
Planning Board Roles and Responsibilities

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Today's Roadmap

- Finding the Law
- A Map of the NH Planning World
- The Three Realms of the Planning Board
 - Planning
 - Legislative
 - Regulatory

Finding the Law

Finding the Law

NH Statutes and Bills

- Revised Statutes Annotated (RSA)
 - www.gencourt.state.nh.us/rsa/html/indexes/default.html
- Search for Bills
 - https://www.gencourt.state.nh.us/bill_Status/quickSearch.aspx
- NH Supreme Court Decisions
 - www.courts.state.nh.us/supreme/opinions/index.htm

For Other Jurisdictions

- Cornell Law School
 - <https://www.law.cornell.edu/>

NH Municipal Association Legislative Bulletins

- www.nhmunicipal.org

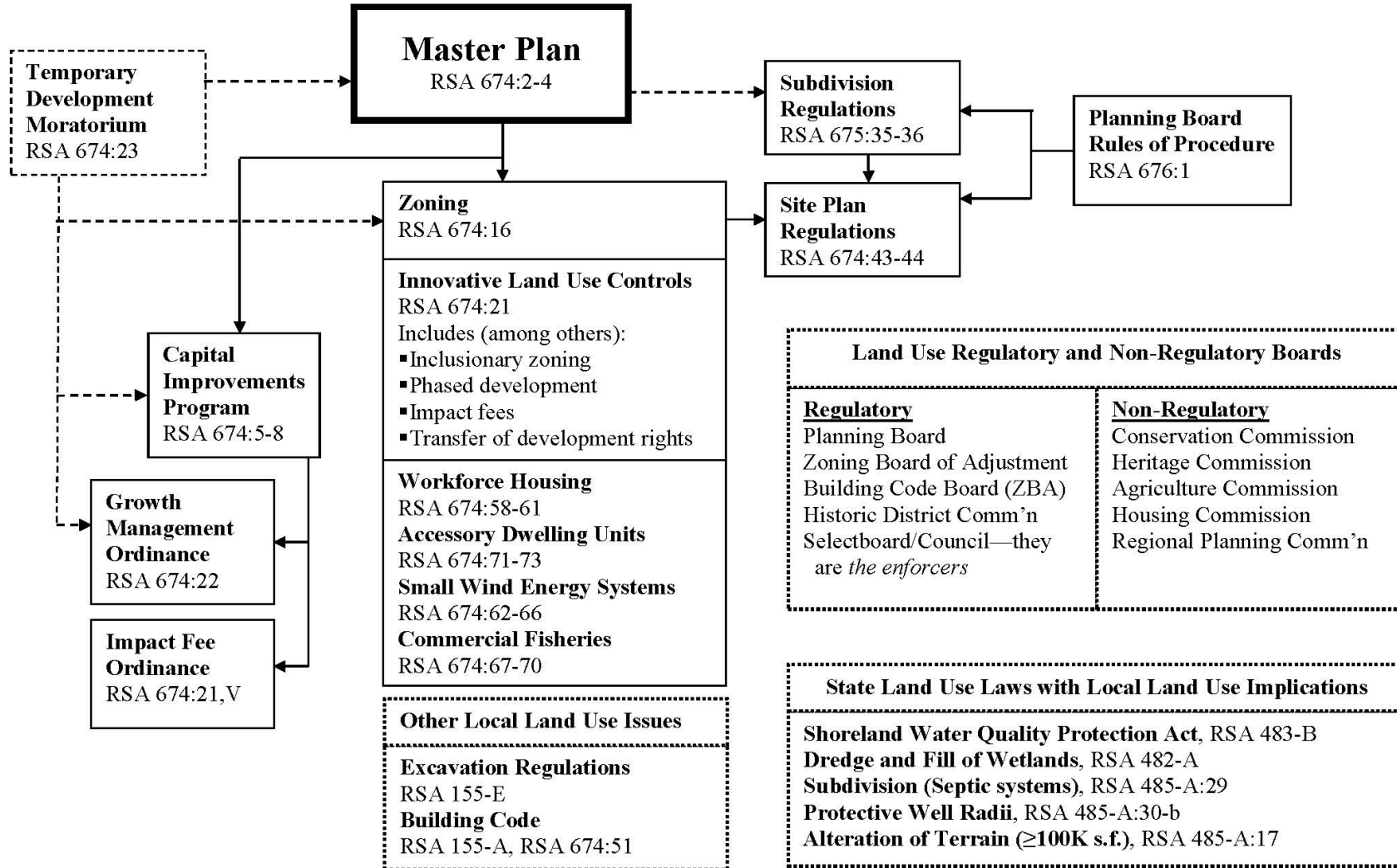
Other Sources

- *Land Use, Planning and Zoning*. New Hampshire Practice Series, vol. 15. LexisNexis. Original written by Peter Loughlin, now updated annually by Cordell Johnston and Christine Fillmore
- NHMA's "Town and City," online searchable index and full-text articles
- ***Don't forget to talk with your municipal attorney.*** That's the person who will be defending you in court! ...and who can help keep you out of court in the first place.

"An ounce of prevention..."

A Map of the NH Planning World

NH Municipal Land Use Regulation



The Three Realms of the Planning Board



1. The Planning Role

The Planning Role

■ ***Master Plan***

- ❑ Required – vision and land use
- ❑ Optional – everything else
- ❑ Must you limit yourselves to the enumerated chapters? Just how creative can you get?
- ❑ Also consider the broader purposes of planning – *and its limitations*
- ❑ Revisions are recommended every 5-10 years
- ❑ Adopted by the planning board; should involve extensive public engagement and input
- ❑ The master plan is strictly advisory; it has no regulatory weight

The Planning Role

- ***Capital Improvements Program***
 - A schedule of municipal capital improvements for at least the next six years – levels of urgency, need
 - What's a capital improvement?
 - “Sole purpose” is to guide the governing body and the budget committee as they develop the annual budget
 - But the CIP is also a statutory prerequisite for impact fee and growth management ordinances
 - Adopted by the planning board (or a CIP committee, as decided by the local legislative body)

The Planning Role

- ***Growth Management Ordinances and Moratoria***
 - These are ordinances, but they're for the purpose of promoting better planning
 - GMO (RSA 674:22) requires a study substantiating its need, annual review of progress
 - Appropriate “only if there is a demonstrated need to regulate the timing of development, based on the municipality’s lack of capacity to accommodate anticipated growth...”
 - Must have a sunset date – recommendation: 5 years max
 - Temporary Moratoria (RSA 674:23) are appropriate only in “unusual circumstances” that impact adequate provision of services
 - One year only
 - May only be proposed by the planning board



2. The Legislative Role

The Legislative Role

- **Zoning Ordinance (RSA 674:16-20, Ch. 675)**
 - In most communities (cities may differ), the planning board recommends changes to zoning – you are the authors (the ZBA is the interpreter).
 - Citizen petitions are another way – signatures of 25 registered voters in the municipality.
 - The planning board must hold at least one public hearing
 - Note that certain types of amendments may require property owner direct notice
 - Innovative land use controls (RSA 674:21)
 - Certain provisions are required

The Legislative Role

- ***Subdivision Regulations (RSA 674:35-38)***
 - Legislative body authorization required
 - Relationship with zoning – shouldn't be used by planning boards to do things that zoning is supposed to do
 - What is a subdivision?
 - What should your regulations include? Standards for identifying property boundaries; lot configurations; road construction standards
 - Note: bonds for improvements that are part of a subdivision are controlled by the planning board
 - Adopted by the planning board, public hearing required

The Legislative Role

- ***Site Plan Regulations (RSA 674:35-38)***
 - Legislative body authorization required; zoning is a prerequisite
 - Relationship with zoning – shouldn't be used by planning boards to do things that zoning is supposed to do
 - What is the planning board's jurisdiction?
 - What should your regulations include? Standards for parking, landscaping, visual aesthetics, environmental impacts, neighborhood impacts – make your standards clear; eliminate subjectivity wherever possible
 - Note: bonds for improvements that are part of a site plan are controlled by the planning board
 - Adopted by the planning board, public hearing required

3. The Regulatory Role

The Regulatory Role

- ***Subdivision and Site Plan Review (RSA 676:4)***
 - Preapplication
 1. Preliminary Conceptual Consultation
 - Non-binding, no public hearing, no abutter notification
 - Napkin sketch ideas
 2. Design Review
 - Non-binding, no public hearing, but abutters are notified
 - Preliminary engineering, options for discussion and advice from the board
 - **Vesting** of 12 months from the end of design review
 - You can choose whether to do this; if your local legislative body authorizes, you can require applicants to do preapplications (one or both)

The Regulatory Role

- ***Subdivision and Site Plan Review (RSA 676:4)***
 - Formal Application
 - Notice to abutters (see RSA 672:3)
 - Development of regional impact? (RSA (36:54-58)
 - Acceptance of application as “sufficiently complete”
 - Public hearing – who gets to speak?
 - Approval within 65 days (subject to extension)
 - Conditions precedent – approval isn’t final until they’re met
 - Conditions subsequent – ongoing conditions after final approval
 - **NOTE:** the planning board may not refuse to accept or approve an application on the basis that state or federal permits have not been issued (but see “conditions precedent”)

The Regulatory Role

- ***Subdivision Regulation Waivers (RSA 674:36, II(n))***
Site Plan Regulation Waivers (RSA 674:44, III(e))
 - Basis for waivers to be recorded in the minutes. The planning board may grant a waiver if it finds that:
 1. Strict conformity would pose an unnecessary **hardship** to the applicant and waiver would not be contrary to the spirit and intent of the regulations; **or**
 2. Specific **circumstances** relative to the site plan, or **conditions** of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.
 - What does “hardship” mean?

The Regulatory Role

- **Off-Site Exactions (RSA 674:21, V(j))**
 - In the absence of an impact fee ordinance, monetary exactions may be imposed on development approvals by planning boards on a case-by-case basis for impacts of those developments
 - Where the improvements are “necessary for occupancy of any portion of the development.”
 - **Limited to** highways, drainage, water, and sewer
 - Monetary exaction is inappropriate when the developer agrees to make the improvement
 - If the municipality will fund a portion of the improvement, you have 6 years to do that; after that, refund must be made of money collected
 - Otherwise, no statutory time limits, but remember that the development should not be “occupiable” without the improvement. *Be reasonable!*

The Regulatory Role

- ***Vesting of Development Rights (RSA 674:39)***
 - Planning board approval confers 24 months' exemption from most local regulatory changes
 - During that time, “active and substantial development or building” secures an additional 3 years' exemption (vesting) – 5 years total
 - In its approval (or by regulation), if the planning board doesn't define what is meant by active and substantial, 5-year exemption is automatic
 - ***This does not mean that planning board approvals expire after either of these time periods have elapsed!***
 - Substantial completion of the improvements shown on the plan secures permanent vesting

Questions?

