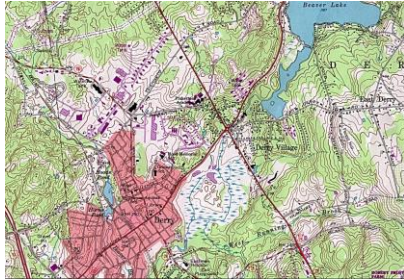


# 2019 Webinar Series



## The Workings of a Planning Board

**Presented by:**

**Stephen Buckley, Legal Services Counsel  
Natch Greyes, Municipal Services Counsel**

**September 4, 2019**

# Our Presenters



*Stephen Buckley*  
*Legal Services Counsel*

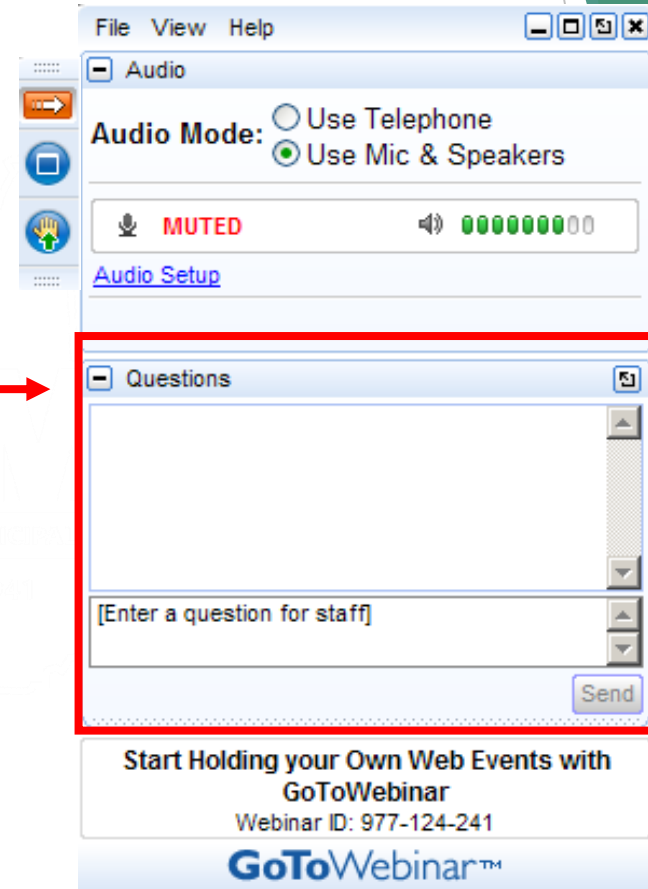


*Natch Greyes*  
*Municipal Services Counsel*

# How to Participate Today



- Open and close your panel →
- Submit text questions
- Q&A addressed during the webinar session →
- Quiz question today!



# Today's Presentation

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## Statutory Duties

Subdivisions & Site Plans, Master Plan, Workforce Housing, CIP, Zoning Amendments, Innovative Land Use, Streets, Driveways, Merged lots

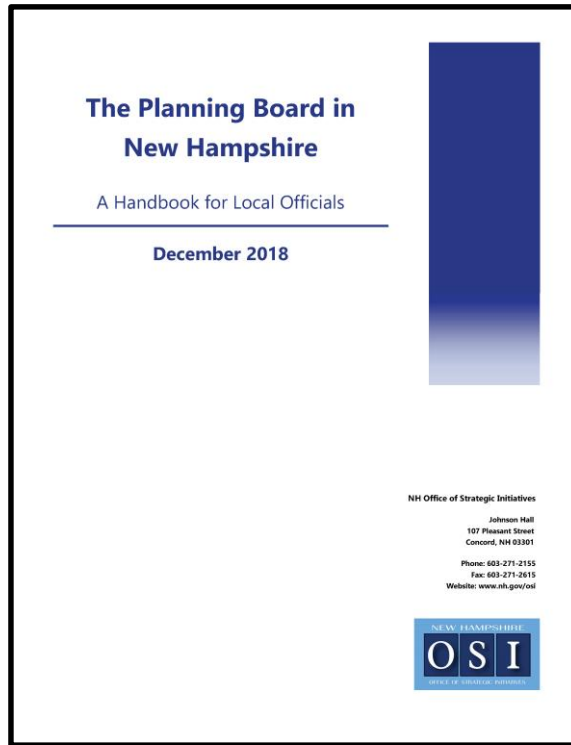
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## Planning Board Procedures

Preliminary review, Applications, Timeline for Review, 3rd Party consultants, 2nd Applications, Public Hearing, Deliberations, Making the decision, Conditional approvals, Vesting, Superior Court Appeal

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The NHOSI Planning Board Handbook is an invaluable resource! *Download your copy today!*



Download location:

<https://www.nh.gov/osi/planning/resources/documents/planning-board-handbook.pdf>

# Planning Board - Statutory Duties



- ✓ Master Plan 674:2
- ✓ Capital Improvements Program 674:5
- ✓ Recommend Zoning Ordinance & Amendments 675:3
- ✓ Subdivision regulation 674:36
- ✓ Site Plan regulation 674:44
- ✓ Excavation regulation 155-E:1 (III) (a)
- ✓ Driveway regulation - RSA 236:13

# Subdivision & Site Plan Approval



## SUBDIVISION:

- ✓ Require preliminary review of subdivisions.
- ✓ Approve plats and plans.
- ✓ Approval showing the manner in which streets within subdivisions shall be graded and improved.
- ✓ Approval also showing how water, sewer, and other utility mains, piping, connections, or facilities within subdivisions shall be installed.

## SITE PLAN:

- ✓ A municipality, having adopted a zoning ordinance.
- ✓ And planning board has adopted subdivision regulations.
- ✓ Board may 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 (structures with > 2 dwelling units)

# Master Plan: RSA 674:1 - :4

## Mandatory Section:

- “Vision” (goals and objectives): statements to “articulate the desires of the citizens,” including set of “guiding principles and priorities”
- Land use: studies of population, economic activity, resources, shows existing conditions and proposed future land uses
- Prerequisites for zoning ordinance, RSA 674:18

Optional Sections: 14  
optional elements



# Workforce Housing Statute RSA 674:58-:61

- ✓ Town shall allow workforce housing to be located in a majority of the land area that is zoned residential
- ✓ If Town has fair share of workforce housing Town is in compliance.
- ✓ Housing for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for Rockingham County in which the housing is located.
- ✓ "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for Rockingham County in which the housing is located.

# Capital Improvements Program

- ▶ Aid with budgeting decisions
- ▶ Not a basis to deny subdivision application  
*Zukis v. Fitzwilliam*,  
135 N.H. 384 (1992)
- ▶ Prerequisite for:
  - ▶ Impact fees
  - ▶ Growth Management



# Zoning Amendments 675:3

- ▶ Planning Board proposes initial zoning adoption
- ▶ Planning Board & Select Board may propose amendments
- ▶ At least one public hearing by Planning Board
- ▶ Another hearing 14 days later if proposal substantively modified
- ▶ Deliver final proposal to town clerk 5<sup>th</sup> Tuesday before town meeting
- ▶ Petitioned Amendments RSA 675:4, Planning Board states approval or disapproval on ballot

# Innovative Land Use - RSA 674:21

- ▶ An innovative land use control when supported by the master plan.
- ▶ Shall contain standards to guide board which administers the ordinance.
- ▶ May provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate.
- ▶ If planning board does not administer, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator.

# Improvements in Unapproved Streets

## RSA 674:40



A municipality which has established a planning board in accordance with RSA 674:35

*Shall not* thereafter accept, lay out, . . . within any portion of the municipality *unless* such street:

(a) Has been accepted or opened as, or has otherwise received the legal status of, a public street prior to the conferring of platting jurisdiction upon the planning board; or

(b) Corresponds in its location and lines with a street shown on the official map, or with a street shown on a subdivision plat approved by the planning board, *or with a street on a street plat made by and adopted by the board.*

# *The Planning Board & Public Streets*

- ▶ *Approves Subdivision Roads 674:36, I (e) & 674:36, II (a)*
- ▶ *Approves Site Plan Roads RSA 674:44, II, (d) (e) (f)*
- ▶ *Establishes Road Construction Standards*
- ▶ *Establishes minimum completion before occupancy 676:12, V*
- ▶ *Imposes performance bonding, RSA 674:36, III*

# Driveways - RSA 236:13



- Planning Board authorized to approve driveway permits on town roads.
- Must adopt driveway regulations.
- Delegate permit issuance and enforcement to Road Agent or other designee.
- Continuing authority over any driveway even if no permit issued.
- Property owner can be ordered to fix driveway that is hazard to traveling public or threat to road integrity.



# POP QUIZ

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# Pop Quiz



▶ Is the Conservation Commission defined as a land use board in New Hampshire?

▶ Yes

▶ No



***Planning  
Board  
Authority to  
Prevent  
Scattered  
and  
Premature  
Development  
RSA 674:36,  
II (a)***

**674:36 Subdivision  
Regulations. -**

II. The subdivision regulations which the planning board adopts may:

(a) Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

# Merged Lots - RSA 674:39-a

Merger of 2 or more *contiguous* preexisting approved or subdivided lots or parcels.

No public hearing or notice shall be required.

No new survey plat need be recorded,

Notice of the merger endorsed by the planning board recorded at registry of deeds.

If any lot is under a mortgage, lender must consent.

# Planning Board off-site exactions RSA 674:21, IV (j)



- ▶ No impact fee ordinance adoption necessary to impose exactions as condition of Planning Board approval
- ▶ Improvements that are necessitated by a development located outside the project boundaries
- ▶ Subject to rational nexus test
- ▶ Limited to highway, drainage, and sewer and water upgrades pertinent to that development

# Planning Board Basic Organization



- Quorum. Majority of membership. RSA 673:10, III
- At least one regular meeting per month. RSA 673:10, II
- Chair and other officers elected from non-ex officio members for one-year term. RSA 673:8, 9
- Members appointed by governing body or elected
- One ex-officio select board member, up to 5 alternates
- Rules of procedure. RSA 676:1
- RSA 676:4 mandates procedures for applications

# Subdivision/Site Plan Applications: Preliminary Review



# Formal Application, RSA 676:4, I



Completed application.



Regulations specify what is completed application.



Checklist can specify types of plans, studies, designs, etc. to minimize review and revisions.



Fees for costs & consultants' studies; detailed accounting. RSA 676:4-b



Application accepted by vote at meeting, with abutter and published notice.

# Timeline for Decision, RSA 676:4, I



Preliminary Consultation No Set  
Time Limit



Application submitted 21 days  
before acceptance at meeting



Notice to Abutters and public 10  
days before meeting for plan  
acceptance



Hold at least one public hearing and  
make decision within 65 days of  
plan acceptance



Issue written decision within 5  
business days





# Only One Bite of the Apple



## *Third Party Consultants - RSA 676:4-b*

- ▶ May require applicant to pay for third party consultant review and construction monitoring
- ▶ Cannot substantially duplicate same review at ZBA

# Public Hearing Procedures



- ▶ 676:4, I (e) hear from applicant, abutters, others with direct interest, and others as permitted by board

- ▶ Impartially follow rules of procedure

- ▶ Site visits are public meetings

- ▶ Riggins Rules

# Deliberation & Weighing the Evidence



- Get all necessary information before closing public hearing
- Board can deliberate and vote at later meeting.
- Avoid ex parte contacts with parties or deliberation among members outside meeting
- Board may rely on personal knowledge of the area; and not bound to accept conclusions of experts, *Vannah v. Bedford*, 111 N.H. 105 (1971), only if some evidence and explained in written decision. *Malachy Glen Associates, Inc. v. Chichester*, 155 N.H. 102 (2007)
- But not in the face of uncontradicted expert testimony, unless board can adequately explain in written decision. *Condos East Corp. v. Conway*, 132 N.H. 431 (1989)

# ***New Case - Dartmouth v. Hanover New Hampshire Supreme Court November 6, 2018***

- ▶ *Planning Boards cannot rely upon lay opinions and anecdotes refuted by uncontroverted expert evidence.*
- ▶ *Planning Boards cannot supplant the specific regulations and ordinances that control the site plan review process with their own personal feelings.*

# Written Notice of Decision



- ✓ Written decision is required, and written reasons in event of disapproval. RSA 676:3, I.
- ✓ RSA 676:4, I (c) (1) also requires decision to approve, approve with conditions or disapprove.
- ✓ Decision and meeting minutes must be on file for public inspection within 5 business days of vote. RSA 676:3, II.
- ✓ A tie vote is not a decision.

# Conditional Approval

- ▶ *Representations by applicant are not binding unless clearly made a condition of approval.*
- ▶ *Conditions must reasonably relate to ensuring compliance with relevant criteria.*
- ▶ *Standard conditions.*
- ▶ *Conditions precedent.*
- ▶ *Conditions subsequent.*
- ▶ *Compliance hearing.*

# “Grandfather Rights”



- Planning Board Regulations may define “substantial completion of improvements etc.” and “active and substantial development etc.” RSA 674:39, III.
- Failure to define “active and substantial development” awards 5-year exemption automatically.





# Superior Court Appeal RSA 677:15

# Upcoming Webinars & Workshops




# Upcoming Webinars & Workshops




## 2019 Budget & Finance Workshops

9:00 am—4:30 pm  
*Wednesday, September 18*  
Derryfield Banquet Facility  
Manchester

9:00 am—4:30 pm  
*Thursday, September 26*  
Mountain Club on Loon  
Lincoln



Sponsored by: 

### PROGRAM AGENDA

#### Fundamentals of the Municipal Budget Process

Using the 2017 edition of NHMA's *Basic Law of Budgeting* and the 2019 *Supplement* as a guide, this full-morning session will address all aspects of the municipal budget process focusing on appropriations, gross-basis budgeting, separate vs. special warrant articles, multi-year contracts, transfers, lapses, spending limitations, no-means-no, duties of official budget committees, disallowed appropriations, special budget requirements under the SB 2 process (official ballot voting) including recent law changes, and other topics. This session is a must for members of governing bodies, budget committees, and other local officials involved in the budget process.  
*Presented By: NHMA Attorneys*

#### You Have Questions? We Have Answers!

The very popular Q & A segment of this workshop is the opportunity to get your questions answered and to learn from the inquiries posed by others. There is no such thing as a silly question, so bring those gnawing budget questions to the NHMA panel of experts. We'll do our best to answer on the spot, and if we can't (which happens on rare occasion) we promise to follow up with you after the workshop.  
*Presented By: NHMA Attorneys and Government Finance Advisor*

#### Budget Pitfalls to Avoid

The local budget process in New Hampshire involves much more than just balancing the numbers, and nothing adds more frustration to the process than a subsequent legal challenge or a "disallowance" by the N.H. Department of Revenue Administration. In this session, key legal requirements for successful budget adoption will be discussed along with examples of common mistakes to avoid.  
*Presented By: Natch Greyes, NHMA Municipal Service Counsel  
Jamie Dow, Department of Revenue Administration, Municipal Accounts Auditor*

#### Property Taxes and State Aid to Municipalities

The final session of the day will explain the property tax rate setting process, including how to estimate budgetary impacts on the property tax rate for your municipality. Municipal funding included in the biennial state budget will be reviewed along with the history and trends of state aid to municipalities.  
*Presented By: Barbara Reid, NHMA Government Finance Advisor*

Cost is \$90 and includes continental breakfast, lunch, and a copy of NHMA's 2017 edition (with 2019 supplement) of *The Basic Law of Budgeting: A Guide for Towns, Village Districts, and School Districts*.

Questions? Call 800.852.3358, ext. 3350, or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)  
Register online at [www.nhmunicipal.org](http://www.nhmunicipal.org) under Calendar of Events

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# Upcoming Webinars & Workshops

Free State Fire Code Workshops in October!



SPONSORED BY PENIEL ENVIRONMENTAL

*Attention Code Personnel!*



Free State Fire Code Training Classes

Attendees to receive complimentary book. Space is limited.  
Although workshop is free, pre-registration is required.

**REGISTER TODAY!**

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## Workshop Schedule

### Tuesday, October 8, NFPA 1, 2015 Edition

New Hampshire Fire and EMS Academy, Smokey Bear Boulevard, Concord  
(3 hours, evening - 1800 to 2100 hours)

### Thursday, October 10, NFPA 101, 2015 Edition

New Hampshire Fire and EMS Academy, Smokey Bear Boulevard, Concord  
(3 hours, evening - 1800 to 2100 hours)

### Friday, October 11, NFPA 1, 2015 Edition and NFPA 101, 2015 Edition

New Hampshire Fire and EMS Academy, Smokey Bear Boulevard, Concord  
(6 hours, full day workshop - 0900 to 1200 hours and 1300 to 1600 hours)

### Wednesday, October 16, NFPA 1, 2015 Edition

Lafayette Regional School, 149 Main Street, Franconia  
(3 hours, evening - 1800 to 2100 hours)

### Thursday, October 17, NFPA 101, 2015 Edition

Lafayette Regional School, 149 Main Street, Franconia  
(3 hours, evening - 1800 to 2100 hours)

# Upcoming Webinars & Workshops



**Friday, October 4, 2019**  
**9:00 a.m. – 12:30 p.m.**  
Registration at 8:30 a.m.

**NHMA Offices**  
**25 Triangle Park Drive**  
**Concord, NH**

**Workshop Cost: \$65.00\***  
\* workshop does not include publication!



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# Upcoming Webinars & Workshops



Join NHMA and the New Hampshire Office of Strategic Initiatives for the

## Fall 2019 Land Use Law Conference

(formerly known as the Municipal Law Lecture Series)

 9:00 am—3:00 pm   
Saturday, October 5, 2019  
Holiday Inn, 172 North Main Street, Concord

**The Legal Authority of a Planning Board in New Hampshire**  
*Laura Spector-Morgan, Esquire, Mitchell Municipal Group, P.A.*  
This session is for planning board members who want a refresher course on the legal authority of the Planning Board in New Hampshire. Topics for discussion include Subdivision and Site Plan Review, Exactions, Innovative Land Use under RSA 674:21, Capital Improvement Planning, Master Plans and more.

**Planning Board Procedural Basics**  
*Stephen C. Buckley, Legal Services Counsel, NH Municipal Association*  
This session is for planning board members who want a refresher course on procedural basics. Topics for discussion include what is a completed application, the timeline for planning board review, conducting meetings and public hearings, the use of third-party consultants, the zoning amendment process, off-site exactions, conflicts of interest, the Right-to-Know law and more.

**Roles and Responsibilities of the Zoning Board of Adjustment**  
*Christopher L. Boldt, Esq., Donahue, Tucker & Clandella PLLC, Meredith, NH*  
This session will provide a detailed look at the statutory responsibilities of the ZBA including appeals of administrative decisions, special exceptions, and variances. This session will also provide an in-depth discussion of how the case law interprets the five variance criteria. Time will be devoted to participant questions.

**ZBA Decision Making Process**  
*Christine Fillmore, Esq., Drummond Woodsum, Manchester, NH*  
*Matthew Serge, Esq., Drummond Woodsum, Manchester, NH*  
You've notified abutters, held the public hearing, heard hours of testimony, and now it's time to make a decision. What do you do? Do you need to decide right then and there? What if you only have four members present? Can there be conditions of approval? Do you vote on each of the criteria separately? Do you need to vote on anything at all? If these and other questions have plagued your ZBA, this session is for you.

**Legal Update**  
*Benjamin D. Frost, Esq., AICP, New Hampshire Housing, Bedford, NH*  
This session will review recent New Hampshire Supreme Court decisions involving land use issues and the impact they have on municipal planning and zoning. Recently enacted legislation that affects the responsibilities and authority of municipal planning and zoning boards will also be discussed.

**Land Use Board Boot Camp**  
*Tim Corwin, Esq., AICP, Senior Planner, Lebanon, NH*  
*Shawn Tanguay, Esq., Drummond Woodsum, Manchester, NH*  
Appropriate for beginning members, seasoned veterans, as well as land use administrators, this session will provide an overview on the mechanics of a land use board meeting. Discussion will touch on requirements for legal notice, meeting procedure and conduct, conflicts of interest, Right to Know issues, and more. The session will conclude with Q&A.

Cost is \$100 and includes continental breakfast, lunch, and program materials  
Questions? Call 800.852.3358 or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)  
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# Upcoming Webinars & Workshops



## NHMA's 78th Annual Conference and Exhibition

Wednesday, November 13 and Thursday, November 14, 2019  
The DoubleTree by Hilton Downtown Manchester Hotel (formerly Radisson), Manchester

# Working Better Together

CHECK OUT OUR KEYNOTE SPEAKER: **JIM HUNT**

Would you like for your city to be AMAZING? Nationally recognized Author and Speaker, Jim Hunt, will provide a roadmap of proven techniques to energize and revitalize your city. Big or small, rich or poor, urban or rural, you will discover an exciting future for your city. It's AMAZING! Join Jim at 9:00 am on Wednesday, November 13th as he gives this keynote address.

Jim is the author of *The Amazing City-7 Steps to Creating an Amazing City*, a best-selling book that is being used by thousands of city officials, as a guide to creating positive change in their communities. Jim is quoted regularly in national media on issues in local government and has appeared on C-Span, National Public Radio, USA Today and other national media outlets.



**Conference Sessions Include:**  
Legislative and Court Updates  
Right-to-Know Law  
Code Enforcement  
Conflicts of Interest  
Sexual Harassment  
Economic Development  
Wage & Hour Compliance  
Cybersecurity  
Municipal Trustees Training  
And More...!

### Who Should Attend?

Mayors  
Select Boards  
Council Members  
Municipal Managers  
Finance Officers  
Public Works  
Road Agents  
Planners  
Assessors  
Welfare Officials  
Code Enforcement  
Building Inspectors  
Anyone in Municipal Government

Save Wednesday, November 13 and Thursday, November 14 to be sure you can attend this event planned just for New Hampshire's elected and appointed city and town officials. From economic development to Right-to-Know Law, conflicts of interest to human resources, the plus 50 program sessions at this annual event are all designed with municipal officials in mind.

*Registration to open in early September.*

Get inspired, connect with town and city colleagues, gain skills and tools to bring back to your municipality, and more during the 2019 Annual Conference and Exhibition.

Credit card payments ONLY receive Early Bird discount before October 11, 2019. **Early Bird Discount - Before October 11, 2019** Member Rates: One day/\$80.00 • Two days/\$130.00

After October 11, 2019 Member Rates: One day/\$110.00 • Two days/\$160.00 • Affiliate Members: One day/\$175.00 • Two days/\$225.00

For registration information, visit [www.nhmunicipal.org](http://www.nhmunicipal.org) under Calendar of Events.

## REGISTRATION TO OPEN IN EARLY SEPTEMBER!

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*THANK YOU for  
attending our  
webinar!*

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