

2015 OEP Land use Planning Conference  
May 2, 2015

## Planning Board Basics

Daniel D. Crean  
Crean Law Office  
Pembroke, New Hampshire

---

---

---

---

---

---

---

---

### Goals of this Session

- ❖ Provide General Guidance in the Basics for New Hampshire Planning Boards
- ❖ *Enabling Legislation & Local Government Powers*
- ❖ *Planning & Regulation: Past & Present*
- ❖ *The New Hampshire Scheme*
- ❖ *PB Organization, Officers, & General Duties; Conflicts of Interest*
- ❖ *Becoming and Being a PB Member*
- ❖ *PB By-Laws or Rules of Procedure*
- ❖ *Meetings and Procedures*
- ❖ *Planning, Zoning, Subdivision Regulation & Site Plan Review*
- ❖ *Decisions and Decision-Making*
- ❖ *Understanding Appeals*
- ❖ *Access to Proceedings & Records*



---

---

---

---

---

---

---

---

### Enabling Legislation & Local Government Powers

Some words to live by:

**“Get thee to a statute book!”**

**“Don’t try to do it alone or reinvent the wheel – unless you have to!”**

---

---

---

---

---

---

---

---

***Resources***

- ❖ OEP, RPCs, & NHMA
- ❖ Town Documents: Historical & Current – Including the Master Plan
- ❖ RSAs & Your Municipal Lawyer
- ❖ NH Municipal Lawyers Association (NHMLA) Local Government Seminars
- ❖ Other Board Members and Other Boards
- ❖ Common Sense

4

---

---

---

---

---

---

---

---

***Planning & Regulation:  
Past & Present***

- Rome*
- Ireland*
- Maya*
- Aztec*
- Inca &*
- Cahokia, ILL*



5

---

---

---

---

---

---

---

---

***“Modern Planning”***

- ❖ SZA & SCPEA
- ❖ RSA 31 & 36 reenacted as TITLE LXIV
- ❖ CH. 672: GENERAL PROVISIONS
- ❖ CH. 673: LOCAL LAND USE BOARDS
- ❖ CH. 674: LOCAL LAND USE PLANNING & REGULATORY POWERS
- ❖ CH. 675: ENACTMENT & ADOPTION PROCEDURES
- ❖ CH. 676: ADMINISTRATIVE & ENFORCEMENT PROCEDURES
- ❖ CH. 677: REHEARING AND APPEAL PROCEDURES
- ❖ CHAPTER 678: COMMUNITY SERVICES & CARE PLANNING BOARDS

6

---

---

---

---

---

---

---

---

*The New Hampshire Scheme*

- ❖ Powers vested primarily in local government
- ❖ BUT
  - ❖ Home Rule v. Dillon's Rule
  - ❖ Need for enabling legislation
  - ❖ Compliance with legislative requirements
  - ❖ Why?
    - ❖ Because the Legislature says so

---

---

---

---

---

---

---

---

*Planning Board Organization; Officers; General Duties; Conflicts of Interest*

- ❖ Basics of PB Powers & Duties
- ❖ Master Planning
- ❖ Compiling Capital Improvements Program
- ❖ Growth Management
- ❖ Zoning Ordinance
- ❖ Subdivision and Site Plan Regulations
- ❖ Review of Applications
- ❖ Official Map (RSA 674:10)
- ❖ Earth Excavation Permits
- ❖ Special/Conditional Use Permits
  - Don't Stop Thinking About Tomorrow!"

---

---

---

---

---

---

---

---

**PB Organization in a**



- ❖ RSA 673:2 Membership, Appointment or Election
- ❖ RSA 673:5, :6, :7 Terms, Alternates, Serving on Other Boards
- ❖ RSA 673:8 Organization, Terms of Chair and Officers
- ❖ RSA 673:13 Removal of Members
- ❖ RSA 673:16 Staff and Finances
- ❖ RSA 673:17 Open Meetings and Records - And Don't Forget RSA 91-A

---

---

---

---

---

---

---

---

## *Conflicts of Interest*

- ❖ *RSA 673:14*
- ❖ *RSA 31:39-a*
- ❖ *"Know thyself - and Have a Thick Skin!"*
- ❖ *And don't forget, common sense.*

10

---

---

---

---

---

---

---

---

## *Becoming & Being a Planning Board Member*

- ❖ **The Oath of Office**
  - ❖ *... agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire*
  - ❖ *You don't need a law degree, but "if a policeman must know the Constitution, why should not a planner?"*
  - ❖ *You don't need to memorize the RSAs, but your oath of office says you will perform your duties to the best of your ability and in accordance with the law -*
  - ❖ *Should ignorance of the law excuse malpractice of planning and regulation?*

11

---

---

---

---

---

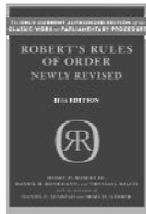
---

---

---

## *PB By-Laws or Rules of Procedure*

- ❖ You don't need "parliamentary rules"



- ❖ **But you do need something**
  - ❖ **Why?**
    - ❖ *Because the legislature says so*
    - ❖ *But also because you really need them.*

12

---

---

---

---

---

---

---

---

***Meetings and Procedures***

- ❖ Meeting v. Hearing
- ❖ Notice
- ❖ Procedure and Due Process or Process that is Due
- ❖ Dealing with Lawyers, Gadflies & Other Undesirables
- ❖ Requests for Findings & Rulings



13

---

---

---

---

---

---

---

---

***Zoning Ordinance Amendment Procedure***

- ❖ Who Proposes?
- ❖ PB Role on Selectmen's or Petitioned Amendments
- ❖ The Hearing
- ❖ The Ballot Question Wording
- ❖ Protest Petitions



14

---

---

---

---

---

---

---

---

***Decisions , Decision-Making & Notices of Decision***

- ❖ "You gotta do it!"
- ❖ Many decisions have to be made, such as:
  - ❖ Reject or accept application;
  - ❖ Act on waivers if requested;
  - ❖ Approve or deny approval of the application;
  - ❖ Defer consideration on an application, being mindful of deadlines to action;
  - ❖ Impose conditions on approval.

15

---

---

---

---

---

---

---

---

## When and How to Make Decision

- ❖ Before the notice of decision is finalized
  - ❖ But you can use a draft decision as a guideline
- ❖ Decision should be made by a motion that is clear and, if required or appropriate, should include reasons
- ❖ Include conditions if appropriate



16

---

---

---

---

---

---

---

---

## The notice of decision can be vital

- ❖ 1. It tells the world what the PB did – and maybe why!
- ❖ 2. Purpose of notice of decision is to let parties know basis of PB action.
- ❖ 3. It may prevent an appeal.
- ❖ 4. It may limit grounds for an appeal.
- ❖ 5. May be key to defending – or losing – an appeal.



17

---

---

---

---

---

---

---

---

## *Understanding Appeals*

- ❖ Don't Take it Personally!
- ❖ You'd like your "day in court" if you felt "wronged."
- ❖ Understand that we can make mistakes
  - ❖ And then learn from them!



18

---

---

---

---

---

---

---

---

## RTK - RSA 91-A

- ❖ Provides access to proceedings (meetings) and to records (documents, or more broadly, information).
- ❖ RSA 91-A is minimum access
  - ❖ Constitution may be broader.
  - ❖ Litigation rules also likely are broader for both retention and production of documents.
  - ❖ The scope of access continues to broaden.
- ❖ PB must be aware of, and comply with, law.

19

---

---

---

---

---

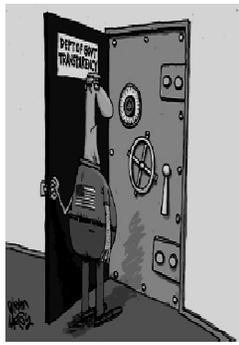
---

---

---

## Meetings

- ❖ General rule = they are public.
- ❖ Exceptions are narrow and may not be used to “get around” openness requirements.
  - ❖ Notice
  - ❖ Location and accessibility
  - ❖ Chance meetings
  - ❖ Electronic participation
  - ❖ Sequential communication



20

---

---

---

---

---

---

---

---

## Nonpublic Meetings

- ❖ Purpose
- ❖ Procedures to enter, conduct, and come out
- ❖ Minutes
- ❖ Can no longer generally use for “deliberations”
  - ❖ “You Mean They Get to Know How We Think?”
- ❖ Transparency is an over-used term today, but in land use proceedings, it can be particularly important.

**PRIVATE**

21

---

---

---

---

---

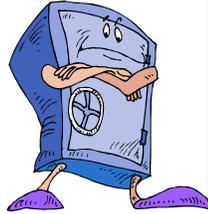
---

---

---

## Records

- ❖ Definition of record is about as broad as you can imagine
- ❖ Duties to retain and produce
- ❖ Public rights to see and copy them
  
- ❖ Exceptions are limited and are applied strictly



22

---

---

---

---

---

---

---

---

## Possible RTK Remedies

- ❖ Order to produce
- ❖ Invalidation of action
- ❖ Costs and fees
  
- ❖ In court, failure to produce may lead to negative inference
- ❖ For lawyers, possible sanctions
  
- ❖ Advice:
  - ❖ Don't lead a judge to throw the book at you.



23

---

---

---

---

---

---

---

---

## Thank You

Questions, Comments, Concerns



Ask Now or Contact:

Attorney Daniel Crean  
Crean Law Office  
Pembroke, NH 03275  
928-7760  
[creanlaw@comcast.net](mailto:creanlaw@comcast.net)  
[www.creanlaw.com](http://www.creanlaw.com)

24

---

---

---

---

---

---

---

---