CHAPTER V: APPLICATION, SUBMISSION & REVIEW PROCEDURES

The steps involved in the application, submission and review of subdivision and site plan review proposals are based on the requirements of RSA 676:4. The following procedures describe an efficient approach to the review process and encourage planning boards to make use of the authority in RSA 676:4, I(g) to provide administrative and technical assistance as necessary. A clear understanding of these steps by both local officials and prospective developers can greatly reduce the tension and frustration sometimes experienced in this regulatory process.

Statutory requirements are indicated by using the verb "must;" i.e., "abutters must be notified…"

Where the statutes allow local discretion in determining procedures, a course of action is recommended by NH OPD based on its interpretation of the enabling legislation, i.e., "the Office of Planning and Development recommends that the planning board…"

PRE-APPLICATION REVIEW

The purpose of the pre-application review is to provide an opportunity for the board and the applicant to discuss a proposal without any binding decisions being made by either the board or the applicant. Statements made by planning board members at pre-application discussions cannot be used to disqualify them during review of the completed application or as the basis for invalidating any future action of the board. Municipalities have the authority to require pre-application discussions where the applicant may not decline to participate in the pre-application phases. If the municipality has not included such requirements in its subdivision and site plan review regulations, the applicant may decline to participate in the pre-application phases and begin the review process by filing a completed application.

Municipalities may authorize the planning board to require preliminary review of subdivisions and site plan review applications. See RSA 674:35; RSA 674:43, I; and RSA 674:44, II(j).

From a practical standpoint, the planning board probably should not require more than one pre-application meeting under either the preliminary conceptual consultation or design review phases.

NH OPD strongly recommends that pre-application phases be included in the local subdivision and site plan review regulations and that the Town Planner, Planning staff, or planning board mandate or encourage every applicant to make use of them. The valuable exchange of ideas and information between an applicant and the board before a formal plan is submitted can eliminate costly redesigns and save time for all parties involved. The pre-application phases provided for by RSA 676:4, II must be specifically allowed by the subdivision and site plan review regulations if they are to be offered by the planning board.

Pre-application review is a non-binding process. It should not be confused with the required formal review of a completed application. State statutes do not authorize any form of preliminary approval.

Whether the pre-application review process is mandated or voluntary by the subdivision and site plan review regulations, the planning board may establish rules of procedure that include submission requirements (RSA 676:4, II(b)). Submission requirements should cover such items as:

- Whether an appointment is necessary to appear before the board for conceptual consultation;
- The type of material to be presented and discussed that would require notification of abutters

and the public (i.e., any detail beyond a base map or a site location map);

- Whether an application is required for design review and the fees for notices that must be paid;
- Identification of any information that would help the board during the design review; and
- Reasonable time limits within which the board would review such information.

The pre-application review of subdivision and site plan proposals is divided into two phases: conceptual consultation and design review.

Is there a time limit for the pre-application review phases?

No. There are no statutory time limits for these phases, but the applicant may choose, in communities that don't require the pre-application phase, to curtail the pre-application process and file a completed application to trigger the required review.

The board may determine at a public meeting that the design review process of an application has ended and shall inform the applicant within 10 days. (RSA 676:4, II (b))

STEP 1: CONCEPTUAL CONSULTATION (RSA 676:4, II(a), (C))

The conceptual consultation phase provides an opportunity for a property owner or agent to discuss with the planning board, in very general terms, the types of uses that may be suitable for the subject property. Although this discussion must take place at a public meeting of the planning board, notification of abutters and the general public is not required because the discussion is informal, and no plans or specific details are presented.

The primary advantage of this consultation is that ideas can be informally discussed with the planning board before time or money is spent on design and engineering details. The owner or agent may outline, in general terms, the type of subdivision or site plan that is anticipated. The planning board may discuss any pertinent information contained in the master plan and the local regulations that must be considered. During the discussion, the board should describe the procedures to be followed for the filing, submission, acceptance and review of a completed subdivision or site plan review application. It is perfectly acceptable for the planning board to limit the time period to discuss a conceptual consultation with the applicant at the meeting.

New Hampshire statutes place great emphasis on the obligation of the planning board to provide notice to the abutters and the public of any substantive discussions on specific development proposals. Neither the applicant nor the planning board may go beyond the general and conceptual limits and begin discussing the design or engineering details of a proposal until the abutters and general public have been notified. Notice must occur either prior to the design review phase of the pre-application review or when a completed application has been filed.

It also encourages an applicant to make full use of the opportunity to identify potential problems early in the process, thereby saving time as well as unnecessary and expensive redesign at a later date.

STEP 2: DESIGN REVIEW (RSA 676:4, II(b), (c))

Design review gives the applicant and the planning board an opportunity to discuss a proposal in much greater detail than is allowed in the conceptual consultation phase. The objective of design review is to provide the board with an opportunity to understand what is being proposed, and for the applicant to understand the concerns of board members, abutters, and the general public. Design review is intended to assure that the essential characteristics of the site and specific requirements of

local regulations are thoroughly reviewed and understood before the final design is prepared. It also gives the planning board the opportunity to determine whether or not the development has the potential for regional impact under RSA 36:54.

Design review applications are required to be noticed in the same way a formal application would be according to RSA 672:3 676:4.(d)1. The applicant must also pay the required fees to cover the costs of notices and any administrative actions.

Information Needs

Information similar to that required for a completed application will be useful during the design review phase. Using the design review process allows an applicant to understand the board's key concerns and to evaluate the problems to be faced in designing an approvable project. The expenses for site investigation and engineering, which would be required in any event, can be apportioned over a more carefully planned period of time. Material presented during this phase should be stamped "design review" to distinguish it from the formal application. Any information not modified or changed may be filed as part of the formal application and noted accordingly. The board's rules can be amended to specify submission requirements, which should include:

- A site location map placing the parcel in the larger context of the community;
- A site survey showing pertinent features of the site;
- An indication of any future subdivisions contemplated in or adjacent to the proposal;
- A topographic map of the area;
- Any soils information, such as permeability or boring data, that has been gathered; and
- A sketch showing the proposed layout of lots, streets, and recreation areas; watercourses; natural features and easements.

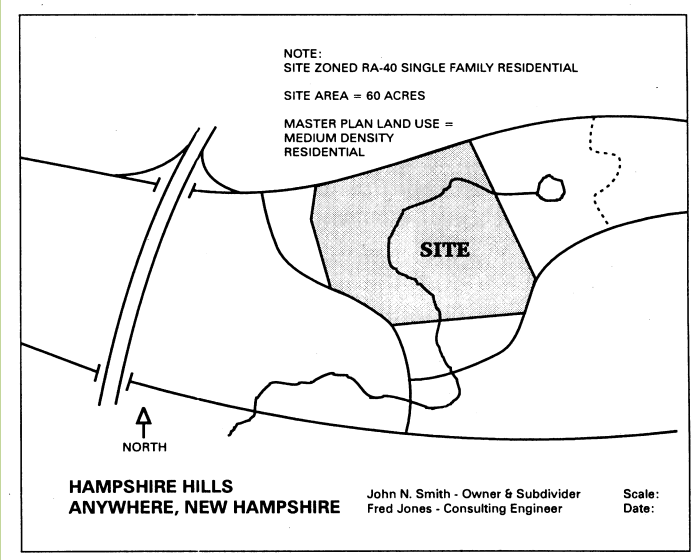

Exhibit V-1
Site Location Map

During the design review phase, the applicant may be alerted to site problems that can be resolved or mitigated before final plans are prepared. An abutter, for example, may point out an off-site drainage problem that may be affected by the proposal. The planning board may have received an application for the subdivision of an adjoining parcel that would add to traffic concerns. The status of roads in the area of the proposal should be identified and may affect the planning board's approach and the applicant's responsibilities.

During this phase, the planning board should inform the applicant of any special studies required by the regulations that must be provided as part of the completed application. Depending on the complexity of the proposal, these studies may involve an assessment of the impact of the proposal on water, sewers, roads, traffic, schools, fire and police protection, or other municipal services. The board should advise the applicant about the potential for a third-party review that will be paid for by the applicant when the board considers their formal application. Note that 2021 legislation amended RSA

676:4-b, II such that a planning board requiring third-party inspection during the construction process must develop a scope for the project inspection in consultation with the applicant. In the alternate, in some cases a signed certification may be requested by the planning board.

Planning Board Designee

The board may designate someone to review material provided for the design review. The designee may engage in non-binding discussions with the applicant after the abutters and general public have been notified.

State statutes do not specify who the designee should be or when or where the discussions should take place. The following suggestions may be adapted to fit the needs of the municipality:

- A municipality with a town planner, planning assistant, or part-time circuit rider planner, may use this staff as the planning board's designee. Discussions between an applicant and the professional planner should take place during business hours in the planning office and could involve a site visit to review specific details. It must be understood that the designee cannot make any decisions or commitments on behalf of the board, but can only offer comments and suggestions.
- A planning board without a planning staff could use the services of other municipal employees such as an engineer, road agent, public works director, or health officer. Alternatively, the board could retain outside agencies or individuals such as the regional planning commission or a private consultant, to act as its designee. This individual should conduct discussions during business hours and make no commitments on behalf of the board.
- A third alternative is to reserve a period of time at the beginning of each planning board meeting for discussion of proposals currently under design review. The agenda must list all proposals that may be discussed so abutters and the public are aware of the current status.

Public Participation

State statutes do not require either a public hearing or an opportunity for public comment during the design review phase. However, input from an abutting landowner that is pertinent to the discussion may be useful, both to the planning board and the applicant, and should be welcomed. The board may allow for public participation by providing time during any meeting at which a proposal is on the agenda for the abutters or members of the public to present specific concerns. The board may set limits on the items to be discussed, the time allowed for presentations, and other reasonable guidelines to balance the public's interests with the board's need to complete its agenda.

NH OPD strongly recommends that individual board members not serve as designees to discuss proposals with an applicant outside of regular planning board meetings. One member cannot speak for the board and may find it difficult to separate the role of a designee from the board-member role.

Each active design review proposal must be listed on the planning board's meeting agenda. If a designee were involved in the design review process, they would present the status of these proposals at the planning board meeting to inform both the board and the public.

REQUIRED REVIEW

This section outlines the steps required by state statutes for the subdivision or site plan review process. (See Appendix F for a flowchart of the application process.)

- An application must be filed with the planning board at least 21 days before the meeting at which it is to be submitted unless a shorter time is specified in the board's rules of procedure. RSA 676:4, I(b).
- Only the planning board has the authority to decide if an application meets the subdivision or site plan requirements for a completed application, although a designee can review it and make a recommendation to the board.
- Once filed, the planning board must determine if an application is complete before moving on to the merits of the development proposal. The completeness determination must be made within 30 days following delivery of the application, or at the next regular meeting for which legal notice can be given.

An application should not be accepted as complete by the planning board if it doesn't comply with local regulations unless a variance and/or waivers have been submitted and granted. If an applicant has provided all the necessary materials, studies, or reports required in your application form and/or checklist, then the application must be accepted as complete.

- When a completed application has been accepted, the planning board has 65 days to approve, conditionally approve, or disapprove the application (unless the board has determined that the application is a development of regional impact, which gives the board an additional 30 days). If the planning board does not act on the application within the 65-day period, then the governing body{selectmen, city or town council} is required to approve the application. If warranted, the applicant and board should agree to an extension of the 65-day time frame. This 65-day period starts the day after the decision was made to accept the application as complete. (If the board meets on Tuesday night and accepts the application that night, then Wednesday is day 1, Thursday is day 2, etc. (RSA 21:35)).

The language in RSA 676:4 is subject to more than one interpretation. The discussions contained in this section are based on OPD's understanding of the statutory language. Pay particular attention to the timeframe for filing and acting on applications. The previous version permitted the board to first accept the application as complete before the clock started, and then allowed 90 days to make a decision.

- Submission to the board and acceptance by the board can take place only at a public meeting for which notice has been given to the applicant, abutters, general public, and any professional whose seal appears on any plat.

RSA 674:75 Advance Pipeline Notification, makes any interstate natural gas transmission pipeline operator an abutter for the purposes of any development that occurs within 1,000 feet of the center point of the natural gas transmission pipeline. As of March 1, 2023, local land use boards in a municipality that is within 1,000 feet of the center point of a natural gas transmission pipeline shall also make National Pipeline Mapping System geospatial data maintained by the Pipeline and Hazardous Materials Safety Administration within the US Department of Transportation relative to the locations of pipelines available to developers.

STEP 1: FILE THE APPLICATION (RSA 676:4, I(b))

The applicant triggers the review process by filing an application. State statutes require the filing to be done at least 21 days before the public meeting of the planning board at which the application will be formally submitted. Note that legislation passed in 2019 amended RSA 676:4, I(b) to allow a planning board, in its rules of procedure, to shorten this 21-day minimum period.

COMPLETED APPLICATION

The subdivision and site plan review regulations must provide the applicant with a clear picture of the information the planning board requires in order for an application to be accepted as complete. The regulations must specify not only the design details and factual data of location and ownership, but also must include any special studies, reports, and technical reviews the board will need to understand and evaluate the impact of the proposal. Design review discussions help to clarify the need for specific studies or could indicate that some studies might not be needed for a particular proposal and could be waived.

The regulations should also reserve the right to require additional studies if, after initial review and public comment, the board determines that a decision cannot be made without such information. In some municipalities, the planning board will accept an application and hold the public hearing on the same night. This procedure is allowed, but make sure that the board votes to accept the application as complete before starting the public hearing. Also, make sure to include both steps to be taken in the public notice to be posted as required under RSA 676:4, I(d).

Who May Apply

The subdivision and site plan review regulations should specify who is eligible to submit an application to the planning board. If the regulations allow the property owner to designate an agent, only the agent should be responsible for the application. The legal property owner must be identified on the application and should authorize an agent or option holder to act on their behalf.

Filing Procedures

An application must be filed at least 21 days before the board meeting at which it is to be submitted for acceptance, unless the board's rules of procedure specify a shorter period of time. Each application should be logged in, given a file number that will identify it throughout the review process, and, if complete, be placed on the planning board's agenda. The filing procedure should be structured to enable the applicant to meet the statutory requirements for filing an application and giving notice.

The planning board should state in the regulations and on the application form where and when applications may be filed. In municipalities with staff and regular office hours for the planning board, applications may be filed with the staff at the designated times.

Planning boards without this type of staff support should only accept applications at a regular meeting, and under no circumstances should the board allow applications to be mailed or dropped off at a

NH OPD recommends that the board prepare an application form and an accompanying checklist to clearly show all of the information and other documents that must be filed. This helps the applicant understand the requirements and simplifies the board's process of determining whether or not the application is complete. A good source of model forms and checklists is in Southwest Region Planning Commission's *Subdivision and Site Plan Review Handbook*.

board member's home or place of business. While this practice has been common in smaller towns, statutory changes in the timing for filing make it important for the board to have documentation of when an application has been physically received by the board. Be careful to avoid discussing the merits of the proposal at this point. It is appropriate only to take receipt of the application and schedule the submission meeting. The board may, however, review the plat against the checklist to determine if all submission items have been provided, but members should firmly avoid discussing the plan itself.

List of Abutters

Under the requirements of RSA 676:4, I(b) an applicant must submit the names and mailing addresses of the applicant and all abutters to the property under consideration. The names of the abutters must be taken from the municipal records not more than five days before the date on which the application is filed. It is ultimately the applicant's responsibility to verify abutters are correct, not the municipality's. In the interests of assuring that current property owners are notified of a pending application, a planning board may suggest that an applicant check with the county registry of deeds to identify any recent changes in ownership.

The application shall also include the names and addresses of all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and the name and business address of every engineer, architect, land surveyor or soil scientist whose professional seal appears on any plat submitted to the board. 676:4.(d)(1).

Filing Fees

The applicant must pay all costs involved in providing the notices required for planning board action on an application. Such costs must be paid in advance and include postage for mailing notices to abutters and professionals, expenses for preparation of posted notices, and the charges to place legal notices in newspapers (RSA 676:4, I(d)). Any fee which a city or town imposes on an applicant pursuant to this title shall be published in a location accessible to the public during normal business hours. Any fee not published in accordance with this paragraph at the time an applicant submits an application shall be considered waived for purposes of that application. A city or town may comply with the requirements of this section by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's Internet website.

A separate document labeled as "Notice of Land Use Board Fees under RSA 673:16, III" should be created that provides a complete listing of fees charged for land use board applicants before the planning board, zoning board of adjustment, historic district commission, building inspector, and building code board of appeals.

Other Fees

The planning board may include the cost of reasonable administrative services as part of the subdivision and site plan review application fee to provide staff assistance to handle the filing, record keeping, and other clerical details involved in the review process.

The application fee may also include preliminary funds to prepare special studies, independent review of such studies that are provided by the applicant, and/or construction inspections that are required by the regulations (RSA 676:4, I(g) and RSA 676:4-b). Inspection costs can also be considered costs incurred under a third-party review agreement or as spelled out in the subdivision and/or site plan regulations. It often pays for an engineer or other professional to perform engineering or construction

activities on behalf of the town that is paid for by the applicant. But note that a planning board requiring third-party inspection during the construction process must develop a scope for the project inspection in consultation with the applicant (or, in some cases, a signed certification may be requested by the planning board). See RSA 676:4-b, II.

Because the zoning board of adjustment may also collect fees for special studies, and it is possible that redundant studies may be requested of the same applicant, both the planning and zoning boards are limited to assessing fees where it will not "substantially replicate a review and consultation obtained by" the other board.

The administrative and third-party review fees should be placed in separate accounts, identified by file number, and drawn down as expended. All fees should be based on documented charges.

COMPLETENESS REVIEW

Before an application is submitted to the planning board for acceptance, the board should be satisfied that it is complete. The first step is to file an application with the planning board staff or designee who performs the completeness review before officially submitting it to the planning board. A completeness review is intended to assure the planning board that the application meets the criteria and contains all of the items required by the regulations but does not involve a review of the material submitted.

Only the planning board can decide if the application meets its criteria; however, a designee who has a thorough knowledge of the subdivision and site plan review regulations and an understanding of the types of materials that are needed, can do a preliminary screening as applications are filed and make a recommendation regarding the application's completeness to the board. In such a case, the board, in its procedures, could suggest that the applicant provide the material earlier than the statutorily required 21 days before submission. The additional time would give the applicant an opportunity to provide any items identified by the designee that must be filed to make the application complete.

A checklist based on the requirements of the subdivision and/or site plan review regulations is particularly helpful for the board in performing the completeness review. Those applications that are determined to be complete could then be placed on the agenda of a subsequent meeting for submission or can be done at the same public hearing. Once the board determines that the application is complete, it must be accepted upon submission.

In the event that the applicant disagrees with the designee's recommendation that the application is not complete and declines to submit the requested items, the application must be placed on the agenda. The designee's recommendation would be considered by the board in deciding what action to take. The abutters and the public must be notified when the application is on the agenda, but the board may reject an application as incomplete without a public hearing (RSA 676:4, I(e)(2)). A written determination that an application is not complete must be provided to the applicant (RSA 676:3, I). A planning board application may not be determined incomplete solely because it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal government bodies, nor may a planning board refuse to take action on such an application for that reason only. However, the planning board may condition approval upon the receipt of such permits or approvals in accordance with RSA 676:4, I(i).

STEP 2: NOTICE OF PUBLIC HEARING (RSA 676:4, I(D))

A public notice is required when a formal application or an application for design review has been filed and placed on the planning board's agenda to be reviewed at a public hearing. The notice must:

- Be sent by verified mail at least 10 days before the date of submission;

In 2017 the legislature revised several statutes, including RSA 676:4, I(d)(1) to replace the requirement for notice by certified mail with "verified mail" as such term is defined in RSA 451-C:1, VII. RSA 451-C:1, VII, in turn, defines "verified mail" as "any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing." Thus, "verified mail" includes, but is not limited to, certified mail.

- It must be sent to the applicant, all abutters, holders of conservation, preservation or agricultural preservation restrictions, and all professionals whose seal appears on any plat as defined in RSA 676:4, I(d);
- Be provided to the general public as the subdivision and site plan review regulations specify (either posting or publication);
- Include the date, time, and place of the meeting, the name of the applicant, the location and general description of the proposal; and
- Be paid for in advance by the applicant.

Notice is required even if the abutters and the public were notified for a design review application. The applicant should recheck local records not more than 5 days before the filing to determine if there have been any changes in the list of abutters. Submission of a completed application is a separate procedure and marks the point at which the required review begins.

It is important to remember that notice of a public hearing, as discussed above, differs from notice of a simple public meeting. It is also important to distinguish the above from the notice required for a public hearing on proposed regulations or ordinances, which is governed by RSA 675:7, and which requires, in part, notice by publication.

When choosing a newspaper for the publication of a notice, there are several points to remember:

- The public notice must appear in the newspaper at least 10 days prior to the planning board's public hearing.
- Newspaper publication deadlines need to be considered when setting the schedule for filing, especially for weekly newspapers.
- Free "shoppers" and "bulletin board papers" should be avoided.

Minor lot line adjustments or boundary agreements, which do not create buildable lots, do not require public hearings prior to approval unless the subdivision regulations state otherwise. However, notice must be given in accordance with RSA 676:4, I(d) that the board is considering such a request.

In the interest of keeping the public fully informed, NH OPD recommends that the notice procedures include both newspaper publication and posting. The subdivision and site plan review regulations or the board's rules of procedure should specify where in the municipality notices will be posted and in what newspaper they will be published. The *Subdivision and Site Plan Review Handbook* by Southwest Region Planning Commission has model notice forms for both abutters and the general public.

Similarly, public hearings are not required for the disapproval of applications based upon failure to submit all information required by the regulations, notify abutters, meet deadlines, or pay the required fees.

Voluntary and Involuntary Lot Merger

Under RSA 674:39-a, any owner of 2 or more contiguous pre-existing approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. However, recent changes to the statute now prohibit involuntary mergers. Governmental entities are precluded from merging preexisting subdivided, contiguous nonconforming lots or parcels without the owner's consent.

In addition, RSA 674:39-aa permits owners of lots that were involuntarily merged prior to September 18, 2010 to have the lots restored to their pre-merger status. "Involuntarily merged lots" are lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Property owners must submit a request to the municipality's governing body to restore any involuntarily merged lots to their previous status. The decision of the governing body may be appealed in accordance with RSA 676. If any owner in the property's chain of title voluntarily merged the lots, subsequent owners may not request restoration of the lots to their pre-merger status. The municipality has the burden of proving that a previous owner voluntarily merged the lots. Restoration of involuntarily merged lots to their pre-merger status does not cure any lot's nonconformity with existing local land use ordinances.

Municipalities may adopt local ordinances regulating the restoration of previously merged properties that are less restrictive than the provisions in RSA 674:39-aa.

Additional Notices

Throughout the deliberation and review process, the planning board must keep all of the interested parties informed of any meetings at which the application will be considered. Separate notices are not necessarily required each time an application is to appear on the planning board agenda if "continuity of notice" is maintained by one of the following methods:

- The initial notice may state that the application will be on the planning board's agenda for each regular meeting until a decision is made. The notice should include the board's meeting schedule.
- If no decision is reached and consideration of the application will be continued to a future meeting, the board announces the date, time and place of the continued meeting.

Failure to Notify

New Hampshire statutes stress the importance of providing notice and an opportunity to be heard for abutters and the public during the subdivision and site plan review process. Failure to adhere to the notice requirements could result in costly and time-consuming court action against the planning board, reversal of a decision made by the board, and expensive project delays.

The board's rules of procedure could address this issue by allowing someone who was not notified, but is present at the hearing, to sign a form agreeing to waive the notice requirement. If the person is not present, declines to sign the form, or if the error is found after the meeting, the required notice must be provided, and the review process begun again. These steps would guard against a possible legal challenge to the board's action on grounds of failure to follow the notice requirements.

STEP 3: SUBMISSION AND ACCEPTANCE (RSA 676:4, I(b))

Submission

Before a planning board can take any action on an application, the complete package of required information as defined in the subdivision and site plan review regulations must be submitted to the board at a public meeting. The process of submitting the application should take only a short time during the meeting.

The planning staff or designee can discuss the completeness of an application with the board prior to the public hearing. The discussion can include if the required materials were submitted according to the checklist and regulations and if there are waiver requests for the board to consider. This "order of business" should be spelled out in the board's "Rules of Procedure." It is appropriate for the board to not engage in discussion over completeness of the application with the applicant before the public hearing is opened. While they can ask the applicant for clarity on an issue, caution should be taken with this policy. The merits of the application cannot be discussed outside of a public hearing.

Acceptance

The planning board's action to accept a completed application should be clearly identified. A formal motion to accept, with an affirmative vote by a majority of the board members, is recommended. An example of a confirmatory note to an applicant may be found in the *Subdivision and Site Plan Review Handbook* by Southwest Region Planning Commission. If the application is complete upon submission, the planning board cannot delay acceptance until a future date. And, upon the board's acceptance as complete, the board has 65 days to approve, approve with conditions, or disapprove the application (assuming no regional impact determination). See RSA 676:4, I(c)(1).

The board accepts an application as "complete" based on its own review or on the designee's recommendation. The board's familiarity with the details of the application upon acceptance may be minimal. Before the board can approve a subdivision or site plan application, a public hearing must be held. For simple applications, the public hearing may be scheduled for the same meeting at which the application is submitted and accepted (but must be noticed as such).

For more complex applications, the board should take the time to review the details of the application and provide time for review and comment from other municipal boards and departments as appropriate. When the public hearing is held, the board would then be in a better position to understand and respond to questions raised.

In the interest of time and money for the municipality, the applicant, the board could adopt procedures to determine completeness and acceptance and open the public hearing at one meeting. This can also prove beneficial for the abutters and the public by only having to attend one public hearing for the acceptance of the application and opening of the public hearing.

STEP 4: PUBLIC HEARING (RSA 676:4, I(d))

In most cases, a public hearing must be held before the planning board can take final action on an application that has been accepted for review. Once again, the notice requirements should be carefully followed to ensure that required parties have an opportunity to participate.

The purpose of the hearing is to inform abutters and the public of the proposal and to give the planning board and the applicant the benefit of the views, opinions, and remarks of the abutters and

anyone else who might be affected by the proposal.

Exceptions to the Public Hearing Requirement

State statutes do not require a public hearing in the following situations:

- The board determines that the applicant has failed to supply required information (including a list of abutters), has not paid costs or fees set by the board, or has failed to meet reasonable deadlines established by the board (RSA 676:4, I(e)(2)).
- The proposal is a boundary agreement or a minor lot line adjustment that does not create buildable lots (RSA 676:4, I(e)(1)).
- The proposal meets the requirements for the expedited review process for minor subdivisions under RSA 676:4, III and this process is allowed by local subdivision regulations.

A public hearing may be required by local regulations for minor subdivisions, lot line adjustments and site plan review. The regulations should state whether public hearings are routinely held for these types of applications or will be held only if requested.

Procedures for a Hearing

The rules of procedure adopted by the planning board under RSA 676:1 should provide the basic ground rules for holding a public hearing. Recommended procedure is outlined below:

1. The chair opens the public hearing and explains what procedures will be followed.
2. The chair explains that the reason for holding the hearing is to gain input from any persons potentially affected by the proposal.
3. The applicant presents the proposal.
4. The board members may ask questions of the applicant.
5. Other questions and comments are taken in the following order:
   a. Abutters in favor of the proposal.
   b. Abutters opposed to the proposal.
   c. Anyone else who wishes to speak, if time permits.
   d. Any written comments are read into the record. Anyone speaking from the floor must identify themselves for the record. All questions must be directed through the chair to avoid cross-questioning between abutters and the applicant.
6. The chair summarizes the comments and provides an opportunity for the applicant to clarify any issues. The chair announces the procedures the board will follow in making a decision.
7. The chair closes the public hearing and the board begins deliberating on the application at that time and either makes a decision or continues the application to a future public hearing.

The minutes of the public hearing will help the board in its deliberations and will also form an important part of the record if the decision is challenged. After the public hearing, a board member may offer one of the following motions:

- Motion to approve the application;
- Motion to approve the application, with conditions;
- Motion to disapprove the application;
- Motion to defer a decision on, or continue the application until a later date; or
- Other motion, as appropriate.

STEP 5: FORMAL CONSIDERATION (RSA 676:4, I(c))

Upon finding that a submitted application is complete, the board shall begin formal consideration and must act within 65 days to approve, conditionally approve, or disapprove the application. In the case of a determination by the board that the application is a development of regional impact requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act to approve, conditionally approve, or disapprove.

To begin formal consideration, the board should initiate the following actions, as it deems appropriate:

- Open the public hearing or schedule a public hearing.
- For larger more complex applications, the board may consider scheduling a site visit by the board;
- Hold a work session to review details of the application;
- Assign a designee to review the application and report back to the planning board;
- Review any impact studies or reports required as part of the application;
- Request other local boards and municipal officials to review and comment on the proposal

If the public notices have stated that the application is on the agenda of every planning board meeting from the date of the acceptance to the date of final action, the board may discuss any aspect of the application at any regular meeting or work session.

Review of Application

For some applications, it is possible for the board to accept an application, hold the public hearing, and make its decision at one meeting. This process, however, may not be appropriate for complex applications. The key is for the planning board to take the time necessary to evaluate the information provided by the applicant, review recommendations from local officials and planning staff, the designee or consultants, and carefully weigh the issues raised at the public hearing.

These comments and evaluations may alert the planning board to some problem with the site of which neither the board nor the applicant was aware. Local regulations should reserve the right for the board to require additional information under these circumstances, i.e., if the board could not make an informed decision or would have to disapprove the application without the information.

The board should set a reasonable time for the applicant to provide the material. If necessary, the applicant and the board should agree to an extension of the 65-day time period.

If the planning board does not act on the application within the 65-day period (or 95 days in the case of developments of regional impact), then the governing body {selectmen, city or town council} is required to approve the application. If warranted, the applicant and board should agree to an extension of the 65-day time frame.

The board should not grant conditional approval of an application pending receipt of studies or reports that have been required and must be reviewed before a decision can be made.

The written decision to disapprove required by RSA 676:3, I should cite lack of specific material or failure to meet an established deadline as the reason for the decision. Under RSA 676:4, I(e)(2) no public hearing is required for this disapproval. The file should be marked closed.

Procedurally, a new application filing, including required fees, are necessary to invoke the jurisdiction of the board, but the previously filed material could be included along with the additional items.

Nonpublic Sessions

The provisions of RSA 91-A:3 regulate the very limited circumstances under which a planning board may meet in a nonpublic session. A recorded roll call vote by a majority of board members is required to enter a nonpublic session and the specific statutory reason for the nonpublic session must be cited. Permitted reasons are listed in RSA 91-A:3, II(a-l). Reasons for a nonpublic session include discussion of litigation filed by or against the municipal board and, newly added in 2016, advice received from the board's legal counsel either orally or in writing, even if legal counsel is not present. The decision to hold a nonpublic session must be included in the minutes of the open session. Minutes also must be kept of the nonpublic session. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes of nonpublic sessions shall include the names of members, persons appearing before the board, and a brief description of the subject matter discussed and final decisions. Also, minutes of nonpublic sessions must be made public within 72 hours unless the board votes by a two-thirds majority to seal the minutes. Minutes may only be sealed if the requirements in RSA 91-A:3, III are met.

In 2023, paragraph IV was added to RSA 91-A:3, requiring public bodies to either develop their own process to review minutes or to follow a statutorily created process. Either way, public bodies are required to review all nonpublic minutes that were previously sealed and determine whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. That review process must take place within 10 years of the effective date of HB 321, October 3, 2023. Meeting minutes that were kept from the public that are not reviewed by the public body or agency on or before October 3, 2033 shall be subject to public disclosure without further action of the public body.

The use of nonpublic sessions should be limited and the requirements of RSA 91-A:3 carefully observed.

If there is any question concerning the appropriateness of a closed deliberative session, the board should consult its legal counsel.

Extension of 65-Day Review

A complex application can take many meetings for the board to review. In addition, an applicant may have difficulty completing requirements set by the planning board. In either case, the 65-day period for the planning board to vote on an application may be extended in one of the following ways, as provided in RSA 676:4, I(f):

- The applicant and the board agree to an extension for a set period of time.
- The applicant and the board agree to halt the running of the review for a set period of time, i.e., "stop the clock," until necessary material is prepared and submitted.

Any extension of time or delay in the process should be carefully documented in the records of the planning board and in writing to the applicant.

Please note that in 2022 the ability of the planning board to request an extension of time from the governing body for up to additional 90 days was eliminated by a legislative change. Now the law reads that in order for the planning board to have more than 65 days (or 95 days in the case of developments of regional impact) to act upon the application, **the applicant** must waive the statutorily specified time period and **the board and the applicant** must agree upon the time of the extension.

STEP 6: THE DECISION (RSA 676:4, I)

After the planning board is satisfied that it has addressed all potential concerns and issues associated with a subdivision or site plan application, the board is ready to make a decision. Under state statutes, the board shall take one of the following actions, which shall be based on findings of fact:

- A motion to approve the application;
- A motion to disapprove, with specific reasons for the disapproval; or
- A motion to approve with conditions.

When a motion to approve does not get an affirmative vote from a majority of board members, it does not result in automatic disapproval of the application. A new motion to disapprove, including reasons for the action, should be offered and another vote should be taken. Similarly, a motion to disapprove that does not receive a majority vote does not result in an automatic approval of the application. In order for the board to act, it must approve an affirmative vote to take a particular action. This may become problematic when there is an even number of board members present. If a motion is made that results in a tie vote, the motion fails and the board is back where it began. The board should make several attempts to craft a motion that a majority of members can approve. If the board is unable to break the tie, the meeting should be adjourned until a board with an odd number of members can be convened.

RSA 676:3, I requires that the applicant be given a final written decision (commonly referred to as a "Notice of Decision") that documents the board's decision to approve or disapprove the application. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. In general, the board should be clear with identifying how the application meets (or doesn't meet) their regulations and checklist requirements when determining the findings of fact. Findings of fact should not replace conditions of approval, they are in addition to conditions of approval. For denials, in addition to consulting with town counsel, the planning board should consider and identify what are the things about the application that are preventing the board from saying yes. These things should be anchored in the standards of the regulations, applications, and checklists. The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons for your decision, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact.

The statute also requires the planning board's written decision to detail all conditions that may have been placed upon an approval. In addition, the written decision and all the conditions are required to be filed with or on the plats.

Approval

The approval of an application by the planning board signifies that the proposal meets all applicable regulations. The degree to which a local land use board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application. **Findings of fact should not replace conditions of approval.**

The plat must be approved by a majority vote of the planning board and signed as required by local regulations. For subdivision applications the final plan shall be recorded at the County Registry of Deeds. Site plans however, (except condominium site plans) may not be accepted for recording at the registry so check with your county registry before requiring the recording of site plans in your

regulations. The board could consider recording the "Notice of Decision" for site plan approvals, with plans available for review with the Town. Registries require that all final approved plats for a subdivision or condominium be made on Mylar (plastic) for recording purposes.

Disapproval

When denying an application, the planning board must vote to disapprove, specify the reasons for denial, and cite the sections of the regulations that were not satisfied. The reasons for denial must be clearly stated in the board's findings of fact, minutes, and other records of its actions.

For denials, a local land use board should consider what are the things about the application that is preventing it from saying yes. These things should be anchored in the standards of the regulations and describe how the application does not meet the standards of the regulations; but may also include the exercise of independent judgment, experience, and knowledge of the area by the board.

The board must notify the applicant, in writing, of the reasons for the denial. While the applicant may disagree with the board's decision, the applicant should be able to understand the basis for the decision. Such careful documentation will support the board's action if the decision is appealed.

The option to disapprove an application can be taken by a planning board in the following situations:

- The proposal does not or could not meet the local requirements due to specific factors relating to soils, road conditions, lack of state permits, or the inability to meet zoning requirements.
- The proposal cannot adequately address the legitimate concerns raised at the public hearing, such as drainage, traffic, or other health or safety issues.
- The applicant failed to provide information required by the board.
- The proposal would result in a "scattered or premature" subdivision. This determination would be based on the goals and objectives in the master plan that are referenced with specific criteria in the subdivision regulations. A statement of intent for the particular zoning district would lend further support to such a finding. An analysis of the timeliness of the proposal in light of actions outlined by the capital improvements program would also be an important factor in determining whether a proposal is premature.

The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact.

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

It is optional for a planning board to include a provision for waivers in the regulations; however, it is mandatory for site plan review regulations. The planning board may grant a waiver of a portion of its subdivision and site plan review regulations if it finds, by majority vote, that strict conformity with the regulation would pose an unnecessary hardship to the applicant and would not be contrary to the spirit and intent of the regulations. Alternately, a waiver may be approved if specific circumstances of the development or conditions of the land indicate that the waiver will properly carry out the spirit and

While it is optional for waiver provisions to be included in subdivision regulations, it is recommended boards allow for waivers from subdivision regulations. Also, it is good practice to specify waiver requests are to be submitted in writing and clearly identify the section of the application, regulations, and/or checklist item in which relief is sought.

intent of the regulations. The basis for granting a waiver shall be recorded in the planning board minutes.

Conditional Approval

The planning board's decision to approve an application with conditions may be necessary for a variety of reasons:

- The application may require minor revisions;
- Permits or approvals from other boards or agencies may be lacking;
- Improvements to roads, sewers or other utilities may be required before the development is completed; or
- The board may want to require preservation of specific natural features during development.

Conditional approval constitutes a decision of the planning board within the requirements of the 65-day review period or a legal extension thereof. State statutes do not set a time limit within which the planning board must make a decision on whether or not conditions have been met. When a planning board votes to approve an application conditionally, it should set reasonable deadlines for the applicant to notify the board that the conditions have been fulfilled. Deadlines for all conditions should be spelled out in the regulations, as applicable, or in the Notice of Decision. If the applicant fails to act upon an approval within the specified time frame, they may have to return to the board with an extension request.

There are two general categories of conditions:

- **Conditions precedent** are conditions that must be fulfilled before the planning board may give final approval to an application, such as receiving state permits, obtaining bonds for construction (provided for subdivisions, road and utility construction can begin without a bond), and making revisions to the plans.
- **Conditions subsequent** are conditions that appear on the final plat and deal with restrictions on the use of property or safeguards that must be observed during development of the parcel or once the project is in use. Such issues might include the location of a road, preservation of vegetation and stone walls, or hours of operation and details of security protection for a commercial use.

In imposing conditions on the approval of an application, the records of the planning board should state the reasons for the conditions and the specific actions that are required. This will simplify the job of verifying that the conditions have been met. In conjunction with the local enforcement authorities, the planning board should establish a monitoring process to ensure that conditions subsequent are followed, both during development and through the ongoing life of the project. In addition, such conditions should be noted on the written decision issued to the applicant and on the plat, or contained in a separate recording at the registry of deeds so that the conditions are a matter of record for future owners of the property.

According to RSA 676:4, I(i), conditional approvals that are considered minor plan changes, administrative, or relate to the issuance of other approvals or permits, become final without further public hearing once satisfactory compliance with the conditions has been confirmed. This may occur either through certification to the planning board by its designee or based on evidence submitted by the applicant to the board. All other conditions precedent require a hearing prior to the plat's final approval and must be noticed as provided in RSA 676:4, I(d).

It should also be noted that if the applicant believes the conditions are unreasonable, conditional approval can be treated as disapproval for the purposes of an appeal.

Compliance Hearing

Responding to a New Hampshire Supreme Court ruling in *Sklar v. Town of Merrimack*, 125 NH 321 (1984), the state legislature addressed the issues of how and when a conditional approval becomes final. Under RSA 676:4, I(i), a public hearing is not required when compliance with the conditions is an administrative act or does not involve discretionary judgment by the board. Such conditions precedent might include:

- Minor plan changes such as modifying the location of a structure or a lot line to accommodate a tree or other natural feature;
- Administrative conditions such as submission of financial security to ensure compliance with the municipality's road specifications or other requirements for improvements; or
- Conditions that require the applicant to receive permits or approvals from other boards or state or federal agencies, i.e., wetland permit, subsurface disposal system permit, or approval to tie into municipal water or sewer systems.

A public hearing must be held to assure compliance with conditions that require judgment by the planning board. For example, revisions to a drainage plan must be reviewed to determine if they adequately meet concerns expressed either by the board or an abutter. Such a condition requires a public hearing with full notice to abutters and the public before finalizing the approval and signing the plat (RSA 676:4, I(d)).

Additional notice is not required for an adjourned hearing if the date, time, and place of the continuation were announced at the prior hearing. The board should listen to the public's comments and decide, by vote, whether the conditions have been met. The compliance hearing is concerned only with the issue of whether any discretionary conditions attached to the approval have been met and should not provide an opportunity to reopen general discussion of the entire proposal.

Posting of Bond or Other Surety

A municipality must be assured that all improvements are constructed or installed in accordance with the approved application. When improvements are included as conditions for subdivision and or site plan approval, the planning board should require a performance bond, letter of credit, or other type of financial security as specified in the subdivision and site plan regulations, to guarantee that streets will be constructed, utilities installed, and landscaping and other improvements provided in accordance with the regulations. Financial security may also be considered for stabilization of the site if a developer is unable to complete a project but site work has begun. While the type of security chosen may vary, the planning board should ensure that the applicant is fully responsible for the cost of the improvements so that the municipality does not assume the financial burden.

A detailed description of the required improvements should be included as part of the security agreement. The termination date of the agreement should extend beyond the time period for the work to be accomplished to give the municipality sufficient time to invoke the provisions of the security when it becomes obvious that work will not be completed.

Posting of the bond, letter of credit, or other security must be completed before the plat is signed, dated, and recorded by the board. Certification that security has been provided is considered an

administrative act and does not require a compliance hearing.

A standard form for the security should be prepared and reviewed by the municipal attorney to assist the board with its effort to safeguard municipal interests. The attorney should also be asked to review any unusual or complex situations that may be related to a specific subdivision or site plan.

RSA 674:36, III(b) prohibits a planning board from specifying cash or a passbook as the only types of acceptable security. In addition, the municipality must allow partial release of the security as phases or portions of the improvements are completed and approved by the planning board. The security agreement should define the phases included and establish reasonable costs for each phase.

In 2023, several changes were made to RSA 674:36, III and IV relative to performance bonding:

- A planning board must allow at least two forms of security including a letter of credit, cash, or passbook. No forfeiture or automatic call bonds are allowed to be required by the planning board.
- Cost escalation factors applied by the planning board are now allowed to be up to 15 percent per year. However, no cost increases are allowed for engineering, administration, or other non-construction reasons.
- A planning board must allow road and utility construction to start without a bond, however, a bond for infrastructure, including roads and utilities, must be in place prior to sale of any parcel or an application for a building permit for structures. Planning boards who would like to guard against incomplete infrastructure that is not bonded still have the option to require an on-site engineer to inspect infrastructure construction.
- Partial releases of securities are prescribed "when substantial improvements are made" during the course of project building. If an inspection is required by the municipality for release of a bond, it must be completed within 30 business days of written request delivered by hand or sent by courier. Notification by the municipality of non-compliance shall be sent within 15 business days of the inspection to the bonded party. Any fix must be completed within 30 days of receipt of notification, and reinspection must occur within 15 business days of notification that the fix has occurred. Such inspections may be appropriate for a third-party reviewer. All bonds shall be released within 90 days of final sign off.

RSA 676:12, V prohibits the denial of a building permit based on uncompleted streets and utilities after such improvements have been secured. However, occupancy can be restricted until terms set by the planning board in its decision have been met.

Effect of Approval of Lot Line Adjustment

In context of a lot line adjustment, it is important to understand that the effect of the planning board approval is limited. Essentially, the approval acts as any other subdivision approval. It is recognition that the new lot line constitutes a use of the land that is consistent with local land use regulations and the overall land use plan of the municipality. The approval of the planning board does not create the new line. Lines dividing parcels of land do not move or disappear without a conveyance or a merger. In the case of a lot line adjustment, we typically see a lot line move to create more favorable dimensions for one or both lots. In order to complete this move, a conveyance must occur. The owners of the respective lots must transfer, by deed, parts of their respective parcels to each other (in some situations only one owner transfers to the other). The documents reflecting the conveyance should then be recorded in the registry of deeds along with the plan approved by the planning board. This portion of the lot line adjustment process is a private matter and the planning board need not be involved in the negotiation of the location of the line, the cost of the transaction, or other private terms of

agreement. The limited job of the planning board is to review the configuration of the proposed new lots and lines to determine whether they are in conformance with subdivision regulations and any local zoning ordinance.

To alleviate any confusion regarding the effect of planning board approval, it may be advisable for a planning board to indicate in its notice of decision and/or as a note on the plan that approval by the planning board in and of itself does not effectuate a change in lot line location. Such approval merely constitutes recognition by the municipality that the lot configurations, as proposed, are in conformance with local land use regulations or are otherwise accepted with non-conformances.

Issuing the Decision

All planning board decisions must be by a majority vote of the members present and must be based on a motion that clearly expresses the intent of the board. While not required by state statutes, a number of boards take a roll call vote on subdivision and site plan review applications and enter the vote in the board's records.

The plat should include a formal signature block where the board's approval is noted. Because administrative conditions may not be in place at the time of approval, the regulations may allow the chair and/or board secretary to sign the completed plat when the conditions have been met. This action will allow the plat or the Notice of Decision to be accepted for filing at the registry. The motion to approve an application should include authorization for these signatures, making it clear in the records that the board intends to delegate responsibility for this administrative action. One signed copy of the approved plat should be retained in the planning board's files and a second copy should be given to the applicant.

Any decision of the board must be in writing and placed on file in the board's office for public inspection within 5 business days after the decision is made.

STEP 7: FAILURE TO ACT (RSA 676:4, I(c))

State statutes establish specific steps that must be taken if a planning board does not arrive at a decision on an application within 65 days after acceptance of a completed application, and an extension has neither been granted by the governing body nor agreed to by the applicant. The steps related to a planning board's failure to act are as follows:

1. If the planning board fails to act on the application within the 65-day time period, then the selectmen or city council shall certify on the applicant's application that the plat is approved.
2. In the event that the governing body fails to certify approval of the plat upon the planning board's failure to act within the required time period shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application.
3. The superior court shall act upon such a petition within 30 days.

If the court finds that the board's failure to act within the time period was not justified, the municipality may be ordered to pay reasonable costs for the applicant's legal action.

STEP 8: RECORDING THE PLAT (RSA 676:16)

In a municipality that has established subdivision review authority, no parcel of land within a subdivision can be transferred or sold until the planning board has approved a plat of the subdivision and filed it with the appropriate county register of deeds. RSA 674:37 requires that any plat to be filed

or recorded must be prepared and certified by a licensed land surveyor since July 1, 1981, or by a registered land surveyor between January 1, 1970, and June 30, 1981.

The subdivision regulations should prescribe the recording process. It is strongly recommended that the board or its designee handle delivery of the plat to the registry. In this way, the board is assured that the plat is recorded as approved and can document the date of the recording. Allowing an applicant to file the plat should be discouraged to ensure that no changes or modifications are made after the board has approved the plat. If an applicant is allowed to file the plat, the regulations should require that a copy of the plat, certified by the county register of deeds, be returned to the board for its records. A recorded plat that has been altered without board approval is considered null and void.

APPEALS (RSA 677:15)

An appeal of a planning board decision concerning a site plan or a subdivision is taken to superior court and can be filed by any persons aggrieved by the decision. One exception to this procedure is found in RSA 676:5, III and would occur if a planning board makes any decision or determination an application based solely, or in part, on the terms of the zoning ordinance. In that case, the decision is considered an administrative decision based on an interpretation of the zoning ordinance, which is appealed first to the zoning board of adjustment. It is possible that a planning board decision on a subdivision or site plan application will be appealed both to the superior court and to the ZBA, based on the reasons for the decision.

If any party appeals part of the planning board decision to the superior court before all matters appealed to the ZBA are resolved, the court proceedings will be stayed pending resolution of the ZBA appeal. All matters decided by the planning board or the ZBA may be appealed to the superior court within 30 days after final action by the ZBA.

If a planning board decision is first appealed to the superior court and the court determines, within 30 days after proof of service of process, that any matters contained in the appeal should have been appealed to the ZBA, the court will issue an order to that effect and stay the court proceedings. The party who brought the appeal will have 30 days to present the matter to the ZBA. If the court doesn't make that determination, no matter contained in the appeal may subsequently be dismissed on the ground that it should have been appealed to the ZBA.

Land use boards may reconsider their own decisions within the statutory time period for appeal to the superior court. The board's rules of procedure should outline the process for reconsideration or include a reconsideration provision in the subdivision and site plan review regulations.

The procedures for an appeal of planning board decisions to the superior court are:

- A petition must be filed with the court within 30 days. The clock starts on the date that the board votes to approve or disapprove the application.
- The petition must state the grounds on which the decision is claimed to be illegal or unreasonable.
- The court may order the planning board to review the decision and set a time limit for such review.
- The court may require a hearing or appoint a referee or court master to prepare a report.
- The court must give land use board appeals priority on the court calendar.

- The court may affirm, reverse, or modify the planning board's decision if there is an error of law or if the court finds that the decision is unreasonable based on the evidence presented.

The municipality can be required to pay costs only when the court finds that the planning board acted in bad faith or with malice.

In 2022 language was added (RSA 677:20) to allow the superior court to require a bond from the appealing party whenever an appeal is filed and allows the court to award attorney's fees and costs to the prevailing party. However, attorney's fees and costs are not allowed against the party appealing the land use board's decision or the local land use board unless that person or body acted with gross negligence, in bad faith, or with malice in either filing the appeal or making the decision.

ENFORCEMENT

The planning board has authority to conduct third-party reviews and construction inspections to ensure the terms of the subdivision or site plan approval are met and construction is in accordance with the approved plat or plan. The third-party inspector must observe, record, and promptly report any construction defects and deviation from the terms of approval to the planning board or the appropriate municipal authority and the applicant. The applicant may be required to reimburse the planning board for the expenses incurred for the third-party review and inspection process (RSA 676:4-b).

The 2008 Municipal Law Lecture Series (Lecture 2) titled "Effective Use of Code Enforcement Tools" and published by the NH Municipal Association provides detail about enforcement issues and the practical considerations prior to superior court action. Local officials should work cooperatively with federal, state or local regulators and public safety officials and balance the facts, competing interest, and points of view before taking action. Consultation with the municipal attorney is also strongly recommended prior to taking enforcement action. The planning board has several tools it can use to enforce its decisions, such as:

- Take no action – Appropriate response to inaccurate complaints.
- Seek voluntary compliance – More often than not, violations are unintended and the violator may be more willing to cooperate than be required to proceed through formal enforcement actions.
- RSA 676:4-a – Revoke an approval when the applicant or the applicant's successor performs work, erects a structure or structures or uses the land in ways that fail to conform to the plans or specifications upon which the approval was based, or has violated any requirement or condition of approval.
- RSA 676:15 – Institute proceedings for a court injunction against unlawful construction, alteration or reconstruction.
- RSA 676:16 – Recover civil penalties for land transfers or sales of unapproved subdivision lots.
- RSA 676:17 – Recover fines and penalties for violations of local land use regulations and subsequent offenses. Each day a violation continues may be considered a separate offense.
- RSA 676:17-a – Issue a cease and desist order against any violations.
- RSA 676:17-b – Issue a local land use citation in addition to the summons. The defendant receiving such a citation may plead guilty or *nolo contendere* (no contest) by mail. If the court accepts the plea, the defendant shall not be required to appear in court.
- RSA 31:39-d – Use the plea-by-mail process, which is permitted for land use violations but not

for violations of the state building code.

"GRANDFATHERED" APPLICATION (676:12, VI)

Once an application has been the subject of notice by the planning board, pursuant to RSA 676:4, I(d), it is grandfathered or protected from subsequent amendments to the municipality's subdivision or site plan review regulations or zoning ordinance. However, the application's first legal notice must occur before the amendment's first legal notice. In these situations, the application is reviewed under the current version of the regulations as opposed to the proposed amended regulation.

This grandfathered status also applies 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. RSA 676:4, II(b) also allows planning boards to determine, at a public meeting, that an application's design review process has ended. This determination requires written notification to the applicant within 10 days.

For applications accepted after the first legal notice of regulation amendments has been posted, the planning board should advise the applicant of the possible effects of the proposed changes and offer the following options for the applicant's consideration:

- The application can be delayed until action on the amendments has been taken, and if the changes are adopted, the review would then be based on the revised regulations;
- The application can be reviewed as submitted with the understanding that if proposed amendments are adopted, the decision of the board could be affected by the new regulations; or
- The application can be revised to conform to the proposed changes.

The planning board should advise the applicant that a plat shall not be filed with the registry of deeds if it does not conform to the regulations in effect at the time the application is approved unless the provisions of RSA 676:12, V apply.

STATUTORY VESTING (RSA 674:39)

The provisions of RSA 674:39 protect approved and recorded subdivision and site plans from subsequent changes in planning board regulations and zoning ordinances. They also protect municipalities from having development that is based on outdated regulations and ordinances, or from development work that has dragged on for years in a less-than-half completed state.

In the first instance, every approved and recorded subdivision or site plan is exempt from all subsequent changes in subdivision and site plan regulations and zoning ordinances for a period of five years after the date of approval (except those regulations and ordinances that expressly protect public health, such as water quality and sewage treatment), provided that:

- Active and substantial development has begun in accordance with the approved plat within 24 months after the date of approval;
- Development remains in full compliance with public health regulations;
- The subdivision plat or site plan conforms to the planning board's regulations in effect at the time of approval.

Planning Boards should define and identify what improvements and features as well as percentage of completion of features that constitutes "Active and Substantial Completion of Improvements" in their subdivision and site plan regulations.

Once the project's improvements have been substantially completed in compliance with the approved subdivision plat or site plan, unless otherwise stipulated by the planning board, the project is permanently protected from subsequent ordinance or regulation changes, except for impact fees. If the board fails to specify and define by regulation what is "active and substantial" for a particular project, the project automatically gets the five years of protection.

MINOR SUBDIVISIONS (RSA 676:4, III)

Many planning boards spend a substantial amount of time on applications proposing relatively simple subdivisions. To encourage a more efficient use of valuable planning board time, state statutes allow local regulations to provide an expedited review process for proposals that create three lots or less, or do not create any new lots for the purpose of building development.

Before deciding whether or not to include an expedited review in the subdivision regulations, the planning board should be aware of some potential problems. There may be cumulative effects from several small subdivisions built in the same area at different times. While each proposal may be filed separately and meet the strict definition of a minor subdivision, the combined effect can cause numerous problems for a municipality. A limited view of the impact of minor subdivisions can result in piecemeal development and uncoordinated growth that is detrimental to the community.

Problems may be avoided by including in the criteria for a minor subdivision the requirement that no lot created has the potential for further subdivision.

For example, the development of a number of subdivisions along an existing road may create an inefficient strip development and leave back land without access if each lot has direct driveway access to the road. In addition, municipal services such as sewer lines and water supply may require extension, the driveways may create hazardous driving conditions, and the general appearance of the subdivision may be unattractive. A more accurate appraisal is made by looking at the extent of both the immediate and future improvements that will be needed. The planning board can assess the total burden a subdivision will place on municipal facilities if it can estimate the future improvements that will be needed to serve the area.

The subdivision of a few lots from a larger parcel of land creates the potential for further subdivision. For example, lots with direct access to the road system may be subdivided from a larger parcel that extends back from the existing public road and has no frontage other than that of the first subdivision. If the remainder of the parcel is subdivided later, the access road that was originally designed to serve only a few lots may be unable to handle a traffic load in excess of the original capacity.

Similar problems may arise if drainage systems, culverts, and water lines are originally designed for three lots and are then called on to serve a growing development. These types of problems result from the assumption that the number of lots alone determines the impact of a subdivision on the municipality, an assumption that is not always true.
Because the subdivision of only a few lots may have significant implications for the municipality, a planning board should be careful in designating minor subdivisions. The amount of work and trouble saved by eliminating a few steps in the crucial review process may prove very costly if the municipality later faces problems resulting from a poor initial design.

NH OPD recommends that the planning board use a base map to record pertinent information for all subdivision applications as they are submitted. In this way, the cumulative impact of successive subdivisions can be identified at an early point in the review process.

Review Process for Minor Subdivisions

The review of a minor subdivision application involves most of the same steps required for a major subdivision. However, a public hearing must be held only if:

- Required by local regulations;
- Requested by the applicant;
- Requested by abutters; or
- The planning board decides that a hearing is needed.

A completed application must be filed and full notice must be given to the applicant, the abutters, any professional whose seal appears on a plat, and the public. The requirements for a completed application may be limited by the scope of the application. When the application is submitted, the planning board may accept it and make its decision at the same meeting.

At a minimum, a minor subdivision application must include the following items:

- A list of abutters taken from the municipal records not more than 5 days before the application is filed;
- A site location map;
- A plat prepared by a licensed land surveyor; and
- Notification of approval from appropriate agencies and any required permits.

The expedited review procedure does not exempt the subdivider from complying with applicable state laws. Before the planning board approves an application, state subdivision approval may be required from the Subsurface Systems Bureau of the NH Department of Environmental Services (RSA 485-A: 29-35). Access roads to any public street must be approved by either the municipality or the state Department of Transportation (RSA 236:13). The plat must be prepared on Mylar by a licensed land surveyor so it can be filed with the county register of deeds following approval of an application by the planning board (RSA 674:37).

TECHNICAL REVIEW

Up to this point, this chapter has presented the steps the applicant and the planning board should follow to process a subdivision or site plan review application. This section focuses on the details of the design and layout of a subdivision or site plan that a planning board should consider during review of an application. The planning board is responsible for examining each application to ensure that the interests of the municipality are protected and the requirements of the zoning ordinance, subdivision and site plan regulations are met.

While the subdivision of land into lots does not necessarily imply the construction of buildings, the planning board should consider any subdivision proposal as the first step in the development of a parcel of land. The provision of open space and the design requirements for road construction, water supply, wastewater collection and treatment facilities, drainage or storm water management measures, and other concerns related to the site, should be decided on the basis of the full development of the parcel.

Four general areas should be included in the board's review of a subdivision or site plan application. They are discussed in the order the board would logically address them:

1. Municipal plans, ordinances and regulations;
2. Municipal impact;
3. Physical characteristics of the site;
4. Streets, utilities and lot layout

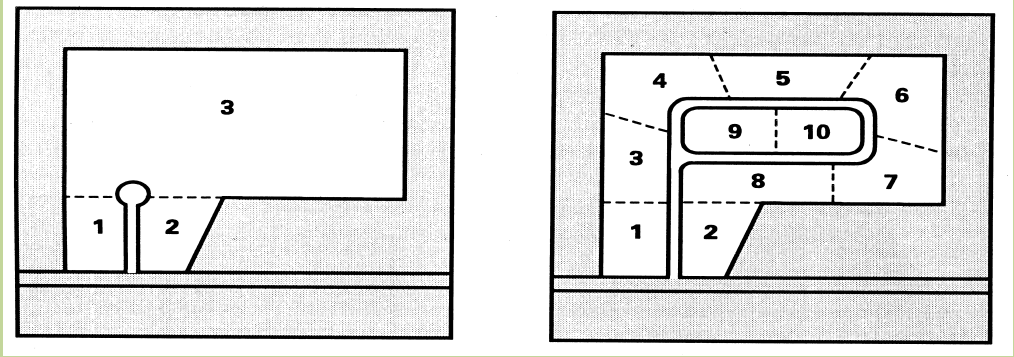

Exhibit V-2a
Potential for Re-subdivision

Exhibit V-2b
Re-subdivided

MUNICIPAL PLANS, ORDINANCES AND REGULATIONS

MASTER PLAN

The planning board should begin its review of a completed application by consulting the master plan to determine if the area is generally suitable for development and to analyze how well the proposal meets the goals and objectives of the municipality. By checking the location of the proposed subdivision or development against the future land use map and any plans for municipal roads and facilities, the board will have an initial idea of how well the proposal conforms to the planned pattern of growth. Focusing on the characteristics of the site itself and its relationship to the surrounding area will help the board decide how well the proposal fits into both the natural and man-made environments.

The master plan may also reflect the residents' wishes concerning areas that should be preserved because of historical or environmental importance or where development should be delayed until services have been extended or roads upgraded. A subdivision or site plan proposed for an outlying area can create problems with providing municipal fire, police and highway services, and can lead to the loss of open space, wetlands, sensitive shore lands or agricultural land targeted in the master plan for preservation.

The master plan is an advisory document and the decision of the planning board must focus on uses permitted by the zoning ordinance and address the requirements contained in the subdivision or site plan review regulations.

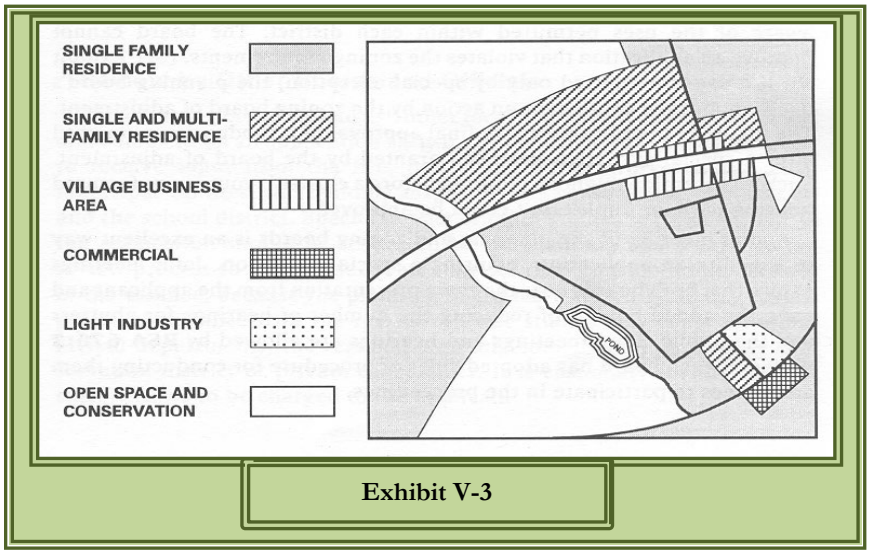

Exhibit V-3

CAPITAL IMPROVEMENTS PLAN/CAPITAL BUDGET

The municipal capital improvements plan (CIP) and capital budget should contain a schedule for making road improvements, extending municipal services, purchasing municipal equipment and vehicles and/or acquiring open space or development rights. An applicant may be advised that the approval of a proposal must be delayed until services are extended to accommodate the subdivision or site plan.

ZONING ORDINANCE

If a zoning ordinance has been adopted, the planning board must be aware of the uses permitted within each district. The board cannot approve an application that violates the zoning requirements. If a use is permitted only by special exception, planning board approval should be conditioned upon action by the zoning board of adjustment. For example, a special exception might be required before a cluster layout, manufactured housing park, or duplex unit could be approved, depending on local regulations.

A joint meeting of the planning and zoning boards is an excellent way to expedite an application requiring a special exception. Joint meetings assure that both boards hear the same presentation from the applicant and have the added benefit of reducing the number of hearings for abutters and the public. Joint meetings and hearings are allowed by RSA 676:2, provided each board has adopted rules of procedure for conducting them and agrees to participate in the proceedings.

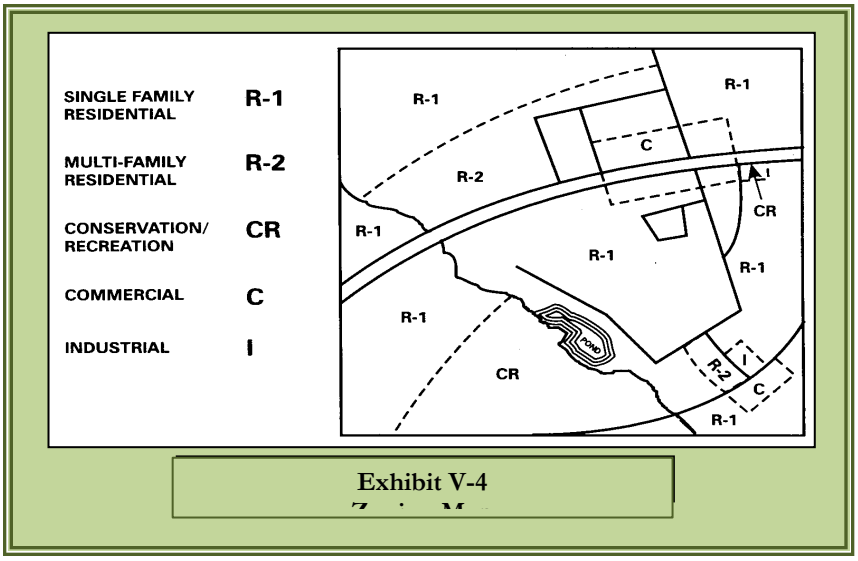

Exhibit V-4

Review by Other Boards and Officials

The planning board should ask other local boards and officials to review and comment on an application early in the review period. It may be useful to receive input from the fire, police and public works departments, municipal utilities, the building inspector, the conservation commission and the school district. Special impact or other studies required as part of the application should be requested by the planning board early in the review process so there is adequate time for their consideration. Time is of the essence because the planning board has a statutory review period. Assistance with the review of these studies may come from municipal departments, the regional planning commission, the county conservation district, or private consultants. It is customary for the costs of such reviews to be charged to the applicant.

Municipal Impact

The following attributes of a subdivision application should be examined by the planning board to determine the impact of the proposal on the municipality:

Scale: How many acres are involved and how many potential dwelling units could result from the proposal?

Timing: Over what period of time and at what rate will the units be built?

Type: Is the proposal for permanent homes or seasonal dwellings, single family or multi-unit homes?

Scale

Depending on the type of subdivision and the average number of bedrooms per residential dwelling, 100 homes may represent an addition of anywhere from 25 to 200 school-age children. The planning board should assess whether existing schools can accommodate the anticipated increase or whether expanded transportation services or additional classrooms will be necessary. A subdivision of 100 dwelling units may generate 800 automobile trips per day. The board should determine whether existing roads and parking facilities are adequate to handle the increased load. One hundred new dwelling units may draw 40,000-50,000 gallons of water per day. The planning board should determine the effect of this increased use on the municipal water supply, private water supplies or groundwater for individual wells.

Timing

The period of time over which an applicant plans to proceed with the development of a subdivision will be a major concern to the planning board. Obviously, the municipality can more easily accommodate the addition of 100 new dwelling units over a period of five years than the same number in six months. The subdivision regulations could provide that any further subdivision or re-subdivision of a parcel that occurs within a set period of time (3, 5 or 10 years) be treated by the board as part of the initial subdivision. The impacts would, therefore, be treated cumulatively and conditions placed accordingly.

If the applicant owns additional land, the subdivision may eventually involve substantially more acres than the initial submission. The planning board should be aware of the long-term implications of such a development and ask the applicant to discuss plans for the entire parcel during the early review.

Type

The impact of a proposal on a wide range of municipal services will vary with the type of development planned for a particular subdivision. Single family dwellings, duplexes, multi-family units, and seasonal dwellings each have different impacts on the roads, schools, and utilities. The conversion of seasonal properties to year-round use and the construction of new dwellings designed for multi-season use can result in additional demands on municipal services, without the benefit of any kind of local review or control.

In areas without sewers, any increase in projected wastewater flows, including the construction of additional bedrooms, requires that an application for approval of the subsurface wastewater treatment system be submitted to the Department of Environmental Services. The application must include either:

1. A state-approved plan for the existing subsurface wastewater treatment system that is approved for the projected flow; or
2. A design for a new system that meets current state standards.

Physical Characteristics of the Site

The discussion in this section deals with existing physical characteristics of the site. It is presented to assist the planning board in evaluating the subdivision or site plan and related material submitted by the applicant. The information on soils, seasonal high water table, depth to bedrock or a restrictive layer, and percolation rates and the permeability of the soil, forms the basis for decisions that are made by the applicant and appropriate state agencies. These are also factors that must be considered by the planning board. Local regulations that are more restrictive than state requirements can be imposed if the scientific basis for them is well documented in the master plan.

A subdivision or site plan application should include site-specific data describing the property boundary, topography, drainage features, soil characteristics, percolation rates, soil permeability, and principal site features such as wooded areas, rock outcroppings and wetlands. To review this information, the planning board may draw assistance from the following sources:

- United States Geological Survey (USGS) – topographic quadrangle maps with very general information such as contour lines, lakes, major streams, and existing development.
- Natural Resources Conservation Service (NRCS) – county soils maps, available from county offices or the NRCS state office in Durham, NH.
- Municipal tax maps showing property lines.

- A deed description and survey of the site perimeter and topography, provided by the applicant.
- Flood Insurance Rate Maps, available from NH OPD.
- Aerial photographs, available from the USDA Farm Service Agency and GRANIT, to identify important site features such as existing structures, fences and stone walls, roads and trails, water bodies, rock outcroppings, trees and foliage lines.

The subdivision or site plan should indicate existing and planned roads, major intersections, and minor roads immediately around the site. The map should include enough of the surrounding area, utilities, and street system to indicate how the subdivision or site plan fits with its surroundings. It should provide some basis for determining the effect of the development on the man-made environment. The location of municipal facilities and services should be shown in greater detail immediately around the site in order to indicate the relationship of the subdivision or site plan to the surrounding community.

If board members are not familiar with the site, a field trip to the location with the applicant will provide a better understanding of the details of the property and the surrounding area than is possible to grasp from a map.

Please note any field trip or site walk with the applicant and the board is considered a meeting under RSA 91:A and minutes and an agenda need to be created.

Members will be able to see any outstanding features such as the vestiges of an old farm or a striking natural formation which could be retained to enhance the aesthetic environment of the subdivision or site plan. They can then request special treatment of a particular feature or suggest redesign of the plan to accommodate significant features.

Finally, the subdivision or site plan plat should show the zoning district(s) for the site. All of these elements will be important to ensure the planning board's ability to assure the proper fitting of the new subdivision or site plan to the existing environment.

Soils Data

Countywide soil surveys completed by the Natural Resources Conservation Service (NRCS) provide detailed soil resource information that can be used in making informed land use decisions. Soil investigations used to prepare these maps are conducted to a depth of 60 inches. Soil types are currently identified on aerial photography at a scale of 1:20,000 (1"=1,666') or 1:24,000 (1"=2,000'). The smallest soil map unit delineated in a county soil survey is limited to three to five acres in size. Soil surveys are available from the NRCS, local conservation district offices or online through GRANIT.

There are two types of site specific soil surveys frequently required by municipal subdivision and/or site plan regulations in New Hampshire: High Intensity Soil Survey (HISS) soil maps and site specific soil maps. The HISS maps are often used to determine soil based lot sizing to implement local area requirements in the zoning ordinance. The HISS mapping criteria and standards were developed by certified soil scientists in New Hampshire. The resulting soil maps are useful products so long as they are used only for soil based lot sizing. They should not be used for making other on-site assessments that depend on more detailed physical and chemical soil properties. Site specific soil mapping standards are an enhancement to the Order 1 mapping standards. Site specific soil maps are completed under the standards of the USDA National Cooperative Soil Survey. They are multi-purpose products and are suitable for making an assessment of soil suitability on a particular site for most any proposed

land use. This includes soil based lot sizing to accommodate subsurface wastewater treatment systems. Both soils maps are required to be prepared by professional, consulting soil scientists certified in the State of New Hampshire.

How can planning boards use countywide soil maps?

Countywide soil maps are excellent for general land use planning purposes such as municipal and regional master plans. However, many planning boards require more intensive soil surveys for major subdivision or site plan applications.

Site-specific soil surveys can also be used to determine the location of critical resources such as wetlands, floodplains, sensitive shorelands and stratified drift aquifers.

SOIL BASED LOT SIZING

Model lot size by soil type regulations are available through the Society of Soil Scientists of Northern New England (SSSNNE). Soil based lot sizing is based on the capabilities of the soil to assimilate nitrate loading from septic systems. Many New Hampshire municipalities have adopted and successfully implemented the concept of soil based lot sizing by adopting area requirements according to soil type in their subdivision regulations. The model regulations provide lot sizes for soil maps prepared using either the site specific soil mapping standards or the High Intensity Soil Survey maps.

WATER TABLE

There are two types of water tables common to New Hampshire landscapes: perched water tables and apparent water tables. Perched water tables result from surface water accumulating on top of slowly permeable subsoil layers creating a zone of saturation within the soil. Duration of saturation lasts about two to three months, typically during the spring months and after periods of significant rainfall. Perched water tables are common in soils with a hardpan layer, which occur throughout New Hampshire.

Apparent water tables, or groundwater, are aquifers or zones of saturation that continue for considerable depth, usually to bedrock and below. Depth to groundwater fluctuates with the seasons, typically being closest to the surface during the spring and during periods of heavy rainfall.

A professional soil scientist recording observable features in the soil profile can determine the elevation of the seasonal high water table in the soil, whether perched or apparent. The most common feature observed in association with soil saturation is color. Test pits are dug to a minimum of four (4) feet to record soil features in order to determine the depth to seasonal high water table. Test pits should be dug, and the soils recorded, regardless of whether or not the site is served by public sewers.

Some points to remember about predicting groundwater levels in test pits:

- Soils with no observed water table may in fact have a seasonal high water table during other times of the year. An experienced soil scientist should examine all soil test pits.
- Some soils with high clay content have very slow permeability. A hole can be excavated far below the water table elevation without immediate evidence of water. However, if the hole is left open for a time, the water will eventually seep into the pit and fill with water to the actual depth of the water table.
- Two closely located test holes at substantially different elevations may exhibit water tables of the same depth. This may be evidence of a perched water table resulting from a dense subsoil layer

keeping surface water from percolating into underlying material.

- Tests may indicate a disappearance of groundwater in areas of shallow bedrock. This may indicate poor structure and fissures in the bedrock which allow water to flow through bedrock strata into groundwater aquifers. There is a severe hazard of groundwater contamination in these areas if septic systems are installed.

In some soils, the water table is subject to marked seasonal fluctuations so that observations made in August may show the water table several feet below the level in May. NRCS has collected year-round data from water table monitoring sites in many of the soils that occur in New Hampshire. This data is used to develop soil interpretations based on measured seasonal high water table levels. This data also provides a check on test pit determinations, which, because they are made at a single point in time, may fail to register the maximum water table elevation.

Problems affecting just about every area of a subdivision can be anticipated when a high water table is encountered. The planning board should be aware of these problems and be assured that the applicant has accommodated them in the subdivision design. Some common problems:

- Subsurface wastewater treatment systems will not function properly in saturated soil.
- Basements will flood unless drained and waterproofed properly. Curtain drains and footing drains should be installed in accordance with good engineering practices.
- Roadway and driveway pavements will crack, heave, and fail because of wet or frozen sub-base conditions unless the groundwater is properly removed (see Exhibit V-5).
- Grading the site will be troublesome because of water bleeding through the surface in "cut" areas.

STORMWATER MANAGEMENT (DRAINAGE)

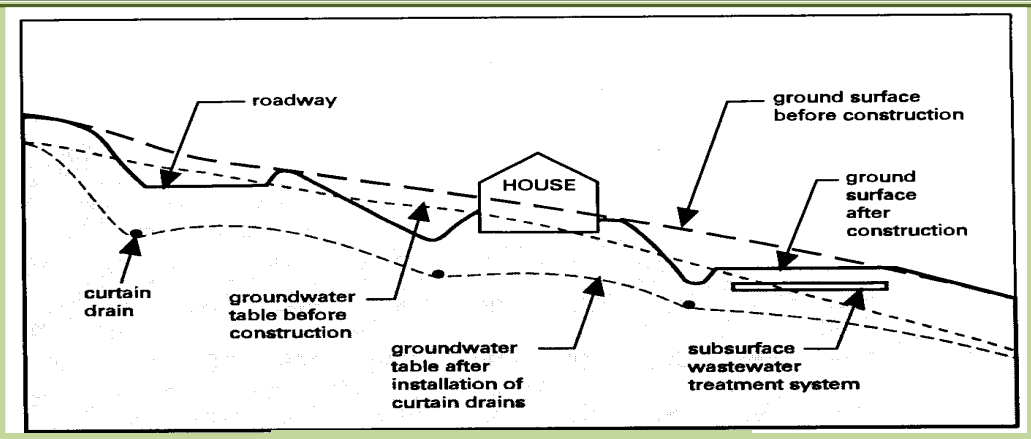

Exhibit V-5
Adapting Site with High Water Table

Depending on the topography, the drainage system of an individual site may be located in one or more small watersheds. Surface water run-off patterns will depend upon factors such as watershed boundaries, the extent and type of vegetative cover, the permeability of the soil, and the steepness of the terrain. These factors will determine the extent to which precipitation will infiltrate the soil to recharge groundwater or become run-off to surface waters through over-land flow. The increase in impervious or less pervious surface materials associated with a subdivision will increase the run-off potential. The travel time of the run-off also decreases, contributing to higher peak flows. This means that less water will be available for groundwater recharge, resulting in lower stream flows and increased

flashiness in streams, which in turn results in more bank erosion and channel scour.

If the layout of a subdivision involves removal of a substantial portion of the existing vegetation, the amount of water lost through evapotranspiration will decrease, resulting in a greater volume of runoff at an increased velocity and the potential for erosion, sedimentation and downstream flooding.

NH OPD strongly encourages planning boards to consider adopting Low Impact Development (LID) requirements of stormwater management into their subdivision and site plan regulations. LID considers micro-scale design to simulate to the extent possible the natural hydrology of the site prior to development. In other words, preventing runoff in the first place and simulating the natural hydrology cycle with respect to infiltration and evapotranspiration will generate less runoff, less stormwater pollution, and lower impact to stream channels. LID takes advantage of natural areas, such as depressions, to drain small impervious areas such as rooftops and driveways, minimizing stormwater flow to road networks and piped drainage systems.

Planning boards often focus on keeping the peak rate of runoff from a proposed development at the pre-development conditions. However, this means that more water will flow to the receiving stream, but at a somewhat slower rate. Increasing stormwater infiltration will result in maintaining stormwater volume closer to pre-development conditions, which results in less impact to receiving streams.

Any alteration of existing natural streams or drainage ways requires a permit from the NH Wetlands Bureau in accordance with RSA 483-A and NH Code of Administrative Rules Wt. 100-900. NH OPD recommends that planning board regulations refer to the criteria for wetlands in their subdivision and site plan regulations and wetland zoning ordinances for consistency with state and federal regulations. Local subdivision regulations may require that proposals be designed to minimize impacts on surface waters and wetlands. Building sites can be located to let the natural beauty of these sensitive resources enhance the value of the subdivision.

The planning board is advised to add a section to its regulations that references the state's requirements for erosion and sediment control and stormwater management in cases where site disturbance involves an area greater than 100,000 square feet (50,000 square feet, if any portion of the project is within the protected shoreland) or disturbs an area having a grade of 25 percent or greater within 50 feet of any surface water. A permit for such disturbances, known as an Alteration of Terrain—or AoT—permit, is required by the NH DES in accordance with RSA 485-A:17.

Some disruption of the watershed will inevitably occur as pavement for roads, driveways and parking areas replaces natural vegetation. An increase in impervious coverage will result in increased runoff, with the potential for erosion and sedimentation. The stormwater management plan required by the subdivision regulations should include design and construction specifications for all structural and non-structural stormwater management measures that must be installed. Also included should be a maintenance plan that addresses periodic inspection and correction of inadequacies found during and after construction.

The landowner bears the financial responsibility for the design and construction of on-site stormwater management facilities. The planning board may be able to negotiate a reasonable agreement with an applicant to install a system that is adequate to meet future needs in return for subsequent reimbursement by the municipality.

The New Hampshire Stormwater Manual was developed in 2008 as a planning and design tool for the communities, developers, designers and members of regulatory boards, commissions, and

agencies involved in stormwater programs in New Hampshire. A copy is available online here: https://www.des.nh.gov/water/stormwater

ALTERATION OF TERRAIN

Disturbance of the natural soils and vegetation should be minimized. However, if unavoidable, the applicant may be required to seek an alteration of terrain permit from the Department of Environmental Services whenever a project proposes to disturb more than 100,000 square feet of contiguous terrain (50,000 square feet, if any portion of the project is within the protected shoreland), or disturbs an area having a grade of 25 percent or greater within 50 feet of any surface water. The alteration of terrain application should include detailed site plans that show existing and final topography. The design should include erosion and sediment controls to protect water quality during construction, as well as address stormwater management issues such as removing pollutants from stormwater, recharging groundwater, protecting channels from erosion, and protecting properties from flooding. The services of the NRCS district conservationist, a hydrologist, professional engineer, professional geologist, a certified wetland scientist, and/or a certified soil scientist may be helpful to the board in reviewing the plan. Some features required in the plan are (see Env-Wq 1504.05 for a complete list):

- Soil types;
- Estimates of runoff based on acceptable methodology; all water features including, but not limited to the direction of water flow, the maximum high-water mark and usual shorelines, the location of wetlands and surface water and their banks;
- All drinking water supply wells, whether private or public, with set-backs;
- The locations and types of existing vegetative cover;
- A clear delineation of the total area to be disturbed, including proposed improvements or modifications;
- A note explaining the intended use of the site or, if the intended use is unknown at the time the permit is issued, a note indicating whether or not local zoning allows for high-load uses;
- Complete storm drainage system, including size, slope, and invert elevations of all pipes and culverts, and detention measures.

LAYOUT OF STREETS, UTILITIES, AND LOTS

After the planning board is familiar with the specifics of the site, review of the actual subdivision and/or site plan should focus on the layout of roads, utilities and individual lots and building sites. The development proposal should disturb the existing natural conditions as little as possible. There are several reasons for this:

- The natural landscapes of New Hampshire are composed of a variety of parent materials, soils, water resources, and various forms of plant and animal life. Disturbance of the landscape will impact the forces that created it. These forces may still be present following the development and should be considered as part of the subdivision design.
- The natural system is enjoyable for living in and viewing.
- Physical alteration of the landscape is expensive. The more cut and fill, re-grading, stream relocation and tree removal required, the more costly the project.

Because no two development sites are the same, the natural terrain should establish the pattern of the design. Rarely will using a grid pattern or some standard formula for laying out the lots and designing a street pattern result in the most efficient design. Nature is not a checkerboard and the landscape does not come in two-dimensional squares. Similarly, any other predetermined, regular pattern will probably be inappropriate. Initially, the best individual building sites should be located without regard to the overall pattern of lots. Individual lots should be suitable for house construction based on the physical and chemical characteristics of the soil and the existing topography. Construction should be possible without unreasonable disruption of the terrain.

Good design combines the willingness and ability to recognize and accommodate significant elements in the site with the flexibility to provide optimum use of the land. The idea is to design with nature, not against it.

Street Layout

The street pattern should be laid out to provide circulation within the subdivision and to provide access to the existing public road system. Topographic and geographic features must be considered so that roads can conveniently serve dwelling area locations while maintaining natural vegetation and other attractive landscape features. Streets should generally follow the contour of the land. The board should avoid approving roads that cross contours at right angles, particularly in steep terrain. Designed in this way, grade conditions and "cut and fill" requirements will be minimized, resulting in lower construction and maintenance costs.

Exhibit V-6 illustrates a pattern of lots and streets that are laid out with consideration of the natural contours of the site. In addition to landscape features and dwelling unit locations, the street pattern of a development should be determined by such factors as:

- The previously established street pattern around the subdivision, into which the design must fit;
- Any major streets proposed in the master plan or street plan which would affect the subdivision itself;
- Roadway intersections designed to provide smooth traffic movement; and
- Avoidance of direct connections between arterial roads. A direct connection between two arterial roads would, in effect, constitute a major street and could completely change the character of a subdivision by bringing heavy traffic through it.

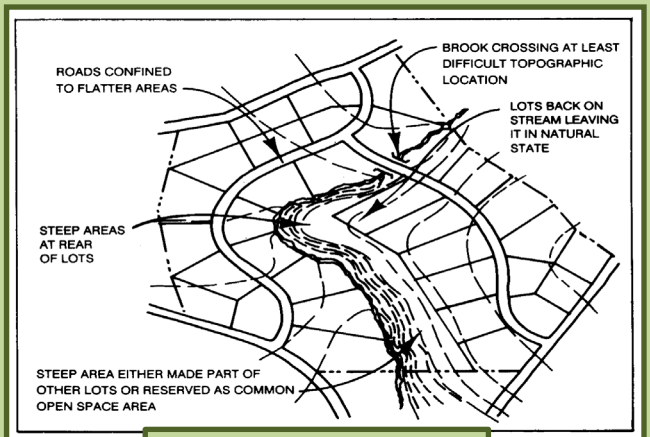

Exhibit V-6
Layout of Roads and Lots

The master plan, or the transportation section of the master plan, provides the basis for classifying roads according to projected traffic flows. The same principle can be applied to subdivision and site plan roads, which must be designed to handle the projected traffic. All streets should be designed to meet construction standards prescribed by a local ordinance or the subdivision regulations.

NH OPD recommends that these standards should be followed whether the roads are to be privately owned or maintained. This practice assures that roads may be accepted by a future town meeting if they are built to town specifications.

The classification of streets in a subdivision should reflect their anticipated functions. Most streets will be local service roads, providing access to individual lots. They can be designed to minimum standards, allowing adequate access for fire protection and other emergency services. Other streets will collect traffic from local service roads and distribute it to large thoroughfares or to the municipal center. In the case of a subdivision traversed by a major road, the design should assure dwelling units are shielded from traffic noise by means of a landscaped buffer.

Traffic loads can be projected, based on the number and type of dwelling units and estimated trips per day per unit to determine whether a street should be classified as a local service street or a "collector" road, and designed accordingly. The design standards required by the street classifications should be followed, notwithstanding the fact that the traffic load anticipated in the immediate future indicates a lower standard.

The road system should be adequate for the needs of the subdivision, but at the same time discourage outside traffic from moving through the area. Curved roads, indirect connections, and the choice of street dimensions are ways in which this can be accomplished. Street design can either reflect or determine expected use. That is, traffic can be encouraged to travel a certain route by design features such as pavement width, number of lanes and allowable speed. The construction standards should provide some flexibility as to pavement width, but the right-of-way must be adequate to handle all necessary utilities and proposed future expansion. Natural beauty is preserved by paving only as much land area, within reason, as is necessary.

The design and construction of subdivision streets that will connect the subdivision to an existing street network requires coordination between both the applicant and municipal or state government. RSA 236:13 requires a permit for access to municipal roads and state highways. Depending on the classification of the road, either the New Hampshire Department of Transportation (DOT) or the municipality must issue the permit. Uncontrolled entry of access roads from subdivisions to the existing road network can frustrate traffic flow. For example, traffic problems are created when too many access points occur along a section of road, or when an access enters the road where driver vision is obscured.

The planning board must presume that, eventually, subdivision streets will be accepted and their maintenance will become a municipal responsibility. Thus, the board should consistently apply the design and construction standards in its subdivision regulations to protect the municipality from assuming the burden of excessive maintenance or construction costs in the future.

Utilities

The planning board should consult the municipality's plan for utilities, as contained in the master plan and capital improvements program. These plans should indicate locations of future public water supply facilities, wastewater treatment facilities, and major distribution lines and interceptors. In a municipality with more than one major watershed, several wastewater treatment systems or water

systems may be needed. Each development should be reviewed in light of this plan to determine whether the subdivision is in any way affected.

Planning utility layouts in advance is economical. Utility lines are often located underground, within the road right-of-way. As future services are added, the street location reserved for each utility can be identified by reference to the utility plan. This will help avoid excessive cost of future field surveys in order to determine where existing lines are located and where space remains for additional service lines.

Although present development may not require it, all utility systems in the subdivision should be designed to handle maximum foreseeable demand so that future development will not require expensive upgrading of the facilities.

Any easements that will be required for the extension of utility lines should be shown on the plan and recorded on the deed.

The subdivision and site plan should indicate the location of utility lines, including water supply lines, wastewater collectors, storm sewers, electricity, gas, telephone, and possibly cable television. The proposal under consideration may not require all of these services initially, but the plans should include cross sections showing placement of utilities according to standards specified in the subdivision regulations. The board should consult the Public Utilities Commission, town departments, and local utility companies for assistance in establishing these standards.

The municipality should maintain accurate records of utility locations. In the planning stage, each applicant submits cross-sections and profiles of all roads indicating utilities and their elevations. During the course of construction, the design profiles are sometimes altered to accommodate actual field conditions. At the completion of construction and prior to release of the applicant's financial responsibility, the board should require submission of a reproducible original of the profiles marked with the actual utility locations as constructed. These drawings are commonly called "as-built" plans. Proper filing of these plans will give the municipality a record of utility locations as installed.

On occasion, major utility lines such as sewer interceptors, high-pressure gas lines, and power or telephone conduits are placed outside of the street right-of-way. In undeveloped areas, utility companies may seek to install utility lines in straight lines to reduce costs, regardless of topographic features or property lines. Such installation practices can scar the countryside, decrease adjacent property values and create isolated, sometimes landlocked, parcels. Subdivision regulations should require that utility companies design their facilities to minimize adverse impacts on the landscape or surrounding properties.

The planning board should be aware of the statutory definition of a subdivision that specifically exempts certain utility easements, including unmanned structures of less than 500 square feet, from consideration as a subdivision. RSA 672:14. However, the planning board could encourage the cooperation of utility companies and request submission of plans for such structures for the board's information.

Some planning boards require the location of all utilities underground, a practice that helps to maintain the aesthetics of the landscape by eliminating utility poles and wires. This can, however, be costly to the applicant. The planning board should consider future maintenance costs of above-ground utilities and discuss reasonable alternatives with the applicant.

Underground utility mains will vary in size, shape, material, and location beneath the road surface.

Some requirements for different utilities are:

- Water and sewer mains must be laid below the depth of frost penetration of the area.
- Sewer lines should be set lower than water mains to avoid risk of contamination in the event of leakage in the system.
- Storm and sanitary sewers generally require a significant amount of space and depend on proper placement for economical gravity flow. One reason for standardizing the locations is to avoid crossing lines at critical points for gravity flow.
- Electric, telephone and gas lines can be laid in conduits and are not governed by slopes and grades, but electric and telephone lines must be sufficiently separated to prevent electromagnetic interference with one another.

Each lot that is not served by public utilities must provide on-site wastewater treatment and water supply. If properly constructed and maintained, these facilities will give satisfactory service. However, some problems that can arise include the following:

- Wells not properly cased and located can be polluted by wastewater effluent and run-off from road salt.
- Subsurface wastewater treatment systems constructed with effluent disposal areas that are shallow to bedrock or hardpan, or are installed on steep slopes, can fail, resulting in groundwater contamination.
- Septic tanks not pumped clean at regular intervals will result in a build-up of solids in the tank. This material can overflow into the effluent disposal area causing the system to fail.
- The practice of using community wells to serve several dwellings has increased. Proper connection of these wells in a coordinated looped system can produce improved supply and pressure. Municipalities should keep a careful record of each well installed in order to determine whether or not it can be integrated into an overall system if a future interconnection is appropriate. Municipal requirements should assure that the wells supplying these systems are adequate in quality and quantity and adhere to the requirements of the NH Code of Administrative Rules (Env-WS 378) for siting new wells. There are separate requirements for siting large and small overburden wells and all bedrock community wells.

Lot Layout

The planning board should look at how the individual lots relate to the site information and the roads and utilities to produce a functional, economical, and pleasing layout. The lot layout is governed by the subdivision regulations and the zoning ordinance. Zoning dictates lot size, configuration, frontage, setback requirements, building coverage, parking, landscaping, and building height. Potentially unsanitary conditions and environmental pollution can result from allowing higher densities than a given site can accommodate. Where existing zoning specifies definite restrictions, the board must be sure that the subdivision regulations themselves are not detrimental to their purpose.

Open Space and Landscaping

If dwelling areas and street locations have been set without excessive re-grading and removal of vegetation, the basis for a well-landscaped environment is virtually assured. Many features that are costly to remove or relocate are most interesting and attractive when left in their natural state. By carefully considering these features in laying out lots, the existing landscape can be used to the best advantage. For example, leaving the rugged, more difficult to develop topography in the rear portion of the lot can provide varied and interesting areas in individual yards. Similar geographic features in adjoining yards create a continuous, park-like area running behind the lots. Such systems of open

space are especially appropriate for ridgelines, streams, and wetland areas and may be designated as open space, especially if a "cluster" type design is used.

In addition to providing increased privacy for individual lots, natural features such as rock outcroppings and large trees can serve as buffers between busy roads and dwelling units or between the subdivision and an adjoining non-residential development that may be visually unattractive, uncomfortably noisy, or physically incompatible.

Preservation of existing site features in a subdivision can be assured only through careful forethought during the design stage and careful action during the construction stage. Continuing effort is needed to produce a quiet, attractive area, shaded and buffered with existing trees, rather than a completely cleared area with parched lawns, struggling saplings, and none of its former attractiveness. However, such an effort can save much of the cost of removing and replanting, and the homeowner can be spared the cost of private landscaping.

Planning boards should be familiar with the pertinent sections of several state statutes:

- RSA 485-A:32, III, entitled "Prior Approval; Permits," which requires NH Department of Environmental Services' subdivision approval prior to construction of roads, clearing natural vegetation, placing artificial fill, or otherwise altering the natural state of the land or environment.
- RSA 227-J:9, entitled "Cutting of Timber Near Certain Waters and Public Highways of the State; Penalty," which requires approval from the NH Department of Natural and Cultural Resources to exceed the timber harvesting limitations and from the NH Department of Environmental Services for subdivision approval prior to clearing the natural vegetation for subdivision purposes.
- RSA 483-B, the "Shoreland Water Quality Protection Act," which establishes minimum requirements for use of land within certain setback buffers from the reference line of waters of the state. Included are woodland buffer requirements, setbacks for subsurface wastewater treatment systems, and primary structures and lot sizes by soil type in un-sewered areas.

Final planning board approval of subdivision and site plan applications should include the condition that the requirements of these and other applicable state and local regulations be met. The following are examples of conditions that the board may wish to require to reduce stress on municipal facilities:

- Land set aside for open space for public use or resource protection purposes.
- Roads, storm sewers and other public facilities that are adequately designed to accommodate projected future needs. A system of requiring impact fees based upon a capital improvements program could be developed to provide an equitable way of allocating the cost of such facilities.
- Maintenance of natural or historic features on the site can enhance the aesthetics of the subdivision and retain the character of the municipality.

The power of the planning board to encourage good subdivision and site plan design should not be underestimated. Planning boards are authorized to disapprove proposals, or work with the applicant to modify them if development would endanger public health, safety and welfare. Conditions placed on local approvals can have a positive influence on the quality of subdivision and site plan designs and function.