

New Hampshire Municipal Association Land Use Law Conference November 16, 2024

Planning Board Housekeeping

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Agenda

- Applicable Laws- Review and approval authority
- Regulations, Forms, Checklists, Waivers, and Deadlines- Yes! Yes! Yes!
- Application types- Major and Minor
- Application and Meeting Management- Staff and Board Roles
- Motions, Accept or Not, Approve or Not, Continue or not...
- Site Walks-Yes!
- Third party review-Yes!
- TRC-Yes!
- Board Decisions-Final or not
- Tips for board members
- Q&A

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Subdivision Regulations (674:36)

MAY Address:

- Street Layout
- Utilities
- Public Health
- Open Space
- Lot Configuration
- Thresholds for major and minor subdivisions

Must provide for waivers

*Goal/Purpose-Provide against “scattered and premature development.”

Practice Pointer-The adoption and amendment of subdivision and site plan regulations can be done at any time throughout the year as they do not have to go to town meeting for approval. They would follow the normal 10-day public hearing notice procedures.

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Site Plan Regulations (674:43)

May include-

- Traffic
- Parking
- Utilities
- Landscaping
- Building location
- Signage
- Lighting
- Noise

Must include-

- Procedures
- Purpose
- Standards
- Performance Guarantees
- ***Must provide for waivers***

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Planning Board Application Process (676:4)

1. Application submitted to the planning board according to the board's meeting and deadline schedule or at a minimum of 21 days before a public hearing.
 - Practice Pointer-Post an annual meeting schedule.
2. 676:4.I(b) the planning board SHALL specify by regulation (674:36 Subdivision/ 674:44 Site Plan) what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.
3. A completed application means sufficient information is included to allow the board to proceed with consideration and make an informed decision.
 - Should use Checklists!

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Checklists

Checklist- Are to itemize the types of plans, studies, designs, information, materials, required fees, escrows, etc. that are required by the regulations.

- **Suggestion** Planning boards without staff support could have the Secretary of the Planning Board process applications to check the submission contains all the required information required in the checklist prior to the meeting. If that is not feasible then the board should review the application at a public hearing.
- **OPTION** Conduct completeness review as a conceptual consultation. Applicant applies with preliminary information and reviews with the board what the checklist and regulations require in order to accept an application as complete..

- The Planning Board Handbook

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Formal Application

Formal Application-

- 676:4,I(b) "The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval."
- "A "**completed application**" means sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision."
 *Regulations and checklists identify what a completed application is.

 *Remember-Checklists are part of the regulations AND the application submission.

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Waivers

1. Subdivision Regulations 674:36
2. Site Plan Regulations 674:44
 - Waivers
 - Applicants must show good cause that strict conformity to the regulations would cause an unnecessary hardship, and a waiver would not go against the spirit and intent of the regulations.
 - Waiver requests must be in writing and should identify the section of the regulation in which the waiver is being requested.
 - The board should be clear in their reason for granting OR not granting the waiver and what the next steps for the applicant are.

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Waivers cont'd

- ***“Will this affect the information we need in order for us to hear and decide on this application? (Yes or No)”***
- ***“Is there enough information to make an informed decision based on your regulations?” (Yes or No)”***
 - PUT DECISION AND REASONS IN WRITING whether it is a “yes” or “no” to grant the waivers.
 - If waiver is granted the application can be accepted as complete and the public hearing can begin.
 - ☐ This can be done at the same meeting, as long as it was noticed that way to the public and abutters.
- If the waiver is not granted, the application can be denied, or it can be continued with no need for further notice to the public.
- The board and/or staff should work with the applicant for what material or information is missing.

It is your responsibility to assist and work with applicants!

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Technical Review Committee (TRC)

- **673:1 Establishment of Local Land Use Boards. –**
 I. Any local legislative body (City Council/Town Meeting) may establish a planning board, the members of which shall be residents of the municipality.
 - PB elect officers and adopt By-Laws/Rules of Procedures.
 - PB write and adopt a Master Plan-Vision and Land Use Chapters are required
- **674:35 Power to Regulate Subdivisions. –**
 I. A municipality may by ordinance or resolution authorize the planning board to require preliminary review of subdivisions....

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Technical Review Committee (TRC) cont'd

- **674:43 Power to Review Site Plans. –**
 I. A municipality, **having adopted a zoning ordinance** as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or re-subdivision of the site.
- **674:43.III** The local legislative body of a municipality may by ordinance or resolution 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...

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What is a TRC?

- A committee appointed and authorized by the Legislative bodies of the municipality either by the City Council, Town Council, or Town Meeting vote.
- Legislative bodies determine the type of TRC either with site plan review authority or without review authority.
- Made up of municipal officials, department heads, other board or commission members.
- There is a Chair and Vice-Chair of the TRC.
- It is an arm of the planning board.

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Roles and Responsibilities of a TRC

- Can be either advisory or have site plan approval authority.
- Part of the development review process from the beginning.
- Provide technical assistance to applicants through the development process.
- Informs all town departments on development projects.
- Create communication and cooperation with the planning board and municipal departments.
- We are on the same team! 😊

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Overall Benefits of a TRC

- Fosters cooperation and communication with municipal departments and the applicant over development projects.
- Inform departments of large projects.
- Can assist departments with budgets and CIP items.
- Can provide Conceptual Consultation review and input for the applicant.
- Streamline development review process for the developer and municipality saving time and money.

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Major and Minor Applications

- Subdivision and Site Plan Regulations should define what a major and minor subdivision and site plan are. i.e., size in number of lots, square footage of new buildings, etc.
- The regulations should include if third party review is required for all applications, just major applications, or at the board's discretion.
- If there is an established TRC (Technical Review Committee) with site plan review authority then TRC can review minor site plans. Has to be spelled out in the TRC's regulations what the guidelines are for minor site plan review.
- Major and minor site applications need a public hearing.

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Staff Application Management

Set up a process for application acceptance in the office!

- Set deadlines for applications e.g. Noon on deadline day-
NO 4:29 PM drop offs! Stick to deadlines!
- Create spreadsheet for tracking applications and escrow accounts-very helpful for Yr. End Reports/Town Reports.
- Consider creating a cover sheet for the application to help with tracking and quick references., i.e., when application was submitted, 1st public hearing/acceptance, approval, etc.
- Abutter verification is applicant's responsibility.
- Set an abutter submission policy based on number of abutters.
- Don't have to make copies of applications/materials for applicants.

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Staff Application Management cont'd

- Review application materials for all submission requirements **NOT** for content requirements.
 - ✓ You are looking for- signed application, checklist, waivers, fees, escrow funds, etc. not reviewing the integrity of the application-that is the board's job.
- Inform Chair number of application submissions.
- Process fees and escrow funds.
- Create the public notice and abutter notices.
- Prepare packets for the TRC and/or planning board.
- Circulate packets to the TRC and planning board.
- Planning Board members should have their packet at least one (1) week before meeting.

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Board's Roles and Responsibilities

- To accept or not and review and approve/deny formal applications that are submitted.
 - Chair-Allow the applicant and abutters to speak and be heard. Do NOT have to allow repetitive comments!
 - Run a calm and respectful meeting-OK to set time limits.
 - If uncertain on whether to accept an application as complete, don't hesitate to continue the acceptance. (Good time to consult with Municipal Attorney 😊)
 - Utilize the existing regulations in your decision-making process i.e., does this meet the Master Plan goals? Site Plan/Subdivision Regs?
- *Don't forget-When in doubt-DON'T! It is OK to continue the application for more information or guidance from staff and/or Municipal Attorney**

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Wait, is it a Public Hearing or Public Meeting?

Public Hearing vs. Public Meeting

- Public Hearing-
 - A meeting duly announced and advertised in advance that is open to the public and called by the town council, board, or commission of the town for the purpose of taking **formal** public comment, both in favor and opposition to a proposed action.
- Public Meeting-
 - An **informal** meeting, hearing, or workshop of a municipal board, committee, commission or governing body or their representatives where the public may attend and may provide input.

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Site Walks

- Consider an important part of the application decision making process.
- Can be done at the beginning of the process-or as part of the application process.
- It is a public meeting! Post an agenda and take minutes!
- Public **MUST** be allowed to attend. Denying public access can lead to delays or denial of the application.
- Good for fact finding and visualizing the development in the area.
- If no site walk is scheduled, individual members may view the site on their own.

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Third Party Review-676:4-b

- Should be part of every application process.
- Designed to assist municipalities to hire experts to help you understand complex/phased applications, controversial issues, unusual subject matter.
- **DON'T** take applicant's "word" on engineering/traffic/drainage, etc. get a professional to work on the municipality's behalf for your own protection.
- Get an estimate from the professional, establish an applicant-funded escrow (separate account).
- All third-party reviews are paid for by the applicant. **NO COST TO THE MUNICIPALITY!**
- Keep good records of funds. If funds are low or exhausted application should not continue through the process until funds are replenished.
- Put process in application and regulations.
- Work with Municipal Attorney.

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Third Party Review-cont'd

- Role of your expert-
 - Work with applicant's expert to work through issues/municipal regulations to develop an improved plan.
 - Provide alternative review of the same material to assist the board in making sound decisions.
 - Work to protect the municipality's interests.
 - Establish a basis for approval or denial.
 - Utilize for actual groundwork in the development of project i.e., drainage inspections, road inspections, escrow drawdowns, final inspections, compliance, etc.

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Making Motions-Decisions

- Motions may be made by any regular member (chair included) or alternate serving in place of a regular member.
- Motions should contain the complete action.
 - All conditions of approval; reasons for denial.
 - Require second in order to discuss; require deliberation; require vote.
- A failed motion is not an approved action to do the opposite!
- If the motion to approve fails it does not mean the application is denied. A failed motion to deny does not mean the application is approved.
- A new motion must be made and seconded. Discussion continues until the board can agree upon a decision.
 - **Work with Municipal Attorney!**

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Final Answer!

TIME TO MAKE THE DECISION!

- Consider, reviewing and discussing proposed conditions of approval or reasons for denial while public hearing is still open. That way you can still talk with the applicant in the public hearing.
- Provide last chance for applicant and abutters to comment.
- Close the public hearing!
- No further input from members of the public, applicants, agents, etc.

Deliberations-

- Discussion among the board, staff, Third Party Professionals the potential conditions of approval or reasons for denial.
- BE CLEAR WITH CONDITIONS AND REASONS FOR APPROVAL OR DENIAL

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Final Answer cont'd!

- Don't pay attention to the number of conditions of approval/reasons.
- You can't enforce intent!
- Minutes don't count for enforcement!
- Consult with Municipal Attorney!

COMPLETE FINDINGS OF FACT AND NOTICES OF DECISION ON TIME!

- 91-A:2. II Subject to the provisions of RSA 91-A:3, **minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting**, except as provided in RSA 91-A:6. and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception.

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Final Answer cont'd!

676:3 Issuance of Decision. –

I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15,** unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

II. **Whenever a local land use board votes to approve or disapprove an application or deny a motion for rehearing, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefor and all conditions of approval, shall be placed on file in the board's office and shall be made available for public inspection within 5 business days of such vote.** Boards in towns that do not have an office of the board that has regular business hours shall file copies of their decisions with the town clerk.

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Conditional Approval

- Conditional approval under **RSA 676:4, I(i)** is only an “interim step in the process of the board’s consideration” **and is not a final approval.** **For a valid final approval under the statute, there must be no unfulfilled conditions precedent.**
- Conditions precedent-conditions that must be completed in order to obtain final approval. i.e., revised plans, escrow funds, final documents, etc.
 - a “Conditional Approval” is NOT final approval!
 - When conditions precedent have been met the final approval is granted. Final plans can be signed, permits issues etc.
- Conditions subsequent-conditions that are for the life of the project. They are “attached” to an approval. i.e., hours of operation, maintenance of landscaping, lighting times, etc.

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Conditional Approval cont'd

Practice Pointers:

- When granting approvals with conditions, be clear which conditions are precedent or which conditions are subsequent.
- If a board wants the final approval based on the applicant completing certain conditions precedent, the board needs to be clear that failure to comply with conditions precedent means there is no final approval.
- A conditional approval that includes only conditions subsequent constitutes a final decision appealable under RSA 677:15, I.
- Use templates!
- ***When in doubt-DON'T! Consult with Municipal Attorney!**

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What is a Zoning Amendment?

A Zoning Amendment- any change to the zoning ordinance including language, table, graphics, or maps, approved by the legislative body. (Town Meeting, Town Council, City Council).

RSA 675:6 Method of Adoption-

"Every local master plan, subdivision regulation, site plan review regulation and historic district regulation...shall be adopted or amended by the planning board or historic district commission. (Does include zoning ordinances)

Who makes amendments?

The planning board (RSA 674:1, V)

The governing body (RSA 675:3, VIII)

The board of selectmen, village district commission, city or town council all have the authority to propose zoning amendments.

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What is a Zoning Amendment? Cont'd

- Petitioned Zoning Amendment (RSA 675:4)
 - 25 or more registered voters may petition for an amendment to a zoning ordinance, historic district ordinance, or a building code.
- Zoning amendment language-
 - Correct format! Review with Town Clerk!
 - Statement of PB support or not.
 - Reason or justification/explanation statement along with the amendment should be on the ballot.
 - Gov Body and Petitioned amendment language cannot be changed!
 - The planning board shall hold at least one public hearing
 - Have a board member or staff available to explain amendment and answer questions.

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How to be a good board member

- DO YOUR HOMEWORK!
- Be fair and unbiased.
- Attend the meetings, be on time, look presentable.
- Work with staff on learning ordinances.
- Cooperate with other boards.
- Be respectful to fellow members and the public.

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How to be a good board member cont'd

- DO NOT COMMUNICATE VIA EMAIL (RSA 91-A)
- Refrain from social media posts.
- WORK WITH MUNICIPAL ATTORNEY!
- Schedule work session meetings with municipal attorney to review decision making, rules of procedures, zoning amendments.

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“We cannot solve our
problems with the same
thinking we used when we
created them.”

-Albert Einstein

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NH Office of Planning and Development Training Page

American Planning Association (APA) website

Northern New England Chapter of the American Planning Association

New Hampshire Association of Regional Planning Commissions

Q&A

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