

Meeting Mechanics of Land Use Boards

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What we will cover:

- Goals of the Land Use Board Review Process
- Pre-Meeting Administration
- The Meeting
- Hearing Procedures
- Deliberation
- Making a Decision

Goals of the Land Use Board Review Process

- To ensure **fundamental fairness**
 - Judicial standard review
 - Board must provide procedural due process to all parties
 - Procedural due process means providing:
 - Notice of the hearing (RSA 676:4, I & 676:7)
 - An opportunity to be heard by an impartial board at a public meeting (RSA 676:7, 673:14, 674:33, and 91-A)
 - A decision in writing explaining the basis of the decision (RSA 676:3)

Goals of the Land Use Board Review Process

- To ensure **effectiveness and efficiency** by:
 - Avoiding procedural mistakes & creating appealable issues
 - Helping to create a complete and understandable record in case of an appeal
 - Instilling public confidence

Goals of the Land Use Board Review Process

- To have a legally defensible final decision by the Board
 - *Land use board decisions can be appealed to court (RSA 677:4 & 15)*
 - *Review must comply with statutory procedural requirements (RSA 676:4 & 676:7)*
 - *Decision must be based on testimony given and evidence submitted in light of the applicable regulations*



Pre-Meeting Administration

- Administrator's job is to:
 - Maintain a clear, organized record
 - Meet all statutory steps/requirements
 - Ensure there aren't any procedural gaps creating appealable issues and raising red flags
- Application forms, instructions and checklists should be used to ensure applicant provides what is needed

Pre-Meeting Administration

- A checklist should be prepared for each application type, e.g.:
 - site plan review checklist
 - subdivision checklist,
 - variance checklist,
 - etc.
- Planning Board checklists should identify both *submission* requirements and *design requirements (if feasible)*



Pre-Meeting Administration

- The Hearing Notice
 - Minimum requirements set forth in RSA 676:4, I and 676:7
 - WHO: applicant, property owner, easement holders, professional representatives, and abutters
 - WHEN:
 - Zoning Board – 5 days (RSA 676:7)
 - Planning Board – 10 days (676:4, I)
 - HOW: Statute requires notice sent by “verified mail”

Pre-Meeting Administration

- Preparing and posting the agenda
- Preparing and providing agenda materials for the Board members
- Preparing the meeting room
- On-line meetings

The Meeting

- “Right-to-Know” or “Open Meetings” law
 - 91-A:2, II: “all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public [...] no vote while in open session may be taken by secret ballot.”

The Meeting

- The Board's Rules of Procedure
 - Boards must adopt Rules of Procedure (RSA 676:1)
 - Help fill in the gaps between the minimum statutory requirements
 - Rules must be followed
 - Board members must be familiar with them
 - Will help ensure proceedings are conducted fairly

The Meeting

- To open the meeting, the Chair should:
 - Introduce the members
 - Appoint alternates
 - Educate the audience:
 - Explain the purpose of a public hearing
 - Explain Board's role and principles involved in evaluating applications
 - Outline how each hearing will proceed
 - If less than a full member board is present, offer applicants the option of postponing the hearing.



Hearing Procedures

- Role of Chair
- Role of Staff
- Opening the Hearing
 - Read hearing notice
 - Appoint alternates (if not already appointed)
 - Discuss possible recusal, if needed (RSA 673:14)
 - It is the member's decision, unless prejudgment/bias or direct abutter

Hearing Procedures

- Applicant's presentation
- Questioning the applicant
 - Board members may (and should) ask questions
 - Try to wait until conclusion of applicant's presentation
 - Questions should have legal bearing
 - Should be posited as impartially as possible
 - All questions for the applicant must be asked and answered *before* the hearing is closed
 - Don't wait until deliberation

Hearing Procedures

- Abutter/other interested party testimony
 - Cross examination of applicant should not be permitted
 - Questions should be directed to the Chair and answered during rebuttal
 - Entering exhibits is OK but allow applicant an opportunity to review
 - Chair should never allow personal attacks
- Standing (“persons aggrieved”) (RSA 677:4 & 15)
 - Abutters have automatic standing
 - Err on allowing testimony when standing is suspect
 - but due weight should be given to its relevance

Hearing Procedures

- Rebuttal
 - Applicant
 - Abutters (optional)
- Final questions from Board to Applicant
 - Avoid negotiations; but can explore conditions of approval
- Prior to closing the hearing:
 - Confirm all Board's questions have been answered
 - Confirm Board has sufficient information to make a decision

Deliberation

- RSA 91-A:2-a, I:
 - “public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III”
- Evaluating and weighing evidence and testimony
- Expert testimony
- Personal knowledge

Deliberation

- Evaluating the applicable regulations/criteria
 - Variances: consider voting on each criteria separately
- Reopening the hearing
 - This should be a last resort
 - All parties will need to be given an opportunity to speak
 - May need to continue the hearing and renotice if anyone has left
- Draft motions
 - Can be prepared in advance or assigned to a member or staff

Making a Decision

- The Board must issue a written decision that clearly explains the basis for the decision (RSA 676:3)
 - Must include findings of fact (HB1661)
 - For disapprovals, failure to include will result in “automatic reversal and remand”

Making a Decision

- Zoning Board:
 - approval requires majority vote of the 5-member Board (RSA 674:33)
 - even if less than a quorum is present
 - (i.e. 3 votes needed even if only 3 members present)
 - If less than a full board is present, deliberation may need to be continued until a full board is present
- Planning Board:
 - a simple majority of members present is needed to pass a motion

QUESTIONS?

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