



Planning Board Basics

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Planning Board - Statutory Duties



- ✓ Master Plan 674:2
- ✓ Capital Improvements Program 674:5
- ✓ Recommend Zoning Ordinance & Amendments 675:3
- ✓ Subdivision regulation 674:36
- ✓ Site Plan regulation 674:44
- ✓ Excavation regulation 155-E:1 (III) (a)
- ✓ Driveway regulation - RSA 236:13

Master Plan: RSA 674:1 - :4

Mandatory Section:

- “Vision” (goals and objectives): statements to “articulate the desires of the citizens,” including set of “guiding principles and priorities”
- Land use: studies of population, economic activity, resources, shows existing conditions and proposed future land uses
- Prerequisites for zoning ordinance, RSA 674:18

Optional Sections: 14
optional elements

Capital Improvements Program

- ▶ Aid with budgeting decisions
- ▶ Not a basis to deny subdivision application
Zukis v. Fitzwilliam,
135 N.H. 384 (1992)
- ▶ Prerequisite for:
 - ▶ Impact fees
 - ▶ Growth Management



Workforce Housing Statute RSA 674:58 - :61

- ✓ Town shall allow workforce housing to be located in a majority of the land area that is zoned residential
- ✓ If Town has fair share of workforce housing Town it is in compliance.
- ✓ Housing for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the county in which the housing is located.
- ✓ "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the County in which the housing is located.

Housing Needs Assessment

- ▶ **RSA 672:1, III-e:** Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.
- ▶ **RSA 674:2, III (I):** A housing section which assesses local housing conditions and projects *future housing needs of residents of all levels of income and ages* in the municipality and the region.
- ▶ **RSA 36:47, II:** Each regional planning commission shall compile a regional housing needs assessment, which shall include an assessment of the regional need for housing for persons and families of all levels of income. The regional housing needs assessment shall be updated every 5 years and made available to all municipalities in the planning region.

Zoning Amendments 675:3

- ▶ Planning Board proposes initial zoning adoption
- ▶ Planning Board & Select Board may propose amendments
- ▶ At least one public hearing by Planning Board
- ▶ Another hearing 14 days later if proposal substantively modified
- ▶ Deliver final proposal to town clerk 5th Tuesday before town meeting
- ▶ Petitioned Amendments RSA 675:4, Planning Board states approval or disapproval on ballot

Subdivision & Site Plan Approval



SUBDIVISION:

- ✓ Require preliminary review of subdivisions.
- ✓ Approve plats and plans.
- ✓ Approval showing the manner in which streets within subdivisions shall be graded and improved.
- ✓ Approval also showing how water, sewer, and other utility mains, piping, connections, or facilities within subdivisions shall be installed.

SITE PLAN:

- ✓ A municipality, having adopted a zoning ordinance.
- ✓ And planning board has adopted subdivision regulations.
- ✓ Board may review and approve or disapprove site plans for the *development or change or expansion of use* of tracts for nonresidential uses or for multi-family dwelling units (structures with > 2 dwelling units)

Driveways - RSA 236:13



- Planning Board authorized to approve driveway permits on town roads.
- Must adopt driveway regulations.
- Delegate permit issuance and enforcement to Road Agent or other designee
- Continuing authority over any driveway even if no permit issued.
- Property owner can be ordered to fix driveway that is hazard to traveling public or threat to road integrity

Innovative Land Use - RSA 674:21

- ▶ An innovative land use control when supported by the master plan
- ▶ Shall contain standards to guide board which administers the ordinance.
- ▶ May provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate.
- ▶ If planning board does not administer, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator.

674:40 Improvements in Unapproved Streets



A municipality which has established a planning board in accordance with RSA 674:35

Shall not thereafter accept, lay out, . . . within any portion of the municipality *unless* such street:

(a) Has been accepted or opened as, or has otherwise received the legal status of, a public street prior to the conferring of platting jurisdiction upon the planning board; or

(b) Corresponds in its location and lines with a street shown on the official map, or with a street shown on a subdivision plat approved by the planning board, *or with a street on a street plat made by and adopted by the board.*

The Planning Board & Public Streets

- ▶ *Approves Subdivision Roads 674:36, I (e) & 674:36, II (a)*
- ▶ *Approves Site Plan Roads RSA 674:44, II, (d) (e) (f)*
- ▶ *Establishes Road Construction Standards*
- ▶ *Establishes minimum completion before occupancy 676:12, V*
- ▶ *Imposes performance bonding, RSA 674:36, III*

***Planning
Board
Authority to
Prevent
Scattered
and
Premature
Development
RSA 674:36,
II (a)***

**674:36 Subdivision
Regulations. -**
II. The subdivision regulations
which the planning board
adopts may:
(a) Provide against such
scattered or premature
subdivision of land as would
involve danger or injury to
health, safety, or prosperity by
reason of the lack of water
supply, drainage,
transportation, schools, fire
protection, or other public
services, or necessitate the
excessive expenditure of
public funds for the supply of
such services;

Merged Lots - 674:39-a

Merger of 2 or more *contiguous* preexisting approved or subdivided lots or parcels.

No public hearing or notice shall be required.

No new survey plat need be recorded,

Notice of the merger endorsed by the planning board recorded at registry of deeds.

If any lot is under a mortgage, lender must consent.

Planning Board Basic Organization



- Quorum. Majority of membership. RSA 673:10, III
- At least one regular meeting per month. RSA 673:10, II.
- Chair and other officers elected from non-ex officio members for one year term. RSA 673:8, 9
- Members appointed by governing body or elected
- One ex-officio select board member, up to 5 alternates
- Rules of procedure. RSA 676:1
- RSA 676:4 mandates procedures for applications.

Subdivision/Site Plan Applications: Preliminary Review



Formal Application, RSA 676:4, I



Completed application



Regulations specify what is completed application.



Checklist can specify types of plans, studies, designs, etc. to minimize review and revisions.



Fees for costs & consultants' studies; detailed accounting. RSA 676:4-b



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

Time Line for Decision, RSA 676:4, I

*Planning board can
specify shorter time
in its rules of
procedure
HB 245, eff. 7/9/19



Preliminary Consultation No Set
Time Limit



Application submitted 21* days
before acceptance at meeting



Notice to Abutters and public 10
days before meeting for plan
acceptance



Hold at least one public hearing and
make decision within 65 days of
plan acceptance



Issue written decision within 5
business days



Only One Bite of the Apple

Planning Board off-site exactions RSA 674:21, IV (j)



- ▶ No impact fee ordinance adoption necessary to impose exactions as condition of Planning Board approval
- ▶ Improvements that are necessitated by a development located outside the project boundaries
- ▶ Subject to rational nexus test
- ▶ Limited to highway, drainage, and sewer and water upgrades pertinent to that development



Third Party Consultants

- ▶ RSA 676:4-b
- ▶ May require applicant to pay for third party consultant review and construction monitoring
- ▶ Cannot substantially duplicate same review at ZBA

Public Hearing Procedures



- ▶ 676:4, I (e) hear from applicant, abutters, others with direct interest, and others as permitted by board

- ▶ Impartially follow rules of procedure

- ▶ Site visits are public meetings

- ▶ Riggins Rules

Deliberation & Weighing the Evidence



- Get all necessary information before closing public hearing.
- Board can deliberate and vote at later meeting.
- Avoid ex parte contacts with parties or deliberation among members outside meeting.
- Board may rely on personal knowledge of the area; and not bound to accept conclusions of experts, *Vannah v. Bedford*, 111 N.H. 105 (1971), only if some evidence and explained in written decision. *Malachy Glen Associates, Inc. v. Chichester*, 155 N.H. 102 (2007)
- But not in the face of uncontradicted expert testimony, unless board can adequately explain in written decision. *Condos East Corp. v. Conway*, 132 N.H. 431 (1989)

New Case - Dartmouth v. Hanover NH Supreme Court November 6, 2018

- ▶ *Planning Boards cannot rely upon lay opinions and anecdotes refuted by uncontroverted expert evidence.*
- ▶ *Planning Boards cannot supplant the specific regulations and ordinances that control the site plan review process with their own personal feelings.*

Written Notice of Decision



- ✓ Written decision is required, and written reasons in event of disapproval. RSA 676:3, I.
- ✓ RSA 676:4, I (c) (1) also requires decision to approve, approve with conditions or disapprove.
- ✓ Decision and meeting minutes must be on file for public inspection within 5 business days of vote. RSA 676:3, II.
- ✓ A tie vote is not a decision.

Conditional Approval

- ▶ *Representations by applicant are not binding unless clearly made a condition of approval.*
- ▶ *Conditions must reasonably relate to ensuring compliance with relevant criteria.*
- ▶ *Standard conditions.*
- ▶ *Conditions precedent.*
- ▶ *Conditions subsequent.*
- ▶ *Compliance hearing.*

“Grandfather Rights”



- Planning Board Regulations may define “substantial completion of improvements etc.” and “active and substantial development etc.” RSA 674:39, III.
- Failure to define “active and substantial development” awards 5-year exemption automatically.

Superior Court Appeal - RSA 677:15





*THANK YOU for
inviting NHMA
to the OSI 2019
Spring
Conference!*

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