

CHAPTER V: WORKING WITH OTHER BOARDS & ORGANIZATIONS

Interaction? Yes, interaction. Much of the success or failure, satisfaction or displeasure that you, your colleagues and others will derive from your role as a land use board member will depend on how you interact with other local boards in your town (and even sometimes in neighboring towns), with applicants, with abutters, and with other members of the public. Of course, public perception of the fundamental wisdom and importance of planning and land use regulation will also be deeply influenced by how those interactions are handled.

In this chapter, the focus is on concrete suggestions to make your work, and the experience of individuals who come in contact with you in your role on the planning board, as smooth and rewarding as possible.

ZONING BOARD OF ADJUSTMENT AND JOINT MEETINGS

Every New Hampshire municipality that adopts a zoning ordinance must establish a zoning board of adjustment (ZBA). The board is a requirement because it is impossible to write a zoning ordinance that provides for every unusual condition or special circumstance that might occur. A ZBA functions as a quasi-judicial body that hears and decides requests for special exceptions to, and variances from, the zoning ordinance; appeals from decisions of the zoning administrator (local official or board of selectmen responsible for enforcing the zoning ordinance); and appeals from decisions of the planning board that involve interpretations of the zoning ordinance.

For more details on the roles and responsibilities of the ZBA, see *The Board of Adjustment in New Hampshire handbook*, published by the NH Office of Energy and Planning, available at: <http://www.nh.gov/oep/planning/resources/publications.htm>

Who's First?

A proposed use of land often necessitates review by more than one board. Most commonly, the zoning board of adjustment and the planning board would be involved in such a scenario. For example, a proposed commercial use of property for which site review is necessary may also require a variance or special exception for the proposed use or because of a dimensional problem.

A planning board may not grant final approval to a project that violates the zoning ordinance. Either the planning board or the ZBA could grant conditional approval for such a project. However, as a practical matter, it generally makes more sense to suggest that the applicant obtain the necessary approval from the ZBA prior to seeking planning board approval. Particularly in cases involving the need for a variance, the legal hurdle that the applicant must overcome is rather high. Whether a use will be permitted at all is a threshold issue to other planning decisions. Further, most towns require far more engineering documentation in connection with site plan review than is often required by the ZBA. Consequently, it is often more economical for a developer to seek ZBA approval first and proceed with the engineering for the planning board if, and only if, the threshold issue with the ZBA is resolved satisfactorily. RSA 674:33 was amended in 2013 to place a two-year time limit on special exceptions and variances to remain valid except that no variance or special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon either.

Joint Meetings

Under RSA 676:2, applicants for local land use permits may petition two or more land use boards to hold a joint meeting when action on a proposal is required by more than one land use board. Each board also has authority of its own to request a joint meeting. Whether requested by the applicant or by a land use board, each board retains discretion as to whether or not to hold a joint meeting.

Probably because of the perceived difficulty in keeping the differing legal standards and functions of each land use board distinct in such a joint setting, the joint meeting provisions of RSA 676:2 are little used. If land use boards do decide to proceed under this section, a number of steps are suggested to help ensure that each board continues to function independently and addresses the issues required to be addressed separately by it. First, RSA 676:2 mandates that each board adopt rules of procedure relative to joint meetings. This statute also provides that the planning board chair shall chair such joint meetings unless the planning board is not involved in the particular application. Beyond the statutory requirements, it is suggested that the boards separate themselves physically in the meeting room. Efforts should also be encouraged to address separately the issues unique to one board or the other, although a single presentation of background information probably should not be discouraged. Finally, the boards should deliberate and render their decisions separately, although not necessarily in separate locations.

It can also be helpful for planning and zoning boards to meet occasionally to discuss necessary and/or possible changes to the zoning ordinance and to assess how the application review and hearing process is working.

BOARD OF SELECTMEN

In most New Hampshire towns, a board of selectmen is the official governing body responsible for the daily administration of municipal affairs, and the town meeting adopts the municipal budget while the selectmen supervise the expenditure of the funds appropriated. Town meeting adopts most town ordinances, including zoning ordinances and amendments, and the selectmen enforce those ordinances. Selectmen administer the zoning ordinance and certain local building regulations unless the town has a building inspector or code enforcement officer to do so. Selectmen determine road layout petitions and decide whether to authorize building permits on Class VI roads (RSA 674:41). Town meeting votes to establish a planning board. The selectmen appoint its members, except when town meeting votes to have an elected planning board. For more details see RSA 673:2.

New Hampshire city governments vary because city charter provisions may differ from city to city. Some cities, such as Manchester and Nashua, have a strong mayoral form of government where the mayor's responsibilities parallel those of the board of selectmen in towns. Other cities follow the strong city manager-city council form of government, although the power to make appointments to boards and commissions may remain with the city council. The board of alderman, city council, or town council is the legislative body that adopts ordinances and the budget unless a town council charter provides for official ballots or budgetary town meetings.

While the governing body does not have authority to approve or adopt a master plan, elected officials are influential in setting municipal policy on growth and development. Consequently, it is important for the planning board to involve the governing body in the planning process. Not doing so could jeopardize the outcome or implementation of the master plan. Unless it can be prepared strictly on a voluntary basis or by municipal staff, the planning board will need the support of the governing body in recommending and/or appropriating the funding needed to prepare the plan. In a small town, the board of selectmen and the budget committee will recommend at town meeting

whether or not funding should be approved. In a larger town or city, the council appropriates funding through a budgetary process that typically involves the mayor, city or town manager, and the budget committee.

HISTORIC DISTRICT COMMISSION/HERITAGE COMMISSION

The primary purpose of the Historic District Commission (HDC) is the preservation of the municipality's cultural resources, including its structures and places of historic, architectural and community value. The HDC, when established by the municipality's legislative body, is authorized to adopt and amend regulations in the same manner that subdivision and site plan review regulations are adopted and amended. The HDC may regulate the construction, alteration, repair, moving, demolition or use of historic structures and places. Historic districts and regulations must be compatible with the municipality's master plan and zoning ordinance, and provisions for enforcement of the HDC's administrative decisions must be included in the zoning ordinance. This requires strong cooperation and communication between the planning board and the HDC. The HDC reviews applications for building permits within the historic district and files a certificate of approval or notice of disapproval within 45 days after the application is filed. Notice of disapproval is binding upon the building inspector and a building permit shall not be issued. In municipalities in which historic districts have been established but which have not adopted a zoning ordinance, the HDC has the same authority as a planning board within the bounds of the historic districts. In municipalities without a building inspector, the HDC certificate of approval is the equivalent of a building permit.

Persons aggrieved by decisions of the HDC have the right to appeal to the zoning board of adjustment.

Municipalities may also establish a Heritage Commission whose duties include conducting research to provide the legal basis for historic districts and historic district ordinances. The Heritage Commission may, among other duties, advise the planning board, upon request, with the development and review of master plan sections that address cultural and historic resources.

If authorized by the legislative body, the Heritage Commission may assume the composition and duties of the Historic District Commission. Likewise, the HDC may assume the duties of the Heritage Commission. If a municipality chooses to have both commissions, the HDC may request the assistance of the Heritage Commission in performing research and preparing the content of the historic district ordinance.

CONSERVATION COMMISSION

Responsibilities of a conservation commission and those of a planning board are complementary; a cooperative approach in areas of mutual concern is important. As noted in RSA 36-A and RSA 673:7, a planning board and conservation commission may have one common member. Sharing a member may enhance communications and help ensure mutual understanding and cooperation.

In cities and larger towns, professional planning staff may help build a relationship between the planning board and the conservation commission, encouraging the exchange of ideas, information, and expertise. Although the planning board is the primary focus of a staff planner, he or she may also be able to advise the commission on procedures, sources of information, and strategies for reaching commission goals.

The planning board and conservation commission should work together in the development of the master plan to ensure that recommendations for future land use adequately consider protection of

natural resources and provide for “passive” use of low impact recreational activities such as cross-country skiing and hiking. When the master plan is being prepared or revised, the planning board has a golden opportunity to solicit input from the conservation commission. If a master plan committee is created to help the planning board, a conservation commissioner should serve either as a member of or a liaison with the master plan committee.

Planning boards and conservation commissions should also work closely together on implementation of the master plan recommendations, adopting or modifying zoning ordinances and subdivision or site plan regulations to ensure wise use of natural resources such as wetlands or shores of rivers, streams or lakes. The planning board should encourage the conservation commission to develop and draft zoning and other amendments to local regulations.

AGRICULTURAL COMMISSIONS (RSA 673:4-b; 674:44-e-g)

Agricultural commissions are a relatively new concept for municipalities seeking to balance growth and quality of life while preserving local character. A town or a city may choose to establish an agricultural commission to promote, enhance and encourage farming, agricultural resources and the rural character of a community. This commission gives farming a voice but it does not have any enforcement powers or regulatory authority. The planning board or local governing body may work in cooperation with an agricultural commission to make sure the concerns and interests of farmers are better understood and considered in their decision-making process. According to “Creating an Agricultural Commission in Your Hometown” by Lorraine Stuart Merrill, published by the University of New Hampshire, an agricultural commission may:

- Advise and work with other boards and commissions on issues facing farming in the town;
- Conduct inventories of agricultural resources;
- Conduct inventories of historic farms and farm buildings;
- Educate the public on matters relating to farming and agriculture;
- Serve as a local voice advocating for farmers;
- Provide visibility for farming;
- Give farmers a place to go to for help;
- Help resolve farm-related problems or conflicts; and
- Help protect farmland and other natural resources.

HOUSING COMMISSIONS (RSA 673:4-c; RSA 674:44-h-j)

New Hampshire municipalities may create a local housing commission that will serve as a local advocate for housing issues and advise other local boards and officials on issues of housing affordability. Such a commission is established by an action of the legislative body (town meeting). The primary purpose of a housing commission is not only to advise other municipal boards and officials on policies and plans related to housing, but also to make specific recommendations on housing development proposals, much like the way a conservation commission reviews applications for environmental impacts. Unlike local housing authorities, the purpose of a commission is not to own property as a landlord, but to have temporary ownership to facilitate the establishment of affordable housing. RSA 674:44-i lists in detail the authority of the housing commission, which includes: conducting a housing needs assessment; conducting activities that recognize, promote, enhance and encourage the development of housing, particularly affordable and workforce housing; and holding meetings and hearings necessary to carry out its duties. Local housing commissions are authorized to administer a non-lapsing “affordable housing fund” which shall only serve the purpose of facilitating transactions relative to affordable housing.

RSA 31:95-h permits a municipality to create an “affordable housing revolving fund” in conjunction with, or as an alternative to, creating a local housing commission. The money in this fund shall be non-lapsing, shall not be considered part of the town’s general surplus, and may only be expended for the purposes for which the fund was created.

For more information on housing commissions, see “Housing Commissions: A New Voice for Housing in Your Community,” by the NH Housing Finance Authority and available at: http://www.seacoastwhc.org/documents/Housing_Commission_Handbook.pdf

REGIONAL PLANNING COMMISSIONS AND REGIONAL PLANS

Under RSA 36:45, the main purpose of the regional planning commissions is to prepare a regional plan. This plan must take into account present and future needs with a view toward encouraging the most appropriate use of land, the facilitation of transportation and communication, the proper and economic location of public utilities and services, the development of adequate recreational areas, the promotion of good civic design, and the wise and efficient expenditure of public funds. Just like during the preparation of a local master plan, the regional planning process must seek to involve each community within the regional planning commission’s jurisdiction and address all comments received in writing. Regional planning commissions must also prepare a housing needs assessment, which has to include an assessment of the regional need for housing for persons and families of all levels of income. Since these regional planning activities require local input to be efficient and successful, there are several opportunities for planning board members to be involved at the regional level.

State statutes also give regional planning commissions the authority to provide assistance on local planning problems to any municipality or county and make recommendations on the basis of its studies and plans to any planning board.

RSA 36:46 gives the opportunity to each municipality located in a regional planning commission to have representatives on the commission. This represents another chance for towns and cities to be involved with the work of their regional planning commission and to keep an open and close relationship.

NEW HAMPSHIRE OFFICE OF ENERGY AND PLANNING

The NH Office of Energy and Planning (OEP) provides information, data and guidance to assist decision makers on issues pertaining to development, land protection, energy use and community planning. OEP guides the state’s future growth through public policy development, education, research, and partnership building.

The Municipal and Regional Planning Assistance staff provides information and assistance to municipal planning and zoning boards. Local boards can get assistance on the following topics: municipal master planning, planning board and zoning board of adjustment procedures, zoning ordinances, building codes, subdivision regulations, smart growth techniques, site plan review regulations, capital improvements plans, impact fees, innovative land use controls, excavation and other local land use regulations.

THE STATE DEVELOPMENT PLAN

The purpose and framework for the State Development Plan are established in RSA 9-A. The NH Office of Energy and Planning is directed to assist the Governor in preparing and updating the plan every four years, starting October 1, 2003. Fundamentally, the State Development Plan should

include policies in areas related to the orderly physical, social, and economic growth and development of the state, all of which should reflect the principles of smart growth.

The purpose of the State Development Plan is to serve as the state's overall planning document - to act as a guide for all state agencies as they develop plans, programs and projects; to help state agencies establish priorities and allocate limited resources; to account for the plans of local and regional government and agencies; and to reflect the vision of the state's citizens.

THE SCENIC AND CULTURAL BYWAYS COUNCIL

The duties of the Council include encouraging municipalities to designate scenic and cultural byways within their jurisdictions and to petition the Council for their inclusion in the New Hampshire scenic and cultural byways system. Designation enables municipalities to participate in federal transportation funding programs. The Council also can help municipalities with tools and ideas for enhancement and protection of the scenic and cultural byways. (RSA 238:21)

Beginning in July 2016, the NH Department of Transportation (DOT) must notify the municipal planning board when any new traffic or directional sign is to be placed on a scenic or cultural byway within the town by filing a plan with the planning board. The planning board may hold a public hearing and suggest changes to the plan for the purpose of maintaining the scenic nature of the byway. DOT is not required to comply with the planning board's suggestions. (RSA 238:25)