE PATTERN OF GROWTH IMPORTANT FOR NEW HAMPSHIRE?

While economic growth and development present opportunities for our state, they also place additional burdens on our communities and our natural resources. Specifically, poorly managed growth leads to the following types of consequences:








- **Economic:** increased costs for road maintenance, infrastructure expansion, public services (such as plowing), and schools, higher public and private automobile maintenance and fuel costs, higher housing costs, and reduced ability to attract new businesses.
- **Environment:** degradation of air and water quality, deforestation and forest fragmentation, increased impervious cover and greater polluted runoff, loss of wildlife habitat, loss of agricultural land, loss of open space, and loss of scenic vistas.
- **Social:** loss of sense of community, increased traffic congestion, disrupted social networks with fewer opportunities to connect with neighbors, loss of intergenerational contact, lack of housing options, lack of transportation options, reduced walkability, lower levels of exercise, loss of time spent on community activities and with families, lower levels of participation in civic life, loss of rural character, and loss of rural culture.

In producing their report on *Managing Growth*, the Office of State Planning compared recent growth trends and land development patterns against the master plans of several towns and concluded that current planning and zoning approaches do not provide the type and pattern of growth and development desired by communities. Techniques to improve the design of new development and curtail the sprawling pattern of recent growth are needed to reduce the potential negative impacts of growth and produce development that is consistent with a community’s vision.

Recent public meetings and surveys have confirmed that many communities want to grow compactly in areas of traditional development that have nearby access to undeveloped lands. The public also wants new approaches to managing growth to reduce the potential negative effects of growth discussed above. The techniques discussed here can help to meet these needs.

This guidance seeks to provide information on several techniques available to communities that wish to redirect future growth in their communities to enhance existing developed areas, create new areas of focused development in appropriate locations, and reduce development pressures on important natural systems and undeveloped lands. There are broader approaches that can be used to redirect development at the community or regional level, such as village development, transit-oriented development, growth boundaries, infill development, transfer of development, and conservation or open space zoning, as well as site-specific approaches that can minimize the impact of developing an individual parcel, such as conservation subdivision design, minimum impact development standards, access management, and comprehensive water resource protection requirements.

These techniques, used as a whole or individually, can help communities grow in a way that is more consistent with their stated vision and more protective of the resources and community character that are so important to every New Hampshire community.

Suggestions for Where to Apply Different Zoning and Regulatory Techniques							
							
	TRANSIT-ORIENTED DEVELOPMENT	URBAN/TOWN DEVELOPMENT	HIGHER DENSITY RESIDENTIAL AREAS	LOWER DENSITY RESIDENTIAL AREAS	RURAL TO WILD AREAS	WILDERNESS AREA	STATEWIDE
Liveable, Walkable Community	✓	✓	✓				Dark Skies Lighting Stormwater Management Energy Efficient Development Erosion and Sediment Control Wetlands Protection Drinking Water Protection Floodplain Zoning
Transfer of Development Rights (receive)		✓	✓				
Growth Boundary			✓				
Landscaping Standards		✓	✓				
Infill Development	✓	✓	✓				
Inclusionary Housing		✓	✓				
Access Management			✓	✓			
Village Plan Alternative				✓	✓		
Conservation Design Subdivision				✓	✓		
Wildlife Habitat Management				✓	✓	✓	
Feature-Based Density				✓	✓	✓	
Steep Slopes and Ridgelines				✓	✓	✓	
Agricultural Incentives					✓		
Lot Size Averaging				✓	✓	✓	
Transfer of Development Rights (send)					✓	✓	