

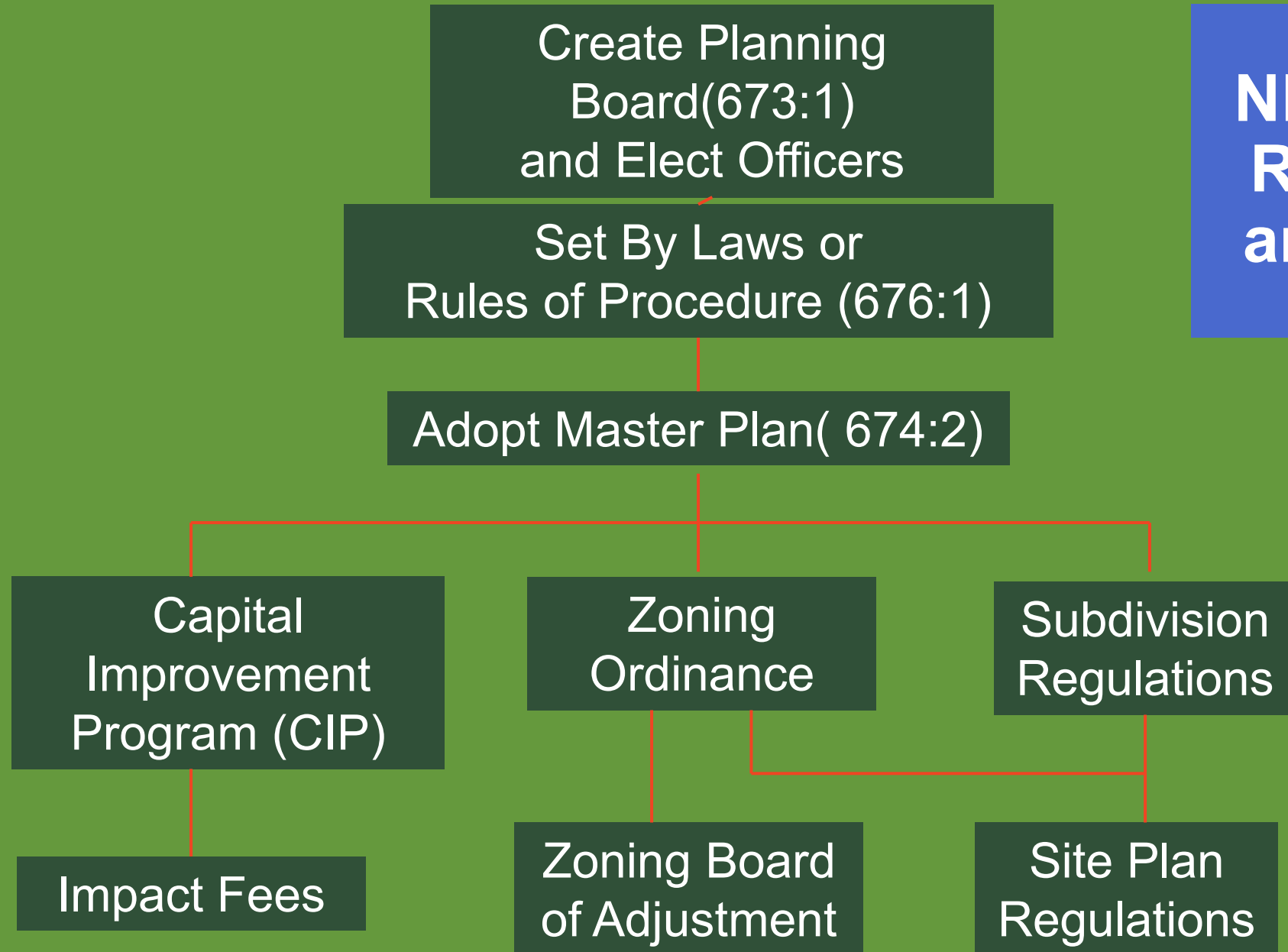
PLANNING BOARD HOUSEKEEPING

Heather Shank, Director, BEA Division of Planning and Community Development
Brendan McDowell, Principal Planner, BEA Office of Planning and Development

PLANNING BOARD HOUSEKEEPING

- NH Land Use Regulations and Process
- Subdivision Regulations, Checklists, and Waivers
- Application Management and Deadlines
- Technical Review Committees (TRC)
- Site Walks
- Motions, Accept or Not, Approve or Not, Continue or not
- Approvals, Findings of Fact, and Notice of Decision
- Tips on how to be a good board member
- Zoning Amendments
- Question and Answer

NH Land Use Regulations and Process



Subdivision Regulations (674:36)

MAY Address:

- Services
- Street Layout
- Utilities
- Public Health
- Open Space
- Lot Configuration
- Thresholds for major and minor subdivisions

May provide for waivers

*Goal/Purpose-Provide against “scattered and premature development.”

Practice Pointer-The adoption and amendment of subdivision and site plan regulations can be done at any time throughout the year as they do not have to go to town meeting for approval. They would follow the normal 10-day public hearing notice procedures.

Site Plan Regulations (674:44)

May include:

- Traffic
- Parking
- Utilities
- Landscaping
- Building location
- Signage
- Lighting
- Noise

Must include:

- Procedures
- Purpose
- Standards
- Performance Guarantees
- ***Must provide for waivers***

Wait, is it a Public Hearing or Public Meeting?

Public Hearing vs. Public Meeting

- Public Hearing-

- A meeting duly announced and advertised in advance that is open to the public and called by the town council, board, or commission of the town for the purpose of taking **formal** public comment, both in favor and opposition to a proposed action.

- Public Meeting-

- An **informal** meeting, hearing, or workshop of a municipal board, committee, commission or governing body or their representatives where the public may attend and may provide input.

Planning Board Application Process (676:4)

1. Application submitted to the planning board according to the board's meeting and deadline schedule or at a minimum of 21 days before a public hearing.
2. 676:4.I(b): the planning board SHALL specify by regulation (*674:36 Subdivision/ 674:44 Site Plan*) what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.
3. A completed application means sufficient information is included to allow the board to proceed with consideration and make an informed decision.

Checklists

Checklists are to itemize the types of plans, studies, designs, information, materials, required fees, escrows, etc. that are required by the regulations.

- Planning boards without staff support could have the Secretary of the Planning Board process applications to check the submission contains all the required information required in the checklist prior to the meeting. If that is not feasible then the board should review the application at a public hearing.
- **OPTION** Conduct completeness review as a conceptual consultation. Applicant applies with preliminary information and reviews with the board what the checklist and regulations require in order to have it accept an application as complete.

Waivers

1. Subdivision Regulations 674:36 (optional)
2. Site Plan Regulations 674:44 (required)
 - ▶ Applicants must show good cause that strict conformity to the regulations would cause an unnecessary hardship and a waiver would not go against the spirit and intent of the regulations.
 - ▶ Waiver requests must be in writing and should identify the section of the regulation in which the waiver is being requested.
 - ▶ The board should be clear in their reason for granting OR not granting the waiver
 - ▶ **Practice Pointer:** vote on each waiver separately

Waivers

- ***“Will this affect the information we need in order for us to hear and decide on this application? (Yes or No)”***
- ***“Is there enough information to make an informed decision based on your regulations?” (Yes or No)***
 - PUT DECISION IN WRITING whether it is a “yes” or “no”
 - If waiver is granted the application can be accepted as complete and the public hearing can begin.
 - ❖ This can be done at the same meeting, as long as it was noticed that way to the public and abutters
- If the waiver is not granted, the application can be denied.
- The board and/or staff should work with the applicant for what material or information is missing.

Application Completeness

Formal Application-

- 676:4, I(b) “The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.”
- “A “**completed application**” means sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision”
 - *Regulations spell out what a completed application includes.
- Planning Board at next regular meeting or within 30 days of application delivery, vote on application completeness
- **Practice Pointer:** Determining an application is incomplete and requesting additional information from the applicant to meet all checklist requirements is preferable to a premature determination of completeness

Application Process

676:4,I(c)(1): Planning Board has 65 days from application completeness determination to approve, conditionally approve, or deny application

- Hold public hearing – can be same meeting as vote on application completeness if notice has been given to abutters and the public of public hearing on application
- Consider, review, and discuss proposed conditions of approval or reasons for denial while public hearing is still open.
- Provide last chance for applicant and abutters to comment.
- Close the public hearing!
- Begin deliberations-
 - Discuss among the board and staff potential conditions of approval or reasons for denial
 - BE CLEAR WITH CONDITIONS AND REASONS.
 - Don't pay attention to the number of conditions of approval
 - Minutes don't count for enforcement

Planning Board's Role

- To accept or not and review and approve/deny formal applications that are submitted.
- Chair: Allow the applicant and abutters to speak and be heard. Do NOT have to allow repetitive comments!
- Run a calm and respectful meeting-set time limits
- If uncertain on whether to accept an application as complete or not-don't hesitate to continue acceptance
- Utilize the existing regulations in your decision-making process i.e., does the application meet the Master Plan goals? Site Plan/Subdivision Regs?

***When in doubt... It is OK to continue the application for more information or guidance from staff and/or Municipal Attorney**

Technical Review Committee

674:43 Power to Review Site Plans. –

I. A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to 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, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or re-subdivision of the site.

674:43.III The local legislative body of a municipality may by ordinance or resolution authorize the planning board to delegate its site review powers and duties in regard to minor site plans to a committee of technically qualified administrators...

What is a TRC?

- A committee appointed and authorized by the Legislative bodies of the municipality either by the City Council or Town Meeting vote.
- Legislative bodies determine the type of TRC either with site plan review authority or without review authority.
- Made up of municipal officials, department heads, other board or commission members.
- There is a Chair and Vice-Chair of the TRC. It is an arm of the planning board.



Roles and Responsibilities of a TRC

- Can be either advisory or have site plan approval authority.
- Part of the development review process.



Roles and Responsibilities of a TRC

- Provide technical assistance to applicants on the development process.
- Informs all town departments on development projects.
- Create communication with the planning board and municipal departments.



Overall Benefits of a TRC

- Fosters cooperation and communication with municipal departments over development projects.
- Inform departments of large projects.
- Can assist departments with budgets and CIP items.
- Can provide Conceptual Consultation review and input.
- Streamline development review process for the developer and municipality

Site Walks

- Considered an important part of the application decision making process.
- Can be done at the beginning of the process-or as part of the application process.
- **It is a meeting!** Post an agenda and take minutes!
- Public **MUST** be allowed to attend. Denying public access can lead to delays or denial of the application.
- Good for fact finding and visualizing the development in the area
- If no site walk is scheduled, individual members may view the site on their own.

Third Party Review (676:4-b)

- Should be part of every application.
- DON'T take applicant's "word" on engineering/traffic/drainage, etc. studies-get a professional to review on the town's behalf.
- Hire experts to help you understand
 - ▶ Complex/phased applications, controversial issues, unusual subject matter
 - ▶ Get an estimate, establish an applicant-funded escrow (separate account).
 - ▶ All third-party reviews are paid for by the applicant.
 - ▶ Keep good records of funds
 - ▶ Put process in application and regulations

Third Part Review

Role of Planning Board's expert:

- ▶ Work with applicant's expert to develop an improved plan
- ▶ Provide alternative review of the same facts
- ▶ Work to protect the municipality's interests
- ▶ Establish a basis for approval or denial
- ▶ Utilize for actual development of project i.e., drainage inspections, road inspections, escrow drawdowns, final inspections, compliance, etc.

Motions

- Motions may be made by any regular member (chair included) or alternate serving in place of a regular member
- Motions should contain the complete action
 - All conditions of approval; reasons for denial
 - Require second; require deliberation; require vote
- A failed motion (not a majority of yeas*) is not an approved action to do the opposite!
- If the motion to approve fails it does not mean the application is denied; a new motion must be made. Discussion continues.
- A new motion must be made and seconded. Discussion continues until the board can agree upon a decision.

Work with Municipal Attorney!



New Hampshire Department of
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Types of Conditional Approval


- Conditional approval under **RSA 676:4, I(i)** is only an “interim step in the process of the board’s consideration” and is not a final approval. **For a valid final approval under the statute, there must be no unfulfilled conditions precedent.**
- Conditions precedent: conditions/items that must be completed in order to obtain final approval. i.e., revised plans, escrow funds, final documents, receipt of state/federal permits, etc.
 - a “Conditional Approval” is NOT final
 - When conditions precedent have been met the final approval is granted. Final plans can be signed.
- Conditions subsequent: conditions or operations that are for the life of the project-they are “attached” to an approval. i.e. hours of operation, maintenance of landscaping, lighting times, etc.

Types of Approval

- When granting approvals with conditions, be clear which conditions are precedent and which are subsequent.
- If a board wants the final approval based on the applicant completing certain conditions precedent, the board needs to be clear that failure to comply with conditions precedent means there is no final approval.
- A conditional approval that includes only conditions subsequent constitutes a final decision appealable under RSA 677:15, I.
- Use templates!
- ***When in doubt.. Consult with Municipal Attorney!**

Notice of Decision (676:3)

- After the Planning Board has voted on the application, the final decision must be;
 - Put in written form
 - Provided to the applicant
 - Placed on file in the Town's offices and made available to the public within 5 business days.
- **The decision shall include specific written findings of fact that support the decision in addition to conditions of approval**
- 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, unless the court determines that there are other factors warranting the disapproval.



Town of Boscawen, NH
116 North Main Street, Boscawen, NH 03303
Telephone: 603-753-9188

Planning Board Notice of Decision

Donald C. Fannie
83 Sewalls Falls Road
Concord, NH 03301

November 4, 2024

At a regularly scheduled and duly noticed meeting of the Boscawen Planning Board on **Monday, November 4, 2024**, at 6:30pm, the Board **conditionally approved** the application submitted by **Donald C. Fannie, 83 Sewalls Falls Road, Concord, NH 03303**, with a location of **North Main Street, Boscawen, NH 03303, Map 83 Lot 8 Sublot 1**, located in a **R2W&S zone**, for a **Conditional Use Permit for a Planned Unit Development in accordance with Article XXV of the Zoning Ordinance** with the following conditions and findings of facts:

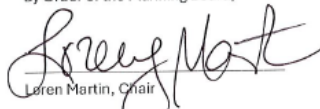
Finding of Facts:
The application complies with the Town of Boscawen's Zoning Ordinance and Land Development Regulations given the plans presented and waivers granted.

Conditions precedent:

1. Any additional buffer or landscaping that the Board may choose to require shall be shown on the final plan
2. A construction schedule shall be added to the final plan
3. Proposed ownership shall be indicated on the final plan
4. Professional stamps and signatures, as well as owner's signature shall be on the final plan
5. All conditions and waivers shall be on the final plan
6. Notice of Decision shall be recorded at the Merrimack County Registry of Deeds

Conditions subsequent:

1. Site Plan approval must be obtained for the Planned Unit Development prior to the issuance of building permits
2. Impact Fees apply

By Order of the Planning Board,

Lauren Martin, Chair

Findings of Fact

- The degree to which a board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application
- For denials, a board should consider what are the aspects about the application that is preventing it from saying “yes.”
 - Include references to the specific sections of the subdivision and site plan regulations, which haven’t been met
 - Don’t base findings of fact supporting a denial only on the opinion/sentiment of the majority of the board about an application
- **Findings of Fact should NOT replace Conditions of Approval**

Major and Minor Applications

- Subdivision and Site Plan Regulations should define what a major and minor subdivision and site plan are. i.e., size in number of lots, square footage of new buildings, etc.
- The regulations should include if third party review is required for all applications, just major applications, or at the board's discretion.
- If there is an established TRC (Technical Review Committee) with site plan review authority than TRC can review minor site plans. Has to be spelled out in their regulations what the guidelines are for minor site plan review.
- Major and minor site applications need a public hearing

Staff Application Management

Process for application acceptance in the office-

- Set deadlines for applications for Noon on deadline day-
NO 4:29 PM drop offs! Stick to deadlines!
- Create spreadsheet for tracking applications and escrow accounts-very helpful for Yr. End Reports/Town Reports
- Consider creating a cover sheet for the application to help with tracking and quick references., i.e., when application was submitted, 1st public hearing/acceptance, approval, etc.
- Do not verify abutters-applicants responsibility
- Set an abutter submission policy based on number of abutters.
- Don't have to make copies of applications for applicants

Staff Application Management

- Review application materials for all submission requirements NOT for content requirements.
 - ✓ You are looking for- signed application, checklist, waivers, fees, escrow funds, etc. not reviewing the integrity of the application-that is the board's job.
- Inform Chair number of application submissions
- Process fees and escrow funds
- Create the public notice and abutter notices.
- Prepare packets for the planning board
- Circulate packets to the planning board at least 1 week before meeting

Rules of Procedure – RSA 676:1

RSA 676:1:

Planning Board **MUST** Adopt Rules of Procedure
“concerning the method of conducting its business.”

- Outline Method of Conducting Business
 - Do not use Robert’s Rules
 - Days and times of meetings
 - Order of business
- Conduct at meetings
- Rules for Officers, Members and Alternates i.e., absenteeism, discipline, recusals, removal of members
- Rules the board must follow for applications, decisions, etc.
- Be available to the public

What is a Zoning Amendment?

Zoning Amendment: any change to the zoning ordinance including language, table, graphics, or maps, approved by the legislative body. (Town Meeting, Town Council, City Council).

Cities and towns with town councils can adopt zoning amendments any time of year (*RSA 675:2*)

Non-town council towns and village districts can only adopt zoning amendments once a year by ballot at their annual meeting (*RSA 675:3*)

ZONING AMENDMENTS	
Warrant Article 2: Amendment #1: Are you in favor of the adoption of Amendment No. 1 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To clarify that residential development on a lot must be within the minimum contiguous buildable area; and general textual clarifications to Table 2.01(B)?	YES <input type="radio"/> 295 NO <input checked="" type="radio"/> 83
Warrant Article 3: Amendment #2: Are you in favor of the adoption of Amendment No. 2 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To increase the maximum density for duplex and multi-family housing; clarify density bonus criteria for those properties connected to water or sewer; clarify that residential development on a lot must be within the minimum contiguous buildable area; and general textual clarifications to Table 2.02(B)?	YES <input type="radio"/> 241 NO <input type="radio"/> 144
Warrant Article 4: Amendment #3: Are you in favor of the adoption of Amendment No. 3 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To add density bonus criteria for those properties connected to water or sewer; clarify that residential development on a lot must be within the minimum contiguous buildable area; and general textual clarifications to Table 2.03(B)?	YES <input type="radio"/> 261 NO <input type="radio"/> 116
Warrant Article 5: Amendment #4: Are you in favor of the adoption of Amendment No. 4 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To set the maximum density for single family residential at one dwelling unit per 30,000 square feet; increase the maximum density per dwelling unit for duplex (15,000 square feet), multi-family (10,000 square feet), and mixed-use (5,000 square feet) units; amend the minimum lot size to 30,000 square feet; add density bonus criteria for those properties connected to water or sewer; and general textual clarifications to Table 2.04(B)?	YES <input type="radio"/> 242 NO <input type="radio"/> 129
Warrant Article 6: Amendment #5: Are you in favor of the adoption of Amendment No. 5 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To amend the maximum density per dwelling unit for single family (8,000 square feet), duplex (4,000 square feet), and multi-family (2,500 square feet) units; amend residential development restrictions on specific streets; and general textual clarifications to Table 2.05(B)?	YES <input type="radio"/> 238 NO <input type="radio"/> 129
Warrant Article 7: Amendment #6: Are you in favor of the adoption of Amendment No. 6 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To amend the maximum density for mixed-used developments and to set a minimum unit size (750 square feet)?	YES <input type="radio"/> 239 NO <input type="radio"/> 129
Warrant Article 8: Amendment #7: Are you in favor of the adoption of Amendment No. 7 as proposed by the Planning Board for the Farmington Zoning Ordinance as follows: To allow for a duplex to be built on land subdivided using the rear lot provision in all residential zoning districts except for the Agricultural Residential District?	YES <input type="radio"/> 229 NO <input type="radio"/> 145

What is a Zoning Amendment

The planning board (RSA 674:1, V)

The governing body (RSA 675:3, VIII)

- The board of selectmen, village district commission, city or town council all have the authority to propose zoning amendments

Petitioned Zoning Amendment (RSA 675:4)

- 25 or more registered voters may petition for an amendment to a zoning ordinance, historic district ordinance, or a building code.

Zoning amendment language

- Correct format! Review with Town Clerk!
- PB support or not
- Reason or justification statement along with the amendment
- Governing Body and Petitioned amendment language can't be changed!

Petitioned Zoning Amendments

- 25 registered voters can petition to amend or repeal a provision of the zoning ordinance, historic district and building codes.
- Petitioned zoning amendments must be received between 120 and 90 days before town meeting (the 2nd Tuesday in March, April or May)
- Petitions are submitted to the governing body who forward to planning board
- At first planning board meeting after the petition period the board shall set the date for the public hearing on the petition
- Petitioned amendments cannot be altered by planning board, but the board shall state if it approves/supports or disapproves/not support on the ballot

How to be a good board member?

- DO YOUR HOMEWORK!
- Be fair and unbiased
- Attend the meetings, be on time, look presentable
- Work with staff on learning ordinances
- Cooperate with other boards
- Be respectful to fellow members and the public
- DO NOT COMMUNICATE VIA EMAIL (RSA 91-A)
- ASK MUNICIPAL ATTORNEY!

How to be a good board member?

- Do not use social media to discuss applications
- Do not develop or express preconceived opinions about any applications
- Do not abstain
- Recuse yourself when appropriate (674:14,I)
- Juror Standard (500-A:12 Examination)
 - Expects to gain or lose from the case
 - Is related to either party
 - Has advised or assisted either party
 - Directly or indirectly given or formed an opinion

Contact Information and Resources

Heather Shank, Director

BEA, Office of Planning & Development
heather.r.shank@livefree.nh.gov

Brendan McDowell, Principal Planner

BEA, Office of Planning & Development
brendan.m.mcdowell@livefree.nh.gov
603-271-1765

Web Site: www.nhopd.com

Email: planning@livefree.nh.gov

Staff Contact Information:

<https://www.nheconomy.com/office-of-planning-and-development/who-we-are>

Training Library on YouTube:

<https://www.youtube.com/channel/UCmk4EEnIIIGZFZjqLYARAU>



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Questions?

- PLAN Webinar Series
 - 3rd Thursday of each month
- Sign-up for e-mails about upcoming trainings and new publications by e-mailing planning@livefree.nh.gov with a request to join our training list.
- Visit our YouTube channel for a recording of this and other presentations.