

# Planning Lunches at Noon (PLAN) Monthly Webinar Series

Welcome to the PLAN Monthly Webinar Series!

**“2023 Planning & Zoning Legislation Review and Preview of 2024”**

The webinar will begin shortly.

Check out our [Planning and Zoning Training webpage](#) for:

- Slides and recording of all completed PLAN webinars in the
- Schedule for upcoming webinars
- OPD [Planning Board](#) and [Zoning Board](#) Handbooks
- Optional Planning Board and Zoning Board Tests
- A short, anonymous [online survey](#)

# 2023 PLANNING & ZONING LEGISLATION REVIEW AND PREVIEW OF 2024

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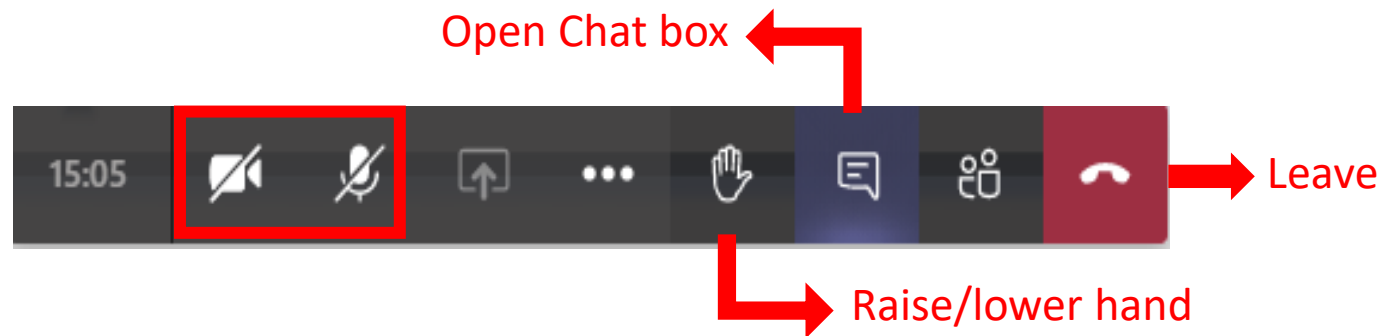
December 21, 2023

PLAN Monthly Webinar Series

# Webinar Logistics

## Presentation then Question and Answer session

- Type questions into Chat box
- Raise hand
- We will be recording this webinar.



# Agenda

- Review of 2023 Planning and Zoning Statutory Changes
- Other Recent Planning and Zoning Statutory Changes
- Preview of 2024 Planning, Zoning, Land Use, and Housing Bills
- Question & Answer Session

# 2023 NH Planning and Zoning Statutory Changes

# Noisy Farms Are OK, but...

## 2023 HB 252 (Ch. 83)

- RSA 31:39 is the town bylaws enabling statute
- Amend 31:39, I(n) to read as follows: (n) Regulating noise, ***except that no "quiet hours" ordinance or bylaw that attempts to regulate noise from activities related to farms, agriculture, and farming as defined in RSA 21:34-a shall be enforceable within a town. This exception shall not apply to agritourism as defined in RSA 21:34-a, II(b)(5).***
- Just towns? Probably also applies to cities
- Partly supersedes waiver process in RSA 674:32-c, II
- Effective August 19, 2023

# Subdivision Improvement Surety 2023 SB 78 (Ch. 208)

## ■ RSA 674:36, III – VI

- III(b): Phased release of security “when substantial improvements are made”
- III(b): Cost escalation changed from 10% to 15% annual maximum. No escalation “for engineering, administration, or other non-construction reasons”
- III(c): post-final-approval security expressly permitted for landscaping and final pavement
- IV (new):
  - Letter of credit/cash/passbook shall not be the only means of surety (conflict with existing language in II?)
  - Planning board *shall allow* road and utility construction to begin without a bond – **but** a bond for infrastructure/roads/ utilities *must be in place* prior to sale of any lot or building permit application for structure for human occupation

# Subdivision Improvement Surety 2023 SB 78 (Ch. 208)(cont'd)

## ■ RSA 674:36, III – VI

- V (new):
  - Inspections for bond release must be done within 30 days of request (and additional process for incomplete work); release within 90 days of sign-off
  - Formal communications must be made by hand delivery or by courier or service (prob. incl. USPS) – No phone! Email?
- VI (old IV): eliminates confusing (but well-intentioned) “conditional” language for optional sprinklers in 1- and 2-family dwellings
- Effective October 3, 2023
- **Practice Points:** review your process and ensure that it complies with these new standards; what type of surety? Bond or LOC



# Driveway Permits and Fire Code

## 2023 HB 296 (Ch. 187)

- RSA 153:5, VI
- State fire code doesn't supersede Title LXIV local land use board authority over driveways (when not governed by RSA 236:13 for 1- and 2-family dwellings)
- *Provided* – minimum 12' width if over 150' long
- Local land use board shall consider fire chief recommendations on “width, vertical clearance, grade, suitability of road surface, bridges, dead-ends, and the ability to pass and turn around once...”

# Driveway Permits and Fire Code 2023 HB 296 (Ch. 187)(cont'd)

- But what does it mean?
- Consider a 3-lot subdivision with a common driveway; a condition of approval could include specifications for that driveway
- The planning board's jurisdiction controls; the fire chief's view is advisory
- Effective October 3, 2023
- **Practice Points:** listen to your fire chief, but use your own judgment too!

# Housing Champions Designation and Grant Programs

## 2023 SB 145 (included in HB 2 by Senate)

- RSA 12-O:71 – 12-O:76
  - Voluntary program – qualifications:
    - Adoption of land use regulations that promote workforce housing and “other types of housing necessary for the economic development of the state”
    - Training of land use board members
    - Implementation of sewer and water and walkability measures to support workforce housing
    - Adoption of financial tools
  - 3-Year Designation; preferential access to discretionary state infrastructure funding
  - 3 Funds for municipal grants: planning and zoning; per-unit workforce housing production; infrastructure
    - Originally \$29M; budget includes \$5M
  - Program rule drafting is underway

# Land Use Review Docket

## 2023 HB 147 (included in HB 2 by House)

- Establishes a specialty docket in superior court to hear appeals of all local land use decisions
- Timeline:
  - Structuring conference within 30 days of appeal;
  - Deadline set for certified record;
  - Hearing on the merits within 60 days of receipt of certified record
  - Decision on the merits within 60 days of hearing
- Establishes a new judge position (HB 1 & 2)
- No impact on concurrent jurisdiction of Housing Appeals Board

# A Few That Didn't Make the Cut

- HB 44 – the four-plex bill (killed)
- HB 423 – expanding ADU requirements (killed)
- SB 224 – enabling mandatory inclusionary zoning (interim study by Senate)

# Pre-2023 Statutory Changes

# The Big Bill (a.k.a. “Community Toolbox”) 2022 HB 1661 (Ch. 272) (see SB 400)

- 2019 Governor’s Housing Task Force
  - Array of legislative recommendations – municipal incentives (e.g., revenue sharing) and obligations (e.g., process requirements)
- 2020: HB 1629 and HB 1632 – hung up in Covid
- 2021: HB 586 – hung up in House
- 2022: SB 400 – hung up in House, then...
  - Included as part of compromise bill HB 1661 (the “parking garage” bill)
  - Much left on the cutting room floor, especially in comparison with the 2020 bills as introduced
- 2023: HB 2 – NH Housing Champions Designation

## 2022 HB 1661 (Ch. 272) Highlights

- RSA 673:3-a: Office of Planning and Development to develop voluntary tests based on standard self-training modules for Planning & Zoning Board members
- RSA 673:16, III: Local land use boards must publish all fees in a location accessible to the public; failure to post fees prior to a particular application will result in their waiver for that application.
- RSA 674:17, IV: As of July 1, 2023 elderly housing incentives shall be deemed applicable to workforce housing developments
- RSA 676:3, I: Findings of fact required to support decisions of all local land use boards (approval or denial)
- RSA 674:33, VIII: 90-day deadline for ZBA action on an application
- RSA 676:4, I(c)(1): Clarification of 65-day deadline for planning boards to take action after accepting an application; 90-day extension by planning board eliminated, unless mutually agreed to by applicant



## 2022 HB 1661 (Ch. 272) Highlights

- [RSA 677:20](#): Superior Court may require a bond to be posted by a person challenging a land use board decision; attorney's fees and costs may be awarded if Court determines either party acted in bad faith or with malice.
- [RSA 162-K](#): Enables the use of tax increment finance districts explicitly for the development of housing typically to support infrastructure development; expands definition of "public use" to include acquisition of real property for development of workforce housing, but prohibits use of eminent domain for this purpose.
- For additional information about 2022 HB 1661, review the NHMA/OPD Joint Memo, "[Changes to Planning & Zoning Laws in 2022: A Guide for Municipalities](#)" and August 10, 2022 [NHMA – OPD webinar](#)

# RSA 674:76 – Religious Land Uses

## 2022 HB 1021 (Ch. 291)

- RSA 674:76 Religious Use of Land and Structures.
  - No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes;
  - provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements
  - as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not *substantially burden* religious exercise.
- What should you do?
  - At the first inkling of an application for a religious land use or structure, talk to your attorney – including before conducting non-binding pre-application processes (preliminary conceptual consultation or design review)
- For additional information about 2022 HB 1661 and 2022 HB 1021 NHMA/OPD Joint Memo, “Changes to Planning & Zoning Laws in 2022: A Guide for Municipalities”

# Lead Paint Poisoning

## 2018 SB 247 (Ch. 4)

- Reduces the blood lead levels that compel State notice to landlords and enforcement actions
- Establishes a loan loss guarantee for lenders who make loans for lead remediation work
- **Prohibits** the introduction to the market of new residential units in pre-1978 structures as of 7/1/24 without lead safe certification
  - **How will this be done?** What will be the role of local land use boards and building inspectors? Before granting a site plan, subdivision, or building permit, will the board/inspector have to ask the age of the structure? Who else would police such a standard?

# Planning, Zoning, Land Use, and Housing Bills in 2024 Session

## Planning Board and ZBA Procedures

- [CACR 16](#): relating to local governance. Providing that local construction projects seeking amendments, waivers, or variances be subject to certain local approval, disclosure, and vote requirements.
- [HB 1086](#): relative to public notice of zoning board of adjustment hearings.
- [HB 1284](#): relative to relative to the quasi-judicial authority of planning boards.
- [HB 1297](#): relative to the authority of municipalities to enforce ordinances related to health and safety.
- [HB 1359](#): relative to appeals of certain zoning decisions by abutters.
- [HB 1461](#): relative to live-streaming all properly noticed meetings and hearings. of elected and appointed municipal bodies.
- [SB 533](#): relative to physical quorums at public meetings.

## House Special Committee on Housing

- Speaker established House Special Committee on Housing at the beginning of the 2023 session
- 10-member committee evenly split by party
- The Housing Special Committee on Housing will hear at least 7 housing-related bills in 2024:
  - HB 1065: relative to fire sprinkler requirements in residential buildings.
  - HB 1215: relative to subdivision regulations on the completion of improvements and the regulation of building permits.
  - HB 1291: relative to accessory dwelling unit uses allowed by right.
  - HB 1361: relative to municipal land use regulation for manufactured housing and subdivisions.
  - HB 1399: allowing municipalities to permit 2 residential units in certain single-family residential zones.
  - HB 1400: relative to the required maximum number of residential parking spaces.

## Other Housing-Related Bills

- Septic systems: [HB 1139](#), [HB 1140](#), [HB 1141](#)
- [HB 1053](#): relative to permissible residential units in a commercial zone.
- [HB 1202](#): relative to the issuance of permits for the alteration of driveways exiting onto public ways.
- [HB 1281](#): relative to zoning restrictions on residential rental property.
- [HB 1483](#): allowing subdivision regulations concerning water supply.
- [HB 1602](#): relative to the authority of the housing appeals board.
- [HB 1651](#): relative to combining the board of tax and land appeals and the housing appeals board.
- [SB 224](#): relative to housing opportunity zones and inclusionary zoning.
- [SB 538](#): relative to zoning procedures concerning residential housing (the “HOMEnibus” bill)

## State Development Plan/Master Plan

- [HB 1314](#): relative to the comprehensive state development plan.
- [HB 1371](#): relative to allowing the land use master plan to include a section on waste reduction.



## Miscellaneous

- [HB 1052](#): relative to the format of excavating and dredging permit applications.
- [HB 1121](#): relative to creating certain wetlands permit exemptions after a natural disaster or flooding event.
- [HB 1196](#): relative to requests for easements for the purpose of laying sidewalk along class I-IV highways.
- [HB 1208](#): relative to permitting requirements before timber harvesting operations in a wetland.
- [HB 1221](#): relative to including solid waste landfills in the definition of development of regional impact.
- [HB 1234](#): relative to the repair of class VI roads not maintained by a municipality.
- [HB 1268](#): relative to prohibiting the issuance of large groundwater withdrawal permits for the commercial sale of bottled or bulk water.
- [HB 1320](#): relative to real property and flood risk disclosure.

## Miscellaneous (cont.)

- [HB 1567](#): relative to zoning provisions concerning family and group family child care uses.
- [HB 1635](#): relative to the definition of short-term rental.
- [HB 1641](#): relating to requiring large parking lots to have a solar power canopy.
- [SB 163](#): relative to agritourism and product sales at farms and farm roadside stands.
- [SB 390](#): relative to defining "critical habitat".

# Resources

- Office of Planning and Development website
- Slides and recordings of all completed PLAN webinars
  - Schedule for 2024 upcoming webinars
- A short, anonymous online survey
- OPD Planning and Zoning Training webpage
  - Updated Planning Board and ZBA handbooks to be published in early 2024
  - Planning and Zoning Board Tests
- NHMA Fast Democracy Planning/Zoning/Land Use bill tracker

**Next PLAN Webinar is scheduled for**  
**January 18, 2024 from 12:00PM-1:30PM**  
**“2024 Planning & Zoning Legislation Primer”**

# Questions 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



# Contact Information

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