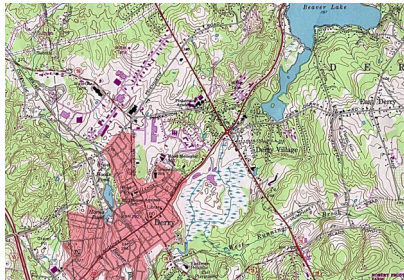


# 2020 Webinar Series



## The Workings of a Planning Board

**Presented by:**

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

**May 13, 2020**

# Our Presenters



*Stephen Buckley*  
*Legal Services Counsel*

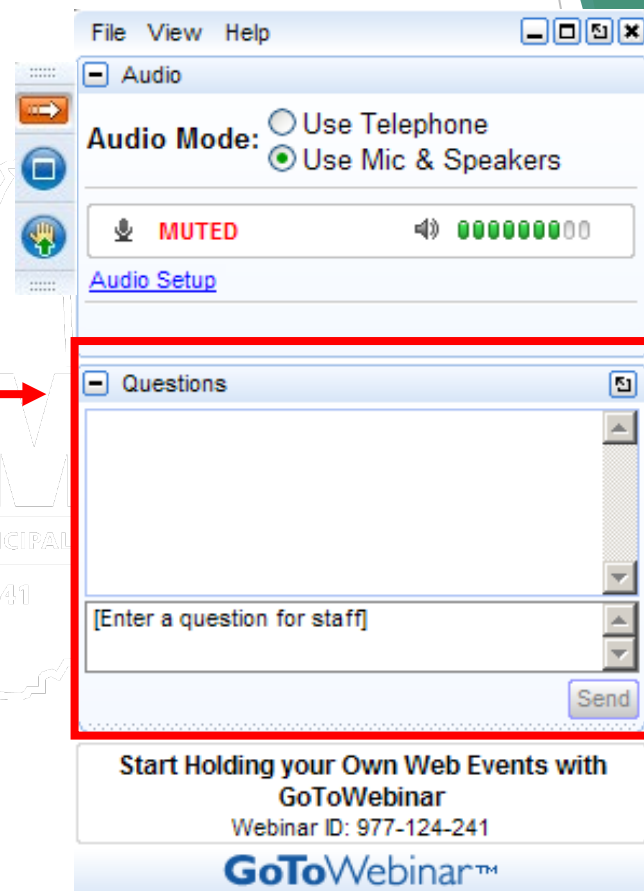


*Natch Greyes*  
*Municipal Services Counsel*

# How to Participate Today



- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session



# Today's Presentation

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## Statutory Duties

Covid-19 Modified Procedures, Subdivisions & Site Plans, Master Plan, Workforce Housing, CIP, Zoning Amendments, Innovative Land Use, Streets, Driveways, Merged lots

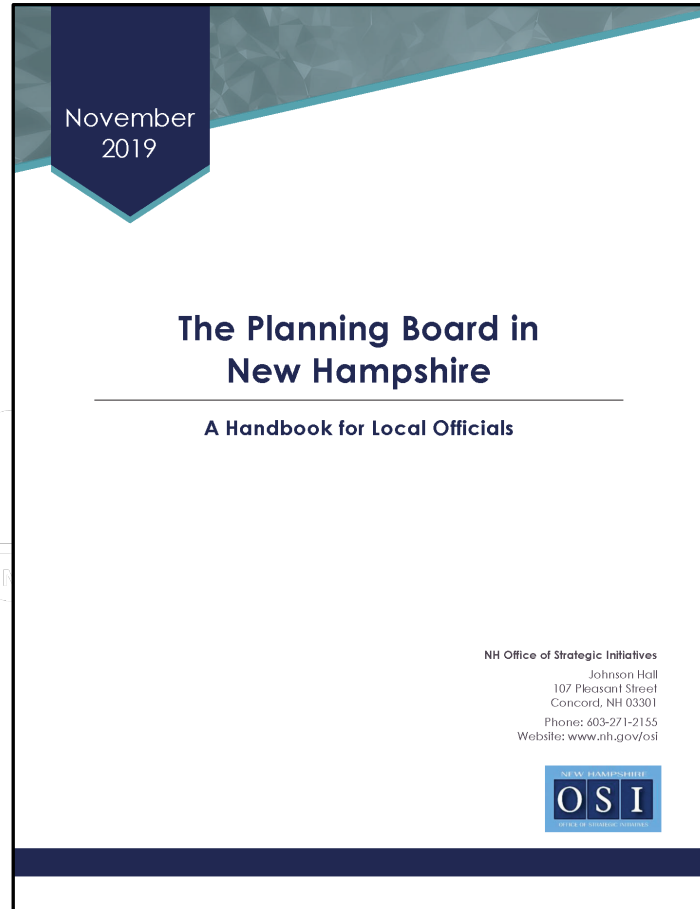
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## Planning Board Procedures

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 & Order #23 - Procedures



## *Mandated Meetings & Deadlines - Extensions:*

- ▶ Planning Board is relieved from monthly mandated meetings under RSA 673:10, II.
- ▶ Planning Board relieved from statutory deadlines, including but not limited to:
  - ▶ Timely planning board action under RSA 676:4.
- ▶ Either by custom and practice, or as provided in the Board's rules of procedure, the chair of the board can cancel a meeting due to exigent circumstances, as is the case with the COVID-19.

# Planning Board & Order #23 – Remote Operations



## *Electronic Transactions:*

- ▶ Use non-contemporaneous public body signature procedures mirroring RSA 41:29, I (a)
- ▶ Use electronic signature, such as facilitated in Adobe Acrobat DC

## *Transition to Phone, Online or Limited Appointment Delivery of Service:*

- ▶ Transition to allowing for applicants to apply online, via email, phone or other accessible manner, and, provide notice of how to apply at conspicuous place at town hall if town hall is closed.
- ▶ Administration of Oaths of Offices can be handled remotely, See, EO#23, ¶ 9 (a-f)

# Planning Board - Statutory Duties



- ✓ Master Plan - RSA 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 - 236:13



# Subdivision & Site Plan Approval

## SUBDIVISION:

- ✓ Require preliminary review of subdivisions.
- ✓ Approve plats and plans.
- ✓ Approval showing streets.
- ✓ Approval showing utility facilities & services.

## SITE PLAN:

- ✓ Municipality must have zoning.
- ✓ Planning board has adopted subdivision regulations.
- ✓ Board may approve site plans for the *development or change or expansion of use* 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

- ✓ Allow workforce housing in a majority of the land area zoned residential.
- ✓ Does municipality have its fair share of workforce housing?
- ✓ Housing for sale - affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for County in which the housing is located.
- ✓ Rental housing - affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for 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

## RSA 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.
- ▶ Administration through 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 permits, planning board shall review prior to final consideration by the administrator.

# Improvements in Unapproved Streets RSA 674:40



Once municipality has established a planning board under RSA 674:35:

*Streets shall not* thereafter be accepted or laid out as public highways *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.*

# Planning Board & Public Streets

- ▶ Approves Subdivision Roads 674:36, II (e)
- ▶ 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, 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.

**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.

# Off-site Exactions

## RSA 674:21, V (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 as approved by town meeting.
- 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)
- Cannot ignore uncontradicted expert testimony, unless board can adequately explain in written decision. *Condos East Corp. v. Conway*, 132 N.H. 431 (1989)

# 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

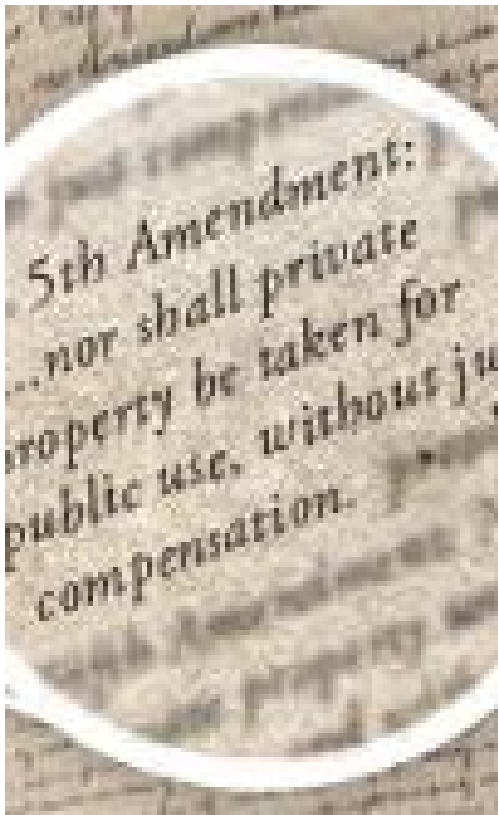


- ✓ Written decision is required, and written reasons in event of disapproval. RSA 676:3, I.
- ✓ RSA 676:4, I (c) (1) also requires decision to approve, approve with conditions or disapprove.
- ✓ Decision and meeting minutes must be on file for public inspection within 5 business days of vote. RSA 676:3, 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.



# Housing Appeals Board



- Goes into effect July 1, 2020.
- Three members, appointed by the supreme court.
- Will hear appeals of final decisions of municipal boards regarding “questions of housing and housing development.”
- Party has option of appealing to superior court or HAB; appealing to one waives right to appeal to the other.
- Hearing procedure is identical to procedure in superior court.
- Standard of review is identical to that in superior court.
- Board must hold hearing on the merits within 90 days after receipt of notice of appeal and must make decision within 60 days after hearing.
- Decisions may be appealed to N.H. Supreme Court.



# Superior Court Appeal

**RSA 677:15**

# 2020 Land Use Law VIRTUAL Conference



## SAVE THE DATE SATURDAY, OCTOBER 31

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

### Fall 2020 Land Use Law Conference (formerly known as the Municipal Law Lecture Series)

9:00 am—3:00 pm  
Saturday, October 31, 2020




Full day workshop for municipal land use officials including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers and public works personnel. Presentations will focus on the legal authority and procedures these land use boards must understand with content structured to be beneficial to both novice and experienced municipal officials.

**Registration to open later this summer!**



# Academy for Good Governance





## Academy for Good Governance

**New FREE Certificate Program**

The Academy for Good Governance is a series of six courses created by NHMA and Primex, exclusively for elected governing body members (select board, town council, city council, board of aldermen, school board, and village district commissioners). Courses are taught by experienced attorneys and staff from NHMA, Primex, HealthTrust, and the New Hampshire School Boards Association (NHSBA). Attendees will receive education and training intended to make them more knowledgeable and effective in their governing body roles.

Attendance at the Academy is free and open to governing body members from municipalities and school districts that are members of NHMA and Primex. Space is limited, and registration will open on the NHMA website on April 6<sup>th</sup>. Attendees must attend all six courses to receive a Certificate of Completion. All classes run 5:00 pm – 7:00 pm.

**CREATE NEW CONNECTIONS**

*Questions?*  
Call NHMA's Event Coordinator Ashley Methot at 800.852.3358 or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org).

**Don't miss this chance to build your skills and connect with fellow municipal officials!**  
**Find out more: [www.nhmunicipal.org/workshops](http://www.nhmunicipal.org/workshops)**

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**DATES AND LOCATIONS:**

**Governance & Governing Body Authority**  
Presented by NHMA/NHSBA  
Wednesday, June 3, 2020, NHMA Offices

**Financial Responsibility**  
Presented by NHMA  
Wednesday, June 17, 2020, NHMA Offices

**Employment Liability/Harassment**  
Presented by Primex  
Wednesday, September 16, 2020, Primex Offices

**Contracts and General Risk Management**  
Presented by Primex  
Wednesday, September 30, 2020, Primex Offices

**Health Care and Affordable Care Act**  
Presented by HealthTrust  
Thursday, October 8, 2020, NHMA Offices

**Effective Public Meetings**  
Presented by NHMA/NHSBA  
Wednesday, October 21, 2020, NHMA Offices

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**WHO CAN ATTEND?**

Select board members ★  
Town councilors ★  
School board members ★  
City councilors ★  
Board of Aldermen ★  
Village district commissioners ★



**REGISTER NOW!**

# Upcoming Trustee Training



## 2020 MUNICIPAL TRUSTEE VIRTUAL TRAINING

### TENTATIVE AGENDA

Wednesday, June 10, 2020

9:00 am - 9:10 am:

**Introduction to Charitable Trusts Division**  
Tom Donovan, Director, Attorney Generals Office

9:10 am - 10:40 am:

**A Little Help From My Friends**  
Terry Knowles, Emeritus Assistant Director

10:40 am - 10:45 am: Break

10:45 am - 12:15 pm:

**Governance and Right-to-Know Law**  
Stephen Buckley and Natch Greyes  
NH Municipal Association

12:15 pm - 12:30 pm: Lunch

12:30 pm - 2:00 pm:

**Trust Fund Administration**  
Jamie Dow  
NH Department of Revenue Administration

Thursday, June 11, 2019

Cemetery Trustees 101

10:00 am—11:30 am  
Natch Greyes, Municipal Services Counsel  
Mike Horne, Sec./Treasurer, NH Cemetery Association

The Nuts & Bolts of Being A Trustee of Trust Funds

1:00 pm—2:30 pm  
Stephen Buckley, Legal Services Counsel, NHMA  
Jill Senter, Chair, Trustees of the Trust Fund, Town of Plaistow

### REGISTRATION FEE

\$65 per person

### WHEN

**Wednesday, June 10**  
**9:00 am—2:00 pm**

**Thursday, June 11**

**Cemetery Trustees Breakout Session—10:00 am—11:30 am**

**Trustees of Trust Funds Breakout Session—1:00 pm—2:30 pm**

### WHERE

**VIRTUAL TRAINING**

### CONTACT INFO

**Ashley Methot**  
**Events Coordinator**  
**25 Triangle Park Drive**  
**Concord, NH 03301**  
**603.230.3340**  
**amethot@nhmunicipal.org**

### FOR ADDITIONAL DETAILS VISIT

**[www.nhmunicipal.org](http://www.nhmunicipal.org)**



**REGISTRATION**  
**NOW OPEN!**

## Complimentary Webinar



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