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TABLE OF CONTENTS

CHAPTER I: ORGANIZATION I-1

Establishing the Board I-1
Appointment and Number of Board Members I-1
Vacancies in Membership I-2
Terms of Board Members I-2
Alternate Members I-3
Planning Board Members Serving on Other Boards I-3
Removal of Members I-3
Disqualification of Members I-4
Abolition of Planning Board I-5
Scheduling of Meetings I-5
Access to Public Records and Meetings I-6
The Right-to-Know Law I-7
Rules of Procedure I-8
Election of Officers I-8
Planning Board Records I-9
How to Run a Meeting I-9
Development of Regional Impact I-10
Site Visits I-11

CHAPTER II: NON-REGULATORY FUNCTIONS II-1

The Master Plan II-1
What is a Master Plan? II-1
Why Have a Master Plan? II-2
Characteristics and Elements of a Master Plan II-2
Adoption and Amendments II-4
Master Plan Preparation II-5
The Capital Improvements Program II-6
Relationship of CIP Adoption to Land Use Regulations II-7

CHAPTER III: REGULATORY FUNCTIONS III-1

Purpose of Subdivision Regulations (RSA 674:35) III-1
Purpose of Site Plan Review Regulations (RSA 674:43) III-1
Steps to Allow the Regulation of Subdivisions and Site Plan Review III-2
Process for the Amendment of Subdivision and Site Plan Review Regulations III-6
Status of Plats after Adoption of Subdivision and Site Plan Review Regulations III-6
Zoning Ordinance III-7
Zoning Amendment Procedures III-8
Notice Requirements III-9
Earth Excavations III-10
Driveway Regulations (RSA 236:13) III-13
State Minimum Driveway Standards III-15

CHAPTER IV: INNOVATIVE LAND USE CONTROLS (RSA 674:21) IV-1

Timing and Phased Development IV-1
Intensity and Use Incentive IV-1
Transfer of Density Rights IV-2
Planned Unit Development IV-2
Open Space, Cluster, and Conservation Subdivision IV-2

Performance Standards IV-2
Environmental Characteristics Zoning IV-2
Inclusionary Zoning IV-3
Accessory Dwelling Unit Standards IV-3
Impact Fees IV-3
Village Plan Alternative Subdivision IV-3
Integrated Land Development Permit IV-4
Other Innovative Land Use Controls IV-4
Ridgeline and Steep Slope Development IV-4
Habitat Protection IV-4
Infill Development IV-5
Agricultural Incentive Zoning IV-5
Minimum Impact Development (Site Scale) IV-5
Energy-Efficient Development IV-5
Transit-Oriented Development IV-5
Livable/Walkable Development Design IV-6
Other Planning and Development Techniques IV-6
Access Management IV-6
Dark Skies Lighting Ordinance IV-6
Growth Boundaries IV-6
Growth Management IV-6
Workforce Housing IV-7

CHAPTER V: APPLICATION, SUBMISSION & REVIEW PROCEDURES V-1

Pre-Application Review V-1
Step 1: Conceptual Consultation (RSA 676:4, II(a), (c)) V-2
Step 2: Design Review (RSA 676:4, II(b), (c)) V-2
Required Review V-4
Step 1: File the Application (RSA 676:4, I(b)) V-5
Completed Application V-5
Completeness Review V-7
Step 2: Notice of public hearing (RSA 676:4, I(d)) V-8
Step 3: Submission and Acceptance (RSA 676:4, I(b)) V-10
Step 4: Public Hearing (RSA 676:4, I(d)) V-11
Step 5: Formal Consideration (RSA 676:4, I(c)) V-12
Step 6: The Decision (RSA 676:4, I) V-13
Step 7: Failure to Act (RSA 676:4, I(c)) V-18
Step 8: Recording the Plat (RSA 676:16) V-18
Appeals (RSA 677:15) V-19
Enforcement V-20
"Grandfathered" Application (676:12, VI) V-20
Statutory Vesting (RSA 674:39) V-21
Minor Subdivisions (RSA 676:4, III) V-21
Technical Review V-23
Municipal Plans, Ordinances and Regulations V-24
Master Plan V-24
Capital Improvements Plan/Capital Budget V-25
Zoning Ordinance V-25
Soil Based Lot Sizing V-29
Water Table V-29
Stormwater Management (Drainage) V-30

Alteration of Terrain **V-32**
Layout of Streets, Utilities, and Lots **V-33**

CHAPTER VI: WORKING WITH OTHER BOARDS & ORGANIZATIONS **VI-1**

Zoning Board of Adjustment and Joint Meetings **VI-1**
Board of Selectmen **VI-2**
Historic District Commission/Heritage Commission **VI-3**
Conservation Commission **VI-3**
Agricultural Commissions (RSA 673:4-b; 674:44-e-g) **VI-4**
Housing Commissions (RSA 673:4-c; RSA 674:44-h-j) **VI-4**
Regional Planning Commissions and Regional Plans **VI-5**
New Hampshire Office of Strategic Initiatives **VI-5**
The State Development Plan **VI-5**
The Scenic and Cultural Byways Council **VI-6**

EXHIBITS

Exhibit V-1 Site Location Map **V-3**
Exhibit V-2a Potential for Re-subdivision **V-24**
Exhibit V-2b Re-subdivided **V-24**
Exhibit V-3 Future Land Use Map **V-25**
Exhibit V-4 Zoning Map **V-26**
Exhibit V-5 Adapting Site with High Water Table **V-30**
Exhibit V-6 Layout of Roads and Lots **V-34**

APPENDICES

Appendix A: Sources of Assistance **A-1**
Appendix B: Public Notices for Subdivision and Site Plan Review **B-1**
Appendix C: Suggested Rules of Procedure for Planning Boards **C-1**
Appendix D: Checklists **D-1**
Appendix E: Criteria for Determining Regional Impact **E-1**
Appendix F: Procedure for Application Review (RSA 676:4) **F-1**
Appendix G: How to be a Good Board Member **G-1**

PREFACE

The New Hampshire Office of Strategic Initiatives (OSI) – formerly the Office of Energy and Planning – consists of the Energy and the Planning Divisions. The Energy Division provides information, data and guidance to assist decision-makers on energy issues pertaining to energy efficiency, renewable energy, energy use and resiliency. In part, the Planning Division addresses planning issues related to development, land protection, floodplain management, and community planning. We guide the State's future growth through programs, public policy development, education and outreach, research, and partnership building.

INTRODUCTION TO THE PLANNING BOARD IN NEW HAMPSHIRE

What is a Planning Board? The planning board is an organized group of selected members of a community in charge of carrying out the future needs, wants, and vision of a community. This is accomplished through the planning board's regulatory and non-regulatory functions, which include the creation of regulations (Regulatory Function) and the review of development applications (Non-Regulatory Function). This handbook is a guide to the organization, powers, duties, and procedures of the planning board. It includes statutory changes enacted through the current legislative session and electronic copies are available for no charge from OSI's website.

CAUTION

This handbook is designed to serve as an introduction to the organization, powers, duties, and procedures of planning boards in New Hampshire. However, given the unique nature of individual parcels of land across the state and the wide variety of development proposals, this material should be taken only as a guide. Obviously, all principles outlined herein may not be entirely applicable to every parcel or proposal in the state. Accordingly, this guide should be used as a starting point for discussions regarding a particular parcel or proposal. Cases, treatises, statutes, court rulings and the like referred to in this guide should be checked to determine whether they have been reversed, distinguished, amended, or whether they are even applicable to the unique parcel under consideration. This material is being offered as a service to users and is considered "as is" without any expressed or implied guarantee or warranty by the State of New Hampshire or any subdivision thereof pertaining to the operation and administration of the board or for the accuracy of the information provided.

CHAPTER I: ORGANIZATION

New Hampshire state law prescribes the requirements for the creation and organization of local land use boards, including planning boards. These laws are mandatory regarding the establishment of a planning board. This chapter is based on RSA 673, which provides the statutory framework for the workings of a planning board.

ESTABLISHING THE BOARD

Planning boards are established by vote of the local legislative body, i.e., town meeting in towns and the city or town council in municipalities with that form of government. Board members must be residents of the municipality. Generally, the role of the planning board is to provide for the orderly growth and development of the municipality; their only mandated duty is to prepare and, from time to time, amend a master plan. All other regulatory and non-regulatory functions are conveyed to the board by the legislative body (see Chapters II and III).

APPOINTMENT AND NUMBER OF BOARD MEMBERS

RSA 673:2 sets forth the procedures under which planning board members will be designated. These procedures differ depending on the municipality's form of government:

1. In cities with a mayor, the planning board must have 9 members comprised of the mayor or designee, an administrative official, a member of the city council selected by the council, and 6 other members appointed by the mayor or chosen in accordance with the city charter or as determined by the city council.

2. In cities with a city manager, the planning board shall have 9 members comprised of the city manager or designee, a member of the city council selected by the council, and 7 other persons appointed by the city manager, or as determined by the city charter or the city council.

3. In towns with a town council form of government, the planning board shall have 7 or 9 members. If 9, they are chosen according to the same procedure as that detailed in paragraph 1. If 7, one person must be a member of the town council or an administrative official of the town; the other 6 will be appointed by the mayor (if there is one), or as provided for by the town charter or the town council.

4. In all other towns, which represent the vast majority of the municipalities in New Hampshire, the planning board shall consist of either 5 or 7 members as determined by the local legislative body, which is the town meeting. The planning board members may be either appointed or elected, depending on the wishes of the town meeting. There shall be one selectman or administrative official of the town, selected by the other selectmen, who shall serve as ex officio on the planning board. A town that has voted to elect its planning board members may rescind that vote at town meeting and revert to an appointed board.

"Ex-Officio" means *"by virtue of the office."* An ex-officio member has all the same duties and responsibilities as any other member and can make motions and vote (RSA 672:5). The only distinction regarding the ex-officio member on the planning board is that he or she may not serve as chairperson of the board (RSA 673:9). An Alternate Ex-Officio member should be appointed by the Governing Body. If the ex-officio member is absent, the chair may only designate the person who has been appointed to serve as the alternate ex-officio member to act in their place (RSA 673:12).

5. In village districts, the planning board shall consist of either 5 or 7 members, as determined by the village district meeting. One district commissioner or administrative official shall be designated by the commissioners to serve as ex officio member, and the commissioners shall appoint the other 4 or 6 members.

6. In counties where there are unincorporated towns or unorganized places, the planning board shall have either 5 or 9 members. The county commissioners must recommend appointees to the planning board, and the appointees shall be approved by the county legislative delegation. The board shall consist of the chair of the board of commissioners or designee, a member of the county legislative delegation selected by the delegation (sometimes referred to as the county convention), an administrative official of the county selected by the chair of the board of commissioners, 2 or 6 persons appointed by the board of county commissioners as approved by the county convention, and 1 or 3 alternates appointed by the board of the county commissioners and approved by the county convention.

VACANCIES IN MEMBERSHIP

For elected planning board members, a vacancy is filled by appointment of the remaining board members until the next regular municipal election, at which time a successor shall be elected to either fill the remainder of the unexpired term or start a new term, as the case may be. If the vacancy is on an appointed board, or is an ex-officio or alternate member, it is filled by the original appointing or designating authority for the unexpired portion of the original term of office.

RSA 673:12 states that the chair of a local land use board may temporarily designate one of the board's alternate members to fill a vacancy on the board until that vacancy is permanently filled either by appointment (by the governing body) or by election, as the case may be. If the vacancy is for an ex officio member, however, the chair may only designate someone who is the alternate for that ex officio member.

TERMS OF BOARD MEMBERS

The term for all board members, whether elected or appointed, is three years. When a board is first established, the terms shall be staggered so that no more than three appointments or elections occur in one year in the case of a 7- or nine 9-member board, and no more than two appointments or elections in the case of a 5-member board. In situations where a qualified successor is yet to be appointed at the end of the appointed member's term, the member is entitled to remain in office until the position is filled.

The term of an ex officio member shall coincide with the term for that office, except:

(1) when the term of an administrative official appointed by a mayor shall terminate with the term of the mayor, or
(2) when the term of an administrative official appointed by a town council, the board of selectmen, or village district commissioners shall be for one year.

ALTERNATE MEMBERS

Planning boards may have up to 5 alternate members, as determined by the local legislative body. The term of an alternate member is 3 years. For appointed planning boards, the alternate members are appointed by the appointing authority; in the case of elected planning boards, the board itself appoints its alternate members.

Alternate members are encouraged to attend all planning board meetings. Furthermore, RSA 673:6, V authorizes alternate members to participate in meetings of the board as non-voting members pursuant to the board's adopted rules of procedure. Regular participation best prepares alternates to be ready to serve when called upon or to fill future vacancies. Alternate members may vote only when they are specifically designated to sit in the place of a member who is either absent or has disqualified him or herself. The chair designates which alternate shall serve in the place of a regular member; however, the selectmen must designate their alternate if the selectman ex officio cannot serve. The board should review its rules of procedure to make sure they define how and when an alternate may participate in a meeting of the board.

PLANNING BOARD MEMBERS SERVING ON OTHER BOARDS

Pursuant to RSA 673:7, the law prohibits more than one planning board member from also serving on the conservation commission, the board of selectmen, or any other local land use board (such as the zoning board of adjustment, historic district commission, etc.) as defined in RSA 672:7.

In 2019, RSA 673:7 was amended to remove the distinctions between the planning board members of towns and cities. Specifically, it removed certain prohibitions against appointed city planning board members holding other municipal office.

In counties with unincorporated towns or unorganized places, the county commissioners shall determine which members of the planning board may serve on other municipal boards or commissions.

REMOVAL OF MEMBERS

Regular and alternate members may be removed from the planning board only after a public hearing and only upon written findings of inefficiency, neglect of duty, or malfeasance in office. A written statement of reasons for removal must be filed with the city or town clerk, the village district clerk, or the clerk for the county commissioners, whichever is appropriate.

In the case of an appointed member, only the appointing authority may remove the member. The board of selectmen may remove an elected planning board member or alternate.

The term "inefficiency" seems like a much lesser standard than "neglect of duty" or, especially, "malfeasance." Good judgment and caution are urged if you are tempted to begin removal proceedings based on the inefficiency standard. When considering malfeasance, remember that the complete statutory phrase is "malfeasance in office." The malfeasance must relate to the performance of the land use board member's duties as a board member.

Finally, be aware that if a member is removed from office and then successfully appeals the removal to superior court, it is likely that the town will have to pay that person's attorney's fees, which could be a substantial cost. Consultation with your municipal attorney is strongly advised before beginning removal proceedings.

DISQUALIFICATION OF MEMBERS

RSA 673:14 Disqualification of Member

I. No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

III. If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place, as provided in RSA 673:11.

Any member who has a direct personal or pecuniary (financial) interest in the outcome of an application that differs from the interest of other citizens, must disqualify him or herself. The chairperson, when informed of this fact, would designate an alternate member of the board to act in place of the disqualified member. The records of the hearing should clearly note the disqualification and replacement by an alternate member. A recused member may wish to leave the meeting room for the duration of the public hearing and deliberations to quell even the notion of participation by the disqualified member.

Although not expressly mentioned in RSA 673:14, an abutting landowner is disqualified from hearing an application. The New Hampshire Supreme Court determined in the case of Totty v. Grantham Planning Board, 120 N.H. 388 (1980) "we hold that ownership of land abutting a proposed subdivision by a planning board member presents a conflict of interest and requires that the member be disqualified from voting thereon."

When there is a question as to whether a member should be disqualified, that member, or any other member of the board, may request the board to take a vote on the question. The request and the vote must be made prior to the public hearing. Any such vote is advisory and non-binding, and may not be requested by anyone other than a board member, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1. Consultation with your municipal attorney is strongly advised before beginning disqualification proceedings.

Further, a member must step down from hearing an application if he or she would be disqualified for any cause to act as a juror if the matter were to go to trial. The New Hampshire Supreme Court, in a discussion of the test for disqualification of board of adjustment members, said "...they (must) meet the standards that would be required of jurors in the trial of the same matter... A juror may be disqualified if it appears that he or she is 'not indifferent'." *Winslow v. Town of Holderness Planning Board*, 125 N.H. 262 (1984) (citations omitted). In that case the court applied the test to a planning board member because the board was acting in a quasi- judicial capacity. The decision reached by the board was ruled invalid even though the disqualified member's vote was only one of six affirmative votes, because "... it was impossible to estimate the influence one member might have on his associates." *Id.*

RSA 500-A:12 Examination

I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:

(a) Expects to gain or lose upon the disposition of the case;
(b) Is related to either party;
(c) Has advised or assisted either party;
(d) Has directly or indirectly given his opinion or has formed an opinion;
(e) Is employed by or employs any party in the case;
(f) Is prejudiced to any degree regarding the case; or
(g) Employs any of the counsel appearing in the case in any action then pending in the court.

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

ABOLITION OF PLANNING BOARD

In towns with a town meeting form of government, a planning board may be abolished by a vote at town meeting, brought by petition signed by at least 100 voters, or 1/10 of the registered voters in town, whichever is less. In cities, counties and towns with town councils, the local legislative body shall determine the manner in which the board may be abolished.

The effect of abolishing a planning board is that all land use control activities performed by the board will cease upon the effective date of the abolition. Existing zoning ordinances remain in effect for no longer than two years from this date; during this two-year period, no amendment to the zoning ordinance is permitted that would require action by the former planning board.

OSI does not recommend that planning boards be abolished. OSI strongly recommends that before any decision is made regarding the abolishment of a planning board, the board enlist the advice of their town attorney and other consultants to fully understand and appreciate the ramifications of abolishment.

What happens with all records if the planning board is abolished?

Pursuant to RSA 673:21.II, whenever a planning board is abolished, the records shall be transferred to the city or town clerk, to the clerk of the board of district commissioners or to the clerk for the county commissioners, whichever is appropriate.

SCHEDULING OF MEETINGS

Under RSA 673:10, planning boards are required to meet at least once a month. The board may meet more often, at the call of the chair, and at any other time the board determines. If there are no applications pending before the board, it must still hold a monthly meeting, which will afford a great opportunity to discuss and debate community planning goals and the land use tools necessary to help achieve them.

In order to transact any business, a quorum of the board must be present, which is a simple majority of the board (3 members with a 5-member board, and 4 members with a 7-member board). Absent members cannot vote by proxy or by some communication to the board such as a letter or e-mail.

ACCESS TO PUBLIC RECORDS AND MEETINGS

All meetings of the planning board are subject to New Hampshire's Right to Know Law, RSA 91-A. A "meeting" occurs whenever a quorum of board members convenes in person, by phone, e-mail or by any other electronic means to discuss or act upon a matter over which the board has supervision, control, jurisdiction, or advisory power (RSA 91-A:2). A discussion alone is enough to make a meeting; the board does not have to make a decision in order to be involved in a public meeting.

Meetings may not be held via e-mail, online chat, or any method in which the public cannot hear, read or discern the discussion as it happens. In other words, all members must be able to hear and speak with each other, and the public must be able to hear or perceive both sides of the conversation as it occurs. Members may be allowed to participate in meetings by telephone or video conference when physical attendance is not reasonably practical, so long as a quorum is still physically present at the advertised meeting location.

All meetings require at least 24-hour notice (unless a public hearing is involved; public hearing notice requirements are addressed in Chapter IV) and all meetings and records of those meetings must be open to the public. Minutes must be kept and are to be available to the public within 5 business days after the meeting, but within 72 hours for any non-public session unless two-thirds of the members vote to seal the minutes under the provisions of RSA 91-A:3, III.

A "governmental record," as defined in RSA 91-A:1-a, III, is any information created, accepted, or obtained by or on behalf of any public body or a quorum of its membership. This includes any written communication or other information, whether in paper, electronic, or other physical form.

Is any person at a public meeting allowed to use recording devices including, but not limited to, tape recorders, cameras, and videotape equipment?

YES. See RSA 91-A:2 II.

Be aware that all governmental records (minutes, tapes, handwritten notes, etc.) are considered part of the public record, so the public has a right to review and inspect them. If the board tape-records its meeting, those tapes must be available for review. However, if the tapes are used to make a transcript of the meeting, (i.e., the minutes) that too is a governmental record and must be made available. RSA 91-A:4, III-a specifies the required retention period for electronic governmental records and states: "Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III."

Once the board accepts the written minutes, they become the official record of the meeting and the tape no longer needs to be kept unless the board wishes to do so, whereby it too becomes a governmental record to be retained by the board. Some boards immediately tape over the previous meeting; others save the tape until any appeal period has passed. Whichever procedure the board follows should be spelled out in the board's rules of procedure.

RSA 91-A requires minutes to include the names of members present, persons appearing before the board, a brief description of the subject matter discussed, names of members who made and seconded each motion, and any final decisions made by the board. Good practice is to include more in the minutes to provide a full and accurate record of the proceedings of the meeting.

The administrator should create the initial minutes including at least the minimum required by RSA 91-A, make them available to the public, and distribute them to board members within 5 business days after the meeting. During the interim before the board meets again, if the administrator expands upon these initial minutes to include additional details and a fuller record of the discussions and content of the meeting, this expanded document should be distributed to the board for the members to review, amend as needed, and vote to adopt at the next meeting.

The initial minutes and subsequent expanded document, if there is one, are both governmental records and must be made available to the public.

All governmental records should be kept at the board's regular place of business. Requests for copies of governmental records should be promptly complied with. If prompt compliance is not possible, then the records should be made available within 5 business days, or the individual should be told the reason for denial of the request or provided with a statement as to when the requested record can be made available. A person requesting governmental records may be charged administrative costs, but those costs may not exceed actual costs.

THE RIGHT-TO-KNOW LAW

Background. Openness in the conduct of government is an essential principle of democratic government. Although the Right-to-Know law wasn't enacted until 1967, openness in government is not a recent notion in New Hampshire. RSA 41:61, dating back to 1885, requires that all municipal records "shall be open at all proper times for public inspection and examination."

Constitution. Open and accountable government is an explicit requirement of the New Hampshire Constitution:

> "All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted."
>
> NH Constitution, article 1, pt. 8

Preamble. The preamble to RSA 91-A, commonly known as the Right-to-Know law, states the legislature's intent in enacting the law:

> "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people."

Minimum Standard. The law establishes certain procedures to be followed by governmental bodies in the conduct of their affairs and establishes certain rights of access by members of the public to two important aspects of those bodies - their meetings and their records. The courts have generally construed very liberally the provisions of this law. The law is intended to assure that public bodies conduct their business in an open and fair manner. Provisions of the law can be complied with by planning ahead to meet notice requirements and deadlines.

The Right-to-Know statutes represent the minimum acceptable standards under the law. More stringent requirements apply in some instances, either by state statute or local ordinance. The Right-to-Know law has been amended over the years and now provides direction on how to deal with

electronic communications and records that did not exist when the law was first enacted in 1967. Board members should be especially careful about using e-mail to conduct business. One-way e-mail communication is generally permissible but constitutes a "governmental record" subject to disclosure (see RSA 91-A:1-a, III). However, members should not reply to e-mails because doing so may constitute an un-noticed "meeting."

All governmental records must be kept at the office of the public body so any e-mail sent to all the members should also be sent to the town office. After consultation with Town Counsel, the Board may wish to consider adding a disclaimer to all planning board e-mails advising that correspondence is a "governmental record" and subject to the Right-to-Know law.

For more information, please consult with the NH Attorney General's Right-to-Know law memorandum: www.doj.nh.gov/civil/publications.htm.

RULES OF PROCEDURE

The rules of procedure shall be adopted at a regular meeting of the board, and OSI suggests amending rules as part of a public hearing. Rules of procedure shall be placed on file with the town clerk for public inspection.

Must the planning board adopt rules of procedure?

YES. See RSA 676:1.

The principal statutory source of rules governing planning board procedures on subdivision plats is found in RSA 676:4, but the board's own rules of procedure should supplement and "fill in the gaps" as to those procedural questions that are not covered in the statutes. The rules govern all of the board's activities and are not limited to only subdivision review.

The rules should address internal procedures of the planning board, including, but not limited to, swearing in of members; organization of the board; time and place of the meetings; process for conducting public hearings; allowing the public to speak; materials presented at a public hearing; and delegation of certain tasks to a board clerk, secretary or municipal planning staff such as the taking and keeping of minutes and other records of the board. The rules should also address the procedure for when there are Joint Hearings with other boards and commissions. See RSA 676:2

Rules of procedure not only inform the public about how business is conducted (for example, what order of business is followed), but it also helps the board stay on track when there are difficult issues to resolve. They can be used to answer certain questions the public and applicants might have about such things as site visits for applications, how minutes are recorded and made official, the places for posting public notices, and when alternate members may participate in board matters. Rules of procedure should also address the procedures to be followed during a public hearing. These procedures should provide for requests to alter the order of business; typically, the chair would make that determination without a board vote. The board may wish to consult with the town attorney before finalizing their rules of procedure if the changes involve legal questions.

ELECTION OF OFFICERS

Each local land use board shall elect its chair from the appointed or elected members and may create other offices it deems necessary as described in RSA 673:9. An ex officio member (city council or selectmen's representative) may not serve as chair. Officers serve for one year (RSA 673:9). The chair shall preside over meetings and is typically responsible for conduct and decorum of the meeting. The chair has the responsibility to ensure that all parties receive a full and fair hearing before the board and to ensure rules of procedure and applicable state laws are followed.

A board may want to consider electing a vice-chair who shall preside over meetings and assume the duties of the chair in his/her absence. If the vice-chair is also absent, then the secretary shall assume the chair's duties.

PLANNING BOARD RECORDS

Keeping accurate records of the planning board's activities is extremely important. In the event of a challenge to a decision made by the board, the completeness of the records is vital to its defense.

Among the matters that should be carefully documented are:

- The time and location of notices that are posted and published;
- The list of abutters provided by applicants and the dates that notices are mailed;
- Meeting agendas that list public hearings and applications that are under discussion;
- The dates on which applications are submitted to the board;
- The dates on which applications are accepted as complete by the board and the 65-day review period begins;
- Any extensions that are granted or deadlines that are waived;
- Conditions that are placed on approvals; and
- Written decisions that must be on file within 5 business days.

HOW TO RUN A MEETING

The board has discretion to determine its own order of business at its meetings, and should do so. As noted above, the rules of procedure are a good vehicle for making this information available to the public and new board members. Board meetings should be conducted in a business-like fashion, they should be fair, and they should always follow correct legal procedures as applicable.

Although not required by statute, it is a good idea to prepare an agenda in advance and post it in at least two public places and a town website if one exists. This informs the applicants and the public about the business before the board and the order in which applications will be heard or business the board will discuss.

Who *MUST* be heard at a public hearing?

The applicant or appellant, abutters, holders of interests such as conservation easements, "and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration."

Who *MAY* be heard?

Anyone, at the discretion of the board.

See RSA 676:7, I(a).

The chair should open the meeting by going formally on the record, announcing the date and place of the meeting and recording the names of all regular and alternate members present for the record. If the board has a practice of concluding business at a certain time, this should be announced at this point. It can be helpful for the chair to introduce the board members and give a brief explanation of the roles and responsibilities of the board relative to the business at hand. The order of business is then followed, based on the board's adopted rules of procedure.

All persons speaking should address only the board. The chair should not allow cross-witness arguments or cross-examination. Questions may be raised (e.g., abutter question to an applicant) but the questioner should address the chair and the chair should repeat the question in a manner that is impartial and seeks the type of information the board needs to make its decision.

It is common for parties to assume they have an absolute right to read a 10-page single-spaced letter "into the record." Wrong!

Explain to them that the letter will be read by board members and is already part of the record. Give them 2 to 3 minutes to highlight important points. Best practice would be to address this issue in the Rules of Procedure to provide clarity to the public before it becomes an issue.

Keep in mind, the planning board is not at the mercy of applicants or other parties. The chair should set some parameters in advance; ask applicants how much time they reasonably need and hold them to it.

DEVELOPMENT OF REGIONAL IMPACT

All local land use boards are required to determine whether an application before it is a "development of regional impact" (RSA 36:54).

In such cases, hearing notification to neighboring municipalities and to the regional planning commission must be made 14 days in advance and representatives from neighboring municipalities and the regional planning commission have the right to testify, but not the right to appeal. The board should consider adding what the criteria are and how to determine a Development of Regional Impact in their own land use regulations to suit their community's needs and consult with the town attorney.

Criteria for regional impact (RSA 36:55) include, but are not limited to, the following:

- **The relative size and number of dwelling units involved (if a subdivision) over a period of time or the phasing of a commercial or residential development;**
- **The proximity of the development to a municipal boundary;**
- **Impact upon transportation networks;**
- **Anticipated emissions, such as light, noise, smoke, and odors;**
- **Proximity to regional aquifers or surface waters;**
- **Shared facilities**

Decisions on the potential for regional impact are formal actions of the board. When the planning board accepts an application as complete, it should also take a vote to determine if the proposed development might have a regional impact or not. If a determination of a development of regional impact is made, the board should not take any further action on the application and continue it to a specific date and time. This would give the board enough time to properly notice adjacent municipalities and regional planning commissions. Southern New Hampshire Planning Commission has worked with its member communities to develop detailed guidelines for evaluating regional impacts of proposed developments. For additional information, visit: http://www.snhpc.org/

SITE VISITS

Despite authority the statutes may seem to grant, planning board members have no right to trespass on private property without the permission of the property owner. Otherwise, constitutional due process violations may result, giving rise to a civil rights action against the municipality, the planning board and its members. The board should always get permission from the property owner to visit the site. The board could consider adding a 'permission clause' to the planning board application indicating that by signing and submitting the application, the property owner grants permission for the board to access private property. The board may want to consider a consultation with the town attorney before making any final changes to the application.

- If the permission is refused, the board normally would deny an application for failure of the applicant to allow the board to get sufficient information.
- Individual board members may visit a site (with permission) and, as long as there is no quorum of the board, the Right-to-Know law does not apply (public meeting and minutes requirements).
- If a quorum attends a site visit, it is a 'meeting' under the Right-to-Know law. Notice is required, as well as minutes.
- Since it is a meeting, a site visit must also provide for the public to attend and observe.
- If the applicant refuses access to the non-board public, that also may be a basis for denial (without prejudice).

CHAPTER II: NON-REGULATORY FUNCTIONS

THE MASTER PLAN

Since local master plans impact not only the individual municipality but the region as well, it is strongly recommended that planning be conducted in the context of a wider area. In this way, the special historical and cultural qualities of the municipality, the region, and the state can be protected. It was with this intent that the legislature made significant amendments to the master planning statutes in 2001 – to provide more definitive guidance to planning boards in planning and managing future growth.

The statutes describing the individual elements of a master plan were rewritten and reorganized, and several new elements were added. All sections of a master plan should be designed to be consistent with each other.

In addition, planning boards and regional planning commissions are encouraged to develop their municipal and regional plans to be consistent with the policies and priorities established in the State Development Plan, which must be created in consultation with local officials, representatives of the business and environmental community, and the general public.

WHAT IS A MASTER PLAN?

Preparing a Master Plan for your Community was developed by Southern New Hampshire Planning Commission and states, in the simplest terms, that a master plan is a planning document that serves to guide the overall character, physical form, growth and development of a community. It is the basis in which a municipality's land use regulations come from. It describes how, why, where and when to build or rebuild a city or town. It provides guidance to local officials making decisions on budgets, ordinances, capital improvements, zoning and subdivision matters, and other growth-related issues.

According to RSA 674:2,

"The master plan shall be a set of statements and land use and development principles for the municipality with such accompanying maps, diagrams, charts and descriptions as to give legal standing to the implementation ordinances and other measures of the planning board."

A master plan provides an opportunity for community leaders to look ahead, establish new visions and directions, set goals, and map out plans for the future. Properly done, a master plan should describe where, how, and at what pace a community desires to develop physically, economically, and socially. In short, a master plan functions much like a roadmap or a blueprint; it is a guide to the future.

This language typically translates into a format common to most master plans:

- Inventory of current conditions;
- Recommendations for future land use in the community;
- Set of policy goals and recommendations to achieve the future land use recommendations.

WHY HAVE A MASTER PLAN?

RSA 674:1 makes it the duty of every planning board to "prepare and amend from time to time a master plan to guide the development of the municipality."

- Envision the best and most appropriate future development of the community;
- Aid the planning board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire;
- Guide the planning board in the performance of its duties, to achieve principles of smart growth, sound planning and wise resource management;
- Establish statements of land use and development principles; and
- Establish legal standing for implementation of ordinances and other planning board regulations.

While the master plan is not a legal document, it does provide the legal basis for zoning and other land use regulations. Specifically, in order to adopt a zoning ordinance, the planning board must have adopted a master plan with, at a minimum, a Vision section (formerly Goals and Objectives) and a Land Use section. In addition, certain types of ordinances cannot be legally adopted unless an up-to-date master plan is in place (these are discussed in Chapter III).

A master plan is a legal prerequisite for the following:

– Adoption of a zoning ordinance (RSA 674:18);

– Adoption of a historic district (RSA 674:46-a IV);

– Establishment of a capital improvement program (RSA 674:6); and

– Adoption of a growth management ordinance (RSA 674:22).

CHARACTERISTICS AND ELEMENTS OF A MASTER PLAN

As stated in *The Practice of Local Government Planning* (Hollander, Pollock, Reckinger, and Beal, 2nd ed., Washington; International City Management Association, 1988, So and Gretzels, editors, pp. 60-61) a master plan has the following characteristics:

- First, it is a physical plan. Although a reflection of social and economic values, the plan is fundamentally a guide to the physical development of the community. It translates values into a scheme that describes how, why, when, and where to build, rebuild, or preserve the community.
- A second characteristic is that it is long-range, covering a time period greater than one year; usually five years or more.
- A third characteristic of a general development plan is that it is comprehensive. It covers the entire municipality geographically – not merely one or more sections. It also encompasses all the functions that make a community work such as transportation, housing, land use, utility systems, and recreation. Moreover, the plan considers the interrelationships of functions.
- Finally, the master plan is a guide to decision-making for the planning board, the governing body and other municipal officials.

Another important characteristic of the master plan is that it is a statement of public policy. The plan translates community values, desires, and visions into land use regulations and development principles that can guide the future growth of the municipality. The policies of the plan provide the basis upon which public decisions can be made.

RSA 674:2 has been amended several times and expanded the elements of a master plan from 10 to 15. The only required elements continue to be the Vision section and a Land Use section and, as before, these are the two elements required to support a zoning ordinance.

According to RSA 674:2, II, the Vision section should serve to direct the other sections of the plan. It must contain a set of statements that articulate the desires of the citizens affected by the plan, not only for their locality, but for the region and the state as well. Finally, it must contain a set of guiding principles and priorities to implement that vision.

The Land Use section serves as the basis for the other sections of the plan. In this section, the vision statements are translated into physical terms. It should be based on a study of population, economic activity, and natural, historic, and cultural resources. This section must show existing conditions and the proposed location, extent and intensity of future land use.

RSA 674:2, III states that the master plan may also include the following sections:

Transportation. Considers all pertinent modes of transportation and provides a framework for both adequate local needs and for coordination with regional and state transportation plans.

Community Facilities. Identifies facilities to support the future land use pattern, meets the projected needs of the community, and coordinates with other local governments, special districts and school districts, as well as with state and federal agencies that have multi-jurisdictional impacts.

Economic Development. Proposes actions to suit the community's economic goals, given its economic strengths and weaknesses in the region.

Natural Resources. Identifies and inventories any critical or sensitive areas or resources, not only those in the local community, but also those shared with abutting communities. This section, which may specifically include a water resources management and protection plan, shall provide a factual basis for any land development regulations that may be enacted to protect water resources and other identified natural areas. A key component in preparing this section is to identify any conflicts between other elements of the master plan and natural resources, as well as conflicts with plans of abutting communities. Nothing in this subparagraph shall be construed to permit municipalities to regulate surface or groundwater withdrawals that they are explicitly prohibited from regulating.

Natural Hazards. Documents the physical characteristics, severity, frequency, and extent of any potential natural hazards to the community. It should identify those elements of the built environment at risk from natural hazards as well as the extent of current and future vulnerability that may result from current zoning development practices.

Recreation. Shows existing recreation areas and addresses future recreation needs.

Utility and Public Service. Analyzes the need for and shows the present and future general location of existing and anticipated public and private utilities, both local and regional, including telecommunications utilities, their supplies, and facilities for distribution and storage.

Cultural and Historic Resources. Identifies cultural, archeological, and historic resources and protects them for rehabilitation or preservation from the impact of other land use tools such as land use regulations, housing, or transportation. Such sections may encourage the preservation or restoration of stone walls, provided agricultural practices as defined in RSA 21:34-a are not impeded.

Regional Concerns. Describes the specific areas in the municipality of significant regional interest. These areas may include resources wholly contained within the municipality or bordering, or shared, or both, with neighboring municipalities. The intent of this section is to promote regional awareness in managing growth while fulfilling the vision statement.

Neighborhood Plan. Focuses on a specific geographical area of local government that includes substantial residential development. This section is to be considered a part of the local master plan, and must be consistent with it. No neighborhood plan can be adopted until a local master plan is adopted.

Community Design. Identifies positive physical attributes and provides for design goals and policies for planning in specific areas to guide private and public development.

Housing. Assesses local housing conditions and projects future housing needs of residents of all levels of income and ages in the municipality and the region (as identified in the regional housing needs assessment performed by the regional planning commissions) and which integrates the availability of human services with other planning undertaken by the community.

Energy. Includes an analysis of energy and fuel resources, needs, scarcities, costs, and problems affecting the municipality and a statement of policy on the conservation of energy.

Implementation. Sets forth a long-range program detailing the specific actions, time frames, and allocation of responsibilities for the many tasks and regulations to be adopted to implement the goals of the plan and procedures that may be used to monitor and measure the effectiveness of each section of the plan.

Coastal Management. Addressing planning needs resulting from projected coastal property or habitat loss due to increased frequency of storm surge, flooding, and inundation.

ADOPTION AND AMENDMENTS

As provided by RSA 674:4, the master plan is adopted by the planning board after a duly noticed public hearing (see Appendix B). Master plan adoption is not done by town meeting, as is required for the adoption of zoning amendments. The master plan may be adopted one section at a time or as a whole. Any amendments, extensions or updates of the plan are subject to the same public notice procedure as the initial adoption.

How often should a master plan be updated?

RSA 674:3, II includes language that recommends a revision to the master plan every 5 to 10 years. It is also recommended that a water resources management and protection plan should be reviewed and revised every 5 to 10 years.

The Planning Board may wish to review the Master Plan annually or bi-annually to make sure information is still applicable and meets the goals and vision of the community.

A good rule of thumb is to ask the question: "Have conditions in town changed sufficiently since the last master plan to warrant a reexamination of its policies and recommendations?" This would especially apply if significant zoning amendments were being considered. In this case, the master plan should always be reviewed since, as noted above, the zoning ordinance is supposed to represent the implementation of the master plan. If zoning amendments are being proposed that are at odds with the master plan, something needs to be done. Either the master plan needs to be updated to reflect new circumstances, or the zoning amendments should be considered inconsistent with the goals of the master plan.

Also, remember to file a certified copy of the master plan and its various amendments with the town or city clerk's office. RSA 675:6, III provides that the master plan, as well as subdivision, site plan, and historic district regulations, are not legal or have any force and effect until copies are filed with the town or city clerk.

MASTER PLAN PREPARATION

RSA 674:3 states: "In preparing, revising, or amending the master plan, the planning board may make surveys and studies, and may review data about the existing conditions, probable growth demands, and best design methods to prevent sprawl growth in the community and the region. The board may also consider the goals, policies, and guidelines of any regional or state plans, as well as those of abutting communities."

Pursuant to RSA 674:3, during the preparation of the master plan, the board is required to inform the general public and to solicit comments regarding the future growth of the community. The board is also required to inform the general public, the NH Office of Strategic Initiatives, and the regional planning commissions and solicit public comment.

9 Steps of the Master Planning Process

Step 1 **The Planning Board should designate a Master Plan Steering Committee to assist the board with the organization of master plan. The committee should be made up of at least one planning board member and include members from the public, town departments, and other land use boards and commissions.**

Step 2 **Community visioning meeting; engaging the public and developing vision statements, goals and objectives. Recruiting participation is key to success.**

Step 3 **Data collection and inventory; preparing the community survey and existing land use map.**

Step 4 **Data analysis; formulating future development scenarios based on vision statements, the community survey and land use maps.**

Step 5 **Evaluating future development scenarios.**

Step 6 **Selecting a preferred development scheme (the future land use map) and preparing and adopting a plan.**

Step 7 **Implementing the plan.**

Step 8 **Monitoring the plan.**

Step 9 **Amending and updating the plan. The planning board should review the master plan every few years to determine if the chapters and goals are keeping pace with the growth of the community.**

For a step-by-step guide to the process of developing a master plan, refer to "Preparing a Master Plan for your Community" developed by Southern Regional Planning Commission in 2004 and available at: http://www.snhpc.org/.

THE CAPITAL IMPROVEMENTS PROGRAM

The capital improvements program, known by the acronym CIP, links local infrastructure and equipment investments with Master Plan goals, land use ordinances, and economic development. A capital improvements program bridges the gap between planning and spending, between the visions of the Master Plan and the fiscal realities of improving and expanding community facilities.

A CIP is an outline of anticipated expenditures for capital projects projected over a period of at least 6 years. Capital projects are those that relate to infrastructure and the purchase of land and, in some cases, engineering studies. Capital projects do not include regular maintenance and operations.

Authorization

RSA 674:5 empowers the local legislative body to authorize the planning board to prepare and amend capital improvements programs only in municipalities that have adopted a Master Plan. As an alternative, the legislative body may authorize the governing body to appoint a capital improvements program committee to prepare a CIP. This committee must have at least one member of the planning board and may include, but is not limited to, other members of the planning board, the budget committee, or the town or city governing body.

Purpose of a Capital Improvements Program

The CIP must classify projects according to the urgency and need for realization, and must recommend a time sequence for implementation. The CIP may also contain the estimated cost of each project as well as the sources of revenue. The program must be based on information submitted by the departments and agencies of the municipality and must take into account public facility needs indicated by the prospective development shown in the Master Plan of the municipality or as permitted by other municipal land use controls.

Capital improvements programming affords a municipality numerous benefits, including:

- Preserving public health, safety and welfare;
- Anticipating the demands of growth;
- Improving communication and coordination;
- Avoiding undue property tax increases;
- Developing a fair distribution of capital costs;
- Building a foundation for growth management and impact fees;
- Identifying "scattered and premature" development;
- Supporting economic development.

Preparation of the Capital Improvements Program

While preparing the capital improvements program, the planning board or committee must consult with the mayor or the board of selectmen and other local agencies or boards, including the school board, and must review the recommendations of the Master Plan in relation to the proposed capital improvements.

Also, whenever the planning board or capital improvements program committee is authorized to prepare a CIP, all municipal departments and every affected school district must, upon request of the board or committee, provide a statement of all capital projects it proposes to undertake during the term of the program. The planning board or committee must then study each proposed capital project and advise and make recommendations to the department, authority, agency, or school district concerning the relation of its project to the capital improvements program being prepared.

Adoption

Develop a time sequence for CIP expenditures over a period of at least six years. Adjust the starting dates for projects and modify the annualized tax impact of capital improvements using bond financing, capital reserve accounts, and other revenues.

Strive for an annual level of capital expenditures that approximates an affordable level of local tax expenditures for new capital improvements and that keeps the tax rate relatively stable.

RSAs 674:5 through 674:8 describe the preparation and effect of the CIP, but contain no specific guidelines for the adoption of a capital improvements program or capital budget. It is recommended that the program be adopted by the planning board or CIP committee under the same process used for adoption of the Master Plan. Generally, this procedure requires at least one public hearing prior to adoption, unless there are substantive changes made as a result of the comments received at the public hearing. A certified copy of the plan is then filed with the city or town clerk and the NH Office of Strategic Initiatives. While adoption procedures are absent from the statute, RSA 675:9 specifically requires that a copy of any "capital improvements plan" which is adopted must be filed with the NH Office of Strategic Initiatives.

STEPS FOR THE COMPLETION OF A CIP

Step 1 **Organize for the CIP process.**
Step 2 **Define capital projects.**
Step 3 **Perform a fiscal analysis.**
Step 4 **Review the master plan.**
Step 5 **Communicate with departments.**
Step 6 **Review proposed capital projects.**
Step 7 **Prepare a 6-year project schedule.**
Step 8 **Adopt and implement the CIP.**

RELATIONSHIP OF CIP ADOPTION TO LAND USE REGULATIONS

While the statutes do not specify an adoption procedure for a CIP, the laws governing implementation of certain land use regulatory procedures, such as impact fee and growth management ordinances, do require CIP adoption. An adopted CIP may also have a functional role in the review of subdivisions and site plan applications and the impact of their development on municipal services and costs.

CHAPTER III: REGULATORY FUNCTIONS

Drafting, reviewing and recommending ordinances, regulations and amendments.

Subdivision and Site Plan Review Regulations.

PURPOSE OF SUBDIVISION REGULATIONS (RSA 674:35)

Subdivision control guides municipal development, protects prospective residents and abutting property owners from problems associated with poorly designed areas, and advances the purposes of the municipality's police power: to protect the public health, safety, and general welfare. Subdivision controls are based on the premise that a new subdivision is not an island but an integral part of the whole community which must mesh efficiently with the municipal pattern of streets, sewers, water lines and other installations that provide essential services and vehicular access. Peter Loughlin, Volume 15, New Hampshire Practice Series, §29.02.

Regardless of whether or not a municipality has adopted a zoning ordinance, the legislative body may authorize the planning board to regulate the subdivision of land (RSA 674:35). The planning board must adopt regulations before exercising this power. See RSA 674:36 for a list of provisions that may be included in subdivision regulations.

"Subdivision" means the division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development.

It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. (RSA 672:14, I)

PURPOSE OF SITE PLAN REVIEW REGULATIONS (RSA 674:43)

In addition to subdivision review authority, municipalities may regulate site plans for non-residential, as well as multi-family, housing development. Site plan review is one of the most useful techniques in modern land use control. It is an important device to ensure that uses that are permitted by the zoning ordinance are constructed in such a way that they fit into the area in which they are being constructed without causing drainage, traffic, lighting, or similar problems.

A site plan may be required to be submitted to the planning board prior to development of a particular tract of land. The plan must show the proposed location of the buildings, parking areas, landscaping, drainage, and other installations on the plot and their relationship to existing conditions such as roads, neighboring land uses, natural features, public facilities, ingress and egress roads, interior roads and similar features.

The authority to review site plans for non-residential and multi-family housing development, whether or not it involves the subdivision of land, may be delegated to the planning board by vote of the municipality's legislative body, but only in municipalities that have adopted a zoning ordinance and subdivision regulations (RSA 674:43). Site plan review regulations, which are adopted by the planning board, may govern adequate drainage, protection of groundwater quality, provision of "open spaces and green spaces of adequate proportions," fire safety, and other similar issues.
(RSA 674:44).

"Multi-family" is defined as any structure containing more than two dwelling units. Therefore, creation of a duplex house is exempt from site plan regulations.

Similarly, mobile home parks are not subject to site plan review because such parks are a residential use of land and there are no multi-family structures. (RSA 674:43, I)

STEPS TO ALLOW THE REGULATION OF SUBDIVISIONS AND SITE PLAN REVIEW

Before a municipality may regulate the subdivision of land or review site plans within its boundaries, it must:

(1) Establish a planning board; and
(2) the planning board must be granted authority by the legislative body to regulate subdivisions and site plans.

Further, the board must adopt specific subdivision and site plan review regulations. What follows is a step-by-step guide to the authorization and adoption of subdivision and site plan review regulations.

Step 1. Establish a Planning Board (RSA 673:1)

The municipal legislative body, which is a city or town council, or a town or village district meeting, must first vote to establish a planning board. The composition of a planning board is set forth in RSA 673:2. Board members may be elected or appointed, as determined by the legislative body, but each member must be a resident of the municipality. It is the duty of this newly established board to adopt rules of procedure as well as maintain accurate records of its proceedings.

Step 2. Grant Authority (Subdivisions-RSA 674:35, I; Site Plans-674:43, I)

Establishment of a planning board does not confer on it the power to approve or disapprove plans for subdivision of land and site plan review. Separate action by the legislative body is required. In a city, the city charter prescribes the correct form of the ordinance or resolution that authorizes a planning board to regulate subdivisions and site plan review. In a town, an article in the town meeting warrant is required to provide the authorization. The authorizing article may be voted on at the same town meeting that establishes the planning board, or at a later town meeting.

Upon being granted subdivision approval authority by the legislative body, the planning board has the power to regulate the proper arrangement and coordination of streets within subdivisions. However, RSA 674:35 (Power to Regulate Subdivisions) was amended in 2014 to allow municipalities that have granted the planning board subdivision approval authority to delegate to the governing body the authority to approve plans showing the extent to which and the manner in which streets within subdivisions will be graded and improved. It takes approval of a town meeting warrant article or a city council resolution to delegate this authority to the governing body.

Step 3. File Authorization (RSA 674:35, II and 674:43, II)

The municipal clerk, or other official charged with such responsibility, must file a notice with the county register of deeds certifying that the planning board has been authorized to regulate subdivisions and/or site plans, and stating the date of the authorization. It is recommended that the register of deeds be notified again when the planning board has adopted subdivision and site plan review regulations since the board cannot act on applications for subdivision or site plan review before the regulations are prepared and adopted.

Step 4. Prepare Subdivision and Site Plan Review Regulations

Preparing Subdivision Regulations (RSA 674:36)

Subdivision regulations should:

a. Provide against the scattered or premature subdivision of land where such public services as water supply, transportation, fire protection or schools are lacking, or the excessive expenditure of public funds would be required to provide them;

It is important to note that this section of the statutes is permissive. If the planning board wishes to address the issues, the subdivision regulations must specifically include each item listed.

b. Provide for the harmonious development of the municipality and its environs;

c. Provide that streets be adequate to handle existing and prospective traffic and be coordinated within the subdivision and in relation to existing streets;

d. Provide for adequate open spaces, parks, and recreation areas to serve the needs of the neighborhood;

e. Require that lot sizes comply with zoning requirements and be sufficient to handle on-site sewage disposal, if necessary;

f. Require that the land be suitable for building purposes;

g. Encourage the installation of renewable energy systems such as solar and wind, and protect access to energy sources by:
   - regulating the orientation of streets, lots and buildings,
   - establishing maximum building height and minimum setback requirements,
   - limiting the type, height and placement of vegetation, and
   - encouraging the use of solar skyspace easements (RSA 477)

h. Provide for efficient and compact subdivision development to promote retention and public usage of open space and wildlife habitat;

i. Create conditions favorable to the health, safety, convenience or prosperity of the municipality;

j. Require innovative land use controls when supported by the master plan;

k. Include waiver provisions (see Chapter IV for more information on waivers); and

l. Consider adopting the application and checklist as part of the subdivision regulations.

RSA 674:36, IV prohibits municipalities from enacting subdivision regulations that require the installation of fire suppression sprinkler systems in one- or two-family residences. However, that statute was amended in 2013 to recognize that applicants may voluntarily offer to install fire suppression sprinkler systems in one- or two-bedroom residences and, if the offer is accepted by the planning board, installation of such systems shall be required and shall be enforceable as a condition of the approval. The applicant or the applicant's successor in interest may substitute another means of fire protection in lieu of the approved fire suppression sprinkler system, provided that the planning board approves the substitution.

That said, it is worth noting that it appears that a local fire chief may require sprinklers for one and two-family structures if the specific site conditions make access difficult. See Atkinson v. Malborn Realty Trust, 164 N.H. 62 (2012) (finding in part that the local fire chief has the authority, through the National Fire Protection Association regulations to require residential sprinklers when unique site or building conditions warrant them).

Preparing Site Plan Review Regulations (RSA 674:44)

Local site plan review regulations which must be adopted by the planning board shall include:

a. The procedures the board must follow in reviewing site plans;

b. A provision defining the purpose of site plan review (at a minimum, the general language provided in the statute should be incorporated);

c. A specification of the general standards and requirements that must be met "including appropriate reference to accepted codes and standards for construction;"

d. Provisions for guarantees of performance, including bonds or other security; and

e. Waiver provisions (see Chapter IV for more information on waivers).

Additionally, site plan review regulations may include:

a. Provide for the safe and attractive development or modified use of the site and protect against conditions that could pose a danger or injury to health, safety or prosperity due to:
   - inadequate drainage that may contribute to flooding,
   - inadequate protection of groundwater quality,
   - increased undesirable, yet preventable, noise, air, light, or other pollution, and
   - inadequate fire safety, prevention or control.

b. Provide for the harmonious and aesthetically pleasing development of the municipality and its environs;

c. Provide for adequate proportions of open spaces and green spaces;

d. Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;

e. Require that streets be suitably located and sized, usually to road standards adopted by the municipality, to accommodate existing and future traffic and access to emergency vehicles and services;

f. Require that plats depicting new streets or the resizing of existing streets be submitted to the planning board for approval;

g. Require that land be suitable for building purposes without posing health risks;

h. Include conditions that protect the health, safety, convenience or prosperity of the municipality;

i. Require innovative land use controls when supported by the master plan; and

j. Require preliminary review of site plans.

k. The Board can consider making the application and checklist as part of the site plan regulations;

Subdivision and site plan review regulations should evolve from the overall planning process that starts with preparation of the master plan. Subdivision and site plan regulations control the design and accessibility of the subdivision and/or development itself, not the use itself or where it can be located in the community. Zoning regulations establish permitted uses and density limits for the various areas in a community based on the development patterns and types of uses i.e. residential vs. commercial as recommended in the master plan.

Regional planning commissions or planning consultants may provide assistance with the preparation of subdivision and site plan review regulations appropriate for the municipality. Model subdivision and site plan review regulations, which may serve as a guide for those boards interested in updating their regulations, can be found in the Subdivision and Site Plan Review Handbook prepared by Southwest Region Planning Commission in 2001, available at: http://www.swrpc.org/files/data/library

Step 5. Adopt Subdivision and Site Plan Review Regulations (RSA 675:6)

The statutory procedures to be followed for the adoption of subdivision and site plan review regulations include public notice, a public hearing, and a vote by the planning board to adopt the regulations. The planning board may subsequently amend the regulations through the same basic procedures.

Process for adoption of Subdivision and Site Plan Regulations

A. Notice of Hearing

RSA 675:7 requires that the notice of a public hearing to adopt or amend subdivision or site plan review regulations be both published in a newspaper of general circulation in the municipality and posted in at least two public places within the city or town. The notice must be given at least 10 calendar days before the date of the hearing. The statutes specifically provide that the day the notice is posted and the day the hearing is held cannot be included in the 10-day period. The full text of the proposed regulations does not need to be posted or printed in the newspaper as long as the notice tells where a copy of the proposal is available for the public to read. If the regulations are extensive, it is recommended that sufficient copies be made available so residents may have copies to review at their leisure.

In 2020, this statute was amended to allow a community to post such notice on the municipality's internet website in lieu of publishing it in a newspaper of general circulation. The notice or a link to it must appear prominently on the home page, and it must remain posted on the website until the hearing. Notice must still be posted in two other public places.

B. Public Hearing

The public hearing is opened by the planning board chair who should give a brief explanation of the regulations and their purpose. Ample time should be allowed for questions, comments and suggestions by those in attendance. After the public has had the opportunity to be heard, the chair should close the public hearing. A tape recorder is useful to ensure that the proceedings of the hearing are accurate, and then used to prepare the written record.

C. Vote to Adopt

At the close of the public hearing, or at a subsequent meeting, if more appropriate, the planning board should vote on whether or not to adopt the proposed regulations. Comments made at the hearing should be discussed and changes made, as the board deems necessary, in response to such comments. If major revisions are made that were not discussed at the public hearing, it might be advisable to hold a second hearing to inform the public before final adoption.

The affirmative vote of the majority of the board members is necessary. It is strongly recommended that the members who vote on the motion to adopt the regulations be the ones who were present at the public hearing to gain the benefit of the public discussion. A roll call vote may be held, although it is not required, so that the position of individual board members

is clear. The planning board rules of procedure may establish local policy that addresses these issues.

Step 6. File Certified Copy (RSA 675:6, III; RSA 675:8; RSA 675:9)

Subdivision and site plan review regulations, and any subsequent amendments adopted by the planning board, do not have legal force and effect until copies are certified and filed with the city or town clerk. To be certified, the regulations must be signed by a majority of the planning board members.

Remember that a copy of the regulations and amendments of each master plan, zoning ordinance, historic district ordinance or regulation, capital improvement plan, building code, subdivision regulation, and site plan review regulation shall be sent to the Office of Strategic Initiatives. Note that failure to send OSI copies does not invalidate the regulations. See RSA 675:9.

PROCESS FOR THE AMENDMENT OF SUBDIVISION AND SITE PLAN REVIEW REGULATIONS

As a planning board gains experience in using the adopted subdivision and site plan review regulations, the need for changes to improve the effectiveness or to address additional areas of concern may become apparent. In addition, the regulations should be reviewed at the end of each state legislative session to determine if any amendments are required as a result of changes in state law.

The procedures for amending subdivision and site plan review regulations are the same as for original adoption – preparing the proposal, noticing and holding a public hearing, addressing the comments made, voting to adopt the amendments, file amended regulations with the town clerk, and send them to the Office of Strategic Initiatives.

STATUS OF PLATS AFTER ADOPTION OF SUBDIVISION AND SITE PLAN REVIEW REGULATIONS

Subdivision Regulations

When a municipality has authorized the planning board to review subdivision applications, and the board has adopted the appropriate regulations, two requirements must be met before a plat can be filed or recorded with the county register of deeds. The plat must have been:

1. Prepared and certified by a licensed land surveyor since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981; and
2. Approved by the planning board and endorsed in writing, as specified in the board's regulations (RSA 674:37).

Site Plan Review Regulations

While subdivision plats are required by statute to be recorded at the registry of deeds after approval by the planning board, there is no such requirement for approved site plans, unless it is a condominium site plan. However, planning boards have the option of including such a requirement in the site plan review regulations (see RSA 674:39, I), which is recommended.

Check with your local registry of deeds about their policy for recording site plans. Municipalities may wish to consider recording the Notice of Decision at the registry instead of the site plan.

Special Site Plan Review Committee (Minor Site Plan Review)

Under RSA 674:43, III, the town meeting may 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 chosen by the planning board from the departments of public works, engineering, community development, planning, or other similar departments in the municipality.

This special site review committee may have final authority to approve or disapprove site plans reviewed by it but, if this power is granted, the decision of the committee may be appealed to the full planning board within 20 days of the committee's decision. All of the planning board's normal procedures under RSA 676:4 shall apply to the actions of the special site review committee, except that the committee shall act to approve or disapprove an application within 60 days after its submission. OSI recommends creating rules for the Special Site Plan/Minor Site Plan Review Committee, if one exists.

If the municipality does authorize a Special Site Review Committee, the planning board must adopt or amend its regulations to specify application, acceptance, and approval procedures, and define what size and type of site plans may be reviewed by the site review committee.

ZONING ORDINANCE

In New Hampshire, RSA 674:16 gives municipalities the authority to zone. Zoning involves regulating the size, location and use of buildings and other structures for the purpose of promoting the health, safety and general welfare of the community. Traditionally, these purposes are achieved by dividing the municipality into districts with the goal of separating what are thought of as incompatible uses. In each district, some uses are permitted as a right, some are prohibited, and others are allowed only by special exception or conditional or special use permit. More modern zoning techniques, however, encourage mixed use zoning in which residential and commercial uses are permitted in specified districts.

In addition to prescribing the districts in which a use may be located, a zoning ordinance may impose requirements on a specific use, such as size and position of signs and special setbacks or screening for junkyards.

Specifically, RSA 674:16 provides that the zoning ordinance shall be designed to regulate and restrict:

- The height, number of stories and size of buildings and other structures;
- Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- The density of population in the municipality; and
- The location and use of buildings, structures and land used for business, industrial, residential or other purposes.

RSA 674:17 states that a zoning ordinance must be designed for the following purposes:

- To lessen congestion in the streets;
- To secure safety from fires, panic and other dangers;
- To promote health and the general welfare;
- To provide adequate light and air;
- To prevent the overcrowding of land;
- To avoid undue concentration of population;
- To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
- To assure proper use of natural resources and other public requirements;
- To encourage the preservation of agricultural lands and buildings; and
- To encourage the installation and use of solar, wind, or other renewable energy systems.

The grant of power to adopt a zoning ordinance includes the power to adopt innovative land use regulations (RSA 674:16, II), which are discussed in more detail later in this chapter. Innovative land use regulations include, but are not limited to those listed in RSA 674:21, I(a)-(n), including impact fees. RSA 674:21, V defines "impact fee" as a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of certain capital facilities which are listed in the statute, owned or operated by the municipality. Before a municipality can impose impact fees, it must adopt a Capital Improvements Plan pursuant to RSA 674:5-7.

Enactment and Amendment of the Zoning Ordinance

A zoning ordinance may be enacted or amended by ballot vote of a majority of the voters present and voting at the annual or special town meeting where the matter is taken up. However, a properly filed protest petition that meets all of the requirements of RSA 675:5 may result in an increase of the required affirmative vote for enactment to two-thirds of the voters present. A zoning ordinance may be enacted or amended at either the annual town meeting or at a special town meeting, although a voter-petitioned amendment may only be presented at the annual meeting. In cities and town council towns, charter provisions provide the procedures required for enacting zoning ordinances and amendments.

ZONING AMENDMENT PROCEDURES

RSA 674:1 outlines the duties of the planning board. RSA 674:1, V states that the Planning Board "may, from time to time, recommend to the local legislative body amendments of the zoning ordinance…."

The planning board is responsible for preparing and, in towns, holding public hearings on proposals to adopt or revise the zoning ordinance. Also in towns, a zoning ordinance or revision of the ordinance must then be adopted by ballot vote at town meeting. In cities and town council towns where the municipal charter determines how a zoning ordinance is to be adopted or revised, a public hearing is still required for all zoning ordinances and amendments (RSA 675:2-3).

Zoning ordinance amendments may be initiated in three distinct ways:

1. –The planning board may propose amendments to the zoning ordinance.
2. -The governing body (board of selectmen, village district commission, city or town council) has authority to propose zoning amendments.
3. -25 or more voters of the municipality can petition for a zoning amendment.

Regardless of how the zoning amendment is initiated, it must be voted on at town meeting (RSA 675:4) or in a manner prescribed in the municipal charter.

In all three situations, the planning board must hold a public hearing with prior notice as provided in RSA 675:7. After the public hearing, the planning board must, by vote, determine the final form of the ordinance, amendment, or amendments to be presented to the voters. If, after the public hearing, the planning board makes substantive changes to the proposed zoning amendment, it must hold a second public hearing.

The planning board must provide the town clerk with final wording of the zoning question not later

than the fifth Tuesday before the annual or special meeting.

A special town meeting to adopt, amend or repeal a zoning ordinance, historic district ordinance or a building code in an official ballot referendum town (SB 2) needs only to consist of a session for voting by official ballot. A deliberative session is not required to consider a zoning change. However, this would not apply to special meetings to consider the adoption of emergency temporary zoning under RSA 675:4-a.

NOTICE REQUIREMENTS

When an amendment is proposed, the proposing body must submit the properly drafted article to the planning board. The planning board must hold at least one public hearing prior to the vote at the annual or special meeting. Notice of the planning board hearing must be posted in two places and published in a locally circulated newspaper or on the municipal website at least 10 days in advance of the hearing. When calculating the 10-day notice period, the day of posting and the day of the planning board hearing may not be included. If the planning board anticipates a second hearing on the matter, there must be 14 days between the two hearings, and the 10-day notice requirement again applies. Notice requirements for public hearings are found in RSA 675:7.

If the zoning amendment is proposed by the governing body or submitted by voter petition, the planning board may not make substantive changes to the proposal; however, a notation must appear on the ballot stating whether the planning board approves or disapproves of the proposed amendment. See RSA 675:3, VIII (governing body zoning amendment) and RSA 675:4 (petitioned zoning amendment).

RSA 675:7 also requires, in part:

1. Notice must be sent to anyone who owns property in the municipality and requests to be notified of zoning hearings. Notice shall be made at no cost to the person making the request, and can be made either electronically or by first-class mail.
2. Notice must be sent by first-class mail to the owners of each property affected by a zoning amendment that would change a boundary of a zoning district, but only if the boundary change would affect 100 or fewer properties.
3. Notice must be sent by first-class mail to the owners of each property in a zoning district if the proposed amendment would change minimum lot sizes or the permitted uses in that district and only if the zoning district includes 100 or fewer properties.

When notice is sent by first-class mail, it should be sent to the address used for mailing local property tax bills.

Prior to September 16, 2017, these notice requirements did not apply to petitioned zoning amendments. However, in 2017 the legislature amended RSA 675:7, thereby requiring petitioners submitting a petitioned zoning amendment to pay the costs of notification, subject to the following:

1. If the full cost of notice is not paid at the time the zoning amendment petition is submitted, the municipality shall inform the voter whose name appears first on the petition of the cost of notice within 5 business days, and the balance shall be paid within another 5 business days.
2. If full payment is not made and received within 5 business days, the selectmen or village district commissioners may, in their discretion, decide to accept or decline the petition for submission. Failure by the municipality to inform the responsible person of the cost of notice shall be deemed a waiver of the payment requirement.

To assure compliance with all notice requirements, consider the following: the date of the annual or special town meeting; the fifth Tuesday before that date; time for two planning board hearings 14 days apart; 10 days of notice before each planning board hearing; publication dates of local newspapers; and that voter petitions are timely only if they are received between 120 and 90 days before the annual meeting. Local officials should be mindful of these dates and deadlines to avoid making process-related errors that may invalidate adoption of an amendment.

OSI, some regional planning commissions, and the NH Municipal Association offer calendars to help planning boards with important dates for town meeting.

EARTH EXCAVATIONS

Since 1971, when RSA 155-E was enacted, New Hampshire municipalities have had authority to develop regulations governing land excavations. The purpose was to protect the health, safety and general welfare of the public, to protect the environment, and to recognize safety hazards involved with open excavations. RSA 155-E regulates the permitting process, allowable excavations, and the rules of procedure for reviewing land excavation applications.

Land Excavation Permits

No landowner shall permit excavation of earth on his/her property without first obtaining a permit. (There are, however, exceptions to the permitting process, which are explained in detail below.) The excavation permit must be obtained from the regulator, which in most municipalities is the planning board. However, towns may, by town meeting vote, designate the board of selectmen or zoning board of adjustment as the regulator. If there is no planning board, then the board of selectmen is the regulator (RSA 155-E:1). For the purposes of this handbook, the planning board is considered to be the regulator.

Existing Excavations (RSA 155-E:2, I)

A permit is not required of the owner of an excavation that was in existence before August 24, 1979 where sufficient volume of material had been removed during the two-year period prior to August 24, 1979. The excavation site is exempt from local zoning and other ordinances as long as it was in compliance at the time the excavation first began. The excavation area can only be expanded to contiguous property and property in common ownership with the excavation site as of August 24, 1979 and has been appraised and inventoried for tax purposes as part of the same tract as the excavation site.

In order for existing operations (as defined above) to be grandfathered, the owners and operators were required to file a report with the planning board within one year after receiving notice of this requirement and no later than two years from August 4, 1989. The report should have included:

- The location of the excavation and the date the excavation first began;
- A description of any expansions applied to the site that are permissible under RSA 155-E:2, I(b);
- An estimate of the area that had been excavated at the time of the report; and
- An estimate of the amount of commercially viable earth materials still available on the parcel.

Stationary Manufacturing Plants (RSA 155-E:2, III)

A permit is not required from an excavation site that on August 4, 1989, was contiguous to, or contiguous to land in common ownership with, a stationary manufacturing plant in operation as of August 24, 1979.

Highway Excavations (RSA 155-E:2, IV)

A permit is not required for an excavation performed for lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or a consultant for the government with a contractual agreement for construction, reconstruction or maintenance. A copy of the pit agreement executed by the owner and the governmental unit shall be filed with the planning board prior to the start of the excavation.

Highway excavations are not exempt from local zoning or other applicable regulations, and the governmental unit shall certify the following to the planning board before beginning such excavation:

- The excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a.
- The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter, unless requested by the approving abutter.
- The excavation shall not be unduly hazardous or injurious to the public welfare.
- Existing visual barriers in the areas specified under RSA 155-E:3, III shall not be removed, except to provide access to the site.
- The excavation will not damage a known aquifer as mapped by the United States Geological Survey (USGS).
- All required permits have been obtained by state and federal agencies.

Incidental Excavations – RSA 155-E:2-a

No permit is required for the following types of incidental excavations:

- Excavations that are incidental to the construction or alteration of a building or structure or a parking lot, including a driveway, on a portion of the premises where the removal occurs. No excavation is allowed until all state and local permits required for construction have been obtained.
- Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment.
- Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.

An abutter of a site taken by eminent domain or other governmental taking where construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification has been sent to the appropriate local official.

Operational and Reclamation Standards (RSA 155-E:4-A)

All excavation operations, regardless of the need for a permit, must follow certain standards for both operating and reclaiming the site. The law refers to these standards as "minimum" and "express," which means that if an excavation needs a permit, the standards spelled out in RSA 155-E are considered to be the bare minimum, although the planning board may require additional standards. If the excavation does not need a permit, then the standards of RSA 155-E:4-a and 5 are considered to be the only ones the board can expressly require.

In addition to meeting the standards listed in RSA-E:4-a, all state environmental standards and required permits should be met and obtained.

Reclamation Standards

Within 12 months of completion of the excavation, or upon expiration of the permit issued for excavation, the owner of the land shall have completed the reclamation of the areas affected by the excavation and meet the following standards, as provided in RSA 155-E:5.

Exceptions Made by the Regulator (RSA 155-E:5-b)

The planning board may grant an exception to the minimum and express operational and reclamation standards after a public hearing, for good cause shown. The board's written decision shall state the specific standards that have been relaxed and any additional conditions or standards that must be met by the applicant.

Application for the Permit (RSA 155-E:3)

Unless one of the exceptions discussed above applies, prior to excavation the property owner must apply to the planning board for a permit, with a copy to the conservation commission, if one has been established by the municipality. If the proposed excavation site is located in an unincorporated area, application is made to the county commissioners.

If the applicant changes the scope of the project by altering the size or location of the excavation, the rate of removal, or the plan for reclamation, the owner shall submit an application for amendment of the excavation permit to the planning board. The application for amendment will be subject to the same approval process as the original permit (RSA 155-E:6).

Be aware that the public hearing notification process for earth excavations is different from other public hearing notifications for planning board applications or zoning amendments.

Public Hearing (RSA 155-E:7)

The planning board shall conduct a public hearing within 30 days of receiving a permit application or an amended excavation permit application. Notice shall be sent to all abutters 10 days prior to the public hearing, not including the day of posting or the day of the hearing. Notice shall include the grounds for the hearing as well as the date, time and place of the hearing. Notice shall be posted in at least three public places and published in a local newspaper. Within 20 days of the hearing, the board shall render a decision approving or disapproving the application, giving reasons for disapproval.

Issuance of Permit (RSA 155-E:8)

The planning board may issue a permit if the excavation meets all statutory standards, is not a prohibited excavation as listed in RSA 155-E:4, and the applicant has paid the excavation fee determined by the board, which may not exceed $50. A copy of the permit shall be promptly displayed at the excavation site. The permit shall state the date it expires and it may contain any conditions set forth by the board during the review process.

Appeal (RSA 155-E:9)

Any interested person affected by the approval or disapproval of an excavation application can appeal to the planning board for a rehearing on the decision. The motion for rehearing shall state the grounds for appeal and shall be filed within 10 days of the date of the original decision. Within 10 days, the board shall grant or deny the request for rehearing and if the request is granted, a rehearing shall be scheduled within 30 days.

Enforcement (RSA 155-E:10)

The board may revoke or suspend the permit of any person who is in violation of the provisions of the permit or any conditions listed in RSA 155-E. Such suspension or revocation shall be subject to rehearing and appeal in accordance with RSA 155-E:9. Fines, penalties, and remedies for violations shall be the same as for violations of the planning and zoning statutes (see RSA 676:15, 676:17, 676:17-a, and 676:17-b). In addition, the planning board, or any person directly affected, may seek a superior court order requiring the excavator to cease and desist from violating any provision of the permit. If the superior court issues an order, attorney fees and other fees incurred in seeking the order may be awarded to the board. To ensure compliance with the order, the board or duly appointed agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

Earth Excavation Regulations (RSA 155-E:11)

The planning board may adopt regulations to carry out the provisions of RSA 155-E, including adopting a permit fee schedule. Whenever the locally adopted regulations differ from the provisions of RSA 155-E, the greater restriction or higher standard shall be controlling, except that the local regulations cannot supersede the sole applicability of express standards for operation and reclamation under RSA 155-E:2, I, III and IV.

Locally adopted regulations may include provisions for protection of water resources consistent with the municipality's water resource management and protection plan. If the regulation prohibits excavations below a stated height above the water table, the regulations shall also contain a procedure for an exception to the rule if the applicant demonstrates that the excavation will not adversely affect water quality. The board may also impose fees to cover public hearing costs and its administrative expenses, insurance policies, escrow funds for site stabilization or reclamation, third party professional assistance for review of documents, and other matters that may be required.

The Southwest Regional Planning Commission has an earth excavation handbook that includes a model ordinance, available here:
http://www.swrpc.org/files/data/library/local_planning/Excavation%20Handbook.pdf

DRIVEWAY REGULATIONS (RSA 236:13)

RSA 236:13 gives power to municipalities to control how private roads and driveways are connected to local highways (within the limits of the right-of-way). Pursuant to this statute, a planning board that has been granted the power to regulate the subdivision of land shall enact driveway regulations using the same procedure as for subdivision regulations (adoption by the planning board following notice and a public hearing). Driveway regulations may address a number of subjects such as width, angles, slopes and grades of connection, curbs, ditching, culvert standards to prevent erosion and preserve highway drainage, adequate lines of sight to prevent safety hazards, and limiting the number of access points per parcel.

The statute provides that a planning board may delegate the day-to-day administration of driveway regulations, including driveway applications, to a highway agent, DPW Director or code officer.

In many smaller towns, this authority is often delegated to the board of selectmen.

The Property Owner's Duties and Rights

Under RSA 236:13, VI, all private driveway connections, including structures like culverts, remain the continuing responsibility of the landowner, even if located within the highway right-of-way and even if the driveway connection pre-dates the town's permit system. If any driveway connection threatens

the integrity of the highway due to plugged culverts, erosion, siltation, etc., the planning board or its designee can require the owner to repair it. If the owner fails to make the repairs, the town may perform the work and assess the costs to the owner.

An owner's right of access can be limited by regulation, but it can't be denied altogether without paying compensation. ~~A town's exercise of authority under RSA 236:13 "cannot greatly impair or prohibit the use of the access unless it is purchased or taken by eminent domain with adequate compensation to the owner."~~ A landowner's vested right of access consists only of reasonable access to the public highway system in general, not of a particular site.

The State's Role

The New Hampshire Department of Transportation (DOT) issues driveway permits for all proposals for access to the state highway system. To improve the coordination of local and state planning along the state's road system, the DOT has instituted a process to better involve local officials in the permitting process. The DOT has developed a Memorandum of Understanding (MOU), which is an agreement between the DOT and the municipality to coordinate the review and issuance of driveway permits to access state roads. The MOU contains a number of requirements for the municipality and the DOT:

- The municipality must develop, adopt and enforce access management standards for state highways that comply with best management practices for access management.
- The municipality can develop site- or parcel-specific access management plans for highway corridors or segments.
- The municipality must notify the DOT District Engineer when it receives a development proposal that would require a state driveway permit and solicit input on the design.
- The municipality shall require that all access points comply with its adopted access management standards and any applicable site-specific access plans.
- The municipality must inform the DOT of any waivers or variances from the access management standards or plans prior to local approval, and provide appropriate notice for comments.
- The DOT will provide information and technical assistance to the municipality in developing access management standards and site/parcel-specific plans.
- The DOT will not approve driveway permits that do not conform to the local access management standards or plans, except with the consent of the municipality.
- The DOT district engineer shall notify the municipality and transmit copies of all driveway access permit applications to the planning board.
- The DOT will withhold final action on any driveway access permit until the planning board has formally approved the access plan for the development.
- The DOT must notify the municipality if it intends to issue a driveway access permit that is not in conformance with the adopted access management standards or parcel-specific plan.
- All corridor or site-specific access management regulations or plans must be filed with the DOT.

It is highly recommended that all municipalities in the region consider entering into an MOU with the DOT. In addition, municipalities should develop a permitting process for driveways accessing local roads. Such permits can assist with the implementation of access management techniques.

For high-volume commercial connections, the DOT may require the applicant to install turn lanes or signals on the public highway itself. In towns and cities, these issues are more commonly handled through subdivision and site plan review, off-site improvement provisions, or through the impact fees enacted by a zoning ordinance. See RSA 674:21.

STATE MINIMUM DRIVEWAY STANDARDS

RSA 236:13 contains a few standards that apply regardless of what local regulations may require, or whether there are local driveway regulations. This statute applies to local as well as state highways.

CHAPTER IV: INNOVATIVE LAND USE CONTROLS (RSA 674:21)

RSA 674:21 provides municipalities with a wide range of options to use in their efforts to shape land development in ways that reflect the vision of their master plans, and to deal more effectively with growth-related issues.

The use of "innovative zoning" techniques enables municipalities to adopt land use controls that allow for greater flexibility and creativity within a zoning ordinance. These controls can be used to implement more sustainable development planning principles and practices. RSA 674:21 contains a laundry-list of possible options for zoning. The list is not exhaustive and leaves the door open for municipalities to develop innovative land use controls that are not listed – note that the language states: "Innovative land use controls may include, but are not limited to…."

A community has the option to make an innovative land use control a mandatory requirement when supported by the master plan (RSA 674:21, II). These ordinances must also contain within them the standards to guide the person or board that administers the ordinance.

If the administration of the ordinance is not vested with the planning board, any proposal submitted under this section must be reviewed by the planning board prior to final consideration by the administrator.

Below are brief descriptions of some of the innovative land use controls that are included in the statute and ideas for other land use controls that municipalities may consider. Included here are short and simple explanations of each innovative technique. Other publications and sources should be consulted for a more in-depth explanation of each land use control.

TIMING AND PHASED DEVELOPMENT

The Innovative Land Use Controls statute was amended in 2015 to define "phased development," a term that has been included in the statute for many years. The new definition is in RSA 674:21, IV(c). It applies to development phases of projects that are not intended for use in the context of growth management or a temporary growth moratorium ordinance. In the innovative land use control context, phased development means:

> "…a development, usually for large-scale projects, in which construction of public or private improvements proceeds in stages on a schedule over a period of years established in the subdivision or site plan approved by the planning board. In a phased development, the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the planning board. Phased development does not include a general limit on the issuance of building permits or the granting of subdivision or site plan approval in the municipality, which may be accomplished only by a growth management ordinance under RSA 674:22 or a temporary moratorium or limitation under RSA 674:23."

When the timing or phasing of development is necessary to allow municipalities to work with developers to ensure that growth occurs at a reasonable rate and that community services can adequately provide for the needs of new residents, phased development must be contained within a zoning ordinance enacted under RSA 674:22 (Growth Management; Timing of Development).

INTENSITY AND USE INCENTIVE

The traditional approach to regulating density is to assign a density, typically the same as the minimum lot size for a single family home, to each zoning district. Innovative approaches such as lot size averaging or density based on a scoring of the attributes of the land enable more effective

implementation of a municipality's master plan.

TRANSFER OF DENSITY RIGHTS

The transfer of density rights attempts to establish within a municipality a mechanism for trading the density of allowed development between zones designated for low density to areas of high density. The technique extracts a portion of the additional land value created when an area is 'up-zoned' (for example, in establishing a mixed-use village zone, new redevelopment zone, or transit-oriented development zone) as a development fee paid into a municipal conservation fund which is, in turn, used to purchase some or all of the development rights of land located in designated conservation areas. It is less cumbersome to administer and track than conventional transfer of development rights because direct linkage of land in sending and receiving zones is not necessary.

PLANNED UNIT DEVELOPMENT

Planned unit developments (PUD) are good options for municipalities to use to promote the efficient use of land and utilities by providing a pattern of development different from a "conventional" one in which there is a division of separate lots for each structure. This type of regulation can be used for residential, commercial, or industrial developments. The developments are designed so that the developer has flexibility in placing units and accessory buildings, roadways and other utilities while allowing the site to have usable open space and preserve important natural features. The site development is based upon a comprehensive, integrated and detailed plan rather than the specific constraints applicable to piecemeal lot-by-lot development under conventional zoning. A PUD should improve the quality of new development by encouraging aesthetically attractive features and promoting quality site and architectural design.

OPEN SPACE, CLUSTER, AND CONSERVATION SUBDIVISION

Open space, cluster and conservation-style subdivisions can be an important tool in promoting land and open space conservation while fostering more efficient use of land for development. This type of development preserves a large amount of undeveloped land in exchange for developing more intensely on a smaller area. A number of recent models have been developed over the past several years that attempt to make this form of development more attractive. In addition, some municipalities are now mandating this form of development in areas with critical habitat or other high natural resource value.

PERFORMANCE STANDARDS

Performance standards recognize that traditional zoning and the segregation of uses does not always work, giving rise to special exceptions and rezoning. Performance standards allow land to be developed not on the basis of rigid zoning standards, but on the physical characteristics and operations of the proposed uses. Land development under performance standards is then based on certain characteristics of development evaluated against predetermined criteria and standards. Performance standards can include traffic generation, noise, lighting levels, stormwater runoff, loss of wildlife or vegetation, or even architectural style.

ENVIRONMENTAL CHARACTERISTICS ZONING

Environmental characteristics zoning allows municipalities to protect natural resources or features based on scientific evidence and community input. Types of resources that can be protected include aquifers, wetlands, floodplains, wildlife habitat, groundwater, and other environmental characteristics.

INCLUSIONARY ZONING

Inclusionary housing programs are a means of encouraging or requiring private developers to provide housing for various types of households based on income. Inclusionary housing functions by granting zoning exemptions and density bonuses to developers that permit building at a higher density if a portion of the proposed development is reserved for elderly, handicapped, or targeted lower-income households. Inclusionary housing provisions are only applicable in municipalities willing to use density bonuses as a housing development incentive for a recognized community need. In New Hampshire, inclusionary housing programs are voluntary. Depending on the zoning ordinance, developers interested in applying for a density bonus apply either to the zoning board of adjustment or to the planning board. A municipality does not fulfill its obligation to provide a reasonable opportunity for affordable housing through the adoption of a voluntary inclusionary zoning ordinance that relies on incentives that will make workforce housing developments economically unviable.

ACCESSORY DWELLING UNIT STANDARDS

Accessory Dwelling Units (ADU) can address a number of housing needs within a community. ADUs are one way that a municipality can provide for more affordable and diverse housing. ADUs can provide flexibility in household arrangements to accommodate family members or nonrelated people in a permitted single-family dwelling, while maintaining aesthetics and residential use compatible with homes in a neighborhood. On June 1, 2017, new ADU state laws took effect requiring all municipalities to allow internal or attached ADUs in all zoning districts where single-family dwellings are permitted. The new ADU requirements can be found in RSA 674:71 through RSA 674:73. The new laws give municipalities several options in how they regulate ADUs, so it is strongly recommended that planning boards amend their municipality's current ADU regulations. If ADUs are not currently addressed in the zoning ordinance, adoption of a new ADU process is recommended.

IMPACT FEES

Impact Fees are regulated by RSA 674:21, V. These fees can be charged to cover the costs of capital improvements that are necessitated by new developments. Impact fees may only be charged for water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of the capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. All impact fees shall be assessed at the time of planning board approval of a subdivision or site plan or, when no planning board approval is required, the issuance of a building permit or other appropriate permission to proceed with development. The maximum time that an impact fee can remain unexpended is 6 years. RSA 674:21, V was amended in 2012 to create two new provisions: (1) a reporting requirement and (2) an amnesty provision for the prior collection of impact fees for improvements to state highways.

VILLAGE PLAN ALTERNATIVE SUBDIVISION

RSA 674:21, I(n), Village Plan Alternative Subdivision, enables towns to adopt this zoning and regulatory technique to encourage the preservation of open space and the efficient use of land and public and private infrastructure.

There are three key features of the village plan alternative:

1. The entire density permitted by existing land use regulations must be located within 20 percent or less of the entire parcel available for development. The remaining 80 percent is to be used

for conservation, recreation, or agricultural uses.

2. The applicant must grant an easement to the municipality that restricts development and specifies that the restrictions are enforceable by the municipality. The village plan alternative must also comply with existing subdivision regulations relating to emergency access, fire prevention, and public health and safety, including setback requirements for wells, septic systems or wetlands requirements imposed by the Department of Environmental Services; however, lot size, frontage and setback requirements, as well as density regulations, shall not apply.
3. An application made under the village plan alternative ordinance must be given expedited review. See RSA 674:21, VI for more details.

INTEGRATED LAND DEVELOPMENT PERMIT

In 2013, RSA 674:21 (Innovative Land Use Controls) was amended to add an "integrated land development permit option" to allow a project to proceed, in whole or in part, as permitted by the NH Department of Environmental Services (DES) under RSA 489.

An applicant for approvals or permits under two or more DES permit programs may apply for an integrated land development permit in lieu of all individual permits such as wetlands, shoreland and alteration of terrain permits. Municipalities may participate in the process with the consent of the applicant and/or at the invitation of DES.

RSA 674:21, VII also authorizes a municipality to adopt an innovative land use control ordinance allowing the planning board to approve a project that does not fully conform to the local zoning ordinance if it has been approved by DES under the integrated land development program.

In 2014, the legislature delayed implementation of the DES integrated land development permit program until July 1, 2017. This has been suspended for the biennium ending June 30, 2019.

OTHER INNOVATIVE LAND USE CONTROLS

Economic growth and development can present opportunities for New Hampshire but if managed poorly can place additional burdens on communities and their natural resources. Innovative land use techniques, used as a whole or individually, can help municipalities grow in a way that is more consistent with their vision while protecting their natural resources and community character. While the following are not specifically identified in RSA 674:21, the use of innovative land use controls is unlimited.

RIDGELINE AND STEEP SLOPE DEVELOPMENT

Preserving rural character is a top priority for most small towns in New Hampshire and undeveloped hillsides are an essential component of a town's local identity. The steep slopes ordinance can identify regulatory and voluntary approaches that control or manage development on steep slopes. A national, regional, and local literature review should be conducted. Typical issues such as ridge-line visibility, aesthetics, and erosion and flooding that would potentially damage water quality may be explored, as well as any other related issues.

HABITAT PROTECTION

This technique ties together current "best practice" voluntary and regulatory measures to promote land stewardship for habitat protection. The approach relies on the science-based identification of critical habitat based on wildlife and co-occurrence mapping, as well as regional and local wildlife

studies. Regulatory measures that focus on the landscape level as well as the site level can be included. At the site level, these regulatory measures include recommended best practices for low-impact site design, including drainage, tree protection, and protection of riparian areas. Regulatory measures at the landscape level include development density and location factors that consider migratory needs, habitat linkage coordination, and cooperation with regional efforts to protect habitat.

INFILL DEVELOPMENT

Infill development is development that takes place within existing communities, making maximum use of the existing infrastructure instead of building on previously undeveloped land.

AGRICULTURAL INCENTIVE ZONING

Preserving rural character is a top priority for most small towns in New Hampshire, and the zoning statutes specifically state that "agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers…"

MINIMUM IMPACT DEVELOPMENT (SITE SCALE)

Minimum impact development is a community planning approach that balances "smart growth" principles, land and resource conservation, indoor environmental quality, and energy efficiency in order to minimize pollution, promote social capital, protect open spaces, and maintain connectivity between natural resources. At the site scale, minimum impact development design principles include incorporating a mix of uses, providing opportunities for mobility through and around the site, promoting social interaction through the location of social infrastructure such as benches or common dining areas, protecting existing resources such as trees or stone walls by drawing lot lines after key resources are identified, minimizing impervious surfaces, retaining natural vegetation wherever possible, and requiring non-invasive plantings where existing vegetation cannot be retained. Emphasis is placed on maximum on-site storm water infiltration and prevention of storm water runoff.

ENERGY-EFFICIENT DEVELOPMENT

Energy-efficient development incorporates site design techniques to take advantage of sun exposure, differences in microclimate and landscaping, as well as planning techniques that can be used in designing housing, deciding on density levels, integrating different land uses, and designing transportation and circulation systems. Energy-efficient planning techniques can be implemented through the use of traditional police power controls such as site plan regulations, zoning ordinances, and building codes.

TRANSIT-ORIENTED DEVELOPMENT

Transit-oriented development (TOD) encourages a mixture of residential, commercial, and employment opportunities within identified areas that have access to transit centers. TOD promotes development that supports transit by ensuring access to transit and attempts to limit conflicts between vehicles and pedestrians and transit operations. TOD allows for more intense and efficient use of land at increased densities for the mutual reinforcement of public investments and private development. Uses are regulated for a more intense built-up environment, oriented to pedestrian amenities, creating a more pleasant pedestrian environment without excluding the automobile. TOD is usually restricted to areas within walking distance to the transit station and can be new construction or redevelopment.

LIVABLE/WALKABLE DEVELOPMENT DESIGN

Designing communities as livable/walkable places means creating a balance among the economic, human, environmental, and social health of a community. Such development considers community planning and zoning practices at a human scale through the implementation of tools such as traffic calming devices, street and intersection design, bicycle and pedestrian facility design, ADA requirements, and community beautification programs. Livable/walkable development practices protect natural resources by reducing the use of personal automobiles, support business by enabling people to access services locally, promote social capital by encouraging casual interaction, enhance personal physical fitness through increased activity, and diminish crime and other social problems by increasing the number of people on local streets.

OTHER PLANNING AND DEVELOPMENT TECHNIQUES

ACCESS MANAGEMENT

Access management is the practice of coordinating the location, number, spacing and design of access points to minimize site access conflicts and maximize the traffic capacity of a roadway. Uncoordinated growth along major travel corridors can result in strip development and a proliferation of access points. In most instances, each individual development along a corridor has its own access driveway. Numerous access points along the corridor create conflicts between turning and through traffic that cause delays and accidents. Historically, transportation and access management plans concentrated primarily on the movement of vehicles. Current planning efforts focus on all modes of transportation including vehicles, public transit, bicycles and pedestrians.

DARK SKIES LIGHTING ORDINANCE

The purpose of a Dark Skies Lighting Ordinance is to lessen the impact of light pollution, to reduce the effects of unnatural lighting on the environment, and to reduce energy usage. There are a number of existing examples of these lighting ordinances throughout the country.

The NH Office of Strategic Initiative's Resource Library offers useful information about outdoor lighting, light pollution, preserving "dark skies" and LED street lighting. These resources are available at OSI's website:
https://www.nh.gov/osi/resource-library/design-environment/index.htm#outdoor_lighting

GROWTH BOUNDARIES

Urban growth boundaries mark the separation between rural and urban lands by designating growth areas for development and creating economic incentive for development to take place within designated urban service areas. They are often related to or are a precursor to other sustainable development techniques such as brownfields development, infill development and transfer of density rights.

GROWTH MANAGEMENT

According to RSA 674:22, municipalities may regulate and control the timing of subdivision development with approval of the legislative body. Such ordinances may be considered only after a master plan and a capital improvements program have been adopted by the planning board and should be based on a growth management process intended to assess and balance community and regional development needs.

The growth management ordinance may only be adopted where there is a clearly demonstrated and documented need to regulate the timing or rate of development in order to allow municipal services to keep pace with growth. Therefore, the first step that should be taken by the planning board or governing body should be to prepare a study of the municipality's current and projected growth rates and its need for additional municipal services to accommodate such growth. The growth management ordinance should outline how the municipality will establish the needed community services. This community services development plan should be prepared by the capital improvements program committee, if one has been established. Growth management ordinances must include a termination date and may not restrict growth any more than necessary for the municipality to catch up and make a good faith effort to provide the needed municipal services. The ordinance and community services development plan must be evaluated by the planning board at least once a year to confirm reasonable progress and report to the legislative body in the municipality's annual report.

Alternately, in unusual or under emergency circumstances, municipalities may adopt interim or temporary growth moratoriums (RSA 674:23). Such moratoriums may apply to the issuance of building permits or subdivision or site plan approvals for a period of no more than one year. A moratorium may be adopted by the legislative body so that the municipality may temporarily suspend development to allow time for the planning board to amend and update the zoning ordinance, master plan, or capital improvements plan in order to meet growth-induced community needs. The temporary growth ordinance must include a statement about the circumstances creating the need, the board's findings, the ordinance's term (maximum 1 year), the types of development the ordinance applies to, a description of the area and the course of action to alleviate the circumstances. The municipality may wish to exempt or create a special exception or conditional use permit to allow development that may have minimal or no impact on the circumstances.

Municipalities that adopted growth management ordinances before July 11, 2008 were given until June 1, 2010 to amend their ordinances to conform to changes in the growth management statutes. If a municipality adopted an interim growth management ordinance under RSA 674:23 prior to July 11, 2009, that ordinance shall remain in effect until one year after its passage or until the municipality's next annual meeting.

WORKFORCE HOUSING

RSA 674:58-61 codifies the holdings of Britton v. Chester, a case decided by the New Hampshire Supreme Court in 1991. It requires all municipalities' land use ordinances to provide "reasonable opportunity" for the development of workforce housing, including rental housing. Key here is a set of definitions and standards to assess "reasonable opportunity." The municipality is enabled to choose how to provide a "reasonable opportunity" for workforce housing and where it may be permitted. The statute requires that workforce housing be allowed within a majority of the land areas where residential uses are permitted and also allow rental multi-family housing, although this does not have to be allowed in a majority of residential zones.

Municipalities may require workforce housing applicants to record restrictive covenants that ensure the continued or long-term affordability of the proposed units. The local land use board may adopt regulations specifying the term for such covenants and may also include means of monitoring to ensure compliance.

Applicants proposing to develop workforce housing that are denied, or have conditions placed upon approval that jeopardize the development's affordability, may appeal and be heard either by the superior court or a court-appointed referee within six months. For additional information about the workforce housing law, see the Affordable/Elderly/Workforce Housing subject heading in the on-

line OSI Resource Library: https://www.nh.gov/osi/resource-library/housing/index.htm.

Additionally, pursuant to RSA 673:4-c, municipalities are enabled to create local housing commissions. This local land use board serves as an advocate for housing issues and housing affordability. Local housing commissions have the power to administer an affordable housing revolving fund that could be used to facilitate affordable housing transactions.

CHAPTER V: APPLICATION, SUBMISSION & REVIEW PROCEDURES

The steps involved in the application, submission and review of subdivision and site plan review proposals are based on the requirements of RSA 676:4. The following procedures describe an efficient approach to the review process and encourage planning boards to make use of the authority in RSA 676:4, I(g) to provide administrative and technical assistance as necessary. A clear understanding of these steps by both local officials and prospective developers can greatly reduce the tension and frustration sometimes experienced in this regulatory process.

Statutory requirements are indicated by using the verb "must;" i.e., "abutters must be notified…"

Where the statutes allow local discretion in determining procedures, a course of action is recommended by the NH Office of Strategic Initiatives based on its interpretation of the enabling legislation, i.e., "the Office of Strategic Initiatives recommends that the planning board…"

PRE-APPLICATION REVIEW

The purpose of the pre-application review is to provide an opportunity for the board and the applicant to discuss a proposal without any binding decisions being made by either the board or the applicant. Statements made by planning board members at pre-application discussions cannot be used to disqualify them during review of the completed application or as the basis for invalidating any future action of the board. Municipalities have the authority to require pre-application discussions where the applicant may not decline to participate in the pre-application phases. If the municipality has not included such requirements in its subdivision and site plan review regulations, the applicant may decline to participate in the pre-application phases and begin the review process by filing a completed application.

Municipalities may authorize the planning board to require preliminary review of subdivisions and site plan review applications. See RSA 674:35; RSA 674:43, I; and RSA 674:44, II(j).

From a practical standpoint, the planning board probably should not require more than one pre-application meeting under either the preliminary conceptual consultation or design review phases.

OSI strongly recommends that pre-application phases be included in the local subdivision and site plan review regulations and that the Town Planner, Planning staff, or planning board mandate or encourage every applicant to make use of them. The valuable exchange of ideas and information between an applicant and the board before a formal plan is submitted can eliminate costly redesigns and save time for all parties involved. The pre-application phases provided for by RSA 676:4, II must be specifically allowed by the subdivision and site plan review regulations if they are to be offered by the planning board.

Pre-application review is a non-binding process. It should not be confused with the required formal review of a completed application. State statutes do not authorize any form of preliminary approval.

Whether the pre-application review process is mandated or voluntary by the subdivision and site plan review regulations, the planning board may establish rules of procedure that include submission requirements (RSA 676:4, II(b)). Submission requirements should cover such items as:

- Whether an appointment is necessary to appear before the board for conceptual consultation;
- The type of material to be presented and discussed that would require notification of abutters and the public (i.e., any detail beyond a base map or a site location map);
- Whether an application is required for design review and the fees for notices that must be paid;

- Identification of any information that would help the board during the design review; and
- Reasonable time limits within which the board would review such information.

The pre-application review of subdivision and site plan proposals is divided into two phases: conceptual consultation and design review.

Is there a time limit for the pre-application review phases?

No. There are no statutory time limits for these phases, but the applicant may choose, in communities that don't require the pre-application phase, to curtail the pre-application process and file a completed application to trigger the required review.

The board may determine at a public meeting that the design review process of an application has ended and shall inform the applicant within 10 days. (RSA 676:4, II (b))

STEP 1: CONCEPTUAL CONSULTATION (RSA 676:4, II(a), (c))

The conceptual consultation phase provides an opportunity for a property owner or agent to discuss with the planning board, in very general terms, the types of uses that may be suitable for the subject property. Although this discussion must take place at a public meeting of the planning board, notification of abutters and the general public is not required because the discussion is informal and no plans or specific details are presented.

The primary advantage of this consultation is that ideas can be informally discussed with the planning board before time or money is spent on design and engineering details. The owner or agent may outline, in general terms, the type of subdivision or site plan that is anticipated. The planning board may discuss any pertinent information contained in the master plan and the local regulations that must be considered. During the discussion, the board should describe the procedures to be followed for the filing, submission, acceptance and review of a completed subdivision or site plan review application. It is perfectly acceptable for the planning board to limit the time period to discuss a conceptual consultation with the applicant at the meeting.

New Hampshire statutes place great emphasis on the obligation of the planning board to provide notice to the abutters and the public of any substantive discussions on specific development proposals. Neither the applicant nor the planning board may go beyond the general and conceptual limits and begin discussing the design or engineering details of a proposal until the abutters and general public have been notified. Notice must occur either prior to the design review phase of the pre-application review or when a completed application has been filed.

It also encourages an applicant to make full use of the opportunity to identify potential problems early in the process, thereby saving time as well as unnecessary and expensive redesign at a later date.

STEP 2: DESIGN REVIEW (RSA 676:4, II(b), (c))

Design review gives the applicant and the planning board an opportunity to discuss a proposal in much greater detail than is allowed in the conceptual consultation phase. The objective of design review is to provide the board with an opportunity to understand what is being proposed, and for the applicant to understand the concerns of board members, abutters, and the general public. Design review is intended to assure that the essential characteristics of the site and specific requirements of local regulations are thoroughly reviewed and understood before the final design is prepared. It also gives the planning board the opportunity to determine whether or not the development has the potential for regional impact under RSA 36:54.

Design review applications are required to be noticed in the same way a formal application would be according to RSA 672:3 676:4.(d)1. The applicant must also pay the required fees to cover the costs of notices and any administrative actions.

Information Needs

Information similar to that required for a completed application will be useful during the design review phase. Using the design review process allows an applicant to understand the board's key concerns and to evaluate the problems to be faced in designing an approvable project. The expenses for site investigation and engineering, which would be required in any event, can be apportioned over a more carefully planned period of time. Material presented during this phase should be stamped "design review" to distinguish it from the formal application. Any information not modified or changed may be filed as part of the formal application and noted accordingly. The board's rules can be amended to specify submission requirements, which should include:

- A site location map placing the parcel in the larger context of the community;
- A site survey showing pertinent features of the site;
- An indication of any future subdivisions contemplated in or adjacent to the proposal;
- A topographic map of the area;
- Any soils information, such as permeability or boring data, that has been gathered; and
- A sketch showing the proposed layout of lots, streets, and recreation areas; watercourses; natural features and easements.

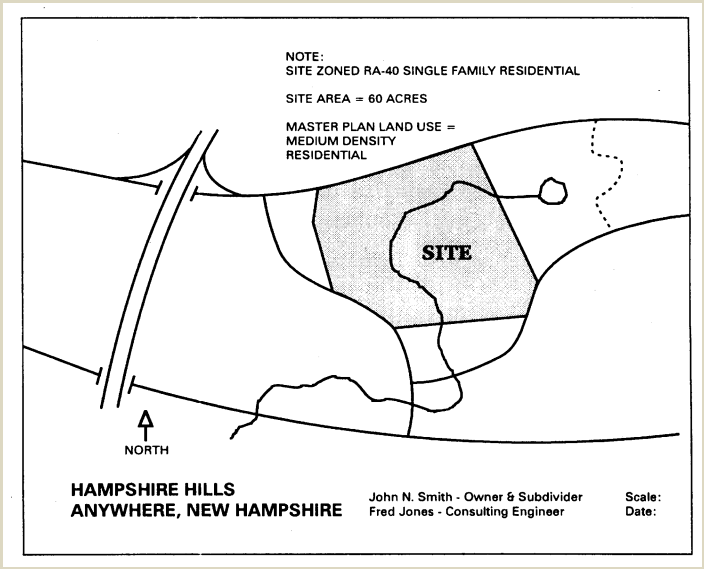


Exhibit V-1
Site Location Map

During the design review phase, the applicant may be alerted to site problems that can be resolved or mitigated before final plans are prepared. An abutter, for example, may point out an off-site drainage problem that may be affected by the proposal. The planning board may have received an application for the subdivision of an adjoining parcel that would add to traffic concerns. The status of roads in the area of the proposal should be identified and may affect the planning board's approach and the applicant's responsibilities.

During this phase, the planning board should inform the applicant of any special studies required by the regulations that must be provided as part of the completed application. Depending on the complexity of the proposal, these studies may involve an assessment of the impact of the proposal on water, sewers, roads, traffic, schools, fire and police protection, or other municipal services. The board should advise the applicant about the potential for a third party review that will be paid for by the applicant when the board considers their formal application.

Planning Board Designee

The board may designate someone to review material provided for the design review. The designee may engage in non-binding discussions with the applicant after the abutters and general public have been notified.

State statutes do not specify who the designee should be or when or where the discussions should take place. The following suggestions may be adapted to fit the needs of the municipality:

- A municipality with a town planner, planning assistant, or part-time circuit rider planner, may use this staff as the planning board's designee. Discussions between an applicant and the professional planner should take place during business hours in the planning office and could involve a site visit to review specific details. It must be understood that the designee cannot make any decisions or commitments on behalf of the board, but can only offer comments and suggestions.
- A planning board without a planning staff could use the services of other municipal employees such as an engineer, road agent, public works director, or health officer. Alternatively, the board could retain outside agencies or individuals such as the regional planning commission or a private consultant, to act as its designee. This individual should conduct discussions during business hours and make no commitments on behalf of the board.
- A third alternative is to reserve a period of time at the beginning of each planning board meeting for discussion of proposals currently under design review. The agenda must list all proposals that may be discussed so abutters and the public are aware of the current status.

Public Participation

State statutes do not require either a public hearing or an opportunity for public comment during the design review phase. However, input from an abutting landowner that is pertinent to the discussion may be useful, both to the planning board and the applicant, and should be welcomed. The board may allow for public participation by providing time during any meeting at which a proposal is on the agenda for the abutters or members of the public to present specific concerns. The board may set limits on the items to be discussed, the time allowed for presentations, and other reasonable guidelines to balance the public's interests with the board's need to complete its agenda.

The NH Office of Strategic Initiatives strongly recommends that individual board members not serve as designees to discuss proposals with an applicant outside of regular planning board meetings. One member cannot speak for the board and may find it difficult to separate the role of a designee from the board-member role.

Each active design review proposal must be listed on the planning board's meeting agenda. If a designee were involved in the design review process, they would present the status of these proposals at the planning board meeting to inform both the board and the public.

REQUIRED REVIEW

This section outlines the steps required by state statutes for the subdivision or site plan review process. (See Appendix F for a flowchart of the application process.)

- An application must be filed with the planning board at least 21 days before the meeting at which it is to be submitted unless a shorter time is specified in the board's rules of procedure. RSA 676:4, I(b).
- Only the planning board has the authority to decide if an application meets the subdivision or site plan requirements for a completed application, although a designee can review it and make a recommendation to the board.

- Once filed, the planning board must determine if an application is complete before moving on to the merits of the development proposal. The completeness determination must be made within 30 days following delivery of the application, or at the next regular meeting for which legal notice can be given.

> **An application can be accepted as complete by the planning board even though it doesn't necessarily follow local regulations. If an applicant has provided all the necessary materials, studies, or reports required in your application form and/or checklist, then the application must be accepted as complete even though the planning board might know that it will probably be denied later for not following local regulations.**

- When a completed application has been accepted, the planning board has 65 days to approve, conditionally approve, or disapprove the application. This 65-day period starts the day after the decision was made to accept the application as complete. (If the board meets on Tuesday night and accepts the application that night, then Wednesday is day 1, Thursday is day 2, etc. (RSA 21:35)).

> **The language in RSA 676:4 is subject to more than one interpretation. The discussions contained in this section are based on OSI's understanding of the statutory language. Pay particular attention to the timeframe for filing and acting on applications. The previous version permitted the board to first accept the application as complete before the clock started, and then allowed 90 days to make a decision.**

- Submission to the board and acceptance by the board can take place only at a public meeting for which notice has been given to the applicant, abutters, general public, and any professional whose seal appears on any plat.

STEP 1: FILE THE APPLICATION (RSA 676:4, I(b))

The applicant triggers the review process by filing an application. State statutes require the filing to be done at least 21 days before the public meeting of the planning board at which the application will be formally submitted. Note that legislation passed in 2019 amended RSA 676:4, I(b) to allow a planning board, in its rules of procedure, to shorten this 21-day minimum period.

COMPLETED APPLICATION

The subdivision and site plan review regulations must provide the applicant with a clear picture of the information the planning board requires in order for an application to be accepted as complete. The regulations must specify not only the design details and factual data of location and ownership, but also must include any special studies, reports, and technical reviews the board will need to understand and evaluate the impact of the proposal. Design review discussions help to clarify the need for specific studies or could indicate that some studies might not be needed for a particular proposal and could be waived.

The regulations should also reserve the right to require additional studies if, after initial review and public comment, the board determines that a decision cannot be made without such information. In some municipalities, the planning board will accept an application and hold the public hearing on the same night. This procedure is allowed, but make sure that the board votes to accept the application as complete before starting the public hearing. Also, make sure to include both steps to be taken in the public notice to be posted as required under RSA 676:4, I(d).

Who May Apply

The subdivision and site plan review regulations should specify who is eligible to submit an application to the planning board. If the regulations allow the property owner to designate an agent, only the agent should be responsible for the application. The legal property owner must be identified on the application and should authorize an agent or option holder to act on their behalf.

Filing Procedures

An application must be filed at least 21 days before the board meeting at which it is to be submitted for acceptance, unless the board's rules of procedure specify a shorter period of time. Each application should be logged in, given a file number that will identify it throughout the review process, and, if complete, be placed on the planning board's agenda. The filing procedure should be structured to enable the applicant to meet the statutory requirements for filing an application and giving notice.

The planning board should state in the regulations and on the application form where and when applications may be filed. In municipalities with staff and regular office hours for the planning board, applications may be filed with the staff at the designated times.

Planning boards without this type of staff support should only accept applications at a regular meeting, and under no circumstances should the board allow applications to be mailed or dropped off at a board member's home or place of business. While this practice has been common in smaller towns, statutory changes in the timing for filing make it important for the board to have documentation of when an application has been physically received by the board. Be careful to avoid discussing the merits of the proposal at this point. It is appropriate only to take receipt of the application and schedule the submission meeting. The board may, however, review the plat against the checklist to determine if all submission items have been provided, but members should firmly avoid discussing the plan itself.

The NH Office of Strategic Initiatives recommends that the board prepare an application form and an accompanying checklist to clearly show all of the information and other documents that must be filed. This helps the applicant understand the requirements and simplifies the board's process of determining whether or not the application is complete. A good source of model forms and checklists is in Southwest Region Planning Commission's *Subdivision and Site Plan Review Handbook*.

List of Abutters

Under the requirements of RSA 676:4, I(b) an applicant must submit the names and mailing addresses of the applicant and all abutters to the property under consideration. The names of the abutters must be taken from the municipal records not more than five days before the date on which the application is filed. It is ultimately the applicant's responsibility to verify abutters are correct, not the municipality's. In the interests of assuring that current property owners are notified of a pending application, a planning board may suggest that an applicant check with the county registry of deeds to identify any recent changes in ownership.

The application shall also include the names and addresses of all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and the name and business address of every engineer, architect, land surveyor or soil scientist whose professional seal appears on any plat submitted to the board. 676:4.(d)(1).

Filing Fees

The applicant must pay all costs involved in providing the notices required for planning board action on an application. Such costs must be paid in advance and include postage for mailing notices to abutters and professionals, expenses for preparation of posted notices, and the charges to place legal notices in newspapers (RSA 676:4, I(d)).

Other Fees

The planning board may include the cost of reasonable administrative services as part of the subdivision and site plan review application fee to provide staff assistance to handle the filing, record keeping, and other clerical details involved in the review process.

The application fee may also include preliminary funds to prepare special studies, independent review of such studies that are provided by the applicant, and/or construction inspections that are required by the regulations (RSA 676:4, I(g) and RSA 676:4-b). Inspection costs can also be considered costs incurred under a third party review agreement or as spelled out in the subdivision and/or site plan regulations. It often pays for an engineer or other professional to perform engineering or construction activities on behalf of the town that is paid for by the applicant

Because the zoning board of adjustment may also collect fees for special studies, and it is possible that redundant studies may be requested of the same applicant, both the planning and zoning boards are limited to assessing fees where it will not "substantially replicate a review and consultation obtained by" the other board.

The administrative and third party review fees should be placed in separate accounts, identified by file number, and drawn down as expended. All fees should be based on documented charges.

COMPLETENESS REVIEW

Before an application is submitted to the planning board for acceptance, the board should be satisfied that it is complete. The first step is to file an application with the planning board staff or designee who performs the completeness review before officially submitting it to the planning board. A completeness review is intended to assure the planning board that the application meets the criteria and contains all of the items required by the regulations, but does not involve a review of the material submitted.

Only the planning board can decide if the application meets its criteria; however, a designee who has a thorough knowledge of the subdivision and site plan review regulations and an understanding of the types of materials that are needed, can do a preliminary screening as applications are filed and make a recommendation regarding the application's completeness to the board. In such a case, the board, in its procedures, could suggest that the applicant provide the material earlier than the statutorily required 21 days before submission. The additional time would give the applicant an opportunity to provide any items identified by the designee that must be filed to make the application complete.

A checklist based on the requirements of the subdivision and/or site plan review regulations is particularly helpful for the board in performing the completeness review. Those applications that are determined to be complete could then be placed on the agenda of a subsequent meeting for submission or can be done at the same public hearing. Once the board determines that the application is complete, it must be accepted upon submission.

In the event that the applicant disagrees with the designee's recommendation that the application is not complete and declines to submit the requested items, the application must be placed on the agenda. The designee's recommendation would be considered by the board in deciding what action to take. The abutters and the public must be notified when the application is on the agenda, but the board may reject an application as incomplete without a public hearing (RSA 676:4, I(e)(2)). A written determination that an application is not complete must be provided to the applicant (RSA 676:3, I). A planning board application may not be determined incomplete solely because it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal government bodies, nor may a planning board refuse to take action on such an application for that reason only. However, the planning board may condition approval upon the receipt of such permits or approvals in accordance with RSA 676:4, I(i).

STEP 2: NOTICE OF PUBLIC HEARING (RSA 676:4, I(D))

A public notice is required when a formal application or an application for design review has been filed and placed on the planning board's agenda to be reviewed at a public hearing. The notice must:

- Be sent by verified mail at least 10 days before the date of submission;

> **In 2017 the legislature revised several statutes, including RSA 676:4, I(d)(1) to replace the requirement for notice by certified mail with "verified mail" as such term is defined in RSA 451-C:1, VII. RSA 451-C:1, VII, in turn, defines "verified mail" as "any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing." Thus, "verified mail" includes, but is not limited to, certified mail.**

- It must be sent to the applicant, all abutters, holders of conservation, preservation or agricultural preservation restrictions, and all professionals whose seal appears on any plat as defined in RSA 676:4, I(d);
- Be provided to the general public as the subdivision and site plan review regulations specify (either posting or publication);
- Include the date, time, and place of the meeting, the name of the applicant, the location and general description of the proposal; and
- Be paid for in advance by the applicant.

Notice is required even if the abutters and the public were notified for a design review application. The applicant should recheck local records not more than 5 days before the filing to determine if there have been any changes in the list of abutters. Submission of a completed application is a separate procedure and marks the point at which the required review begins.

It is important to remember that notice of a public hearing, as discussed above, differs from notice of a simple public meeting. It is also important to distinguish the above from the notice required for a public hearing on proposed regulations or ordinances, which is governed by RSA 675:7, and which requires, in part, notice by publication.

When choosing a newspaper for the publication of a notice, there are several points to remember:

- The public notice must appear in the newspaper at least 10 days prior to the planning board's public hearing.
- Newspaper publication deadlines need to be considered when setting the schedule for filing, especially for weekly newspapers.

- Free "shoppers" and "bulletin board papers" should be avoided.

Minor lot line adjustments or boundary agreements, which do not create buildable lots, do not require public hearings prior to approval unless the subdivision regulations state otherwise. However, notice must be given in accordance with RSA 676:4, I(d) that the board is considering such a request. Similarly, public hearings are not required for the disapproval of applications based upon failure to submit all information required by the regulations, notify abutters, meet deadlines, or pay the required fees.

In the interest of keeping the public fully informed, the NH Office of Strategic Initiatives recommends that the notice procedures include both newspaper publication and posting. The subdivision and site plan review regulations or the board's rules of procedure should specify where in the municipality notices will be posted and in what newspaper they will be published. The *Subdivision and Site Plan Review Handbook* by Southwest Region Planning Commission has model notice forms for both abutters and the general public.

Voluntary and Involuntary Lot Merger

Under RSA 674:39-a, any owner of 2 or more contiguous pre-existing approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. However, recent changes to the statute now prohibit involuntary mergers. Governmental entities are precluded from merging preexisting subdivided, contiguous nonconforming lots or parcels without the owner's consent.

In addition, RSA 674:39-aa permits owners of lots that were involuntarily merged prior to September 18, 2010 to have the lots restored to their pre-merger status. "Involuntarily merged lots" are lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Property owners have until December 31, 2021 to submit a request to the municipality's governing body to restore any involuntarily merged lots to their previous status. The decision of the governing body may be appealed in accordance with RSA 676. If any owner in the property's chain of title voluntarily merged the lots, subsequent owners may not request restoration of the lots to their pre-merger status. The municipality has the burden of proving that a previous owner voluntarily merged the lots. Restoration of involuntarily merged lots to their pre-merger status does not cure any lot's nonconformity with existing local land use ordinances.

RSA 674:39-aa requires municipalities to post a notice informing residents that any involuntarily merged lots may be restored to pre-merger status upon the owner's request. The notice shall be posted in a public place and remain posted through December 31, 2021. The requirement that notice be published in the municipality's annual reports through 2015 was not extended when the deadline to request restoration of involuntarily merged lots was changed to December 31, 2021.

Municipalities may adopt local ordinances regulating the restoration of previously merged properties that are less restrictive than the provisions in RSA 674:39-aa.

Additional Notices

Throughout the deliberation and review process, the planning board must keep all of the interested parties informed of any meetings at which the application will be considered. Separate notices are not necessarily required each time an application is to appear on the planning board agenda if "continuity of notice" is maintained by one of the following methods:

- The initial notice may state that the application will be on the planning board's agenda for each regular meeting until a decision is made. The notice should include the board's meeting schedule.

- If no decision is reached and consideration of the application will be continued to a future meeting, the board announces the date, time and place of the continued meeting.

Failure to Notify

New Hampshire statutes stress the importance of providing notice and an opportunity to be heard for abutters and the public during the subdivision and site plan review process. Failure to adhere to the notice requirements could result in costly and time consuming court action against the planning board, reversal of a decision made by the board, and expensive project delays.

The board's rules of procedure could address this issue by allowing someone who was not notified, but is present at the hearing, to sign a form agreeing to waive the notice requirement. If the person is not present, declines to sign the form, or if the error is found after the meeting, the required notice must be provided and the review process begun again. These steps would guard against a possible legal challenge to the board's action on grounds of failure to follow the notice requirements.

STEP 3: SUBMISSION AND ACCEPTANCE (RSA 676:4, I(b))

Submission

Before a planning board can take any action on an application, the complete package of required information as defined in the subdivision and site plan review regulations must be submitted to the board at a public meeting. The process of submitting the application should take only a short time during the meeting.

The planning staff or designee can discuss the completeness of an application with the board prior to the public hearing. The discussion can include if the required materials were submitted according to the checklist and regulations and if there are waiver requests for the board to consider. This "order of business" should be spelled out in the board's "Rules of Procedure." It is appropriate for the board to not engage in discussion over completeness of the application with the applicant before the public hearing is opened. While they can ask the applicant for clarity on an issue, caution should be taken with this policy. The merits of the application cannot be discussed outside of a public hearing.

Acceptance

The planning board's action to accept a completed application should be clearly identified. A formal motion to accept, with an affirmative vote by a majority of the board members, is recommended. An example of a confirmatory note to an applicant may be found in the *Subdivision and Site Plan Review Handbook* by Southwest Region Planning Commission. If the application is complete upon submission, the planning board cannot delay acceptance until a future date. And, upon the board's acceptance as complete, the board has 65 days to approve, approve with conditions, or disapprove the application.

The board accepts an application as "complete" based on its own review or on the designee's recommendation. The board's familiarity with the details of the application upon acceptance may be minimal. Before the board can approve a subdivision or site plan application, a public hearing must be held. For simple applications, the public hearing may be scheduled for the same meeting at which the application is submitted and accepted (but must be noticed as such).

For more complex applications, the board should take the time to review the details of the application and provide time for review and comment from other municipal boards and departments as appropriate. When the public hearing is held, the board would then be in a better position to understand and respond to questions raised.

In the interest of time and money for the municipality, the applicant, the board could adopt procedures to determine completeness and acceptance and open the public hearing at one meeting.
This can also prove beneficial for the abutters and the public by only having to attend one public hearing for the acceptance of the application and opening of the public hearing.

STEP 4: PUBLIC HEARING (RSA 676:4, I(d))

In most cases, a public hearing must be held before the planning board can take final action on an application that has been accepted for review. Once again, the notice requirements should be carefully followed to ensure that required parties have an opportunity to participate.

The purpose of the hearing is to inform abutters and the public of the proposal and to give the planning board and the applicant the benefit of the views, opinions, and remarks of the abutters and anyone else who might be affected by the proposal.

Exceptions to the Public Hearing Requirement

State statutes do not require a public hearing in the following situations:

- The board determines that the applicant has failed to supply required information (including a list of abutters), has not paid costs or fees set by the board, or has failed to meet reasonable deadlines established by the board (RSA 676:4, I(e)(2)).
- The proposal is a boundary agreement or a minor lot line adjustment that does not create buildable lots (RSA 676:4, I(e)(1)).
- The proposal meets the requirements for the expedited review process for minor subdivisions under RSA 676:4, III and this process is allowed by local subdivision regulations.

A public hearing may be required by local regulations for minor subdivisions, lot line adjustments and site plan review. The regulations should state whether public hearings are routinely held for these types of applications or will be held only if requested.

Procedures for a Hearing

The rules of procedure adopted by the planning board under RSA 676:1 should provide the basic ground rules for holding a public hearing. Recommended procedure is outlined below:

1. The chair opens the public hearing and explains what procedures will be followed.
2. The chair explains that the reason for holding the hearing is to gain input from any persons potentially affected by the proposal.
3. The applicant presents the proposal.
4. The board members may ask questions of the applicant.
5. Other questions and comments are taken in the following order:
   a. Abutters in favor of the proposal.
   b. Abutters opposed to the proposal.
   c. Anyone else who wishes to speak, if time permits.
   d. Any written comments are read into the record. Anyone speaking from the floor must identify themselves for the record. All questions must be directed through the chair to avoid cross-questioning between abutters and the applicant.

6. The chair summarizes the comments and provides an opportunity for the applicant to clarify any issues. The chair announces the procedures the board will follow in making a decision.
7. The chair closes the public hearing and the board begins deliberating on the application at that time and either makes a decision or continues the application to a future public hearing.

The minutes of the public hearing will help the board in its deliberations and will also form an important part of the record if the decision is challenged. After the public hearing, a board member may offer one of the following motions:

- Motion to approve the application;
- Motion to approve the application, with conditions;
- Motion to disapprove the application;
- Motion to defer a decision on, or continue the application until a later date; or
- Other motion, as appropriate.

STEP 5: FORMAL CONSIDERATION (RSA 676:4, I(c))

Upon finding that a submitted application is complete, the board shall begin formal consideration and must act within 65 days to approve, conditionally approve, or disapprove the application. To begin formal consideration, the board should initiate the following actions, as it deems appropriate:

- Open the public hearing or schedule a public hearing.
- For larger more complex applications, the board may consider scheduling a site visit by the board;
- Hold a work session to review details of the application;
- Assign a designee to review the application and report back to the planning board;
- Review any impact studies or reports required as part of the application;
- Request other local boards and municipal officials to review and comment on the proposal; and

If the public notices have stated that the application is on the agenda of every planning board meeting from the date of the acceptance to the date of final action, the board may discuss any aspect of the application at any regular meeting or work session.

Review of Application

For some applications, it is possible for the board to accept an application, hold the public hearing, and make its decision at one meeting. This process, however, may not be appropriate for complex applications. The key is for the planning board to take the time necessary to evaluate the information provided by the applicant, review recommendations from local officials and planning staff, the designee or consultants, and carefully weigh the issues raised at the public hearing.

These comments and evaluations may alert the planning board to some problem with the site of which neither the board nor the applicant was aware. Local regulations should reserve the right for the board to require additional information under these circumstances, i.e., if the board could not make an informed decision or would have to disapprove the application without the information. The board should set a reasonable time for the applicant to provide the material. If necessary, the applicant and the board should agree to an extension of the 65-day time period.

If the deadline is not met or if the applicant has not agreed to an extension of the time period, the board should disapprove the application. The board should not grant conditional approval of an application pending receipt of studies or reports that have been required and must be reviewed before a decision can be made. The written decision to disapprove required by RSA 676:3, I should cite lack of specific material or failure to meet an established deadline as the reason for the decision. Under RSA 676:4, I(e)(2) no public hearing is required for this disapproval. The file should be marked closed.

Procedurally, a new application filing, including required fees, are necessary to invoke the jurisdiction of the board, but the previously filed material could be included along with the additional items.

Nonpublic Sessions

The provisions of RSA 91-A:3 regulate the very limited circumstances under which a planning board may meet in a nonpublic session. A recorded roll call vote by a majority of board members is required to enter a nonpublic session and the specific statutory reason for the nonpublic session must be cited. Permitted reasons are listed in RSA 91-A:3, II(a-l). Reasons for a nonpublic session include discussion of litigation filed by or against the municipal board and, newly added in 2016, advice received from the board's legal counsel either orally or in writing, even if legal counsel is not present. The decision to hold a nonpublic session must be included in the minutes of the open session. Minutes also must be kept of the nonpublic session. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes of nonpublic sessions shall include the names of members, persons appearing before the board, and a brief description of the subject matter discussed and final decisions. Also, minutes of nonpublic sessions must be made public within 72 hours unless the board votes by a two-thirds majority to seal the minutes. Minutes may only be sealed if the requirements in RSA 91-A:3, III are met.

The use of nonpublic sessions should be limited and the requirements of RSA 91-A:3 carefully observed.

If there is any question concerning the appropriateness of a closed deliberative session, the board should consult its legal counsel.

Extension of 65-Day Review

A complex application can take many meetings for the board to review. In addition, an applicant may have difficulty completing requirements set by the planning board. In either case, the 65-day period for the planning board to vote on an application may be extended in one of the following ways, as provided in RSA 676:4, I(f):

- The applicant and the board agree to an extension for a set period of time.
- The applicant and the board agree to halt the running of the review for a set period of time, i.e., "stop the clock," until necessary material is prepared and submitted.
- The planning board requests an extension of time from the board of selectmen or town/city council. Such an extension cannot exceed one additional 90-day period.

Any extension of time or delay in the process should be carefully documented in the records of the planning board and in writing to the applicant.

STEP 6: THE DECISION (RSA 676:4, I)

After the planning board is satisfied that it has addressed all potential concerns and issues associated with a subdivision or site plan application, the board is ready to make a decision. Under state statutes, the board shall take one of the following actions:

- A motion to approve the application;
- A motion to disapprove, with specific reasons for the disapproval; or
- A motion to approve with conditions.

When a motion to approve does not get an affirmative vote from a majority of board members, it does not result in automatic disapproval of the application. A new motion to disapprove, including reasons for the action, should be offered and another vote should be taken. Similarly, a motion to disapprove that does not receive a majority vote does not result in an automatic approval of the application. In order for the board to act, it must approve an affirmative vote to take a particular action. This may become problematic when there is an even number of board members present. If a motion is made that results in a tie vote, the motion fails and the board is back where it began. The board should make several attempts to craft a motion that a majority of members can approve. If the board is unable to break the tie, the meeting should be adjourned until a board with an odd number of members can be convened.

RSA 676:3, I requires that the applicant be given a final written decision (commonly referred to as a "Notice of Decision") that documents the board's decision to approve or disapprove the application. If the application is not approved, the notification must clearly state reasons for the disapproval. The statute also requires the planning board's written decision to detail all conditions that may have been placed upon an approval. In addition, the written decision and all the conditions are required to be filed with or on the plats.

Approval

The approval of an application by the planning board signifies that the proposal meets all applicable regulations. The plat must be approved by a majority vote of the planning board and signed as required by local regulations. For subdivision applications the final plan shall be recorded at the County Registry of Deeds. Site plans however,(except condominium site plans) may not be accepted for recording at the registry so check with your county registry before requiring the recording of site plans in your regulations. The board could consider recording the "Notice of Decision" for site plan approvals, with plans available for review with the Town. Registries require that all final approved plats for a subdivision or condominium be made on Mylar (plastic) for recording purposes.

Disapproval

When denying an application, the planning board must vote to disapprove, specify the reasons for denial, and cite the sections of the regulations that were not satisfied. The reasons for denial must be clearly stated in the board's minutes and other records of its actions.

The board must notify the applicant, in writing, of the reasons for the denial. While the applicant may disagree with the board's decision, the applicant should be able to understand the basis for the decision. Such careful documentation will support the board's action if the decision is appealed.

The option to disapprove an application can be taken by a planning board in the following situations:

- The proposal does not or could not meet the local requirements due to specific factors relating to soils, road conditions, lack of state permits, or the inability to meet zoning requirements.
- The proposal cannot adequately address the legitimate concerns raised at the public hearing, such as drainage, traffic, or other health or safety issues.
- The applicant failed to provide information required by the board.
- The proposal would result in a "scattered or premature" subdivision. This determination would be based on the goals and objectives in the master plan that are referenced with specific criteria in the subdivision regulations. A statement of intent for the particular zoning district would lend further support to such a finding. An analysis of the timeliness of the proposal in light of actions outlined by the capital improvements program would also be an important factor in determining whether a proposal is premature.

Waivers (RSA 674:36, II(n) and RSA 674:44, III(e))

It is optional for a planning board to include a provision for waivers in the subdivision regulations; however, it is mandatory for site plan review regulations. The planning board may grant a waiver of a portion of its subdivision and site plan review regulations if it finds, by majority vote, that strict conformity with the regulation would pose an unnecessary hardship to the applicant and would not be contrary to the spirit and intent of the regulations. Alternately, a waiver may be approved if specific circumstances of the development or conditions of the land indicate that the waiver will properly carry out the spirit and intent of the regulations. The basis for granting a waiver shall be recorded in the planning board minutes.

Conditional Approval

The planning board's decision to approve an application with conditions may be necessary for a variety of reasons:

- The application may require minor revisions;
- Permits or approvals from other boards or agencies may be lacking;
- Improvements to roads, sewers or other utilities may be required before the development is completed; or
- The board may want to require preservation of specific natural features during development.

Conditional approval constitutes a decision of the planning board within the requirements of the 65-day review period or a legal extension thereof. State statutes do not set a time limit within which the planning board must make a decision on whether or not conditions have been met. When a planning board votes to approve an application conditionally, it should set reasonable deadlines for the applicant to notify the board that the conditions have been fulfilled. Deadlines for all conditions should be spelled out in the regulations, as applicable, or in the Notice of Decision. If the applicant fails to act upon an approval within the specified time frame, they may have to return to the board with an extension request.

There are two general categories of conditions:

- **Conditions precedent** are conditions that must be fulfilled before the planning board may give final approval to an application, such as receiving state permits, obtaining bonds for construction, and making revisions to the plans.
- **Conditions subsequent** are conditions that appear on the final plat and deal with restrictions on the use of property or safeguards that must be observed during development of the parcel or once the project is in use. Such issues might include the location of a road, preservation of vegetation and stone walls, or hours of operation and details of security protection for a commercial use.

In imposing conditions on the approval of an application, the records of the planning board should state the reasons for the conditions and the specific actions that are required. This will simplify the job of verifying that the conditions have been met. In conjunction with the local enforcement authorities, the planning board should establish a monitoring process to ensure that conditions subsequent are followed, both during development and through the ongoing life of the project. In addition, such conditions should be noted on the written decision issued to the applicant and on the plat, or contained in a separate recording at the registry of deeds so that the conditions are a matter of record for future owners of the property.

According to RSA 676:4, I(i), conditional approvals that are considered minor plan changes, administrative, or relate to the issuance of other approvals or permits, become final without further public hearing once satisfactory compliance with the conditions has been confirmed. This may occur either through certification to the planning board by its designee or based on evidence submitted by the applicant to the board. All other conditions precedent require a hearing prior to the plat's final approval and must be noticed as provided in RSA 676:4, I(d).

It should also be noted that if the applicant believes the conditions are unreasonable, conditional approval can be treated as disapproval for the purposes of an appeal.

Compliance Hearing

Responding to a New Hampshire Supreme Court ruling in *Sklar v. Town of Merrimack*, 125 NH 321 (1984), the state legislature addressed the issues of how and when a conditional approval becomes final. Under RSA 676:4, I(i), a public hearing is not required when compliance with the conditions is an administrative act or does not involve discretionary judgment by the board. Such conditions precedent might include:

- Minor plan changes such as modifying the location of a structure or a lot line to accommodate a tree or other natural feature;
- Administrative conditions such as submission of financial security to ensure compliance with the municipality's road specifications or other requirements for improvements; or
- Conditions that require the applicant to receive permits or approvals from other boards or state or federal agencies, i.e., wetland permit, subsurface disposal system permit, or approval to tie into municipal water or sewer systems.

A public hearing must be held to assure compliance with conditions that require judgment by the planning board. For example, revisions to a drainage plan must be reviewed to determine if they adequately meet concerns expressed either by the board or an abutter. Such a condition requires a public hearing with full notice to abutters and the public before finalizing the approval and signing the plat (RSA 676:4, I(d)).

Additional notice is not required for an adjourned hearing if the date, time, and place of the continuation were announced at the prior hearing. The board should listen to the public's comments and decide, by vote, whether the conditions have been met. The compliance hearing is concerned only with the issue of whether any discretionary conditions attached to the approval have been met and should not provide an opportunity to reopen general discussion of the entire proposal.

Posting of Bond or Other Surety

A municipality must be assured that all improvements are constructed or installed in accordance with the approved application. When improvements are included as conditions for subdivision and or site plan approval, the planning board should require a performance bond, letter of credit, or other type of financial security as specified in the subdivision and site plan regulations, to guarantee that streets will be constructed, utilities installed, and landscaping and other improvements provided in accordance with the regulations. Financial security may also be considered for stabilization of the site if a developer is unable to complete a project but site work has begun. While the type of security chosen may vary, the planning board should ensure that the applicant is fully responsible for the cost of the improvements so that the municipality does not assume the financial burden.

A detailed description of the required improvements should be included as part of the security agreement. The termination date of the agreement should extend beyond the time period for the work to be accomplished to give the municipality sufficient time to invoke the provisions of the security when it becomes obvious that work will not be completed.

Posting of the bond, letter of credit, or other security must be completed before the plat is signed, dated, and recorded by the board. Certification that security has been provided is considered an administrative act and does not require a compliance hearing.

A standard form for the security should be prepared and reviewed by the municipal attorney to assist the board with its effort to safeguard municipal interests. The attorney should also be asked to review any unusual or complex situations that may be related to a specific subdivision or site plan.

RSA 674:36, III(b) prohibits a planning board from specifying cash or a passbook as the only types of acceptable credit. In addition, the municipality must allow partial release of the security as phases or portions of the improvements are completed and approved by the planning board. The security agreement should define the phases included and establish reasonable costs for each phase. In this situation, it is important for the municipality to provide for an inspection to be sure each phase of work is completed as the applicant requests release (and such inspection may be appropriate for a third-party reviewer).

RSA 676:12, V prohibits the denial of a building permit based on uncompleted streets and utilities after such improvements have been secured. However, occupancy can be restricted until terms set by the planning board in its decision have been met.

Effect of Approval of Lot Line Adjustment

In context of a lot line adjustment, it is important to understand that the effect of the planning board approval is limited. Essentially, the approval acts as any other subdivision approval. It is recognition that the new lot line constitutes a use of the land that is consistent with local land use regulations and the overall land use plan of the municipality. The approval of the planning board does not create the new line. Lines dividing parcels of land do not move or disappear without a conveyance or a merger. In the case of a lot line adjustment, we typically see a lot line move to create more favorable dimensions for one or both lots. In order to complete this move, a conveyance must occur. The owners of the respective lots must transfer, by deed, parts of their respective parcels to each other (in some situations only one owner transfers to the other). The documents reflecting the conveyance should then be recorded in the registry of deeds along with the plan approved by the planning board. This portion of the lot line adjustment process is a private matter and the planning board need not be involved in the negotiation of the location of the line, the cost of the transaction, or other private terms of agreement. The limited job of the planning board is to review the configuration of the proposed new lots and lines to determine whether they are in conformance with subdivision regulations and any local zoning ordinance.

To alleviate any confusion regarding the effect of planning board approval, it may be advisable for a planning board to indicate in its notice of decision and/or as a note on the plan that approval by the planning board in and of itself does not effectuate a change in lot line location. Such approval merely constitutes recognition by the municipality that the lot configurations, as proposed, are in conformance with local land use regulations or are otherwise accepted with non-conformances.

Issuing the Decision

All planning board decisions must be by a majority vote of the members present and must be based on a motion that clearly expresses the intent of the board. While not required by state statutes, a number of boards take a roll call vote on subdivision and site plan review applications and enter the vote in the board's records.

The plat should include a formal signature block where the board's approval is noted. Because administrative conditions may not be in place at the time of approval, the regulations may allow the chair and/or board secretary to sign the completed plat when the conditions have been met. This action will allow the plat or the Notice of Decision to be accepted for filing at the registry. The motion to approve an application should include authorization for these signatures, making it clear in the records that the board intends to delegate responsibility for this administrative action. One signed copy of the approved plat should be retained in the planning board's files and a second copy should be given to the applicant.

Any decision of the board must be in writing and placed on file in the board's office for public inspection within 5 business days after the decision is made.

STEP 7: FAILURE TO ACT (RSA 676:4, I(c))

State statutes establish specific steps that must be taken if a planning board does not arrive at a decision on an application within 65 days after acceptance of a completed application, and an extension has neither been granted by the governing body nor agreed to by the applicant. The steps related to a planning board's failure to act are as follows:

1. The applicant requests assistance from the governing body (selectmen or town/city council).
2. The applicant requests the governing body to issue an order directing the planning board to act within 30 days.
3. If the planning board fails to act on the governing body's order, the governing body must approve the application within 40 days of the order, unless it identifies in writing that the plan does not comply with local regulations.
4. In the event that the governing body fails to act, the applicant files a petition in superior court asking the court to determine whether the application should be approved.
5. The court issues an order approving the application if it finds that the application complies with the local regulations.

If the court finds that the board's failure to act within the time period was not justified, the municipality may be ordered to pay reasonable costs for the applicant's legal action.

STEP 8: RECORDING THE PLAT (RSA 676:16)

In a municipality that has established subdivision review authority, no parcel of land within a subdivision can be transferred or sold until the planning board has approved a plat of the subdivision and filed it with the appropriate county register of deeds. RSA 674:37 requires that any plat to be filed or recorded must be prepared and certified by a licensed land surveyor since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981.

The subdivision regulations should prescribe the recording process. It is strongly recommended that the board or its designee handle delivery of the plat to the registry. In this way, the board is assured that the plat is recorded as approved and can document the date of the recording. Allowing an applicant to file the plat should be discouraged to ensure that no changes or modifications are made after the board has approved the plat. If an applicant is allowed to file the plat, the regulations should require that a copy of the plat, certified by the county register of deeds, be returned to the board for its records. A recorded plat that has been altered without board approval is considered null and void.

APPEALS (RSA 677:15)

An appeal of a planning board decision concerning a site plan or a subdivision is taken to superior court and can be filed by any persons aggrieved by the decision. One exception to this procedure is found in RSA 676:5, III and would occur if a planning board makes any decision or determination an application based solely, or in part, on the terms of the zoning ordinance. In that case, the decision is considered an administrative decision based on an interpretation of the zoning ordinance, which is appealed first to the zoning board of adjustment. It is possible that a planning board decision on a subdivision or site plan application will be appealed both to the superior court and to the ZBA, based on the reasons for the decision.

If any party appeals part of the planning board decision to the superior court before all matters appealed to the ZBA are resolved, the court proceedings will be stayed pending resolution of the ZBA appeal. All matters decided by the planning board or the ZBA may be appealed to the superior court within 30 days after final action by the ZBA.

If a planning board decision is first appealed to the superior court and the court determines, within 30 days after proof of service of process, that any matters contained in the appeal should have been appealed to the ZBA, the court will issue an order to that effect and stay the court proceedings. The party who brought the appeal will have 30 days to present the matter to the ZBA. If the court doesn't make that determination, no matter contained in the appeal may subsequently be dismissed on the ground that it should have been appealed to the ZBA.

Land use boards may reconsider their own decisions within the statutory time period for appeal to the superior court. The board's rules of procedure should outline the process for reconsideration or include a reconsideration provision in the subdivision and site plan review regulations.

The procedures for an appeal of planning board decisions to the superior court are:

- A petition must be filed with the court within 30 days. The clock starts on the date that the board votes to approve or disapprove the application.
- The petition must state the grounds on which the decision is claimed to be illegal or unreasonable.
- The court may order the planning board to review the decision and set a time limit for such review.
- The court may require a hearing or appoint a referee or court master to prepare a report.
- The court must give land use board appeals priority on the court calendar.
- The court may affirm, reverse, or modify the planning board's decision if there is an error of law or if the court finds that the decision is unreasonable based on the evidence presented.

The municipality can be required to pay costs only when the court finds that the planning board acted in bad faith or with malice.

ENFORCEMENT

The planning board has authority to conduct third party reviews and construction inspections to ensure the terms of the subdivision or site plan approval are met and construction is in accordance with the approved plat or plan. The third party inspector must observe, record, and promptly report any construction defects and deviation from the terms of approval to the planning board or the appropriate municipal authority and the applicant. The applicant may be required to reimburse the planning board for the expenses incurred for the third party review and inspection process (RSA 676:4-b).

The 2008 Municipal Law Lecture Series (Lecture 2) titled "Effective Use of Code Enforcement Tools" and published by the NH Municipal Association provides detail about enforcement issues and the practical considerations prior to superior court action. Local officials should work cooperatively with federal, state or local regulators and public safety officials and balance the facts, competing interest, and points of view before taking action. Consultation with the municipal attorney is also strongly recommended prior to taking enforcement action. The planning board has several tools it can use to enforce its decisions, such as:

- Take no action – Appropriate response to inaccurate complaints.
- Seek voluntary compliance – More often than not, violations are unintended and the violator may be more willing to cooperate than be required to proceed through formal enforcement actions.
- RSA 676:4-a – Revoke an approval when the applicant or the applicant's successor performs work, erects a structure or structures or uses the land in ways that fail to conform to the plans or specifications upon which the approval was based, or has violated any requirement or condition of approval.
- RSA 676:15 – Institute proceedings for a court injunction against unlawful construction, alteration or reconstruction.
- RSA 676:16 – Recover civil penalties for land transfers or sales of unapproved subdivision lots.
- RSA 676:17 – Recover fines and penalties for violations of local land use regulations and subsequent offenses. Each day a violation continues may be considered a separate offense.
- RSA 676:17-a – Issue a cease and desist order against any violations.
- RSA 676:17-b – Issue a local land use citation in addition to the summons. The defendant receiving such a citation may plead guilty or *nolo contendere* (no contest) by mail. If the court accepts the plea, the defendant shall not be required to appear in court.
- RSA 31:39-d – Use the plea-by-mail process, which is permitted for land use violations but not for violations of the state building code.

"GRANDFATHERED" APPLICATION (676:12, VI)

Once an application has been the subject of notice by the planning board, pursuant to RSA 676:4, I(d), it is grandfathered or protected from subsequent amendments to the municipality's subdivision or site plan review regulations or zoning ordinance. However, the application's first legal notice must occur before the amendment's first legal notice. In these situations, the application is reviewed under the current version of the regulations as opposed to the proposed amended regulation.

This grandfathered status also applies to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within

12 months of the end of the design review process. RSA 676:4, II(b) also allows planning boards to determine, at a public meeting, that an application's design review process has ended. This determination requires written notification to the applicant within 10 days.

For applications accepted after the first legal notice of regulation amendments has been posted, the planning board should advise the applicant of the possible effects of the proposed changes and offer the following options for the applicant's consideration:

- The application can be delayed until action on the amendments has been taken, and if the changes are adopted, the review would then be based on the revised regulations;
- The application can be reviewed as submitted with the understanding that if proposed amendments are adopted, the decision of the board could be affected by the new regulations; or
- The application can be revised to conform to the proposed changes.

The planning board should advise the applicant that a plat shall not be filed with the registry of deeds if it does not conform to the regulations in effect at the time the application is approved unless the provisions of RSA 676:12, V apply.

STATUTORY VESTING (RSA 674:39)

The provisions of RSA 674:39 protect approved and recorded subdivision and site plans from subsequent changes in planning board regulations and zoning ordinances. They also protect municipalities from having development that is based on outdated regulations and ordinances, or from development work that has dragged on for years in a less-than-half completed state.

In the first instance, every approved and recorded subdivision or site plan is exempt from all subsequent changes in subdivision and site plan regulations and zoning ordinances for a period of five years after the date of approval (except those regulations and ordinances that expressly protect public health, such as water quality and sewage treatment), provided that:

- Active and substantial development has begun in accordance with the approved plat within 24 months after the date of approval;
- Development remains in full compliance with public health regulations;
- The subdivision plat or site plan conforms to the planning board's regulations in effect at the time of approval.

Planning Boards should define and identify what improvements and features as well as percentage of completion of features that constitutes "Active and Substantial Completion of Improvements" in their subdivision and site plan regulations.

Once the project's improvements have been substantially completed in compliance with the approved subdivision plat or site plan, unless otherwise stipulated by the planning board, the project is permanently protected from subsequent ordinance or regulation changes, except for impact fees. If the board fails to specify and define by regulation what is "active and substantial" for a particular project, the project automatically gets the five years of protection.

MINOR SUBDIVISIONS (RSA 676:4, III)

Many planning boards spend a substantial amount of time on applications proposing relatively simple subdivisions. To encourage a more efficient use of valuable planning board time, state statutes allow local regulations to provide an expedited review process for proposals that create three lots or less, or do not create any new lots for the purpose of building development.

Before deciding whether or not to include an expedited review in the subdivision regulations, the planning board should be aware of some potential problems. There may be cumulative effects from several small subdivisions built in the same area at different times. While each proposal may be filed separately and meet the strict definition of a minor subdivision, the combined effect can cause numerous problems for a municipality. A limited view of the impact of minor subdivisions can result in piecemeal development and uncoordinated growth that is detrimental to the community.

Problems may be avoided by including in the criteria for a minor subdivision the requirement that no lot created has the potential for further subdivision.

For example, the development of a number of subdivisions along an existing road may create an inefficient strip development and leave back land without access if each lot has direct driveway access to the road. In addition, municipal services such as sewer lines and water supply may require extension, the driveways may create hazardous driving conditions, and the general appearance of the subdivision may be unattractive. A more accurate appraisal is made by looking at the extent of both the immediate and future improvements that will be needed. The planning board can assess the total burden a subdivision will place on municipal facilities if it can estimate the future improvements that will be needed to serve the area.

The subdivision of a few lots from a larger parcel of land creates the potential for further subdivision. For example, lots with direct access to the road system may be subdivided from a larger parcel that extends back from the existing public road and has no frontage other than that of the first subdivision. If the remainder of the parcel is subdivided later, the access road that was originally designed to serve only a few lots may be unable to handle a traffic load in excess of the original capacity.

Similar problems may arise if drainage systems, culverts, and water lines are originally designed for three lots and are then called on to serve a growing development. These types of problems result from the assumption that the number of lots alone determines the impact of a subdivision on the municipality, an assumption that is not always true.
Because the subdivision of only a few lots may have significant implications for the municipality, a planning board should be careful in designating minor subdivisions. The amount of work and trouble saved by eliminating a few steps in the crucial review process may prove very costly if the municipality later faces problems resulting from a poor initial design.

OSI recommends that the planning board use a base map to record pertinent information for all subdivision applications as they are submitted. In this way, the cumulative impact of successive subdivisions can be identified at an early point in the review process.

Review Process for Minor Subdivisions

The review of a minor subdivision application involves most of the same steps required for a major subdivision. However, a public hearing must be held only if:

- Required by local regulations;
- Requested by the applicant;
- Requested by abutters; or
- The planning board decides that a hearing is needed.

A completed application must be filed and full notice must be given to the applicant, the abutters, any professional whose seal appears on a plat, and the public. The requirements for a completed application may be limited by the scope of the application. When the application is submitted, the

planning board may accept it and make its decision at the same meeting.

At a minimum, a minor subdivision application must include the following items:

- A list of abutters taken from the municipal records not more than 5 days before the application is filed;
- A site location map;
- A plat prepared by a licensed land surveyor; and
- Notification of approval from appropriate agencies and any required permits.

The expedited review procedure does not exempt the subdivider from complying with applicable state laws. Before the planning board approves an application, state subdivision approval may be required from the Subsurface Systems Bureau of the NH Department of Environmental Services (RSA 485-A: 29-35). Access roads to any public street must be approved by either the municipality or the state Department of Transportation (RSA 236:13). The plat must be prepared on Mylar by a licensed land surveyor so it can be filed with the county register of deeds following approval of an application by the planning board (RSA 674:37).

TECHNICAL REVIEW

Up to this point, this chapter has presented the steps the applicant and the planning board should follow to process a subdivision or site plan review application. This section focuses on the details of the design and layout of a subdivision or site plan that a planning board should consider during review of an application. The planning board is responsible for examining each application to ensure that the interests of the municipality are protected and the requirements of the zoning ordinance, subdivision and site plan regulations are met.

While the subdivision of land into lots does not necessarily imply the construction of buildings, the planning board should consider any subdivision proposal as the first step in the development of a parcel of land. The provision of open space and the design requirements for road construction, water supply, wastewater collection and treatment facilities, drainage or storm water management measures, and other concerns related to the site, should be decided on the basis of the full development of the parcel.

Four general areas should be included in the board's review of a subdivision or site plan application. They are discussed in the order the board would logically address them:

1. Municipal plans, ordinances and regulations;
2. Municipal impact;
3. Physical characteristics of the site;
4. Streets, utilities and lot layout

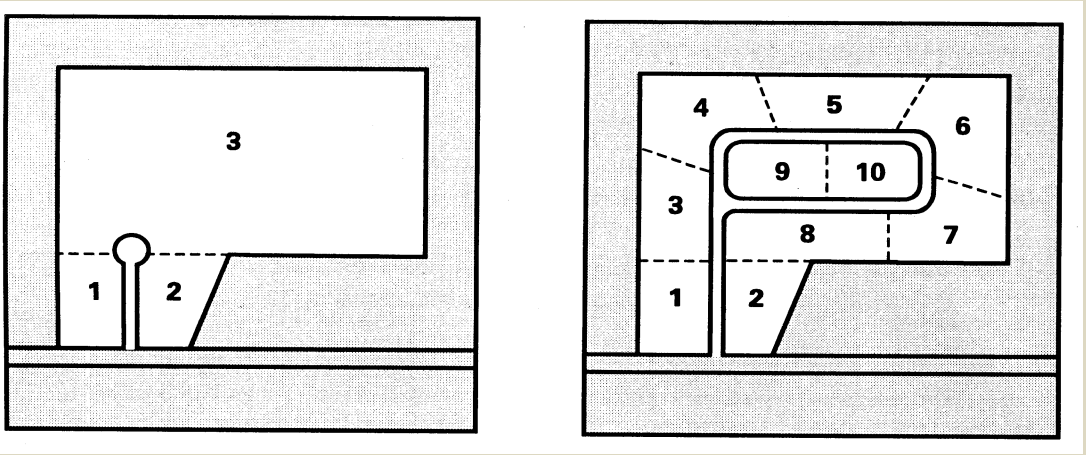


Exhibit V-2a
Potential for Re-subdivision

Exhibit V-2b
Re-subdivided

MUNICIPAL PLANS, ORDINANCES AND REGULATIONS

MASTER PLAN

The planning board should begin its review of a completed application by consulting the master plan to determine if the area is generally suitable for development and to analyze how well the proposal meets the goals and objectives of the municipality. By checking the location of the proposed subdivision or development against the future land use map and any plans for municipal roads and facilities, the board will have an initial idea of how well the proposal conforms to the planned pattern of growth. Focusing on the characteristics of the site itself and its relationship to the surrounding area will help the board decide how well the proposal fits into both the natural and man-made environments.

The master plan may also reflect the residents' wishes concerning areas that should be preserved because of historical or environmental importance or where development should be delayed until services have been extended or roads upgraded. A subdivision or site plan proposed for an outlying area can create problems with providing municipal fire, police and highway services, and can lead to the loss of open space, wetlands, sensitive shore lands or agricultural land targeted in the master plan for preservation.

The master plan is an advisory document and the decision of the planning board must focus on uses permitted by the zoning ordinance and address the requirements contained in the subdivision or site plan review regulations.

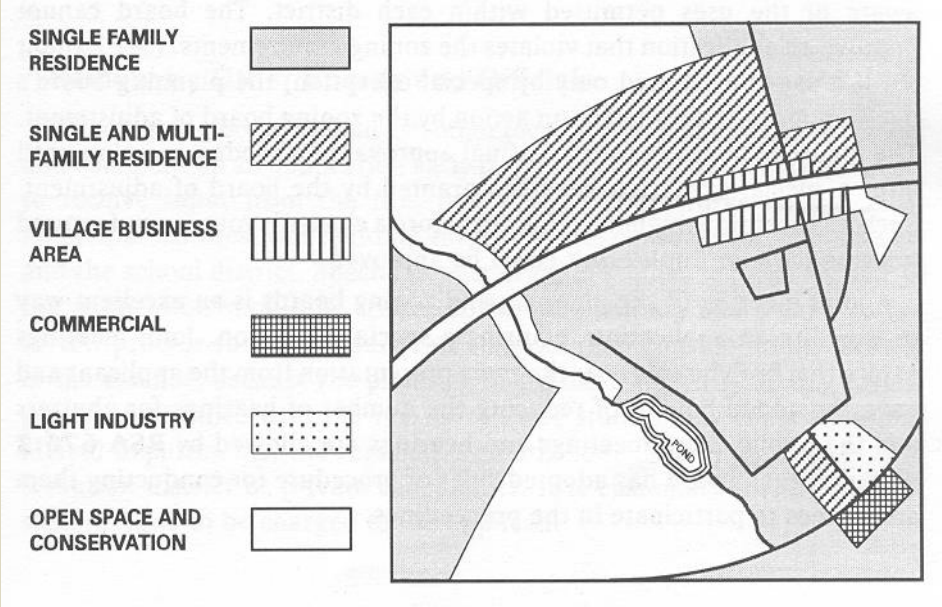


Exhibit V-3
Future Land Use Map

CAPITAL IMPROVEMENTS PLAN/CAPITAL BUDGET

The municipal capital improvements plan (CIP) and capital budget should contain a schedule for making road improvements, extending municipal services, purchasing municipal equipment and vehicles and/or acquiring open space or development rights. An applicant may be advised that the approval of a proposal must be delayed until services are extended to accommodate the subdivision or site plan.

ZONING ORDINANCE

If a zoning ordinance has been adopted, the planning board must be aware of the uses permitted within each district. The board cannot approve an application that violates the zoning requirements. If a use is permitted only by special exception, planning board approval should be conditioned upon action by the zoning board of adjustment. For example, a special exception might be required before a cluster layout, manufactured housing park, or duplex unit could be approved, depending on local regulations.

A joint meeting of the planning and zoning boards is an excellent way to expedite an application requiring a special exception. Joint meetings assure that both boards hear the same presentation from the applicant and have the added benefit of reducing the number of hearings for abutters and the public. Joint meetings and hearings are allowed by RSA 676:2, provided each board has adopted rules of procedure for conducting them and agrees to participate in the proceedings.

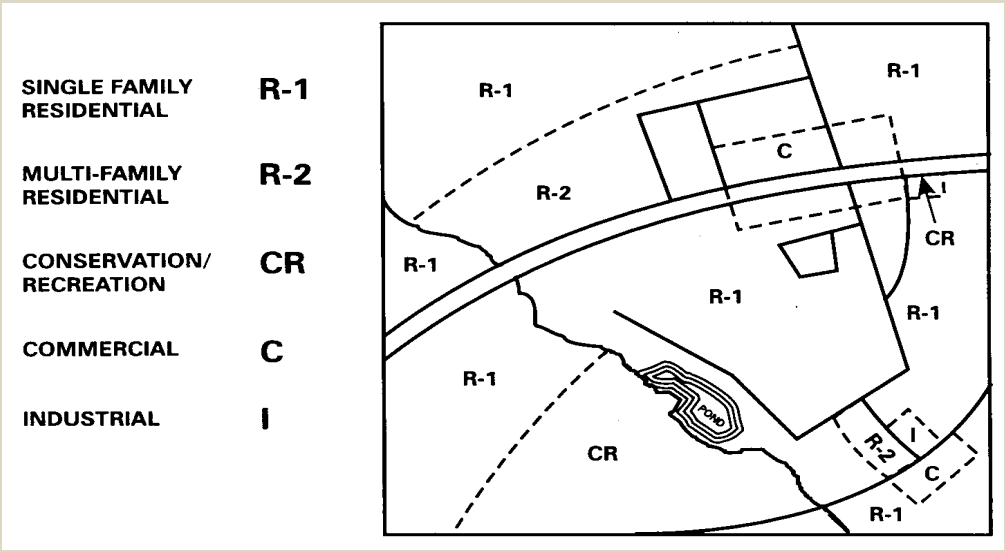


Exhibit V-4
Zoning Map

Review by Other Boards and Officials

The planning board should ask other local boards and officials to review and comment on an application early in the review period. It may be useful to receive input from the fire, police and public works departments, municipal utilities, the building inspector, the conservation commission and the school district. Special impact or other studies required as part of the application should be requested by the planning board early in the review process so there is adequate time for their consideration. Time is of the essence because the planning board has a statutory review period. Assistance with the review of these studies may come from municipal departments, the regional planning commission, the county conservation district, or private consultants. It is customary for the costs of such reviews to be charged to the applicant.

Municipal Impact

The following attributes of a subdivision application should be examined by the planning board to determine the impact of the proposal on the municipality:

Scale: How many acres are involved and how many potential dwelling units could result from the proposal?

Timing: Over what period of time and at what rate will the units be built?

Type: Is the proposal for permanent homes or seasonal dwellings, single family or multi-unit homes?

Scale

Depending on the type of subdivision and the average number of bedrooms per residential dwelling, 100 homes may represent an addition of anywhere from 25 to 200 school-age children. The planning board should assess whether existing schools can accommodate the anticipated increase or whether expanded transportation services or additional classrooms will be necessary. A subdivision of 100 dwelling units may generate 800 automobile trips per day. The board should determine whether

existing roads and parking facilities are adequate to handle the increased load. One hundred new dwelling units may draw 40,000-50,000 gallons of water per day. The planning board should determine the effect of this increased use on the municipal water supply, private water supplies or groundwater for individual wells.

Timing

The period of time over which an applicant plans to proceed with the development of a subdivision will be a major concern to the planning board. Obviously, the municipality can more easily accommodate the addition of 100 new dwelling units over a period of five years than the same number in six months. The subdivision regulations could provide that any further subdivision or re-subdivision of a parcel that occurs within a set period of time (3, 5 or 10 years) be treated by the board as part of the initial subdivision. The impacts would, therefore, be treated cumulatively and conditions placed accordingly.

If the applicant owns additional land, the subdivision may eventually involve substantially more acres than the initial submission. The planning board should be aware of the long-term implications of such a development and ask the applicant to discuss plans for the entire parcel during the early review.

Type

The impact of a proposal on a wide range of municipal services will vary with the type of development planned for a particular subdivision. Single family dwellings, duplexes, multi-family units, and seasonal dwellings each have different impacts on the roads, schools, and utilities. The conversion of seasonal properties to year-round use and the construction of new dwellings designed for multi-season use can result in additional demands on municipal services, without the benefit of any kind of local review or control.

In areas without sewers, any increase in projected wastewater flows, including the construction of additional bedrooms, requires that an application for approval of the subsurface wastewater treatment system be submitted to the Department of Environmental Services. The application must include either:

1. A state-approved plan for the existing subsurface wastewater treatment system that is approved for the projected flow; or
2. A design for a new system that meets current state standards.

Physical Characteristics of the Site

The discussion in this section deals with existing physical characteristics of the site. It is presented to assist the planning board in evaluating the subdivision or site plan and related material submitted by the applicant. The information on soils, seasonal high water table, depth to bedrock or a restrictive layer, and percolation rates and the permeability of the soil, forms the basis for decisions that are made by the applicant and appropriate state agencies. These are also factors that must be considered by the planning board. Local regulations that are more restrictive than state requirements can be imposed if the scientific basis for them is well documented in the master plan.

A subdivision or site plan application should include site-specific data describing the property boundary, topography, drainage features, soil characteristics, percolation rates, soil permeability, and principal site features such as wooded areas, rock outcroppings and wetlands. To review this information, the planning board may draw assistance from the following sources:

- United States Geological Survey (USGS) – topographic quadrangle maps with very general information such as contour lines, lakes, major streams, and existing development.

- Natural Resources Conservation Service (NRCS) – county soils maps, available from county offices or the NRCS state office in Durham, NH.
- Municipal tax maps showing property lines.
- A deed description and survey of the site perimeter and topography, provided by the applicant.
- Flood Insurance Rate Maps, available from the NH Office of Strategic Initiatives.
- Aerial photographs, available from the USDA Farm Service Agency and GRANIT, to identify important site features such as existing structures, fences and stone walls, roads and trails, water bodies, rock outcroppings, trees and foliage lines.

The subdivision or site plan should indicate existing and planned roads, major intersections, and minor roads immediately around the site. The map should include enough of the surrounding area, utilities, and street system to indicate how the subdivision or site plan fits with its surroundings. It should provide some basis for determining the effect of the development on the man-made environment. The location of municipal facilities and services should be shown in greater detail immediately around the site in order to indicate the relationship of the subdivision or site plan to the surrounding community.

If board members are not familiar with the site, a field trip to the location with the applicant will provide a better understanding of the details of the property and the surrounding area than is possible to grasp from a map.

Please note any field trip or site walk with the applicant and the board is considered a meeting under RSA 91:A and minutes and an agenda need to be created.

Members will be able to see any outstanding features such as the vestiges of an old farm or a striking natural formation which could be retained to enhance the aesthetic environment of the subdivision or site plan. They can then request special treatment of a particular feature or suggest redesign of the plan to accommodate significant features.

Finally, the subdivision or site plan plat should show the zoning district(s) for the site. All of these elements will be important to ensure the planning board's ability to assure the proper fitting of the new subdivision or site plan to the existing environment.

Soils Data

Countywide soil surveys completed by the Natural Resources Conservation Service (NRCS) provide detailed soil resource information that can be used in making informed land use decisions. Soil investigations used to prepare these maps are conducted to a depth of 60 inches. Soil types are currently identified on aerial photography at a scale of 1:20,000 (1"=1,666') or 1:24,000 (1"=2,000'). The smallest soil map unit delineated in a county soil survey is limited to three to five acres in size. Soil surveys are available from the NRCS, local conservation district offices or online through GRANIT.

There are two types of site specific soil surveys frequently required by municipal subdivision and/or site plan regulations in New Hampshire: High Intensity Soil Survey (HISS) soil maps and site specific soil maps. The HISS maps are often used to determine soil based lot sizing to implement local area requirements in the zoning ordinance. The HISS mapping criteria and standards were developed by certified soil scientists in New Hampshire. The resulting soil maps are useful products so long as they are used only for soil based lot sizing. They should not be used for making other on-site assessments that depend on more detailed physical and chemical soil properties. Site specific soil mapping

standards are an enhancement to the Order 1 mapping standards. Site specific soil maps are completed under the standards of the USDA National Cooperative Soil Survey. They are multi-purpose products and are suitable for making an assessment of soil suitability on a particular site for most any proposed land use. This includes soil based lot sizing to accommodate subsurface wastewater treatment systems. Both soils maps are required to be prepared by professional, consulting soil scientists certified in the State of New Hampshire.

How can planning boards use countywide soil maps?

Countywide soil maps are excellent for general land use planning purposes such as municipal and regional master plans. However, many planning boards require more intensive soil surveys for major subdivision or site plan applications.

Site-specific soil surveys can also be used to determine the location of critical resources such as wetlands, floodplains, sensitive shorelands and stratified drift aquifers.

SOIL BASED LOT SIZING

Model lot size by soil type regulations are available through the Society of Soil Scientists of Northern New England (SSSNNE). Soil based lot sizing is based on the capabilities of the soil to assimilate nitrate loading from septic systems. Many New Hampshire municipalities have adopted and successfully implemented the concept of soil based lot sizing by adopting area requirements according to soil type in their subdivision regulations. The model regulations provide lot sizes for soil maps prepared using either the site specific soil mapping standards or the High Intensity Soil Survey maps.

WATER TABLE

There are two types of water tables common to New Hampshire landscapes: perched water tables and apparent water tables. Perched water tables result from surface water accumulating on top of slowly permeable subsoil layers creating a zone of saturation within the soil. Duration of saturation lasts about two to three months, typically during the spring months and after periods of significant rainfall. Perched water tables are common in soils with a hardpan layer, which occur throughout New Hampshire.

Apparent water tables, or groundwater, are aquifers or zones of saturation that continue for considerable depth, usually to bedrock and below. Depth to groundwater fluctuates with the seasons, typically being closest to the surface during the spring and during periods of heavy rainfall.

A professional soil scientist recording observable features in the soil profile can determine the elevation of the seasonal high water table in the soil, whether perched or apparent. The most common feature observed in association with soil saturation is color. Test pits are dug to a minimum of four (4) feet to record soil features in order to determine the depth to seasonal high water table. Test pits should be dug, and the soils recorded, regardless of whether or not the site is served by public sewers.

Some points to remember about predicting groundwater levels in test pits:

- Soils with no observed water table may in fact have a seasonal high water table during other times of the year. An experienced soil scientist should examine all soil test pits.
- Some soils with high clay content have very slow permeability. A hole can be excavated far below the water table elevation without immediate evidence of water. However, if the hole is left open for a time, the water will eventually seep into the pit and fill with water to the actual depth of the water table.

- Two closely located test holes at substantially different elevations may exhibit water tables of the same depth. This may be evidence of a perched water table resulting from a dense subsoil layer keeping surface water from percolating into underlying material.
- Tests may indicate a disappearance of groundwater in areas of shallow bedrock. This may indicate poor structure and fissures in the bedrock which allow water to flow through bedrock strata into groundwater aquifers. There is a severe hazard of groundwater contamination in these areas if septic systems are installed.

In some soils, the water table is subject to marked seasonal fluctuations so that observations made in August may show the water table several feet below the level in May. NRCS has collected year-round data from water table monitoring sites in many of the soils that occur in New Hampshire. This data is used to develop soil interpretations based on measured seasonal high water table levels. This data also provides a check on test pit determinations, which, because they are made at a single point in time, may fail to register the maximum water table elevation.

Problems affecting just about every area of a subdivision can be anticipated when a high water table is encountered. The planning board should be aware of these problems and be assured that the applicant has accommodated them in the subdivision design. Some common problems:

- Subsurface wastewater treatment systems will not function properly in saturated soil.
- Basements will flood unless drained and waterproofed properly. Curtain drains and footing drains should be installed in accordance with good engineering practices.
- Roadway and driveway pavements will crack, heave, and fail because of wet or frozen sub-base conditions unless the groundwater is properly removed (see Exhibit V-5).

- Grading the site will be troublesome because of water bleeding through the surface in "cut" areas.

STORMWATER MANAGEMENT (DRAINAGE)

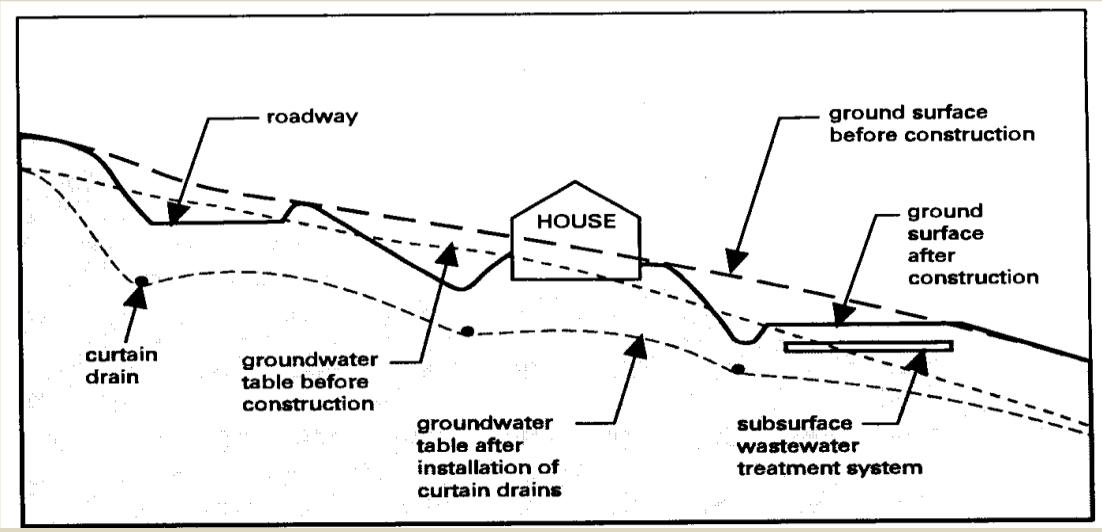


Exhibit V-5
Adapting Site with High Water Table

Depending on the topography, the drainage system of an individual site may be located in one or more small watersheds. Surface water run-off patterns will depend upon factors such as watershed boundaries, the extent and type of vegetative cover, the permeability of the soil, and the steepness of the terrain. These factors will determine the extent to which precipitation will infiltrate the soil to recharge groundwater or become run-off to surface waters through over-land flow. The increase in impervious or less pervious surface materials associated with a subdivision will increase the run-off potential. The travel time of the run-off also decreases, contributing to higher peak flows. This means that less water will be available for groundwater recharge, resulting in lower stream flows and increased flashiness in streams, which in turn results in more bank erosion and channel scour.

If the layout of a subdivision involves removal of a substantial portion of the existing vegetation, the amount of water lost through evapotranspiration will decrease, resulting in a greater volume of runoff at an increased velocity and the potential for erosion, sedimentation and downstream flooding.

OSI strongly encourages planning boards to consider adopting Low Impact Development (LID) requirements of stormwater management into their subdivision and site plan regulations. LID considers micro-scale design to simulate to the extent possible the natural hydrology of the site prior to development. In other words, preventing runoff in the first place and simulating the natural hydrology cycle with respect to infiltration and evapotranspiration will generate less runoff, less stormwater pollution, and lower impact to stream channels. LID takes advantage of natural areas, such as depressions, to drain small impervious areas such as rooftops and driveways, minimizing stormwater flow to road networks and piped drainage systems.

Planning boards often focus on keeping the peak rate of runoff from a proposed development at the pre-development conditions. However, this means that more water will flow to the receiving stream, but at a somewhat slower rate. Increasing stormwater infiltration will result in maintaining stormwater volume closer to pre-development conditions, which results in less impact to receiving streams.

Any alteration of existing natural streams or drainage ways requires a permit from the NH Wetlands Bureau in accordance with RSA 483-A and NH Code of Administrative Rules Wt. 100-900. OSI recommends that planning board regulations refer to the criteria for wetlands in their subdivision and site plan regulations and wetland zoning ordinances for consistency with state and federal regulations. Local subdivision regulations may require that proposals be designed to minimize impacts on surface waters and wetlands. Building sites can be located to let the natural beauty of these sensitive resources enhance the value of the subdivision.

The planning board is advised to add a section to its regulations that references the state's requirements for erosion and sediment control and stormwater management in cases where site disturbance involves an area greater than 100,000 square feet (50,000 square feet, if any portion of the project is within the protected shoreland) or disturbs an area having a grade of 25 percent or greater within 50 feet of any surface water. A permit for such disturbances, known as an Alteration of Terrain—or AoT—permit, is required by the NH DES in accordance with RSA 485-A:17.

Some disruption of the watershed will inevitably occur as pavement for roads, driveways and parking areas replaces natural vegetation. An increase in impervious coverage will result in increased runoff, with the potential for erosion and sedimentation. The stormwater management plan required by the subdivision regulations should include design and construction specifications for all structural and non-structural stormwater management measures that must be installed. Also included should be a maintenance plan that addresses periodic inspection and correction of inadequacies found during and after construction.

The landowner bears the financial responsibility for the design and construction of on-site stormwater management facilities. The planning board may be able to negotiate a reasonable agreement with an applicant to install a system that is adequate to meet future needs in return for subsequent reimbursement by the municipality.

The New Hampshire Stormwater Manual was developed in 2008 as a planning and design tool for the communities, developers, designers and members of regulatory boards, commissions, and agencies involved in stormwater programs in New Hampshire. A copy is available online here: http://des.nh.gov/organization/divisions/water/stormwater/manual.htm

ALTERATION OF TERRAIN

Disturbance of the natural soils and vegetation should be minimized. However, if unavoidable, the applicant may be required to seek an alteration of terrain permit from the Department of Environmental Services whenever a project proposes to disturb more than 100,000 square feet of contiguous terrain (50,000 square feet, if any portion of the project is within the protected shoreland), or disturbs an area having a grade of 25 percent or greater within 50 feet of any surface water. The alteration of terrain application should include detailed site plans that show existing and final topography. The design should include erosion and sediment controls to protect water quality during construction, as well as address stormwater management issues such as removing pollutants from stormwater, recharging groundwater, protecting channels from erosion, and protecting properties from flooding. The services of the NRCS district conservationist, a hydrologist, professional engineer, professional geologist, a certified wetland scientist, and/or a certified soil scientist may be helpful to the board in reviewing the plan. Some features required in the plan are (see Env-Wq 1504.05 for a complete list):

- Soil types;
- Estimates of runoff based on acceptable methodology; all water features including, but not limited to the direction of water flow, the maximum high-water mark and usual shorelines, the location of wetlands and surface water and their banks;
- All drinking water supply wells, whether private or public, with set-backs;
- The locations and types of existing vegetative cover;
- A clear delineation of the total area to be disturbed, including proposed improvements or modifications;
- A note explaining the intended use of the site or, if the intended use is unknown at the time the permit is issued, a note indicating whether or not local zoning allows for high-load uses;
- Complete storm drainage system, including size, slope, and invert elevations of all pipes and culverts, and detention measures.

LAYOUT OF STREETS, UTILITIES, AND LOTS

After the planning board is familiar with the specifics of the site, review of the actual subdivision and/or site plan should focus on the layout of roads, utilities and individual lots and building sites. The development proposal should disturb the existing natural conditions as little as possible. There are several reasons for this:

- The natural landscapes of New Hampshire are composed of a variety of parent materials, soils, water resources, and various forms of plant and animal life. Disturbance of the landscape will impact the forces that created it. These forces may still be present following the development and should be considered as part of the subdivision design.
- The natural system is enjoyable for living in and viewing.
- Physical alteration of the landscape is expensive. The more cut and fill, re-grading, stream relocation and tree removal required, the more costly the project.

Because no two development sites are the same, the natural terrain should establish the pattern of the design. Rarely will using a grid pattern or some standard formula for laying out the lots and designing a street pattern result in the most efficient design. Nature is not a checkerboard and the landscape does not come in two-dimensional squares. Similarly, any other predetermined, regular pattern will probably be inappropriate. Initially, the best individual building sites should be located without regard to the overall pattern of lots. Individual lots should be suitable for house construction based on the physical and chemical characteristics of the soil and the existing topography. Construction should be possible without unreasonable disruption of the terrain.

Good design combines the willingness and ability to recognize and accommodate significant elements in the site with the flexibility to provide optimum use of the land. The idea is to design with nature, not against it.

Street Layout

The street pattern should be laid out to provide circulation within the subdivision and to provide access to the existing public road system. Topographic and geographic features must be considered so that roads can conveniently serve dwelling area locations while maintaining natural vegetation and other attractive landscape features. Streets should generally follow the contour of the land. The board should avoid approving roads that cross contours at right angles, particularly in steep terrain. Designed in this way, grade conditions and "cut and fill" requirements will be minimized, resulting in lower construction and maintenance costs.

Exhibit V-6 illustrates a pattern of lots and streets that are laid out with consideration of the natural contours of the site. In addition to landscape features and dwelling unit locations, the street pattern of a development should be determined by such factors as:

- The previously established street pattern around the subdivision, into which the design must fit;
- Any major streets proposed in the master plan or street plan which would affect the subdivision itself;
- Roadway intersections designed to provide smooth traffic movement; and
- Avoidance of direct connections between arterial roads. A direct connection between two arterial roads would, in effect, constitute a major street and could completely change the character of a subdivision by bringing heavy traffic through it.

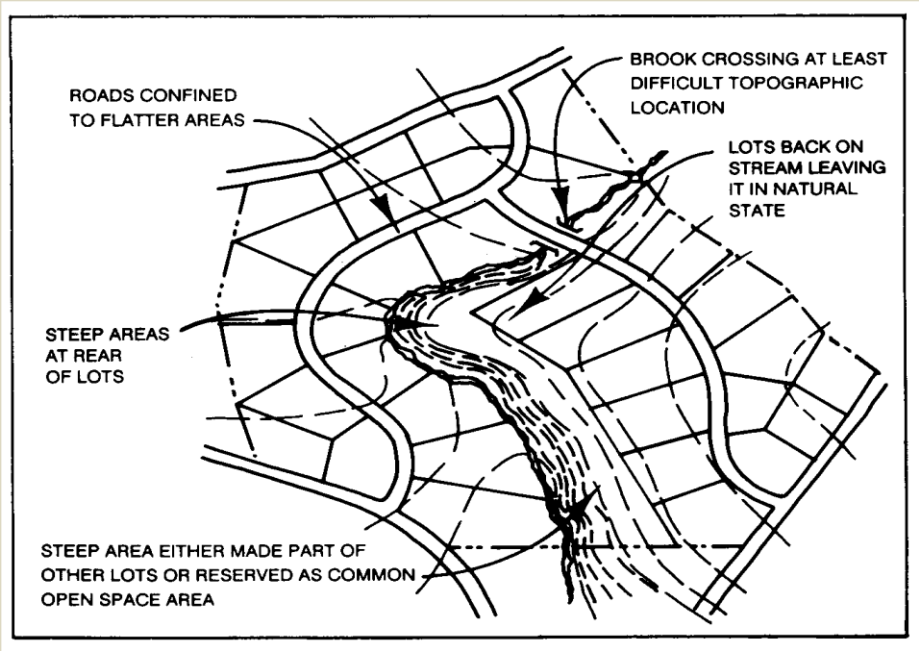


Exhibit V-6
Layout of Roads and Lots

The master plan, or the transportation section of the master plan, provides the basis for classifying roads according to projected traffic flows. The same principle can be applied to subdivision and site plan roads, which must be designed to handle the projected traffic. All streets should be designed to meet construction standards prescribed by a local ordinance or the subdivision regulations.

OSI recommends that these standards should be followed whether the roads are to be privately owned or maintained. This practice assures that roads may be accepted by a future town meeting if they are built to town specifications.

The classification of streets in a subdivision should reflect their anticipated functions. Most streets will be local service roads, providing access to individual lots. They can be designed to minimum standards, allowing adequate access for fire protection and other emergency services. Other streets will collect traffic from local service roads and distribute it to large thoroughfares or to the municipal center. In the case of a subdivision traversed by a major road, the design should assure dwelling units are shielded from traffic noise by means of a landscaped buffer.

Traffic loads can be projected, based on the number and type of dwelling units and estimated trips per day per unit to determine whether a street should be classified as a local service street or a "collector" road, and designed accordingly. The design standards required by the street classifications should be followed, notwithstanding the fact that the traffic load anticipated in the immediate future indicates a lower standard.

The road system should be adequate for the needs of the subdivision, but at the same time discourage outside traffic from moving through the area. Curved roads, indirect connections, and the choice of street dimensions are ways in which this can be accomplished. Street design can either reflect or determine expected use. That is, traffic can be encouraged to travel a certain route by design features such as pavement width, number of lanes and allowable speed. The construction standards should provide some flexibility as to pavement width, but the right-of-way must be adequate to handle all

necessary utilities and proposed future expansion. Natural beauty is preserved by paving only as much land area, within reason, as is necessary.

The design and construction of subdivision streets that will connect the subdivision to an existing street network requires coordination between both the applicant and municipal or state government. RSA 236:13 requires a permit for access to municipal roads and state highways. Depending on the classification of the road, either the New Hampshire Department of Transportation (DOT) or the municipality must issue the permit. Uncontrolled entry of access roads from subdivisions to the existing road network can frustrate traffic flow. For example, traffic problems are created when too many access points occur along a section of road, or when an access enters the road where driver vision is obscured.

The planning board must presume that, eventually, subdivision streets will be accepted and their maintenance will become a municipal responsibility. Thus, the board should consistently apply the design and construction standards in its subdivision regulations to protect the municipality from assuming the burden of excessive maintenance or construction costs in the future.

Utilities

The planning board should consult the municipality's plan for utilities, as contained in the master plan and capital improvements program. These plans should indicate locations of future public water supply facilities, wastewater treatment facilities, and major distribution lines and interceptors. In a municipality with more than one major watershed, several wastewater treatment systems or water systems may be needed. Each development should be reviewed in light of this plan to determine whether the subdivision is in any way affected.

Planning utility layouts in advance is economical. Utility lines are often located underground, within the road right-of-way. As future services are added, the street location reserved for each utility can be identified by reference to the utility plan. This will help avoid excessive cost of future field surveys in order to determine where existing lines are located and where space remains for additional service lines.

Although present development may not require it, all utility systems in the subdivision should be designed to handle maximum foreseeable demand so that future development will not require expensive upgrading of the facilities.

Any easements that will be required for the extension of utility lines should be shown on the plan and recorded on the deed.

The subdivision and site plan should indicate the location of utility lines, including water supply lines, wastewater collectors, storm sewers, electricity, gas, telephone, and possibly cable television. The proposal under consideration may not require all of these services initially, but the plans should include cross sections showing placement of utilities according to standards specified in the subdivision regulations. The board should consult the Public Utilities Commission, town departments, and local utility companies for assistance in establishing these standards.

The municipality should maintain accurate records of utility locations. In the planning stage, each applicant submits cross-sections and profiles of all roads indicating utilities and their elevations. During the course of construction, the design profiles are sometimes altered to accommodate actual field conditions. At the completion of construction and prior to release of the applicant's financial responsibility, the board should require submission of a reproducible original of the profiles marked with the actual utility locations as constructed. These drawings are commonly called "as-built" plans.

Proper filing of these plans will give the municipality a record of utility locations as installed.

On occasion, major utility lines such as sewer interceptors, high-pressure gas lines, and power or telephone conduits are placed outside of the street right-of-way. In undeveloped areas, utility companies may seek to install utility lines in straight lines to reduce costs, regardless of topographic features or property lines. Such installation practices can scar the countryside, decrease adjacent property values and create isolated, sometimes landlocked, parcels. Subdivision regulations should require that utility companies design their facilities to minimize adverse impacts on the landscape or surrounding properties.

The planning board should be aware of the statutory definition of a subdivision that specifically exempts certain utility easements, including unmanned structures of less than 500 square feet, from consideration as a subdivision. RSA 672:14. However, the planning board could encourage the cooperation of utility companies and request submission of plans for such structures for the board's information.

Some planning boards require the location of all utilities underground, a practice that helps to maintain the aesthetics of the landscape by eliminating utility poles and wires. This can, however, be costly to the applicant. The planning board should consider future maintenance costs of above-ground utilities and discuss reasonable alternatives with the applicant.

Underground utility mains will vary in size, shape, material, and location beneath the road surface. Some requirements for different utilities are:

- Water and sewer mains must be laid below the depth of frost penetration of the area.
- Sewer lines should be set lower than water mains to avoid risk of contamination in the event of leakage in the system.
- Storm and sanitary sewers generally require a significant amount of space and depend on proper placement for economical gravity flow. One reason for standardizing the locations is to avoid crossing lines at critical points for gravity flow.
- Electric, telephone and gas lines can be laid in conduits and are not governed by slopes and grades, but electric and telephone lines must be sufficiently separated to prevent electromagnetic interference with one another.

Each lot that is not served by public utilities must provide on-site wastewater treatment and water supply. If properly constructed and maintained, these facilities will give satisfactory service. However, some problems that can arise include the following:

- Wells not properly cased and located can be polluted by wastewater effluent and run-off from road salt.
- Subsurface wastewater treatment systems constructed with effluent disposal areas that are shallow to bedrock or hardpan, or are installed on steep slopes, can fail, resulting in groundwater contamination.
- Septic tanks not pumped clean at regular intervals will result in a build-up of solids in the tank. This material can overflow into the effluent disposal area causing the system to fail.

- The practice of using community wells to serve several dwellings has increased. Proper connection of these wells in a coordinated looped system can produce improved supply and pressure. Municipalities should keep a careful record of each well installed in order to determine whether or not it can be integrated into an overall system if a future interconnection is appropriate. Municipal requirements should assure that the wells supplying these systems are adequate in quality and quantity and adhere to the requirements of the NH Code of Administrative Rules (Env-WS 378) for siting new wells. There are separate requirements for siting large and small overburden wells and all bedrock community wells.

Lot Layout

The planning board should look at how the individual lots relate to the site information and the roads and utilities to produce a functional, economical, and pleasing layout. The lot layout is governed by the subdivision regulations and the zoning ordinance. Zoning dictates lot size, configuration, frontage, setback requirements, building coverage, parking, landscaping, and building height. Potentially unsanitary conditions and environmental pollution can result from allowing higher densities than a given site can accommodate. Where existing zoning specifies definite restrictions, the board must be sure that the subdivision regulations themselves are not detrimental to their purpose.

Open Space and Landscaping

If dwelling areas and street locations have been set without excessive re-grading and removal of vegetation, the basis for a well-landscaped environment is virtually assured. Many features that are costly to remove or relocate are most interesting and attractive when left in their natural state. By carefully considering these features in laying out lots, the existing landscape can be used to the best advantage. For example, leaving the rugged, more difficult to develop topography in the rear portion of the lot can provide varied and interesting areas in individual yards. Similar geographic features in adjoining yards create a continuous, park-like area running behind the lots. Such systems of open space are especially appropriate for ridgelines, streams, and wetland areas and may be designated as open space, especially if a "cluster" type design is used.

In addition to providing increased privacy for individual lots, natural features such as rock outcroppings and large trees can serve as buffers between busy roads and dwelling units or between the subdivision and an adjoining non-residential development that may be visually unattractive, uncomfortably noisy, or physically incompatible.

Preservation of existing site features in a subdivision can be assured only through careful forethought during the design stage and careful action during the construction stage. Continuing effort is needed to produce a quiet, attractive area, shaded and buffered with existing trees, rather than a completely cleared area with parched lawns, struggling saplings, and none of its former attractiveness. However, such an effort can save much of the cost of removing and replanting, and the homeowner can be spared the cost of private landscaping.

Planning boards should be familiar with the pertinent sections of several state statutes:

- RSA 485-A:32, III, entitled "Prior Approval; Permits," which requires NH Department of Environmental Services' subdivision approval prior to construction of roads, clearing natural vegetation, placing artificial fill, or otherwise altering the natural state of the land or environment.
- RSA 227-J:9, entitled "Cutting of Timber Near Certain Waters and Public Highways of the State; Penalty," which requires approval from the NH Department of Natural and Cultural Resources to exceed the timber harvesting limitations and from the NH Department of Environmental Services for subdivision approval prior to clearing the natural vegetation for subdivision purposes.

- RSA 483-B, the "Shoreland Water Quality Protection Act," which establishes minimum requirements for use of land within certain setback buffers from the reference line of waters of the state. Included are woodland buffer requirements, setbacks for subsurface wastewater treatment systems, and primary structures and lot sizes by soil type in un-sewered areas.

Final planning board approval of subdivision and site plan applications should include the condition that the requirements of these and other applicable state and local regulations be met. The following are examples of conditions that the board may wish to require to reduce stress on municipal facilities:

- Land set aside for open space for public use or resource protection purposes.
- Roads, storm sewers and other public facilities that are adequately designed to accommodate projected future needs. A system of requiring impact fees based upon a capital improvements program could be developed to provide an equitable way of allocating the cost of such facilities.
- Maintenance of natural or historic features on the site can enhance the aesthetics of the subdivision and retain the character of the municipality.

The power of the planning board to encourage good subdivision and site plan design should not be underestimated. Planning boards are authorized to disapprove proposals, or work with the applicant to modify them if development would endanger public health, safety and welfare. Conditions placed on local approvals can have a positive influence on the quality of subdivision and site plan designs and function.

CHAPTER VI: 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 Strategic Initiatives, available at: www.nh.gov/osi/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 places 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 STRATEGIC INITIATIVES

The NH Office of Strategic Initiatives (OSI) – formerly the Office of Energy and Planning – provides information, data and guidance to assist decision makers on issues pertaining to development, land protection, energy use and community planning. OSI 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 Strategic Initiatives 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)

APPENDIX A: SOURCES OF ASSISTANCE

CONTACTS			
NH State Agency	**Address**	**Phone**	**Website**
Homeland Security and Emergency Management	33 Hazen Drive Concord, NH 03302	603-271-2231	www.nh.gov/safety/divisions/hsem
Department of Environmental Services	29 Hazen Drive Concord, NH 03302	603-271-3503	des.nh.gov
Department of Justice	33 Capitol Street Concord, NH 03301	603-271-3658	www.doj.nh.gov
NH Department of Natural & Cultural Resources~~Department of Resources and Economic Development~~	172 Pembroke Road Concord, NH 03302	603-271-2411	~~www.~~www.dncr.nh.gov ~~dred.state.nh.us~~
Department of Transportation	7 Hazen Drive Concord, NH 03302	603-271-3734	www.nh.gov/dot
Office of Strategic Initiatives	107 Pleasant Street Concord, NH 03301	603-271-2155	www.nh.gov/osi
Public Utilities Commission	21 South Fruit Street Concord, NH 03301	603-271-2431	www.puc.nh.gov
Cultural Resources Division of Historical Resources	19 Pillsbury Street Concord, NH 03301	603-271-3483	www.nh.gov/nhculture

NEW HAMPSHIRE REGIONAL PLANNING COMMISSIONS

Central New Hampshire
Regional Planning Commission
28 Commercial Street
Concord, NH 03301
Phone: 603-226-6020; Fax: 603-226-6023
http://cnhrpc.org/

Nashua Regional Planning Commission
30 Temple Street, Suite 310
Nashua, NH 03060
Phone: 603-417-6570
www.nashuarpc.org

Rockingham Planning Commission
156 Water Street
Exeter, NH 03833
Phone: 603-778-0885; Fax: 603-778-9183
~~www.~~www.therpc.org ~~rpc-nh.org~~

Southwest Region Planning Commission
37 Ashuelot Street
Keene, NH 03431
Phone: 603-357-0557; Fax: 603-357-7440
www.swrpc.org

Upper Valley Lake Sunapee
Regional Planning Commission
10 Water Street, Suite 225
Lebanon, NH 03766
Phone: 603-448-1680; Fax: 603-448-0170
www.uvlsrpc.org

Lakes Region Planning Commission
Humiston Building, 103 Main Street, Suite 3
Meredith, NH 03253
Phone: 603-279-8171; Fax: 603-279-0200
www.lakesrpc.org

North Country Council, Inc.
161 Main Street
Littleton, NH 03561
Phone: 603-444-6303; Fax: 603-444-7588
www.nccouncil.org

Southern New Hampshire Planning Commission
438 Dubuque Street
Manchester, NH 03102
Phone: 603-669-4664; Fax: 603-669-4350
www.snhpc.org

Strafford Regional Planning Commission
150 Wakefield Street, Suite 12
Rochester, NH 03867
Phone: 603-994-3500; Fax: 603-994-3504
www.strafford.org

NEW HAMPSHIRE CONSERVATION DISTRICTS	
Belknap County Conservation District 64 Court Street Laconia, NH 03246 Phone: 603-527-5880 www.belknapccd.org	**Carroll County Conservation District** 73 Main Street P.O. Box 533 Conway, NH 03818 Phone: 603-447-2771 ext. 100 www.carrollccd.org
Cheshire County Conservation District 11 Industrial Park Drive Walpole, NH 03608 Phone: 603-756-2988 www.cheshireconservation.org	**Coos County Conservation District** 4 Mayberry Lane Lancaster, NH 03584 Phone: 603-788-4651 ext. 5 www.cooscountyconservation.org
Grafton County Conservation District 19 Archertown Road, Suite 1 Orford, NH 03777 Phone: 603-353-4652 www.graftonccd.org	**Hillsborough County Conservation District** Chappell Professional Center 468 Route 13 South Milford, NH 03055 Phone: 603-673-2409 www.hillsboroughccd.com
Merrimack County Conservation District The Concord Center 10 Ferry Street, Suite 211 Concord, NH 03301 Phone: 603-223-6020 www.merrimackccd.org	**Rockingham County Conservation District** 110 North Road Brentwood, NH 03833 Phone: 603-679-2790 www.rockinghamccd.org
Strafford County Conservation District 264 County Farm Road Dover, NH 03820 Phone: 603-749-3037 straffordccd.org	**Sullivan County Conservation District** 95 County Farm Road Unity, NH 03743 Phone: 603-542-9511 x269 www.sccdnh.org/

REFERENCES

GENERAL

Knowing the Territory, NH Municipal Association http://www.nhmunicipal.org/shop/

OSI Online Resource Library, NH Office of Strategic Initiatives
https://www.nh.gov/osi/resource-library/index.htm

OSI Planning Resources and Publications, NH Office of Strategic Initiatives
https://www.nh.gov/osi/planning/resources/index.htm

New Hampshire Municipal Association Law Lectures: http://www.nhmunicipal.org/

THE MASTER PLAN

OSI Resources Concerning Master Plans
https://www.nh.gov/osi/planning/resources/master-planning.htm

Preparing a Master Plan for Your Community: A Handbook for Planning Board Members, Planners and Volunteers, June 2004, Southern New Hampshire Planning Commission
https://www.nh.gov/osi/planning/resources/documents/preparing-a-master-plan-for-your-community.pdf

SUBDIVISION AND SITE PLAN REVIEW

OSI Resources Concerning Subdivision and Site Plan Review
https://www.nh.gov/osi/resource-library/site-plan-review/index.htm

Subdivision and Site Plan Review Handbook, 2001, Southwest Region Planning Commission
http://www.swrpc.org/files/data/library/local_planning/Subdivision%20and%20Site%20Plan%20Review%20Handbook.pdf

Model Non-Residential Site Plan Regulations, June 2002, Nashua Regional Planning Commission
http://www.nashuarpc.org/files/5713/9463/3379/siteplanregs_jun02.pdf

A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails, 2015 with ~~2019~~ 2020 Supplement, http://www.nhmunicipal.org/shop/

ZONING

The Board of Adjustment in New Hampshire – A Handbook for Local Officials,
NH Office of Strategic Initiatives
https://www.nh.gov/osi/planning/resources/documents/zoning-board-handbook.pdf

Planning for Wireless Telecommunications, Technical Bulletin, December 2014,
NH Office of Strategic Initiatives
https://www.nh.gov/osi/planning/resources/wireless/documents/wireless-communications.pdf

INNOVATIVE LAND USE CONTROLS

~~***Impact Fee Development - A Handbook for NH Communities***, July 1999, Southern New Hampshire Planning Commission http://www.snhpc.org/pdf/Impactfee.pdf~~

Access Management Guidelines, 2002, Nashua Regional Planning Commission
http://www.nashuarpc.org/files/2213/9473/7150/accessmngmt_apr02.pdf

PHYSICAL CHARACTERISTICS OF THE SITE

High Intensity Soil Mapping Standards for New Hampshire, April 2008, Society of Soils Scientists of Northern New England
https://sssnne.files.wordpress.com/2013/03/hism-nh.pdf

Soil Based Lot Sizing: Environmental Planning for On-site Wastewater Treatment in New Hampshire, 2003, Society of Soils Scientists of Northern New England
https://sssnne.files.wordpress.com/2013/03/lotsize.pdf

Site-Specific Soil Mapping Standards for New Hampshire and Vermont, February 2011, Society of Soils Scientists of Northern New England
https://sssnne.files.wordpress.com/2013/03/nh-vt.pdf

Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials, January 2004, NH Department of Environmental Services
~~https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-03-42.pdf~~https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wd-03-42.pdf

NH Stormwater Management Manual, December 2008, NH Department of Environmental Services
https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wd-08-20a.pdf
~~https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-08-20a.pdf~~
(Volume 1: Stormwater and Antidegradation);
https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wd-08-20b.pdf
~~https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-08-20b.pdf~~
(Volume 2: Post-Construction Best Management Practices Selection & Design); and
https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wd-08-20c.pdf
~~https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-08-20c.pdf~~
(Volume 3: Erosion and Sediment Controls During Construction)

APPENDIX B: PUBLIC NOTICES FOR SUBDIVISION AND SITE PLAN REVIEW

SUBMISSION OF APPLICATION (used only for submission - not public hearing)
Town of _____

LEGAL/PUBLIC NOTICE

Notice is hereby given in accordance with RSA 676:4 that an application for (subdivision/site plan review - description of application; name of applicant; location of property; tax map and lot number) will be submitted to the Planning Board on (date) at (time) at the _____ Town Hall during a regular meeting of the Board. Upon a finding by the Board that the application meets the submission requirements of the _____ (subdivision/site plan review regulations), the Board will vote to accept the application as complete and schedule a public hearing. Should the application not be accepted as complete, another submission meeting will be scheduled. Anyone needing assistance to attend this meeting should contact the Selectmen's Office one week prior to the scheduled date.

Per order of the _____ Planning Board
_____, Secretary/Clerk

SUBMISSION OF APPLICATION/PUBLIC HEARING ON PROPOSAL
Town of _____

LEGAL/PUBLIC NOTICE

Notice is hereby given in accordance with RSA 676:4 & 675:7 that an application for (subdivision/site plan review - description of application; name of applicant; location of property; tax map and lot number) will be submitted to the Planning Board on (date) at (time) at the _____ Town Hall during a regular meeting of the Board. Upon a finding by the Board that the application meets the submission requirements of the _____ (subdivision/site plan review regulations), the Board will vote to accept the application as complete, and a public hearing on the merits of the proposal will follow immediately. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved. Anyone needing assistance to attend this meeting should contact the Selectmen's Office one week prior to the scheduled date.

Per order of the _____ Planning Board
_____, Secretary/Clerk

PUBLIC HEARING ON PROPOSAL
Town of _____

LEGAL/PUBLIC NOTICE

Notice is hereby given in accordance with RSA 676:4 & 675:7 that the _____ Planning Board will hold a public hearing for (subdivision/site plan review - description of application; name of applicant; location of property; tax map and lot number) on (date) at (time) at the _____ Town Hall. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved. Anyone needing assistance to attend this meeting should contact the Selectmen's Office one week prior to the scheduled date.

Per order of the _____ Planning Board
_____, Secretary/Clerk

ABUTTER NOTICES FOR SUBDIVISION OR SITE PLAN REVIEW APPLICATION

Dear _____:

According to NH Revised Statutes Annotated 676:4, I (d) and the Town of _____ (subdivision/site plan review), it is required that all abutters to land intended for (subdivision/site plan review) be notified of the proposal.

You, as an abutter, are hereby notified that an application for (subdivision/site plan review - description of application; name of applicant; location of property; tax map and lot number) will be submitted to the Planning Board on (date) at (time) at the _____ Town Hall during a regular meeting of the Board. Upon a finding by the Board that the application meets the submission requirements of the _____ (subdivision/site plan review regulations), the Board will vote to accept the application as complete, and a public hearing on the merits of the proposal will follow immediately.

Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Please be advised that, as an abutter, your right to testify is restricted to the public hearing. In the case of a public *meeting*, as opposed to a public *hearing*, you are allowed by right to be notified and be present, but you do not have the right to offer testimony except at the Planning Board's discretion.

If you are unable to attend the public hearing you are encouraged to visit town hall to review the plans and application during normal business hours. You may also submit any concerns or questions in writing before the meeting.

Please be advised this may be the only certified notice you will receive. You are encouraged to review future planning board agendas for the status of this application.

If you have any questions please contact the Planning and Land Use Department at_____.

Sincerely,
Planning Board Secretary/Clerk

APPLICANT NOTICE FOR SUBDIVISION OR SITE PLAN REVIEW

Dear _____:

According to NH Revised Statutes Annotated 676:4, I(d) and the Town of _____ (subdivision/site plan review regulations), it is required that all applicants for land development be sent notice of the public hearing at which their proposal will be submitted to the Board and reviewed.

You, as the applicant, are hereby notified that your application for (subdivision/site plan review - description of application; location of property; tax map and lot number) will be submitted to the Planning Board on (date) at (time) at the _____ Town Hall during a regular meeting of the Board. Upon a finding by the Board that the application meets the submission requirements of the _____ (subdivision/site plan review regulations), the Board will vote to accept the application as complete, and a public hearing on the merits of the proposal will follow immediately.

Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved. Should your application be disapproved, you will receive written notice from the Planning Board within 5 business days stating the reasons for such disapproval.

Sincerely,
Planning Board Secretary/Clerk

[Note: A separate notice to a surveyor, engineer, etc. is not necessary if the abutter notice is written to include them.]

APPLICATION FOR WAIVER OF SUBDIVISION/SITE PLAN REVIEW REQUIREMENT

(Complete one form for each waiver request.)

To the Chairman and Members of the _____ Planning Board:

On _____, 20___, I submitted a plan for (subdivision/site plan review) approval to the Board, entitled _____ prepared by _____ and hereby request a waiver from Article _____ Section _____ of the regulations.

In support of such request:

(1) Strict conformity would pose an unnecessary hardship and waiver would not be contrary to the spirit and intent of the regulations because: _____
_____
_____
_____; or

(2) Specific circumstances relative to the (subdivision/site plan review), or conditions of the land in such (subdivision/site plan review), indicate that the waiver will properly carry out the spirit and intent of the regulations because: _____
_____
_____
_____.

Respectfully submitted: _____ Date:_____

NOTICES OF PLANNING BOARD DECISION

(Once the Planning Board has held the public hearing and voted on the application, the final decision must be put in written form and placed on file in the Town offices and made available to the public within 5 business days. The Board is not required to notify the applicant individually except in the case of a denial, in which case the same time limit applies.)

NOTICE OF PLANNING BOARD APPROVAL

On _____, 20___, after duly-noticed public hearing(s), the Planning Board voted to **APPROVE** the Plan for (a 4-lot subdivision) submitted to the Board _____ for property located at (street address, tax map, lot number, and zoning district). Any conditions to which the plan is subject are listed below:

1. _____
2. _____
3. _____

_____, Planning Board Chair

NOTICE OF PLANNING BOARD DENIAL

On (date) after duly-noticed public hearing(s), the Planning Board voted to **DENY** the Plan for _____ submitted to the Board by_____ for property located at (street address, tax map, lot number, and zoning district). The application was denied for the following reasons:
1._____
2._____
3._____
4._____
5._____

_____, Planning Board Chair

NOTICE OF PUBLIC HEARING TO REVOKE PLANNING BOARD APPROVAL
Town of _____

LEGAL/PUBLIC NOTICE

Notice is hereby given in accordance with RSA 676:4-a that the Planning Board will hold a public hearing on (date) at (time) at the _____ Town Hall for the purpose of considering whether to revoke a plan previously-approved on _____, 20____ and filed with the _____ County Register of Deeds. The Board is considering revocation for the reasons stated below. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Per order of the _____ Planning Board
_____, Secretary/Clerk

DECLARATION OF REVOCATION

(Once the Board has voted to revoke a previously-approved plan, a declaration of revocation must be filed with the county register of deeds no sooner than 30 days after written notification to the applicant, or 30 days after the public hearing, whichever is later. The declaration must be recorded under the same name as that on the original approval, dated, endorsed in writing by the Planning Board, and contain reference to the recording information of the plan being revoked.)

Notice is hereby given that the _____ Planning Board voted on (date) to revoke the approval of (plan name) granted to (applicant name) on (date). The Plan was recorded in the _____ County Register of Deeds as Plan _____ and filed on (date). The approval was revoked for the following reasons:

_____

_____

_____

_____

_____

Respectfully Submitted,

_____

Planning Board Chair

ADOPTION OF AMENDMENTS TO SUBDIVISION OR SITE PLAN REVIEW REGULATIONS
Town of _____

NOTICE OF PUBLIC HEARING

Pursuant to RSA 675:6 & 7, the Planning Board will hold a public hearing on (date) (time) at the _____ Town Hall on a (proposed amendment or the adoption of the subdivision or site plan review) Regulation. The effect of the (proposed amendment or adoption) will be to:

(Insert a topical description of the proposed changes.)

A full copy of the text of the proposed amendment is available for review in the Town Clerk's office during regular business hours.

Per order of the _____ Planning Board
_____, Secretary/Clerk

ADOPTION OF AMENDMENTS TO THE MASTER PLAN
Town of _____

NOTICE OF PUBLIC HEARING

Pursuant to RSA 674:4 and 675:6, the Planning Board will hold a public hearing on (date) (time) at the _____ Town Hall on (a proposed amendment to or the adoption of) the Master Plan. The effect of the (proposed amendment or adoption) will be to:

(Insert a topical description of the proposed changes.)

A full copy of the text of the proposed (amendment or Master Plan) is available for review in the Town Clerk's office during regular business hours.

Per order of the _____ Planning Board
_____, Secretary/Clerk

[NOTE: For more examples of public notices, refer to *New Hampshire Practice - Land Use Planning and Zoning,* by Peter Loughlin.]

Creation and Authorization of the Capital; Improvements Program (CIP)

Sample Article Authorizing the Planning Board to Prepare a CIP

Article Number _____: To see if the Town, having a Master Plan adopted by the Planning Board on [date of adoption], will vote to authorize the Planning Board to prepare and amend a recommended program of municipal capital improvements projected over a period of at least 6 years, in accordance with RSA 674:5.

Sample Article Authorizing the Governing Body to Appoint a Committee to Prepare a CIP

Article Number _____: To see if the Town, having a Master Plan adopted by the Planning Board on [date of adoption], will vote to authorize the governing body to appoint a capital improvements program committee to prepare and amend a recommended program of municipal capital improvements projected over a period of at least 6 years, in accordance with RSA 674:5.

PLANNING BOARD, CITY/TOWN OF _____

AUTHORITY

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA) 676:1.

MEMBERS AND ALTERNATES

1. The Planning Board shall consist of _____ members. The Selectmen shall designate one selectman as an ex-officio and alternate ex-officio member with power to vote.

2. Selection, qualification, term, removal of members, and filling of vacancies shall conform to RSA 673.

3. Alternate members may serve on the Planning Board as authorized by RSA 673:6 and participate as non-voting members.

4. Up to five alternate members shall be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

5. At planning board meetings, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy, may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other board members, the applicant, abutters and the public. However, they shall not be allowed to make or second motions and shall not participate in any way during the deliberations by the board. Upon the close of the public hearing, alternates must remove themselves from the table and sit with other members of the public unless they are sitting in place of another member. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

6. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the chairman as soon as possible. Members, including the chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

7. Each newly elected or appointed (including re-elected or re-appointed) member shall be sworn in and take an oath of office as required by RSA 42:1.

8. The Secretary shall forward to the municipal clerk for recording the appointment/election and expiration dates of the terms of each member of the Board.

OFFICERS

1. The officers of the Board shall be as follows:
   - Chairman: The Chairman shall preside over all meetings and hearings; shall prepare, with the assistance of the Secretary, an annual report; and shall perform other duties customary to the office.
   - Vice-Chairman: The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters that come before the Board in the absence of the Chairman.
   - Secretary: The Secretary shall keep a full and accurate record of the proceedings of each meeting; issue notices of all meetings; record the names of the members present; notify applicants and abutters of hearings; and prepare such correspondence and fulfill such duties as the Chairman may specify. In the absence of the Secretary, the Chairman shall appoint a secretary pro tem to keep records of the meeting.

2. The officers of the Board shall be elected annually during the month of (month) by a majority vote of the Board. If requested by a majority of those present, voting shall be by written ballot.

MEETINGS

1. Regular meetings shall be held at least monthly at (place) at (time) on the (day) of each month.
2. Special meetings may be called by the Chairman or, in his/her absence, by the Vice-Chairman, or at the request of three members of the Board, provided public notice and notice to each member is given at least 48 hours in advance of the time of such meeting. The notice shall specify the purpose of the meeting.
3. Nonpublic sessions shall be held only in accordance with RSA 91-A:3.
4. Quorum: A majority of the membership of the Board shall constitute a quorum, including alternates sitting in place of regular members.

   If any regular Board member is absent from a meeting or hearing, or disqualifies him/herself from sitting on a particular application, the Chairman shall designate one of the alternate members to sit in place of the absent or disqualified member. Such alternate shall have all the powers and duties of a regular member in regards to any matter under consideration on which the regular member is unable to act. The alternate should continue until the matter is completed; the regular member does not vote on that matter.
5. Disqualification: If any member finds it necessary to be disqualified from sitting on a particular case, as provided in RSA 673:14, s/he shall notify the Chairman as soon as possible so that an alternate may be requested to fill the place. The disqualification shall be announced by either the Chairman or the member before the discussion or the public hearing on the application begins. The member disqualified shall leave the Board table during all deliberations and the public hearing on the matter.

   If uncertainty arises as to whether a Board member should disqualify him/herself, on the request of that member or the request of another member of the Board, the Board shall vote on the question of whether that member should be disqualified. Such request and vote shall be made prior to or at the commencement of any required public hearing. A vote on a question of disqualification shall be advisory and non-binding, and may not be requested by persons other than board members.

   [NOTE: Except as may otherwise be provided by local ordinance.]

6. Order of Business shall be as follows:
   a. Call to order by Chairman
   b. Roll call by the Chair
   c. Consider completeness and acceptance of applications
   d. Hearings on subdivision/site plans
   e. Other business - public comment
   f. Minutes of previous meeting
   g. Reading of communications directed to the Board
   h. Report of officers and committees
   i. Unfinished business
7. A motion, duly seconded, shall be carried by an affirmative vote of a majority of the members present. Voting shall be by roll call which shall be recorded in the minutes.
8. If there is a tie vote, then another motion should be discussed and worded in a way that would not result in a tie vote.
9. If there is a failed motion, the board could try another motion to get a motion to pass.

PRELIMINARY DESIGN REVIEW

1. Applications for a Design Review Phase (676:4, II (b)) meeting with the Board shall be made on forms provided by the Board and shall be presented to the planning staff, Secretary of the Board or the Board's agent who shall sign and record the date of receipt.
2. Notice shall be given as required in RSA 676:4, I(d) 10 days before such application is submitted to the Board.
3. The plan shall include at a minimum the following items:
   a. A site location map placing the parcel in the larger context of the community;
   b. A site survey showing pertinent features of the site;
   c. An indication of any future subdivisions contemplated in or adjacent to the proposal;
   d. A topographic map of the area;
   e. Any soils information, such as permeability or boring data, that has been gathered; and
   f. A sketch showing the proposed layout of lots, streets, and recreation areas; watercourses; natural features and easements.
   g. The standards and location for the signature block signifying town's approval.
4. The board shall determine the conclusion of the Design Review Phase process and inform the applicant.

APPLICATIONS FOR SUBDIVISION AND SITE PLAN REVIEW

1. Applications for hearings before the Board shall be made on forms provided by the Board and shall be presented to the planning staff, Secretary of the Board or the Board's agent who shall sign and record the date of receipt.
2. Notice shall be given as required in RSA 676:4, I(d) 10 days before a completed application is submitted to the Board.

3. Completed applications shall be accepted by majority vote of the Board and shall be scheduled for consideration within 30 days of acceptance. The determination of completeness and acceptance can be done at one public hearing, if appropriate.
4. The board shall reject all applications not properly completed.

FORMS

1. All forms, including but not necessarily limited to application, checklist, and waiver requests, prescribed herein and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

NOTICE

1. Public notice of the submission of and public hearings on each application shall be given in the (local newspaper) or by posting in at least two public places, not less than ten (10) days prior to the date fixed for submission and consideration of the application. Posting requirements cannot count the day of the posting and the day of the meeting in the 10 days prior to the meeting.

[Notes: RSA 676:4 requires the public notice of submission to be given by either publication or posting. The Board may do one or the other, or both, so long as the rules of procedure are consistent with the subdivision and site plan review regulations.

In 2017, the legislature made several amendments to RSA 91-A:2, effective January 1, 2018,~~-~~ including the passage of RSA 91-A:2, II-b, which requires the online posting of meeting notices if a website is maintained "in a consistent and reasonably accessible location" or post and maintain a notice on the website stating where meeting notices are posted.]

2. Personal notice shall be made by certified mail to the applicant, all abutters, and any professional whose seal appears on any plat not less than ten (10) days prior to the date fixed for submission of the application to the Board.

[Note: RSA 676:4 permits the planning board to combine the notice of submission with the notice of the public hearing by stating that if the application is accepted as complete, it will be on the agenda of each planning board meeting until a decision is made. The date of the public hearing must also be included on the notice.]

PUBLIC HEARINGS

The conduct of public hearings shall be governed by the following rules:

1. The Chairman shall call the hearing in session, identify the applicant or agent, and ask for the Secretary's report on the proposal.
2. The Secretary shall read the application and report on the manner in which public and personal notice was given.
3. The board considers, completeness, waivers (if any) and acceptance. If the application is complete the chair opens the public hearing for the applicant to make their presentation.
4. Members of the Board may ask questions at any point during the presentation.
5. Any party to the matter who desires to ask a question of another party must go through the Chairman.

6. Any applicant, any abutter or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the Board at each hearing.
7. Each person who speaks shall be required to state his/her name and address and indicate whether s/he is a party to the matter or an agent or counsel to a party to the matter.
8. The applicant or agent shall be called to present the proposal, and those appearing in favor of the proposal shall be allowed to speak.
9. Those in opposition to the proposal shall be allowed to speak.
10. Other members of the public may speak.
11. Other parties such as representatives of town departments and other town boards and commissions who have an interest in the proposal shall be allowed to present their comments in person or in writing.
12. The Chairman shall indicate whether the hearing is closed.
13. Once the hearing is closed, the board will deliberate and make a decision or continue the application pending the submission of additional material or information or the correction of noted deficiencies. In the case of a continuance, additional notice is not required if the date, time and place of the continuation is made known to the public at the adjournment.

DECISIONS

1. The Board shall render a written decision within 65 days of the date of acceptance of a completed application, subject to extension or waiver as provided in RSA 676:4.
2. The Board shall act to approve, conditionally approve, or disapprove.
3. Notice of decision will be made available for public inspection at (location) within 5 business days after the decision is made, as required in RSA 676:3. If the application is disapproved, the Board shall provide the applicant with written reason for this disapproval.

RECONSIDERATION, APPEAL, AND COURT REVIEW OF PLANNING BOARD DECISIONS (*677:15)*

The Planning Board may reconsider any decision to approve or disapprove an application, for good cause, provided it is within the statutory appeal period. This may be done through a motion that specifies the reasons for reconsideration. Upon successful passage of the motion, the board shall schedule a public hearing, with notice as provided in 676:4, I(d), where they shall consider whether or not to revise or alter their original decision. Should the board reach a new decision, a new appeal period shall be considered to have begun pursuant to RSA 677:15, et seq.

RECORDS

1. The records of the Board shall be kept by the Secretary and shall be made available for public inspection at the (office of the Board, or office of the Town Clerk) as required by RSA 91-A:4.
2. Minutes of the meetings, including the names of Board members, persons appearing before the Board and a brief description of the subject matter, shall be open to public inspection within 5 business days after the meeting as required in RSA 91-A:2, II.

3. If a website is maintained, RSA 91-A:2, II-b (effective January 1, 2018) requires that approved minutes must also be posted on the website in a consistent and reasonably accessible location, or a notice must be posted and maintained on the website stating where minutes may be reviewed and copies requested.

JOINT MEETINGS AND HEARINGS

1. The Planning Board may hold joint meetings and hearings with other "land use boards" including the zoning board of adjustment, the Historic District Commission, the Building Code Board of Appeals, and the Building Inspector. Each board shall have discretion whether or not to hold such joint meeting or hearing (RSA 676:2).
2. Joint business meetings with another local land use board may be held at any time when called jointly by the chairmen of the two boards.
3. A joint public hearing must be a formal public hearing when the subject matter of the hearing is within the responsibilities of the boards convened.
4. The Planning Board Chairman shall chair all joint meetings and public hearings when the subject matter involves the Planning Board.
5. The rules of procedure for joint meetings and hearings, the subject matter of which involves the Planning Board, shall be the same as these rules of procedure except that the order of business shall be as follows:
   a. Call to order by Chairman;
   b. Introduction of members of both boards by Chairman;
   c. Explanation of reason for joint meeting/hearing by Chairman;
   d. In the case of a public hearing relative to a requested permit or an application for a plat approval, or both, the applicant shall be called to present his/her proposal;
   e. Adjournment.
6. Each board involved in a joint public hearing makes its own decision, based on its criteria for the particular matter.

AMENDMENT

The Board's rules of procedure may be amended by a majority vote of its members. The Board shall hold a public hearing prior to adoption of new rules or amendment of existing rules. Notice for the time and place of the hearing shall be as provided in RSA 675:7. The amended procedures shall be filed with the municipal clerk.

CHECKLIST FOR SUBDIVISION AND SITE PLAN REVIEW

A completed application shall consist of the following items unless written request for waiver(s) is granted by the Board:

A. A completed application form, accompanied by:

1. Names and addresses of all abutters, taken from the town records not more than five (5) days before the day of filing;
2. Names and addresses of all persons whose name and seal appear on the plat;
3. Names and addresses of all holders of conservation, preservation or agricultural preservation restrictions;
4. Payment to cover administrative and notification fees; (and third party review fees, as appropriate)
5. One Mylar and (____) paper copies of the plat, prepared according to the standards of the NH Land Surveyors Association and the County Register of Deeds, as follows:

   [Note: *Mylar should not be submitted until after approval. Paper and electronic copies are acceptable initially.]*

   a. Plats shall be at any scale between 1"= 20' and 1"=400'.
   b. The outside dimensions of the plat shall be 8 ½" X 11", 11" X 17", 17" X 22", or 22" X 34", or as otherwise specified by the County Register of Deeds.
   c. The material composition shall be suitable for electronic scanning and archiving by the *County Registry* of Deeds.
   d. All plats shall have a minimum ½" margin on all sides.
   e. All title blocks should be located in the lower right hand corner, and shall indicate:
      i. Type of survey;
      ii. Owner of record;
      iii. Title of plan;
      iv. Name of the town(s);
      v. Tax map and lot number;
      vi. Plan date and revision dates.
6. A letter of authorization from the owner, if the applicant is not the owner.
7. A statement of whether the application is intended to qualify as workforce housing under RSA 674:58-61.

B. The plat shall show the following information:

1. Proposed subdivision or site plan name or identifying title; name and address of the applicant and of the owner, if other than the applicant.
2. North arrow, scale – written and graphic; date of the plan; name, license number and seal of the surveyor or other person whose seal appears on the plan.
3. Signature block for Planning Board endorsement.
4. Locus plan showing general location of the total tract within the town and the zoning district(s).
5. Boundary survey including bearings, horizontal distances and the location of permanent markers. Curved boundary lines shall show radius, delta, and length.

6. Names of all abutting subdivisions, streets, easements, building lines, parks and public places, and similar facts regarding abutting properties.
7. Location of all property lines and their dimensions; lot areas in square feet and acres. Lots numbered according to the town tax map numbering system.
8. Location and amount of frontage on public rights-of-way.
9. Location of building setback lines.
10. Location of existing and proposed buildings and other structures.
11. Location of all parcels of land proposed to be dedicated to public use.
12. Location and description of any existing or proposed easements.
13. Existing and proposed water mains, culverts, drains, sewers; proposed connections or alternative means of providing water supply and disposal of sewage and surface drainage.
14. Existing and proposed streets with names, classification, travel surface widths, right-of-way widths. (See Appendix A for road standards.)
15. Final road profiles, center line stationing and cross sections.
16. Location and width of existing and proposed driveways.
17. Water courses, ponds, standing water, rock ledges, stone walls; existing and proposed foliage lines; open space to be preserved; and any other man-made or natural features.
18. Existing and proposed topographic contours based upon the USGS topographical data, with spot elevations where necessary.
19. Soil and wetland delineation (see Appendix B).
20. Location of percolation tests and test results; certification of town official witnessing the tests, as required; and outline of 4,000 square-foot septic area with any applicable setback lines.
21. Location of existing and proposed well, with 75-foot well radius on its own lot.
22. Base flood elevations and flood hazard areas, based on available FEMA maps.

C. Other information:

1. Plan for stormwater management and erosion control, if applicable (see Chapter IV Section 2).
2. State subdivision approval for septic systems; septic design approval where applicable; or certification by septic designer of adequacy of existing system.
3. Alteration of Terrain Permit from NH Department of Environmental Services.
4. State/town driveway permit, as applicable.
5. Report from the Fire Chief, Police Chief, other town departments, and/boards or commissions.
6. Approval for municipal water/sewer connections.

APPENDIX D (con't)

7. Any deed restrictions; and all deeds covering land to be used for public purposes, easements, and rights-of-way over property to remain in private ownership, and rights of drainage across private property, all easements granted with the municipality as receiver shall be submitted in a form satisfactory to the Board's counsel.
8. Any other state and/or federal permits.
9. Any additional reports or studies deemed necessary by the Board to make an informed decision, including but not limited to: traffic, school, fiscal and environmental impact analyses. The Board reserves the right to request such information after an application has been accepted as complete, as well as before acceptance.

10. Should the Board determine that some or all of the above-described information is to be required, the applicant will be notified in writing within ten (10) days of the meeting at which the determination was made.

APPENDIX E: CRITERIA FOR DETERMINING REGIONAL IMPACT

Land use board responsibilities relative to developments of regional impact are laid out in RSA 36:54-58. The statutes give a basic definition of what may constitute a regional impact. Boards may wish to establish more specific guidelines or criteria for making such determinations.

Generally, impact criteria shall include, but not be limited to, the items below. These shall in no way be considered exhaustive, but rather guidelines for the Board to follow in making a determination of impact on a neighboring municipality.

1. Residential Development: Proposals for lots or dwellings that would increase the existing housing stock of the town by more than 25% or specify the number of dwelling units within a certain time frame. i.e. 25 houses within 5 years.
2. Commercial Development: Proposals for new or expanded space of 50,000 square feet or greater.
3. Industrial Development: Proposals for new or expanded space of 100,000 square feet or greater.
4. Other factors to be considered:
   a. Proximity to other municipal boundaries.
   b. Traffic impacts on the regional road network.
   c. Potential effect on groundwater, surface water and wetlands that transcend municipal boundaries.
   d. The potential to disturb or destroy a significant or important natural environment or habitat.
   e. The necessity for shared public facilities such as schools or solid waste disposal.
   f. Anticipated emissions such as light, noise, smoke, odors, or particulates.
   g. The potential for accidents that would require evacuation of a large area.
   h. The generation and/or use of any hazardous materials.
   i. Any other factor considered important to the board and the community.

NOTE: Some Regional Planning Commissions in New Hampshire have developed regional impact guidelines, with help and input from communities in their region. Contact NH OSI or your Regional Planning Commission for more information.

APPENDIX F: PROCEDURE FOR APPLICATION REVIEW (RSA 676:4)

PRE-APPLICATION REVIEW - OPTIONAL OR MANDATORY

The two stages of pre-application review can be optional or mandatory pursuant to RSA 676:4, II.

PRELIMINARY CONCEPTUAL CONSULTATION

Step 1

Applicant meets with planning board to review plan in terms of concept and compliance with the master plan and zoning ordinance; Board determines type of proposal and offers guidance relative to state and local requirements. (Public notice is not required.)

Step 2

At this point, if pre-application is optional, the applicant may either request the design review phase or move directly to the formal submission of a completed application.

DESIGN REVIEW PHASE

Step 1

Applicant submits a "Request for Pre-application Review" at least 15 days before the next regularly-scheduled meeting of the Board.

Step 2

Planning Board notifies abutters and the public 10 days prior to the public meeting at which the proposal will be discussed.

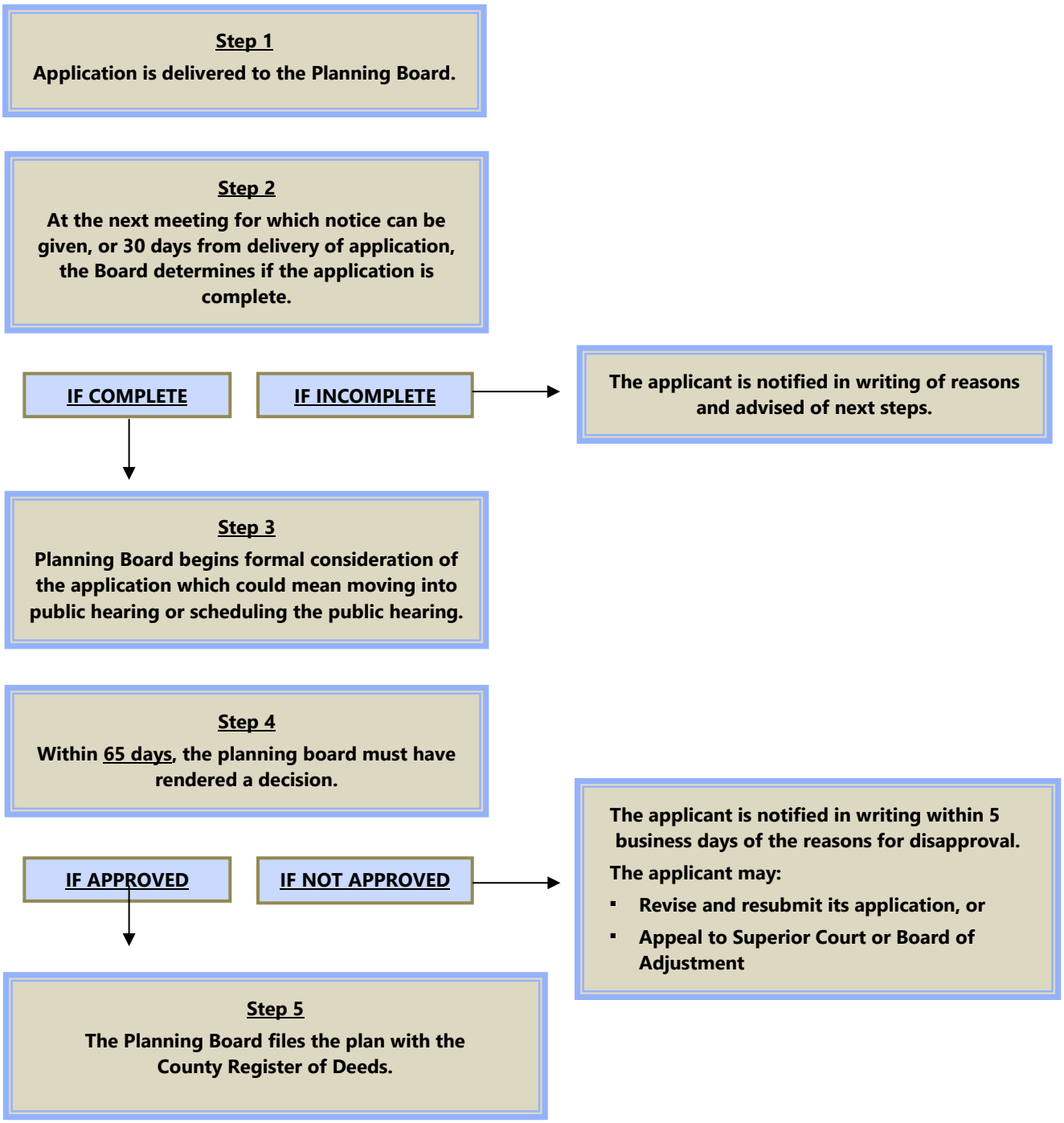
Step 3

Board and applicant engage in non-binding discussion involving specific design and engineering details of the potential application.

Step 4

Board determines that the design review phase is complete during a public meeting. Notification of this determination must be provided to the applicant within 10 days.

FINAL APPLICATION



NOTE: The public hearing may take place on the same evening as the application as complete, provided the notice has advised of the possibility. This is typically only advisable for minor or technical subdivisions.

APPENDIX G: HOW TO BE A GOOD BOARD MEMBER

You can start with *The Riggins Rules* appearing in the Winter 1994/Number 13 Planning Commissioners Journal. They were written by Fred Riggins, former Chairman of the Phoenix Planning Commission, in 1967 as *"Suggested Do's and Don'ts for the Conduct of Public Hearings and the Deportment of Members of Boards, Commissions, & Other Bodies."* Bev Moody, a veteran of 26 years with the City of Phoenix Planning Department, notes that the *do's and don'ts* were retitled as "The Riggins Rules" in recognition of his many years of service on the Planning Commission and have been left in the original crusty, no-nonsense style of Fred Riggins himself. The rules do not follow the principles of non-sexist language that prevail today and asks readers to forgive that he was raised and wrote these in less sensitive times, but that does not detract from the good advice he offers.

Rules Every Board Member Should Live By

1. **Attend every meeting possible.** You volunteered to be on the board or put your hat into the ring to run for election so make the effort to attend and participate in as many meetings as possible. You are only human and humans do get sick and have other things to do, so it is unrealistic to think that you will be at 100% attendance; but if you can't attend at least 80-85% of the meetings, you should think about stepping down.
2. **Create a good impression.** You may have attended hundreds of meetings, but chances are there will be people attending each meeting who have never been to a board meeting before and probably never will again, so this is the first and only time they will see you in action. What you say and do and how the board acts will have a lasting and final impression on them about how their government functions. Keep them in mind.
3. **Be prompt.** If the meeting is scheduled to begin at 7:00, arrive well in advance to take your seat, remove your coat, organize your papers, say hello to fellow board members and be thoroughly ready to go at the exact hour. The meeting should begin just as advertised and if the board has to wait for you to arrive, you've just wasted a lot of people's time.
4. **Look good.** Pay attention to how you look. You may not necessarily need a "power suit" but at least be presentable. Probably a tee-shirt, shorts and flip-flops are not appropriate. The business of the board is important and your attire should reflect that.
5. **Limit pre-meeting mingling.** It is certainly fine to say hello to people as you enter the meeting room or in the lobby outside, but don't spend too long in casual conversation. Though perfectly innocent, it may give the impression that you are somehow connected with an applicant or abutter and that something "fishy" is going on.
6. **Limit ex-parte contacts.** Ex-parte contacts are discussions that take place outside of the public meeting. You should avoid discussing any case with other members, applicants, abutters, neighbors, friends, or relatives (but it's OK to talk with your dog about it) and if someone buttonholes you and gives you information regarding an application, you are obliged to reveal that information to the entire board. Never say the board is leaning one way or another and strongly encourage the person to attend the hearings to voice concerns and ask their questions there.
7. **Be prepared.** **Do your homework** and read all the materials sent to you prior to each meeting. It is grossly unfair to the applicant and the board for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. Never try to read your materials during the meeting – you won't do a good job at either.

8. **Remain impartial.** Never say how you intend to vote during the applicant's presentation, abutter testimony or at any time during the hearing or before. Once the board closes the hearing and begins to deliberate, you can start to express your positions and begin to form an opinion about whether to approve the application or not. It is quite proper to raise questions and raise issues during the hearing but don't make pronouncements like "well then, I guess I'll just have to vote to deny this application" based on someone's testimony or the applicant's presentation. Remember, you are there to help all applicants, whether you agree with them or not. Be polite to everyone and "play fair" like you learned in kindergarten.

9. **Consider recusal.** You must step down (recuse yourself) if you have a direct personal or pecuniary interest in the outcome of a case that differs from the interest of other citizens or where you would otherwise be disqualified as a juror. [RSA 673:14, I] The board can even take a non-binding vote as to whether or not you should step down, but the ultimate decision is yours and yours alone. [673:14, II]

   The "Juror Standard" (RSA 500-A: 12) calls for disqualification where a board member:

   a. Expects to gain or lose upon the disposition of the case, financially or otherwise;
   b. Is related to either party;
   c. Has advised or assisted either party;
   d. Has directly or indirectly given an opinion or has formed an opinion;
   e. Is employed by or employs any party in the case;
   f. Is prejudiced to any degree regarding the case; or
   g. Employs any of the counsel appearing in the case in any action then pending in the court.

   If you do recuse yourself, go for a walk, grab a coffee, read the notices on the bulletin board, etc., and just step away from the proceedings – but make sure someone calls you back in when that case is finished so you can resume your duties on the board. Of course you can always participate in the case as a private citizen – membership on the board does not strip you of that right – just be clear that you are speaking as a citizen and not as a member of the board.

   But, if you firmly believe that you do not have a conflict and can impartially judge the application, don't be bullied into stepping down just because the applicant might think you'll vote against them. It's your decision. Always consider what is best for the board as a whole. Keep in mind this decision to not step down can be used as an appeal issue. Causing the town and the board time and money. Some say, "when in doubt-don't" when it is a question of recusal.

   If you should be disqualified yet participate in the board's decision, you may have tainted the entire decision of the board, and it can be invalidated. [Winslow v. Holderness, 125 NH 262 (1984)]

10. **Pay attention**. Listen to what the applicant or abutters have to say, whether you agree with them or not. This is likely their one time in front of the board even though it may be your 100th board meeting. Don't read or shuffle papers, whisper to other board members, or act disinterested in the proceedings. Again, "play fair" like kindergarten.

11. **Don't interrupt.** Allow presenters to speak and go through their presentations and only ask questions at the end, except for very short and necessary clarifying remarks or queries. Things will

probably progress faster if you allow the full presentation with questions at the end rather than peppering the presenter with questions while speaking and getting them off track.

12. **Be humble.** You don't know everything, even if you think you do. Be wary of trying to answer questions that might be better left for someone else to answer who really knows what they are talking about. This is another place where staff or circuit rider planner can help – rely on them. It is all too easy to answer something as your understanding, only to be corrected later, which can erode the public's overall confidence in the competency of the board.

13. **Vote!** There should be a roll call vote on every motion where each member's vote is clearly documented as part of the record. The board should never vote by a show of hands and only use the mass "all those in favor say aye, those opposed say nay" for things that are generally expected to be unanimous, like approving minutes or closing the meeting. Each board member should vote yes or no on every motion and rarely if ever abstain (i.e., "acquiesce to the will of the majority") from voting. Never abstain just to avoid the difficult task of voting, fearing the anger of friends and neighbors. This is the position you volunteered (or ran for) and it can come with some difficult moments. Lastly, under RSA 91-A:3, I, the board is required to have a roll call vote to enter into a non-public session. [For more information on non-public sessions, see Legal Q and A: The Inside Scoop on Nonpublic Sessions, New Hampshire Town and City, June 2012]

14. **Keep your cool.** Keep your emotions in check and don't be a cheerleader for one side or the other. There really are no "winners or losers" so don't pump your fist at a denial or shout for joy at an approval. This can lead to the appearance that you have more at stake in the outcome of an application and raise doubts about your impartiality. You can certainly be glad or disappointed in a particular outcome but just don't show it.

15. **Self-assess.** Periodically take a step back and look at your participation on the board. How well do you know and understand local ordinances and regulations and state laws relating to your board? Have you been to any training lately (OSI conferences, NHMA law lectures, RPC workshops, etc.)? Do you make motions? Are they seconded? Do you feel like you're out in left field most of the time? Being on a local land use board just may not be your cup of tea. It's OK to recognize that and step down or complete your term and not run again, or ask not to be reappointed.

RULES EVERY BOARD SHOULD LIVE BY

16. **Use a Microphone.** Require the applicant, engineers, presenters and abutters to come up to a podium with a microphone to speak one at a time, or at least to stand and address the board and audience so that everyone can hear the speaker and see the plans and other documents being referenced. Not only will this will allow everyone in the room to hear what is said, it will be easier for the chair to control the meeting and keep track of who is addressing the board. And the board members should use microphones, or at least speak so they can be clearly heard by all in attendance.

17. **Address the Chair.** ALL questions should be addressed to the chair, e.g., "Madame (or Mister) Chair, I have a question." Once the person asks their question, the chair can then ask the applicant or appropriate person to respond. Do not allow direct back and forth discussions that can escalate out of hand. All questions must be germane to the subject and if not, the chair can so state and move to the next question.

18. **Be formal.** Don't use first names in addressing anyone during the course of the hearing. This includes audience, applicants, or members of your particular body, even if the person concerned is

your brother or your best friend. Always use "Mr." or "Ms.," never their first name. Calling on someone by their first name conveys an air of informality or friendship which could be viewed as something other than an impartial relationship. If you just can't bring yourself to call someone Mr. or Ms., use the third person form and call them "the applicant," or "the person who is objecting," or "the gentleman (or lady) who is appearing here in connection with this case."

19. **Be Respectful**

    Of the Chair. Always address the Chair as "Madame (or Mister) Chair," "The Chair," or "Chair Jones," and wait to be recognized before continuing. This will set an example for applicants and others wishing to be heard and will contribute a great deal toward orderly proceedings.

    Of attorneys. Attorneys will sometimes give lengthy presentations on behalf of their clients; they are not there just to make your life miserable. Avoid the temptation to make matters as difficult as possible for them and remember they are there to advocate for their client's position.

    Of everyone. Don't indulge in personalities and don't permit anyone else to do so. Be respectful of everyone no matter how you feel about their positions.

20. **Be courteous.** There may be a temptation, especially when it is apparent that someone is being slightly devious and less than forthright in his testimony, to make someone look foolish, but don't do it. If you must "expose" someone, do it as gently and kindly as possible. Don't be a bully – that is not part of your role as a board member.

21. **Stick to the issues.** The board is not there to solve all the problems of the world – you are not an equity board. If there is a neighborhood argument, don't try to referee the situation. Keep all comments and testimony focused on the application the board is reviewing and the relevant laws, ordinances and regulations.

22. **Don't seek revenge or leverage.** Each application to the board is unique and individual. Even if the applicant has appeared before the board on other occasions, it was for something else. Resist the temptation to "stick it" to the applicant on this application if you feel he or she "got away with something" on a previous occasion. Everyone has a right to a fair and impartial hearing on the merits of the present case, i.e., constitutional due process. Also, don't try to use their application as leverage to accomplish something else. Just because a land owner owes some parking tickets or taxes does not mean you can withhold their subdivision approval until they "pay up" – the two issues are unrelated.

23. **Adhere to the ordinance and regulations.** People may appear before the board in distressed situations. You should remain objective, yet still be sympathetic to their situation. Don't try to be the hero and grant their relief by throwing the regulations or ordinance out the window. If the case comes back on appeal you may well have actually caused a disservice to the person, deepening their distress. If someone has become involved in bad business deals or other self-imposed difficulties, you are not necessarily there to bail them out.

24. **Provide written decisions.** RSA 673 is very clear that every local land use board decision to approve or disapprove an application must be in writing and made available to the applicant. If the application is denied, the board must provide the applicant with written reasons for the denial and similarly, if the application is approved with conditions, the board must include in the written decision a detailed description of all conditions necessary to obtain final approval (i.e., "conditions precedent") or all the on-going, binding conditions that the applicant must adhere to after obtaining a final approval (i.e.,

"conditions subsequent"). [For more on conditional approvals, see Attaching "Conditions" to Approvals in Land Use Boards, New Hampshire Town and City, November/December 2013.]

25. **Carefully consider recommendations.** If the board has utilized a consultant or is lucky enough to have municipal staff assistance, their recommendations should be seriously considered. These recommendations can come before, during, or after a hearing on the application and this advice from professionals with years of experience should be given careful consideration by the board. On a similar note, you should strongly heed unrefuted expert opinions, even if they disagree with your point of view. [For more on expert opinions, see Land Use Decisions: Expert Opinions and the Board's Personal Knowledge, New Hampshire Town and City, November/December 2009.]

26. **Use your staff (if you have any!)** Staff can be a valuable asset and resource and you should not be hesitant to utilize their services. They can help with research, statute review, procedural compliance, and drafting decisions just by way of example. The board should develop a good working relationship with the staff and that also should extend to the regional planning commission. Some RPCs contract with municipalities to provide circuit riders as part-time staff to assist boards.

27. **Be decisive.** Either grant what the applicant has applied for or deny it citing the specific reasons for denial. Don't try to appease an applicant by approving less than what they asked for as a way to make them happy, unless of course, that is all that could possibly be approved. The board could find that a parcel of land could only support 20 house lots where the applicant applied for 25 and that can be justified if the board based its decision on the ordinance and regulations.

28. **When it's over, it's over.** Once the board acts on an application, move on to other business. Don't allow minority opinions or other post-decision observations or testimony. If someone really wishes to object, outline the formal appeal process and assist them with dates, deadlines and how to proceed. A board may reconsider its own decision as long as it is within the appeal time period as outlined in 74 Cox Street LLC v. Nashua. [See more under Decisions on the Land Use Boards and Municipal Officials page.]

29. **Each Case on its Own.** While the regulations are universal for each application, remember each application is different and the regulations will apply differently to each application. Each case needs to be decided on its own merits as compared to the regulations, not on previous approvals.

30. **But Think Ahead.** Always be mindful of precedents you are setting with conditions of approval and treatment of previous applicants. It is important to document and justify your reasons and answers in the minutes and in your decisions as to why you reached the decision you did, whether it is an approval or denial.

31. **Consult with Town Attorney When You Need to.** Make sure your administrative and procedural processes are legally correct. The majority of approvals are appealed due to procedural errors. If you are in doubt over the legality of a procedure or decision, stop the hearing and continue the application to get legal advice. Better safe than sorry! Don't allow applicants, their representatives, the public, or any public or municipal official try to rush your decision or have you make a decision in their favor. You took this position in part to help guide development and growth in your town for the benefit of the entire town. Not everyone will agree with you but don't let that influence your decisions. You can listen to their concerns and maybe work some of their concerns into the conditions of approval. Be mindful that the planning board should be working with the applicants and the residents when trying to reach a decision.

Rules for Running a Meeting

32. **Avoid fights.** Public meetings can be contentious and heated tempers may rise. Do your best to listen to what people have to say, thank them for their comments and move on to the next question or issue. Resist the temptation to engage with the speaker and argue why you're right and the speaker is wrong – that will only prolong and deepen the confrontation.

33. **Make sure everyone can see what the board is looking at.** If the applicant lays out plans on the table and begins to point things out and discuss the details, put the plan up on the wall so everyone can see what the applicant is pointing to. If that is not possible, allow interested parties to come up and look at the plans.

34. **Have speakers introduce themselves.** Ask everyone to state their name and address, the organization they represent, a brief summary of their concerns and any details or specifics that the board should know. As suggested previously, use a podium and microphone, if possible, and require everyone to speak and ask questions from that point. By having everyone speak from a common location (not from the audience seating), it puts all speakers on an equal footing and may lessen the chance of on-going back and forth arguments between abutters and a developer.

35. **Maintain separation.** Except in unusual situations, do not permit people to leave the podium and approach closer to the board table or dais unless they need to show a small exhibit or to explain some detail. This can break down into a small mumbling session at one end of the table that usually does not get recorded and cannot be heard by other board members or the audience.

36. **Don't rush.** There is no statutory requirement to make a decision on an application the same night you hold a public hearing. Especially at the end of a long night, it could be wise to continue the proceedings to a future meeting where the board can begin or continue deliberations and possibly reach a decision. The chair could assign a board member or staff to draft a potential decision and bring it back to the next meeting for the full board to consider. Just be mindful that the planning board must act within 65 days of accepting an application unless the applicant has mutually agreed to an extension. (RSA 676:4, I (c)(1))

37. **Rotate officers.** RSA 673:9 limits the role of chairman and other officers to one year but they can run for reelection year after year. When considering a chair (or other officers as outlined in the board's rules) think of how well that person might be in such a role. Don't just automatically vote for a chair just because he or she has been on the board a long time or is a friend of yours - neither of which are necessarily qualifications for a good chairman. The vice-chair (if your rules provide) might be a good training ground for someone who may become chair, especially if they occasionally run the meetings in the chair's absence. Or, heading up a sub-committee might be a good way to assess a member's potential as a future chairman.