



**THE PLANNING
BOARD IN
NEW HAMPSHIRE**

A HANDBOOK FOR LOCAL OFFICIALS
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NH OFFICE OF ENERGY AND PLANNING



PREFACE

The Office of Energy and Planning (OEP) provides assistance to New Hampshire municipalities in their planning efforts. As part of that assistance, the OEP staff responds to numerous requests for information and assistance from cities and towns concerned about zoning and planning issues, as well as the duties and responsibilities of the planning board. This handbook is a guide to the organization, powers, duties and procedures of the planning board.

The *Planning Board in New Hampshire: A Handbook for Local Officials* was first started by Carol Ogilvie, under the former Office of State Planning but never published. Sandrine Thibault, OEP Principal Planner was responsible for this new and complete version. Stacey Doll, Planning Coordinator at North Country Council and Kerrie Diers, Assistant Director of the Nashua Regional Planning Commission have also participated in the completion and review of this document.

This first edition incorporates statutory changes enacted through the 2005 Legislative Session. Special thanks to OEP's Chris Northrop and Joanne Cassulo for review and comments on this first edition.

Information about videos, handbooks and other publications is available from OEP and can be found on the website www.nh.gov/oep/resources.htm or by calling 271-2155.

This handbook, as well as updates and amendments are available on the OEP website in the reference library. Readers are encouraged to visit the website periodically.

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CHAPTER I - ORGANIZATION

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New Hampshire state law prescribes the requirements for the creation and organization of planning boards. These 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. A full copy of the statutes referenced in this chapter is included in the appendix.

ESTABLISHING THE BOARD

Planning boards are established by vote of the local legislative body. This means the 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.

APPOINTMENT AND NUMBER OF BOARD MEMBERS

RSA 673:2 sets forth the procedures under which planning board members will be designated. The salient distinctions are as follows:

(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 may have nine (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 mayor, or as determined by the city charter or the city council.

(3) In towns with a town council form of government, the board may have 7 or 9 members. If nine, then they are chosen according to the same procedure as that detailed in paragraph (1). If seven members, then one person must be a member of the town council or administrative official of the town; the other six 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 most of the towns in New Hampshire – the planning board may be either 5 or 7 members, as determined by the local legislative body. 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 of 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 they may not serve as chairperson of the board. (RSA 673:9)

(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 shall be designated by the other 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 may be either 5 or 9 members. The county commissioners must recommend appointees to the board, and the appointees shall be approved by the county delegation. The board shall consist of: the chairman of the board of commissioners or designee; a member of the county convention selected by the convention; an administrative official of the county selected by the chairman of the board of commissioners; two or 6 persons appointed by the board of county commissioners as approved by the county convention; and one 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 for an appointed board, 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.

TERMS OF BOARD MEMBERS

The term for all board members, whether elected or appointed, is 3 years. When a board is first established, the terms shall be staggered so that no more than 3 appointments or elections occur in one year in the case of a 7 or 9 member board, and no more than 2 appointments or elections in the case of a 5-member board.

The term of an ex officio member shall coincide with the term for that office, except: (1) the term of an administrative official appointed by a mayor shall terminate with the term of the mayor; (2) the term of an administrative official appointed by a town council, 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 for an alternate member is for 3 years. In case of appointed planning boards, the alternate members will be appointed by the appointing authority; in the case of elected planning boards, the board itself may appoint its alternate members.

While alternate members are encouraged to attend all planning board meetings, they 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 Chairman 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.

PLANNING BOARD MEMBERS SERVING ON OTHER BOARDS

Under RSA 673:7, appointed or elected planning board members may serve on any other municipal board or commission, provided that this does not result in 2 planning board members serving on the same board or commission.

REMOVAL OF MEMBERS



Can a planning board member be removed from the board for inefficiency, neglect of duty, or malfeasance?

YES (RSA 673:13, I)

Regular and alternate members may only be removed from a board after a public hearing on the matter. In the case of an appointed member, only the appointing authority may remove the member, and only upon written findings of inefficiency, neglect of duty, or malfeasance of office.

The selectmen may remove an elected member or alternate member. Such action may be taken only after notice and public hearing. The appointing authority or the planning board shall file with the city or town clerk, the village district clerk, or the clerk for the county commissioners, whichever is appropriate, a written statement of reasons for removal.

The term “inefficiency” certainly 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, please 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 very likely that the town is going to have to pay that person’s attorney’s fees, which could be a substantial cost.

DISQUALIFICATION OF MEMBERS

Any member who has a direct personal or pecuniary interest in the outcome of an application must disqualify him or herself. (Although the statute does not specifically say so, we can assume that an abutting landowner would be disqualified from hearing the application.) Further, a member must step down if he or she would be disqualified for any cause to act as a juror if the matter were to go to trial.

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).

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.



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

If a planning board is abolished, all records are to be transferred to the city or town clerk, or the clerk of the board of district commissioners or the county commissioners.

In cities, counties or 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 2 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.

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 chairman and 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 7-member board). There is no provision that allows absentee votes to be cast by proxy given to a member who is present or by some communication to the board such as letter or email.

ACCESS TO PUBLIC RECORDS AND MEETINGS

All meetings of the planning board are subject to New Hampshire’s so-called “Right-to-Know” Law, RSA 91-A. “Meeting” is defined as the coming together of a quorum of the board to discuss or act upon a matter over which the board has supervision, control, jurisdiction, or advisory power. Note that discussion alone is enough to make a meeting; the board doesn’t have to make a decision in order to be involved in a public meeting. But of course this does not mean that three members couldn’t have coffee together at the local diner – just as long as they do not conduct planning board business!



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)

All meetings require a 24-hour notice (unless a public hearing is involved; these requirements are addressed in Chapter 4). And, all meetings and records of those meetings must be open to the public. Minutes must be kept, and these are to be available to the public within 144 hours of the meeting, but within 72 hours for any nonpublic session.

Be aware that all records – minutes, tapes, etc. – are considered part of the public record, so the public has a right to review and inspect them. All records should be kept at the board’s regular place of business and requests for copies of records should be promptly complied with; if prompt compliance is not possible, the individual should be told the reason for the delay, and in no case should there be a delay of more than five days from the time the request is made. A person requesting records may be charged copying costs but those costs may not exceed actual costs.

There is, however, a distinction between the public record and the official record of the meeting. As noted, all materials concerned with the meeting are considered part of the public record. If the secretary tapes the meetings, those tapes must be available for review. However, once the board accepts the written minutes, they become the official record of the meeting. 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.

RULES OF PROCEDURE

The rules of procedures shall be adopted at a regular meeting of the board and shall be placed on file with the town clerk for public inspection.



Must the Planning Board adopt Rules of Procedures?

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 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, and delegation of certain tasks to a clerk, such as the taking and keeping of minutes and other records of the board.

Rules of Procedure not only inform the public 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, etc. Rules of procedures are

also a useful way to address the procedure to be followed during a public hearing. These procedures should also provide for requests to alter the order of business; typically, the Chair would make that determination without a board vote.

Election of Officers

Each local land use board shall elect its chairperson from the appointed or elected members and may create other offices as it deems necessary. Officers serve for a term of one year. (RSA 673:9) The Chairman shall preside over meetings and shall be responsible for conduct and decorum of the meeting. The Chairman shall have the responsibility to ensure that all parties receive a full and fair hearing before the Board and to ensure the rules of procedure and applicable State laws.



May the Chairman Vote?

Yes, yes, yes! The chairman is not like the President of the Senate, who only votes to break ties.

In addition, a board may want to consider electing a vice-chair who shall preside over meetings and assume the duties of the Chairman in its absence. If the Vice-Chairman is also absent, then the Secretary shall assume the Chairman'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 144 hours.

HOW TO RUN A MEETING?

Is there a specific statute that prescribes the exact order or way for the planning board of conducting business?

NO

The board has discretion to determine its own order, 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.

It is a good idea to prepare an agenda in advance and post it in town; and, if the budget allows, posting in the local newspaper is also helpful. This lets the applicants and the public know what business is before the board, and in what order those items will be heard.

The Chairman 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.

The order of business is then followed, based on the board's established procedure. At the onset of the business, 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.

All persons speaking should address only the Board. Do not allow cross-witness arguments, or cross-examination. This is not a trial. 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 which is impartial and seeks the type of information the board needs to make its decision.

NOTE: 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 the high points.

**Who MUST be heard?**

The applicant (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." (RSA 676:7, I(a) and 676:4, I(d)).

Who MAY be heard?

Anyone, at the board's discretion.

Remember that you are not at the mercy of applicants or other parties. Set some parameters in advance - ask applicants how much time they reasonably need and hold them to it. Limit others to a certain time limit (e.g. 3 or 5 minutes maximum).

ADVISORY OPINIONS

In the case of planning boards, the statutes specifically allow meetings for “conceptual consultation phase” and “design review phase” which are supposed to be non-binding, see RSA 676:4, II. The board should emphasize the non-binding nature of these pre-application procedures by not taking any formal votes. *See Chapter 3 for more details on these procedures.*

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 36:45) In such cases, hearing notification to neighboring towns and to the regional planning commission must be made (14 days in advance, not 5 days like everyone else), and they have the right to testify (but not the right to appeal). Doubt concerning the potential for regional impact is required to be resolved in favor of finding such potential.

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);
- ... The proximity of the development to a municipal boundary;
- ... Impact upon transportation networks;
- ... Anticipated emissions;
- ... Proximity to regional aquifers or surface waters; and
- ... 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 decide if the proposed development might have regional impact or not. This would give the board enough time to properly notice adjacent towns and regional planning commissions before the public hearing is held on the application.

Southern New Hampshire Planning Commission has worked with its members communities to develop detailed guidelines for evaluating regional impact of developments. Contact the planning commission for more details.

SITE VISITS

Despite what the statutes may say, planning board members have no right to trespass without permission (constitutionally, since you represent the government, it might violate Due Process, and give rise to a civil rights action against you). The board should always get permission from the owner.

- 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.
- **If a quorum** attends a site visit, **that is a “meeting.”** 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).

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 time accountable to them. Government, therefore, should be open, accessible, accountable and responsible. 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 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. Most provisions of the law can be complied with by planning ahead to meet notice requirements and deadlines.

The provisions of the Right-to-Know Law represent the minimum acceptable standards under the law. More stringent requirements apply in some instances, either by state statute or local ordinance.

For more details on the Right-to-Know Law, refer to Chapter 6 of the Handbook for Local Officials written by the New Hampshire Municipal Association, 2001.

CHAPTER II - NON-REGULATORY FUNCTIONS

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THE MASTER PLAN

The 2001 session of the Legislature made some rather significant amendments to the master planning statutes, effective July 14, 2002. The intent was to provide more definitive guidance to planning boards in planning and managing future growth. There is also an assumption that since local plans impact not only the individual community, 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 community, the region and the state can be protected.

Toward this end, under HB 650, the individual elements of a master plan have been rewritten and reorganized. Several new elements have been added, and the once familiar “Goals and Objectives” section is now a “Vision” section. And finally, the bill called for all sections of a master plan to be consistent with each other.

In addition to the statutory changes to local master plans, HB 712 addressed the contents of regional plans and the state development plan. The bill recommended that the regional plans rely on the content of the state development plan, which is required to be substantially consistent with local master plans. Further, the state development plan must be created in consultation with local officials, representatives of the business and environmental community, and the general public.

WHAT IS A MASTER PLAN?

As mentioned in the *Master Plan Handbook* developed by Southern New Hampshire Planning Commission, in the simplest terms, a master plan is a planning document that serves to guide the overall character, physical form, growth, and development of a community. It describes how, why, where, and when to build or rebuild a city or town. It provides guidance to local officials when they are 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 for achieving 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.”

If a planning board does nothing else, it MUST prepare and maintain a master plan!

The earlier statute stated that the sole purpose of the master plan was to aid the planning board in the performance of its duties. The 2002 amendment expanded that scope to:

- ... envision the best and most appropriate future development of your community;
- ... aid your planning board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire;
- ... guide your planning board in 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 ordinances and other measures of your planning board.

As presently set forth by New Hampshire statutes, 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)
- ... adoption of a growth management ordinance (RSA 674:22)

So, 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 at a minimum, a Vision section (formerly Goals and Objectives) and a Land Use element. 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 3).

CHARACTERISTICS & 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 mayor or manager.

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 and development principles that can guide the future growth of your community. The policies of the plan provide the basis upon which public decisions can be made.

The 2002 amendments to state statutes expanded the elements of a master plan from 10 to 15. The only required elements continue to be the Vision section (formerly Goals and Objectives) and a Land Use section, although they have been amended. And, as before, these are the two elements required to support a zoning ordinance.



What are the basics characteristics of a master plan?

It's physical.

It's long-range.

It's comprehensive.

It's a guide to decision making.

It's a statement of public policy.

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.

CHAPTER II - NON-REGULATORY FUNCTIONS

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 provides a factual basis for any land development regulations that may be enacted to protect natural areas. A key component in preparing this section is to identify and conflicts between other elements of the master plan and natural resources, as well as conflicts with plans of abutting communities.

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 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 showing 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 these resources and protects them for rehabilitation or preservation from the impact of other land use tools.

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 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.


Implementation*: A long-range action program of specific actions, time frames, allocation of responsibility for actions, description of land development regulations to be adopted, and procedures which the municipality may use to monitor and measure the effectiveness of each section of the plan.

* These sections were added by HB 650 (Chapter 178 of the Laws of 2002).

Note that even though five new elements have been added, the descriptions of the other elements have all been rewritten.

ADOPTION AND AMENDMENTS

As provided by RSA 674:4, the master plan is adopted by the planning board (NOT Town Meeting), after a duly noticed public hearing (see Appendix B). The master plan may be adopted one element at a time, or as a whole. Any amendments, extensions or updates of the plan are subject to the same procedure as the initial adoption.

 **How often should a master plan be updated?**
 The statutes have never addressed this question, except to recommend that a water resources management and protection plan should be reviewed and revised every 5 years. RSA 674:3, II includes language that recommends a revision to the master plan every 5 to 10 years.

A good rule of thumb to follow is to ask the question “Have conditions in town changed sufficiently since the last master plan to warrant a reexamination of the policies and recommendations?” This would especially apply if

significant zoning amendments/proposals 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 way to implement 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 updating to reflect new circumstances, or the zoning amendments should be considered not consistent with the goals of the master plan.

MASTER PLAN PREPARATION

RSA 674:3 states that *“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.”*

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 and solicit comments from the Office of Energy and Planning and applicable regional planning commissions.

The 8 Steps of the master planning Process

- Step 1: Community visioning: engaging the public and developing vision statements, goals and objectives
- Step 2: Data collection and inventory; preparing the community assessment and existing land use map
- Step 3: Data analysis: formulating future development scenarios based on vision statements, the community assessment and land use maps
- Step 4: Evaluating future development scenarios
- Step 5: Selecting a preferred development scheme (the future land use map) and preparing and adoption a plan
- Step 6: Implementing the plan
- Step 7: Monitoring the plan
- Step 8: Amending and updating the plan

For a step-by-step guide on the process of developing a master plan, refer to the Master Plan Handbook developed by Southern Regional Planning Commission in 2004.

THE CAPITAL IMPROVEMENTS PROGRAM

WHAT IS A CAPITAL IMPROVEMENT PROGRAM (CIP)?

The capital improvement program, know by the acronym CIP, links local infrastructure investments with master plan goals, land use ordinances, and economic development. A capital improvement 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 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 improvement programs – *only in communities that have adopted a master plan*. As an alternative, the legislative body may authorize the governing body to appoint a capital improvement 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 IMPROVEMENT 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



What is the sole purpose of the CIP?

To aid the mayor or selectmen and the budget committee in their consideration of the annual budget.

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.

Among the many incentives to a capital improvement programming effort are the following benefits to the community:

- ... Preserving public health, safety and welfare
- ... Anticipating the demands of growth
- ... Improving communication and coordination
- ... Avoiding undue 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 IMPROVEMENT PROGRAM

While preparing the capital improvement 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 improvement program committee is authorized to prepare a CIP, all municipal departments and every affected school district MUST, upon request of the board, 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 board, department or agency, concerning the relation of its project to the capital improvement program being prepared.

The 8 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

ADOPTION

New Hampshire 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 improvement program or capital budget. It is recommended that the program be adopted by the planning board under the same process it would use for the master plan. Generally, this procedure requires at least one public hearing, after which the planning board may adopt the master

plan, 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 a copy filed with the Office of Energy and Planning. While adoption procedures are absent from the statute, New Hampshire RSA 675:9 specifically requires that a copy of any “capital improvement plan” which is adopted must be filed with the Office of Energy and Planning.

Relationship of Adoption to Other 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 do require CIP adoption. An adopted CIP may also have a functional role in the review of subdivisions and their impacts on community services and costs.

Impact Fees.

“In order for a municipality to adopt an impact fee ordinance, it must have enacted a capital improvement program pursuant to RSA 674:5-7.” (RSA 674:21, V(b); emphasis added in bold face). This section refers to impact fees adopted as an innovative land use control within the zoning ordinance.

Growth Management: Timing of Development.

“Any ordinance imposing such a control may be adopted only after preparation and adoption by the planning board of a master plan and a capital improvement program and shall be based upon a growth management process intended to assess and balance community development needs and consider regional development needs.” (RSA 674:22). These requirements underscore the need to review the master plan for projects to be included in the capital improvement program. For the CIP to support a growth management ordinance, it should demonstrate that the capital improvements in the CIP have allowed for expansion of facilities to accommodate a reasonable share of the growth of the region.

Growth Management: Interim Regulation.

“In unusual circumstances requiring prompt attention and for the purpose of developing or altering a growth management process under RSA 674:22, or a master plan or capital improvement program, a city, town or county...may adopt an ordinance imposing interim regulations upon development as provided in this section.” (RSA 674:23). It is clear that in unusual circumstances, presumably those in which a large scale development or rapid pace of development could threaten to overwhelm community services, a community may invoke interim regulations for growth management to allow it time to prepare and adopt an appropriate capital improvement program.

CHAPTER III - REGULATORY FUNCTIONS

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DRAFTING, REVIEWING AND RECOMMENDING ORDINANCES, REGULATIONS AND AMENDMENTS

SUBDIVISION AND SITE PLAN REVIEW REGULATIONS

SUBDIVISION REGULATIONS (RSA 674:35)

The broad purpose of subdivision control is to guide municipal development, to protect the prospective residents and neighboring owners from problems associated with poorly designed areas, and to advance the recognized purposes of the police power. The imposition of subdivision controls is an exercise of the police power, which seeks to accomplish the orthodox ends of that power by serving the health, safety, morals and general welfare of the community. Subdivision controls are imposed on the supportable premise that a new subdivision is not an island, by an integral part of the whole community, which must mesh efficiently with the municipal pattern of streets, sewers, water lines, and other installations, which provide essential services and vehicular access. (Peter Loughlin,)



“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 resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. (RSA 672:14, I)

Regardless of whether or not a municipality has adopted a zoning ordinance, town meeting or city council may authorize the planning board to regulate the subdivision of land (RSA 674:35). The planning board must adopt regulations before exercising this power. Please refer to RSA 674:36 for a list of provisions that subdivision regulations may include.

SITE PLAN REVIEW REGULATIONS (RSA 674:43)

A site plan is a plan which 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.

Site plan review is one of the most useful techniques in modern land use control. It is an extremely important device to insure that uses which are permitted by the zoning ordinance are constructed on a site in such a way that they fit into the area in which they are being constructed without causing drainage, traffic, or lighting problems.

The authority to review site plans for non-residential and multi-family housing development, whether or not it involves a subdivision, may also be given to the planning board by vote at town meeting or city council only in

those municipalities with a zoning ordinance and subdivision regulations (RSA 674:43). The planning board must first adopt regulations, which may address adequate drainage, protection of groundwater quality, and provision of “open spaces and green spaces of adequate proportions” (RSA 674:44)

Before a municipality may regulate the subdivision of land or review site plans within its boundaries, state statutes require that (1) a planning board be established; and (2) that this board must be granted authority by the local 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.



Under the statute, “**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 REGULATION OF SUBDIVISIONS AND SITE PLAN REVIEW

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

The local legislative body of a municipality, which is a city/town council or a town/village district meeting, must first vote to establish a planning board. The composition of a planning board is a matter of statutory law as set forth in **RSA 673:2**. The members may be elected or appointed, as determined by the legislative body, but each member must be a resident of the city or town. It is the duty of this newly established board to adopt rules of procedure as well as maintain accurate records of its proceedings. See Chapter 1 for details on Rules of Procedure and records for planning boards.

STEP 2. Grant Authority (RSA 674:35,I & 674:43,I)

Establishment of a planning board does not confer on the board the power to approve or disapprove plans for subdivision of land and site plan review. This requires a separate action by the legislative body.

In a city, the 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, a separate warrant article is required to provide the authorization. This may be voted on at the same town meeting that established the planning board or at a later town meeting.

STEP 3. File Authorization (RSA 674:35, II & 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 site plan reviews, and stating the date of the authorization. It is recommended that the register of deeds be notified when the planning board has adopted subdivision and site plan review regulations, since the board cannot act on applications for subdivision or site plans before the regulations are prepared and adopted.

STEP 4. Prepare Subdivision and Site Plan Review Regulations (RSA 674:36 & 674:44)***Subdivision Regulations***

Local subdivision regulations, which must be adopted by the planning board, should include:

- ... a provision 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;
- ... a provision for the harmonious development of the municipality and its environs;
- ... a requirement that streets be adequate to handle existing and prospective traffic and be coordinated within the subdivision and in relation to existing streets;
- ... a provision for adequate open spaces, parks, and recreation areas to serve the needs of the neighborhood;
- ... a requirement that lot sizes comply with zoning requirements and be sufficient to handle on-site sewage disposal, if necessary;
- ... a requirement that the land be suitable for building purposes;
- ... an encouragement for the installation of renewable energy systems and for the protection of access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum setback requirements, and limitation on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements;
- ... a provision for efficient and compact subdivision development to promote retention and public usage of open space and wildlife habitat; and
- ... provisions that will create conditions favorable to the health, safety, convenience, or prosperity of the municipality.



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.

Site Plan Review Regulations

Local site plan review regulations, which must be adopted by the planning board, **MUST** include:

- ... the procedures which the board must follow in reviewing site plans;
- ... a statement of purpose of the planning board's review of site plans (in drafting that statement, make sure, at a minimum, that the general language provided in the statute is incorporated);
- ... a specification of the general standards and requirements that must be met "including appropriate reference to accepted codes and standards for construction";
- ... provisions for guarantees of performances including bonds and security; waiver provisions where strict conformance would cause an unnecessary hardship and be contrary to the spirit and intent of the regulations;

- ... provisions for bonding of streets and proposed utilities similar to that authority found in the subdivision statute.

Local site plan review regulations, which must be adopted by the planning board, **MAY** include:

- ... a provision for safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity;
- ... a provision for the harmonious and aesthetically pleasing development of the municipality and its environs;
- ... a provision for adequate proportions of open spaces and green spaces;
- ... a requirement for 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;
- ... a requirement for streets suitably located to accommodate existing and future traffic;
- ... a requirement for innovative land use controls to be supported when considered in the master plan; and
- ... provisions that will create conditions favorable to the health, safety, convenience, or prosperity of the municipality.



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 the Southwest Region Planning Commission in 2001.

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 of the subdivision and/or development itself, not the location in the community. Zoning then establishes permitted uses and density limits for the various districts, based on the development patterns recommended in the plan.

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 use of the same basic procedures.

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 pub-

lic places within the city/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.

Public Hearing

The public hearing is opened by the chairman of the planning board who should give a brief explanation of the regulations and how they will affect the subdivision of land in the municipality. 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 chairman should close the public hearing. A tape recorder is useful to ensure that the proceedings of the hearing are accurate. The tape can then be used to prepare the written record.

Vote to Adopt

At the close of the public hearing, or a subsequent meeting if more appropriate, the planning board should consider the adoption of the regulations. Comments made at the hearing should be discussed and changes made, as the board thinks is necessary, in response to such comments. If major revisions are made that were not discussed at the public hearing, a second hearing must be held to inform the public.

When the board is satisfied that the regulations are in the proper form for adoption, a vote must be taken. The affirmative vote of the majority of the board members is necessary for the adoption of the regulations. 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 is suggested so that the position of individual board members is clear. The planning board rules of procedure may establish local policy that addresses these issues.

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 legislative session to determine if any amendments are required by changes made in the state statutes.

The procedures for amending subdivision 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.

STEP 6. File Certified Copy (RSA 675:6,III)

The 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.



A copy of the regulations and amendments should also be sent to the Office of Energy and Planning to be placed in a central file, although failure to comply with this requirement does not invalidate the regulations. **(RSA 675:9)**

STATUS OF PLATS AFTER SUBDIVISION AND SITE PLAN REVIEW REGULATIONS ARE IN PLACE

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 on Mylar and certified by a licensed land surveyor since July 1, 1981 or by a registered land surveyor between January 1, 1970 and June 30, 1980; 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

It appears that local regulations or local planning boards have the option to require, or not, the recording of site plan review plats as mentioned in RSA 674:39, I. In this case, approved site plans should be recorded at the proper county registry of deeds.

SPECIAL SITE PLAN REVIEW COMMITTEE

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.



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 kind of site plans may be reviewed by the site review committee.

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.

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, this is achieved by dividing the community 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 other are allowed only by special exception or conditional or special use permit. 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. See RSA 674:16,II. Innovative land use regulations include, but are not limited to, those listed in RSA 674:21, I, (a)-(n). Impact fees are among those listed in the statute. RSA 674:21, V defines “impact fee” as a fee or assess-

ment 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 Improvement Plan pursuant to RSA 674:5-7.

ENACTMENT AND AMENDMENT OF THE ZONING ORDINANCE

A zoning ordinance may be enacted or amended upon a ballot vote of a majority of the voters present and voting at the annual or special meeting where the matter is taken up. Caveat: 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 (mentioned above) may only be presented at the annual meeting. Charter provisions in cities and town council towns may require additional enactment procedures.


Amendment Proposal Procedures

 RSA 674:1 outlines the **“Duties of the planning board.”** Paragraph V of that statute states that the planning board “...may, from time to time, recommend to the local legislative body amendments of the zoning ordinance...”

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

The planning board may propose a zoning ordinance or submit a zoning ordinance amendment, and such proposal must be submitted to voters at town meeting. The board of selectmen and/or village district commission also has the ability to propose zoning amendments. Twenty-five or more voters can also petition for an amendment to the zoning ordinance, which must also be voted on at town meeting. (RSA 675:4)

In both cases, 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 town. For an amendment proposed by the planning board or board of selectmen, an additional hearing must be held if the planning board is making substantial changes following public comments at the public hearing.

 For a **petitioned amendment**, the planning board may not revise it, but must vote on whether to recommend adoption or defeat it, which will be on the ballot for town meeting.

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 circulating newspaper. There must be 10 days of notice, not including the day of posting or the day of the planning board hearing. If the planning board anticipates a second hearing on the matter, there must be 14 days between the two hearings, and the ten-day notice requirement again applies. The planning board must provide the town clerk with a final copy of the warrant article not later than the fifth Tuesday before the annual or special meeting.

NOTE: The NH Local Government Center, the Office of Energy and Planning as well as most regional planning commissions develop calendars to help planning boards with important dates for town meeting.

In summary, to assure compliance with all of the notice requirements, consider the following: the date of the annual or special meeting; the fifth Tuesday before that date; time for two planning board hearings 14 days apart; 10 days of notice before the planning board hearings; the days of circulation of your local newspapers; and that voter petitions must be received between 120 and 90 days before the annual meeting. The town should be mindful of these dates and deadlines to avoid making process related errors.

EARTH EXCAVATIONS

In 1971, with amendments and additions in 1979 and 1989, the New Hampshire Legislature gave authority to the municipalities to develop regulations for land excavations. The purpose was to protect the health, safety and general welfare of the public. Through amendments, the purpose for adopting regulations also included additional details for the protection of the public and the environment and to recognize the safety hazards involved with open excavations. RSA 155:E provides information on 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. The permit must be obtained by the regulator, usually the planning board, or selectmen or board of adjustment as stated in RSA 155-E:1; for the purposes of this document, the planning board is considered to be the regulator. There are, however, exceptions to the permitting process which are explained in detail below.

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

A permit is not required for the owner of an excavation which was in existence before August 24, 1979 where sufficient volume of material has been removed during the two year period prior to August 24, 1979. The excavation site is exempt from local zoning and other ordinances providing 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 2 years from the August 4, 1989 date. 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 (b);
- ... An estimate of the area which has 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 which on August 4, 1989, was contiguous to or was contiguous to land in common ownership with a stationary manufacturing plant which was in operation as of August 24, 1979.

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

A permit is not required for an excavation which is 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 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 the aquifer as mapped by the United States Geological Survey.
- ... 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-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 - the planning board may require additional standards; and 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.

Operational Standards:

- ... No excavation shall be permitted below road level within 50 feet of the right of way of any public highway unless the excavation is for the purpose of that highway.
- ... No excavation shall be permitted within 50 feet of a disapproving abutter nor within 150 feet of any dwelling which exists or a building permit has been issued for at the time of the excavation.
- ... No excavation shall be permitted within 75 feet of any great pond, navigable river or any other standing body of water 10 acres or more in area.
- ... No excavation shall be permitted within 25 feet of any other stream, river or brook which normally flows throughout the year or any naturally occurring standing body of water less than 10 acres, prime wetlands or any other wetland greater than 5 acres.
- ... Vegetation shall be maintained or provided within the peripheral areas.
- ... Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods.
- ... No fuels, lubricants, or other toxic or polluting materials shall be stored on-site unless in compliance with state laws or rules pertaining to such materials.
- ... A fence or other suitable barricade shall be erected to warn of danger or limit access to the site where temporary slopes will exceed a grade of 1:1.
- ... The excavator shall file a reclamation bond or other security approved by the regulator prior to the removal of topsoil or other overburden material.

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 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:

- ... Topsoil, strippings, or soil capable of sustaining vegetation with appropriate seedlings or grass shall be spread over the areas affected by the excavation except for rock ledges.
- ... Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- ... Except for exposed ledges, all slopes shall be graded to natural repose for type of soil of which they are composed so as to control erosion.
- ... The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety.
- ... The topography of the site shall be graded so as to allow the natural drainage of water from the site.

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 the public hearing for good cause shown. The written decision of the regulator shall state the specific standards which 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 listed as the exception in the first section of this chapter, any owner, prior to excavation of his land, must apply to the planning board for a permit. If the proposed excavation site is located in an unincorporated area the application must be sent to the county commissioners. The applicant shall also send a copy of the application to the conservation commission. The signed and dated application shall include:

- ... The name and address of the owner of the land to be excavated, the name of the person performing the excavation and all abutters to the excavation site.
- ... A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved and the municipalities and counties in which the site lies.
- ... A sketch and description of access and visual barriers to the public highways to be utilized by the proposed excavation.
- ... The estimated duration of the project and the depth, breadth and slope of the proposed excavation.
- ... The elevation of the highest annual average groundwater table within or next to the proposed excavation.

- ... The reclamation plan for the site once excavation is complete.
- ... Specific actions to be taken in the handling of fuel and chemicals on site as well as dust control, traffic, noise control and abatement.
- ... Other information and studies deemed necessary by the regulator.

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 Board and it will be subject to the same approval process as the original permit (RSA 155-E:6).

PUBLIC HEARING (RSA 155-E:7)

A public hearing shall be held within 30 days of submittal to the regulator on an application for an excavation permit or an amended excavation permit application. A notice shall be sent to all abutters 10 days prior to the public hearing and shall include the grounds for the hearing as well as the date, time and place for the hearing. A notice shall be posted in at least three public places and sent to the local newspaper in the city or town. 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 of the municipality may issue a permit if the excavation meets all 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, but not to exceed fifty dollars (\$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 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 a 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 for rehearing and appeal in accordance with RSA 155-E:9. Fines, penalties, and remedies for violations shall be the same as for violations of RSA title LXIV. In addition, the board may seek an order from the superior court to cease and desist from violating any provision of the permit. If the superior court issues an order, all 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.

REGULATIONS (RSA 155-E:11)

The regulator of the municipality may adopt regulations to carry out the provisions of RSA 155-E including adopting a permit fee schedule. Whenever the local regulations differ from the provisions of this RSA, the greater restriction or higher standard shall be controlling, except that the local regulations can not supersede the sole applicability of express standards for operation and reclamation.

The regulations may include provisions for the 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 the costs for the public hearing and to cover its administrative expenses, review of the documents and other matters which may be required by a particular application.

DRIVEWAY REGULATIONS (RSA 236:13)

RSA 236:13 gives power to municipalities to control how private roads and driveways are connected to local highways. Pursuant to this statute, a planning board, which has been granted the power to regulate the subdivision of land, must enact regulations using the same procedure as for subdivision regulations. Driveway regulations may address a number of subjects, such as: width, angles, slopes and grades of connection, curbs, ditching and culvert standards to prevent erosion and preserve highway drainage, adequate lines of sight to prevent safety hazards, and limiting the number of accesses 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 or code officer. In many smaller towns, this authority is often delegated to the board of selectmen.

THE 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 right of way and even if the driveway connection predates 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 refuses to effectuate such repairs, then 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 system of public highway 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 road 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 community to coordinate the review and issuance of driveway permits to access state roads. The MOU contains a number of requirements for the community and the DOT:

- ... The community must develop, adopt and enforce access management standards for state highways that comply with best management practices for access management.
- ... The community can develop site or parcel specific access management plans for highway corridors or segments.
- ... The community 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 community shall require that all access points comply with its adopted access management standards and any applicable site specific access plans.
- ... The community 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 community 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 community.
- ... The DOT District Engineer shall notify the community 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 community 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.



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, or through the impact fees enacted by a zoning ordinance. (RSA 674:21)

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

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. Some of the minimum standards are:

- ... No driveway connection can be more than 50 feet wide.
- ... No parcel of land can have more than one driveway connection unless that parcel's highway frontage exceeds 500 feet and unless it is proven that there is a 400-foot safe sight distance in both directions at a height of 3 feet, 9 inches above the pavement.

INNOVATIVE LAND USE CONTROLS (RSA 674:21)

RSA 674:21 provides communities 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.

Using “innovative zoning,” communities can adopt land use controls which 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 communities 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 which 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 listed within the RSA and ideas for other land use controls that communities may consider. Presented here are only short and simple explanations of what each control constitute. Other publications and sources should be consulted for a more in depth explanation of each land use control.

TIMING AND PHASED DEVELOPMENT

The timing or phasing of development allows communities 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 (see 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 community's master plan.

TRANSFER OF DENSITY RIGHTS

A form of transfer of development rights, the transfer of density right, 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 that 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 (PUDs) are good options for communities 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 the 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/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 communities 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 communities 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. A summary of some of these ordinances are included below.

Ridgeline/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 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.

INCLUSIONARY ZONING/WORKFORCE HOUSING

Inclusionary housing programs are a means of encouraging or requiring private developers to provide housing for moderate, low-, and very low-income households. 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. Most inclusionary housing programs are voluntary. Depending on the zoning ordinance, developers interested in applying for a density bonus apply either to the local zoning board of adjustment or to the planning board.

ACCESSORY DWELLING UNIT STANDARDS

Accessory Dwelling Units (ADUs) can address a number of housing needs within a community. ADUs are one way that a community can provide for more affordable housing or elderly housing. ADUs can provide flexibility in household arrangements to accommodate family members or nonrelated people of a permitted, owner occupied, single family dwelling, while maintaining aesthetics and residential use compatible with homes in a neighborhood.

IMPACT FEES

Impact Fees are regulated by RSA 674:21, V. These fees can be charged to cover the costs to capital improvements that are necessitated by new developments. Impact fees may only be charged for water treatment and distribution facilities, wastewater treatment and distribution facilities, wastewater treatment and disposal facilities, sanitary sewers, storm water drainage and flood control facilities, public road systems and rights of way, municipi-

pal office facilities, public school facilities, the municipalities' proportional share of 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.

VILLAGE PLAN ALTERNATIVE SUBDIVISION

RSA 674:21 (n), Village plan alternative subdivision, enables towns to develop 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. First, 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. Second, the village plan alternative must comply with existing subdivision regulations relating to emergency access, fire prevention, and public health and safety, however, lot size setbacks, dimensional requirements having to do with frontage and setbacks, density regulations, and lot size regulations, shall not apply. Third, an application made under the village plan alternative ordinance must be given expedited review.



The Rockingham Planning Commission has developed a **Village Design Model Ordinance** that can be used as a starting point for a community wanting to use this land use control. The ordinance is available online at: www.rpc-nh.org/Village-Design.htm

OTHER INNOVATIVE LAND USE CONTROLS

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 RSAs specifically state that “agricultural activities are a beneficial and worthwhile feature of the NH 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, and retaining natural vegetation wherever possible and requiring non-invasive plantings where existing vegetation cannot be retained. Emphasis is placed on maximum on-site stormwater infiltration and prevention of stormwater 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, zoning, 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. The TOD promotes development that supports transit by ensuring access to transit and attempts to limit conflicts between vehicles and pedestrians, and transit operations. The 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. A 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 between 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.

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 work 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.

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 brown-fields development, infill development and transfer of density rights.



OEP's **Technical Bulletin 16: Outdoor Lighting** contains useful information and a model lighting ordinance for communities to use as a starting point. This bulletin is available on the OEP's website at: nh.gov/oep/resourcelibrary/TechnicalBulletins.htm or by calling our office at (603) 271-2155.

CHAPTER IV - APPLICATION, SUBMISSION AND REVIEW PROCEDURES

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The steps involved in the application, submission and review of a subdivision and/or site plan review proposal are based on New Hampshire **Revised Statutes Annotated (RSA) 676:4**. 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 Office of Energy and Planning (OEP), based on its interpretation of the enabling legislation, i.e., . . . *OEP recommends that the planning board . . .* 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 experienced all too often in this regulatory process.

OEP strongly recommends that pre-application phases be included in the local regulations and that the 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 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.



As of recent changes in the State Statute, municipalities may now, by ordinance or resolution, authorize the planning board to **require** preliminary review of subdivisions and site plan review applications. 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.

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. Local municipalities now have the power to **require** pre-application discussions where the applicant may not decline to participate in the pre-application phases. If the town has not included such requirements in its subdivision and site plan review regulations, then the applicant may decline to participate in the pre-application phases and begin the review process by filing a completed application.



Is there any 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.

Pre-application review is a non-binding process that a planning board may choose to include in the subdivision and site plan review regulations as mandatory or not. This process should not be confused with the required formal review of a completed application. State statutes do not authorize any form of preliminary approval.

If the pre-application review process is mandated or allowed by the subdivision and site plan review regulations, specific guidelines and limitations must be included. These should cover such items as:

- ... whether an appointment is necessary to appear for conceptual consultation;
- ... what type of material to be presented and discussed 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 a subdivision and/or site plan review proposal is divided into two phases: *conceptual consultation* and *design review*.

PHASE 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 board, in very general terms, the types of uses that may be suitable for a piece of 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.



A community base map or United States Geological Survey Map may be helpful to show the location of the proposal during the Conceptual Consultation.

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 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.

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. This must occur either prior to the design review phase of the pre-application review or when a completed application has been filed.

The conceptual consultation provides an excellent opportunity for the planning board to stress the value of the design review phase. It also encourages an applicant to make full use of the opportunity to identify potential problems early in the process, thereby saving time and/or unnecessary and expensive redesign at a later date. An applicant who appears regularly before the planning board may opt to begin with design review and follow the required public and abutter notice procedures.

PHASE 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 the board, the 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**.



Prior to the design review phase, the applicant **must** provide a list of the names and addresses of all abutters to the parcel, as well as the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on a plat, if submitted. 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 completed application. Any information not modified or changed may be filed as part of the completed application and noted accordingly. The information requested by the planning board during the design review phase 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.

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 board's approach and the applicant's responsibilities.

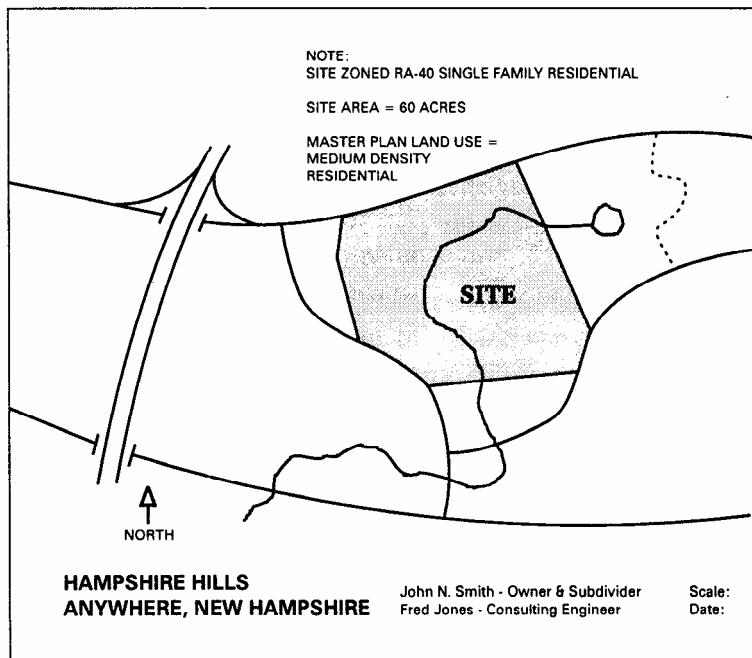


Exhibit 1. SITE LOCATION MAP

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.

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 planning department, planning assistant, or part-time circuit rider planner may use this staff as the 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. Once again, this individual would conduct discussions during business hours and make no commitments on behalf of the board.

- A third alternative is to reserve a set 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.



The Office of Energy and Planning 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.

Public Participation

State statutes do not require either a public hearing or an opportunity for public comment during design review. However, input from an abutting landowner that is pertinent to the discussion may be useful both to the 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 presentation, and other reasonable guidelines to balance the public's interests with the board's need to complete an agenda.

Each active design review proposal must be listed on the board's agenda. If a designee were involved in the design review process, s/he 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.

*The language in **RSA 676:4** is subject to more than one interpretation. The discussions contained in this section are based on the Office of Energy and Planning's understanding of the statutory language. Pay particular attention to the time frame 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. (See Appendix F for a flowchart of the application process)*

- An application must be filed with the planning board at least 15 days before the meeting at which it is to be submitted.
- 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. This determination must be made within 30 days following delivery of the application, or at the next regular meeting for which legal notice of the meeting can be given.
- When a completed application has been accepted, the 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. (If the board meets on Tuesday night and accepts the application that night, then Wednesday is day 1, Thursday is day 2, ... RSA 21:35)
- 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, the abutters, the 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 15 days before the public meeting of the board at which the application will be formally submitted.

Completed Application

The local regulations must provide the applicant with a clear picture of the information the board requires in order for an application to be accepted as complete. This means that the regulations must specify not only the design details and factual data of location and ownership, but must also 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.



An application can be accepted as complete by the planning board even though it doesn't necessarily follow local regulations. There is a clear distinction between the process to accept a complete application and the application review process and final approval or disapproval. If an applicant has provided all necessary materials, studies, 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.

Some communities will accept an application and hold the public hearing the same night. This procedure is allowed but make sure that the board votes to accept the application 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).



OEP 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 the Southwest Region Planning Commission's [Subdivision and Site Plan Review Handbook](#).

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 her/his behalf.

Filing Procedures

An application must be filed at least 15 days before the board meeting at which it is to be submitted for acceptance. 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 communities with staff and regular office hours for the planning board, applications may be filed with the staff at the designated times.

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, the change in the timing for filing now makes it important for the board to have documentation of when an application has been physically received by the board. But, be careful on not discussing the proposal at this point: it is appropriate to only 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 do guard against discussing the plan.



Although state statutes require planning boards to meet at least once a month, many boards find it necessary to meet more often. In a municipality experiencing substantial growth pressures, a planning board may meet weekly and still find it difficult to deal with all of the applications that have been filed. This situation can be eased by including a statement on the application form that allows the board to fill in the date of the meeting at which the submission of the application will be on the board's agenda. The applicant is thus made aware of when review of the application begins if the board accepts it as complete.

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.

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.

RSA 478:14 requires the county register of deeds to send any city and town that requests it, a quarterly report showing copies of all deeds, mortgages, and real estate conveyances. A similar report must be sent once a year to every municipality that does not request the quarterly report. 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 records to identify any changes in ownership.

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 cover the costs to prepare special studies that are required by the regulations or the charges for independent review of such studies that are provided by the applicant. **(RSA 676:4,I (g))**



The fees should be placed in a separate account, 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. A completeness review is intended to assure the board that the application meets the criteria and contains all of the items required by the regulations, but does not involve an evaluation of the material.

A completeness review process avoids the awkward situation of notifying abutters that an application will be submitted and then rejecting it because of incompleteness. Abutters would be understandably confused by such an action. The board could set aside time at each meeting (or at one each month) to review applications.

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



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. Once the board determines that the application is complete, it must be accepted upon submission.

the application's completeness to the board. The board, in its procedures, could suggest that the applicant provide the material earlier than the statutorily required 15 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.

Following the preliminary completeness review by the designee, the applicant should be told specifically what items are needed in order to meet the requirements of the regulations. Written notification, using the checklist for identification, would prevent

any misunderstanding. When the material has been provided and the designee feels that the application is complete, the application should be placed on the agenda for the board's review.

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 of disapproval (i.e. that an application is not complete) must be provided to the applicant. (**RSA 676:3, I**)

STEP 2. REQUIRED NOTICES RSA 676:4, I (D)

A notice is required when an application has been filed and placed on the planning board's agenda for submission. The notice **must**:

- ... be sent by certified mail at least 10 days before the date of submission 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;
- ... 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 during the pre-application design review phase. 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 **public hearing** on proposed regulations and ordinances is subject to **RSA 675:7** which differs from **public meeting** notification in that it requires notice at least 10 calendar days in advance, not including the day the notice is posted or the day of the hearing. The public hearing notice shall be published in a newspaper of general circulation and posted in at least two public places. It must also include an adequate description of the proposal and where it is available for public inspection.



State law, **RSA 91-A: 2**, requires that notification to the general public of all public meetings be given either by posting a notice in at least two appropriate public places or by publishing a notice in a newspaper of general circulation in the municipality at least 24 hours in advance, excluding Sundays and legal holidays.



In the interest of keeping the public fully informed, **OEP** strongly 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 Regional Planning Commission has model notice forms for both abutters and the general public.

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 board's meeting for a public hearing.
- It is critical that the newspaper's publication deadlines be considered in setting the schedule for filing, especially for weekly newspapers.
- Free "shoppers" and "bulletin board papers" should be avoided unless the publisher can guarantee that the notice will reach the public on or before the statutory deadline.

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, the board announces at the adjourned meeting the date, time and place of the meeting where the application will be taken up again.

Failure to Notify

New Hampshire statutes stress how important it is that abutters and the general public know about and have the opportunity to participate in the subdivision and site plan review process. Failure to adhere to the notice

requirements could result in potentially 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 challenge of the board's action on grounds of failure to follow the notice requirements.



The planning board **does not** have jurisdiction to begin reviewing a subdivision or site plan proposal until the required notice has been given. If, during the review period, the board learns that one or more abutters were not properly notified, the error should be corrected before the board proceeds.

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.



What should be included in the records following submission of an application?

The board's records should document the date of the submission, which must be within the timeframe noted above: 30 days from the filing, or the next regular meeting for which legal notice could be posted.

Any presentation by the applicant should be brief and limited to identifying the location of the subdivision or development, outlining the proposal, and answering any specific questions from the board. The board may choose to allow limited comments that are related to the contents of the application. Further discussion should take place at the 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 Regional Planning Commission.) If the application is complete upon submission, the planning board cannot delay acceptance until a future date. And, upon the acceptance as complete, the board now 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.

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 local boards as appropriate. When the public hearing is held, the board would then be in a better position to understand and respond to questions raised. It is not recommended for large, complicated applications that the public hearing be scheduled for the same meeting at which the application is submitted and accepted. When the board accepts larger applications it should be prepared to set the date for the public hearing.



One issue that is beyond the authority of the planning board to resolve is a dispute over a precise boundary or the title to a parcel. The board's responsibility is simply to determine whether the application meets local regulations. The other issues must be resolved by the disputants or by the courts.

”Grandfathered” Application

An application is reviewed under current subdivision or site plan review regulations, zoning ordinance or building code if the planning board has accepted it as complete **before** legal notice is posted for a public hearing on proposed changes to these regulations (**RSA 676:12**). For applications accepted **after** such notices have 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. 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 the change is adopted, the decision of the board could be affected by the new regulation.
- The application can be revised to conform to the proposed changes.

The planning board should also 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.

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 all parties are aware of the public hearing and have an opportunity to participate.

The public hearing may be held at any time during the review, as long as it is prior to the board's decision on the application. 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 chairman opens the public hearing and explains what procedures will be followed.
2. The chairman 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:
 - ... Abutters in favor of the proposal.
 - ... Abutters opposed to the proposal.
 - ... Anyone else who wishes to speak, if time permits.
 - ... Any written comments are read into the record. Anyone speaking from the floor must identify her/himself for the record. All questions must be directed through the chairman to avoid cross-questioning between abutters and the applicant.
6. The chairman summarizes the comments and provides an opportunity for the applicant to clarify any issues.
7. The chairman closes the public hearing.
8. The chairman announces the procedures the board will follow in making a decision.

The minutes of the public hearing will help the board in its deliberations and also will 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 the application until a later date; or
- ... other motion, as appropriate.

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

Upon a 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 appropriate:

- ... schedule a site visit by the board;
- ... hold a work session to review details of the application;
- ... assign a designee to review the application, visit the site, and report back to the planning board;
- ... review any impact studies or reports required as part of the application;
- ... request other local boards or officials to review and comment on the proposal; and
- ... set the date for the required public hearing.

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

While it is possible for the board to accept an application, hold the public hearing, and make its decision at one meeting, this is generally not recommended for complex applications. The board should limit its action to accepting the application as complete and setting the date for the public hearing. This procedure allows adequate time for the board to review and discuss details of the application and to solicit comments from other local officials.

The deliberations for complex proposals may extend over several sessions. The application should be listed on the agenda for each meeting. The planning board should evaluate the information provided by the applicant,

review recommendations from local officials, 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 and the application returned.

Procedurally, a new filing is 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** cover 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. The decision to hold such a session must be included in the minutes of the open session. Minutes must also be kept of the nonpublic session and these must be made public unless 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 can agree to an extension for a set period of time.
- ... The applicant and the board can 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 can request 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 (C))

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.

A motion to approve that does not get an affirmative vote by a majority of board members 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. **RSA 676:3,I** requires that the applicant be given a final written decision that either approves or disapproves the application. If the application is not approved, the notification must clearly state reasons for the disapproval.

Approval

The approval of an application by the planning board signifies that the proposal meets all applicable regulations and that there are no unresolved concerns requiring further board consideration. The plat must be approved by a majority vote of the planning board, signed as required by local regulations, and filed with the appropriate register of deeds. Registries now require that all final approved plats be made on mylar (plastic) for recording purposes.

Disapproval

When denying an application, the planning board must vote to disapprove specifying the reasons for denial and citing 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, s/he 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.

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. Any time necessary for the applicant to meet the conditions is not part of the statutory time period. 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.



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.

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 septic system permits, obtaining bonds for road construction, or submitting a revised drainage plan in response to information in a technical study.
- ... *Conditions subsequent* are conditions that appear on the 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.



A plat that is given conditional approval based on conditions precedent should not be signed and must not be filed at the registry of deeds until such time as the planning board has determined that the conditions have been satisfied.

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 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.

Compliance Hearing

The state legislature, responding to a New Hampshire Supreme Court ruling in *Sklar v. Town of Merrimack*, 125 NH 321, 1984, 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, i.e. wetlands 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 approval, the planning

board should require a performance bond, or other type of security as specified in the subdivision regulations, to guarantee that streets will be constructed, utilities installed, and landscaping and other improvements provided in accordance with the regulations. While the type of security chosen may vary, the planning board should ensure that the subdivider 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 assure the municipality sufficient time to invoke the provisions of the security when it becomes obvious that work will not be completed.

 **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.

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 the municipal interests. The attorney should also be asked to review any unusual or complex situations that may be related to a specific subdivision.

In 1988, the state legislature passed an amendment to **RSA 674:36,III (b)**, which prohibits a planning board from specifying cash or a passbook as the only types of acceptable credit. In addition, the amendment requires 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.

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 chairman and/or the secretary to sign the completed plat when the conditions have been met. This action will allow the plat 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 144 hours 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 local 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 local governing body (selectmen/council).
2. The applicant requests the local 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 local 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 local 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 board/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 with the appropriate county register of deeds. A 1995 amendment to **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 would occur if a planning board does not approve an application based solely, or in part, on the terms of the zoning ordinance. This decision is considered an administrative decision based on an interpretation of the ordinance, which can be appealed to the zoning board of adjustment.

The procedures for an appeal of planning board decisions are outlined below.

- A petition must be presented to the superior court within 30 days. The clock starts when the decision being appealed has been filed and first becomes available for public inspection in the office of the board, its clerk or secretary.
- 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 any hearing under the subdivision appeal section 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.

MINOR SUBDIVISIONS (RSA 676:4, III)

Many planning boards spend a substantial amount of time on applications for 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, there are some potential problems of which the planning board should be aware.

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.

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 a hazardous driving situation, 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.



OEP 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.

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.



The subdivision regulations may avoid some of these problems by including in the criteria for a minor subdivision the requirement that no lot created has the potential for further subdivision.

Because the subdivision of only a few lots may have significant implications for a community, 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.

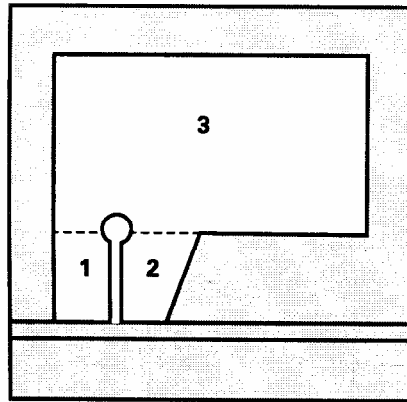


Exhibit 2a. POTENTIAL FOR RE-SUBDIVISION

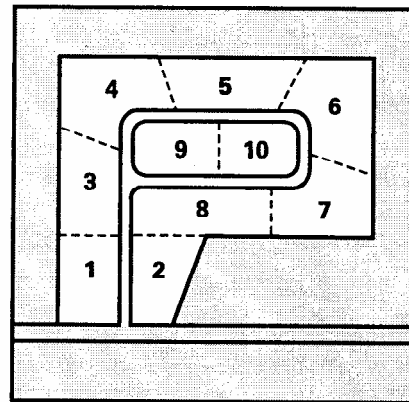


Exhibit 2b. RESUBDIVIDED

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 general 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 New Hampshire Department of Environmental Services (DES) (**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**).

DESIGN REVIEW OF A SUBDIVISION OR SITE PLAN REVIEW APPLICATION

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 review 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 stormwater 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, and are discussed in the order the board would logically address them; they are:

- ... Municipal Plans, Ordinances and Regulations
- ... Municipal Impact
- ... Physical Characteristics of the Site
- ... Streets, Utilities, and Lot Layout

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 shorelands 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.

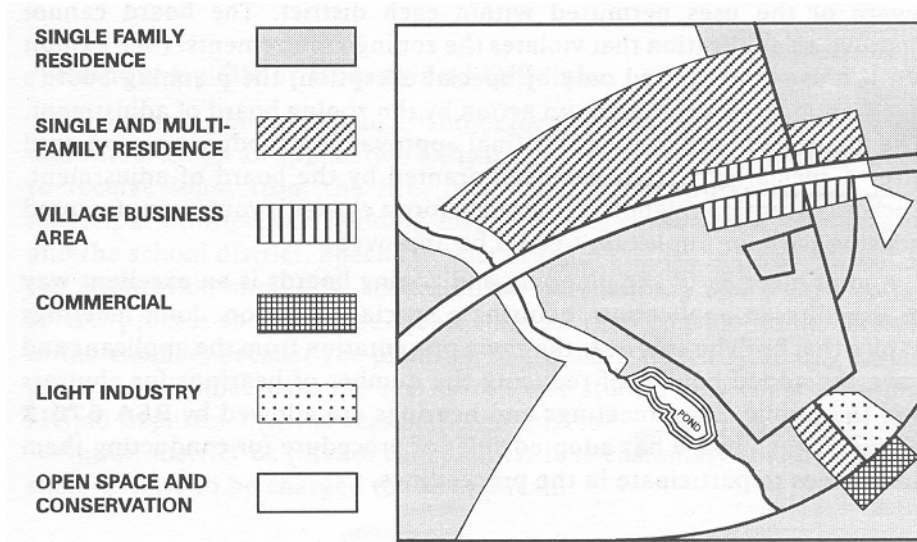


Exhibit 3. FUTURE LAND USE MAP

Capital Improvements Plan/Capital Budget

The municipal capital improvements plan and capital budget should contain a schedule for making road improvements, extending municipal services, 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, the planning board's decision must be contingent on action by the zoning board of adjustment. The planning board should not give final approval of a subdivision or site plan until after a special exception has been granted by the board of adjustment, simply because there is nothing gained by having an applicant go through the entire process if they are ultimately going to be denied the use under the zoning ordinance. Note, however, that such an exception might be required before a cluster layout, manufactured housing park, or duplex unit could be approved.

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.

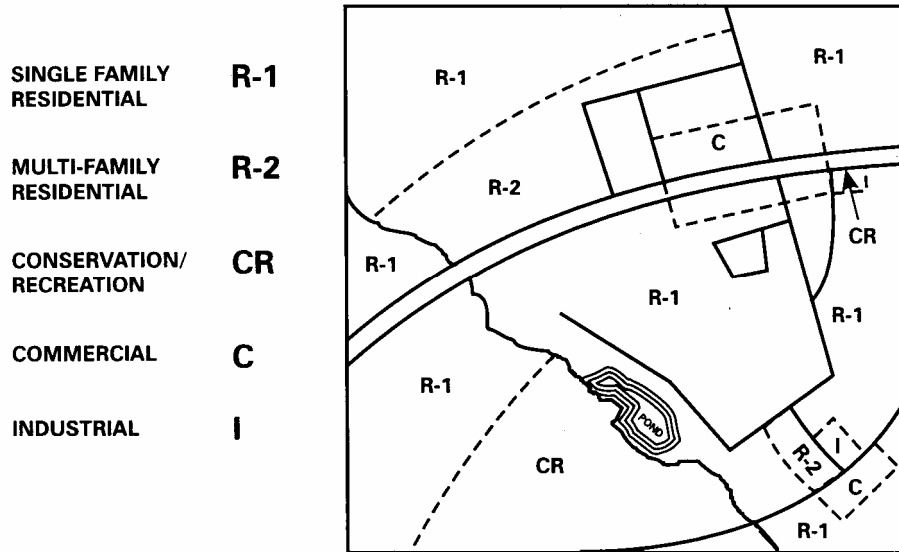


Exhibit 4. ZONING MAP

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, 100 homes may represent an addition of anywhere from 25 to 200 school age children, depending on the average number of bedrooms in the units. 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 40-50,000 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 resubdivision 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.

 The board should also be aware of other recently approved or pending applications in the same general area that would increase the burden on municipal services.

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 dwelling 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 unsewered areas, 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 New Hampshire Department of Environmental Services (DES). 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, 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. If the scientific basis for them is well documented in the master plan, local regulations that are more restrictive than state requirements can be imposed.

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 (formerly the Soil Conservation Service) soils maps are available for the counties. County soils maps are available from the NRCS county offices or the NRCS state office in Durham.
- ... 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 Energy and Planning.
- ... 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. This 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 community.

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



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.

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.

Soil Based Lot Sizing

There is a recent update to the model lot size by soil type regulations published in 2003 and available through 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 communities have adopted and successfully implemented the concept of soil based lot sizing by adopting area requirements according to soil type in their local subdivision regulations. The new model regulations provide lot sizes for soil maps prepared using either the site specific soil mapping standards or the High Intensity Soil Maps.

Permeability vs. Percolation Rates

Both the NRCS county soil surveys and Order 1 (site-specific soil surveys) soil maps provide information about the permeability of the soil. Permeability is defined by the NRCS as “...the quality of the soil that enables water or air to move through it. It is expressed in inches per hour. If the rate applies to only one horizon or soil layer, it describes the potential of that horizon to transmit water and does not reflect the influence of the other horizons on that movement. If the rate applies to the entire soil, then the transmitting potential of the least permeable horizon is implied.” National Soils Handbook, Soil Conservation Service, 430-VI-NSH Section 618.03-24, September 1992.

The permeability information derived from an Order 1 (site-specific soil surveys) soil map or a county soil survey map can be utilized to evaluate the percolation test information submitted to DES by the subdivider for approval of subsurface wastewater disposal systems. A HISS map does not provide permeability information.



It is suggested that the planning board make use of permeability, as well as percolation rates, in its local subdivision review process. The results of percolation tests can vary considerably, whereas NRCS research and laboratory testing support the permeability for a soil series.

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 are as follows.

- 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 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. A few common problems are listed below.

- 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 5 on the next page)
- Grading the site will be troublesome because of water bleeding through the surface in “cut” areas.

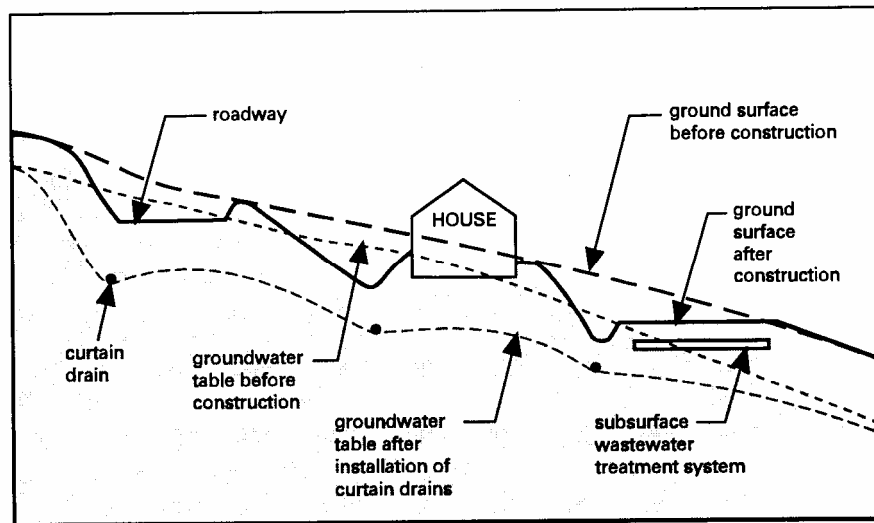


Exhibit 5. ADAPTING SITE WITH HIGH WATER TABLE

Stormwater Management (Drainage)

The stormwater management or drainage plan should include a sketch of the watershed and complete drainage computations. The various topographic contours, stream beds, and water bodies all form part of a drainage system. The watershed of a stream or river is the drainage basin or catchment area for that watercourse.

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.



A **stormwater management plan** should be required as part of the subdivision application. The recommended standards for such plans are contained in the 1992 publication entitled Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire, DES and Rockingham County Conservation District and the 1996 publication entitled Best Management Practices for Urban Stormwater Run-off, DES.

These standards can be incorporated into existing subdivision regulations, by using an updated model stormwater management regulation developed by the NH Association of Conservation Districts in 1996. This model requires the stormwater plan as a condition of subdivision approval and also addresses long term, on-going maintenance of permanent stormwater management measures once they are in place.

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.

The OEP is strongly encouraging planning board to consider adopting Low Impact Development (LIDs) requirements of stormwater management into their subdivision 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. But 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.



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. A permit for such disturbances is required by the DES in accordance with **RSA 485-A: 17** and NH Code of Administrative Rules **Env-Ws 415**. The Shoreland Protection Act (**RSA 483-B**) reduces this threshold to 50,000 square feet within 250 feet of the reference line of public waters.

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. 100-800**. These require delineation of wetlands in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987, supplemented by use of the Regional Field Indicators for Identifying Hydric Soils in New England, NEIWPC, 1995. OEP recommends that planning boards require these criteria for wetlands in their subdivision 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. (Exhibit 10)

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 which 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.

Alteration of Terrain

Disturbance of the natural soils and vegetation should be minimized. The subdivision application should include detailed site plans that show existing and final topography. The stormwater management plan should address these issues. The services of the USDA NRCS district conservationist, a hydrologist, professional engineer or a certified soil scientist may be helpful to the board in reviewing the plan. Some features that should be included in the plan are as follows:

- ... Estimates of runoff based on an acceptable methodology.
- ... Best management practices for stormwater management and erosion and sediment control, including structural, vegetative and non-structural measures. Exhibit 12 provides an example of a non-structural, vegetative stormwater management practice.
- ... Prompt regrading and stabilization of any area where removal of ground cover is necessary because of construction operations.
- ... Slopes regraded as flat as possible with the top and toe rounded to meet existing grades.
- ... Slopes seeded and mulched to assure growth before erosion begins. Note that this should not be considered to be an effective erosion control measure until the vegetation is established.
- ... Swales subject to the greatest run-off may need to be rip rapped or lined with a permanent type of geotextile fabric. Sodding is useful to immediately stabilize a swale. There are many types of manufactured matings that can do as effective a job as sodding, at less cost.

Layout of Streets, Utilities and Lots

After the planning board is familiar with the specifics of the site, review of the actual subdivision plan should focus on the layout of roads, utilities and individual lots. 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, regrading, stream relocation and tree removal required, the more costly the project.

Because no two subdivision 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 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 connections 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.

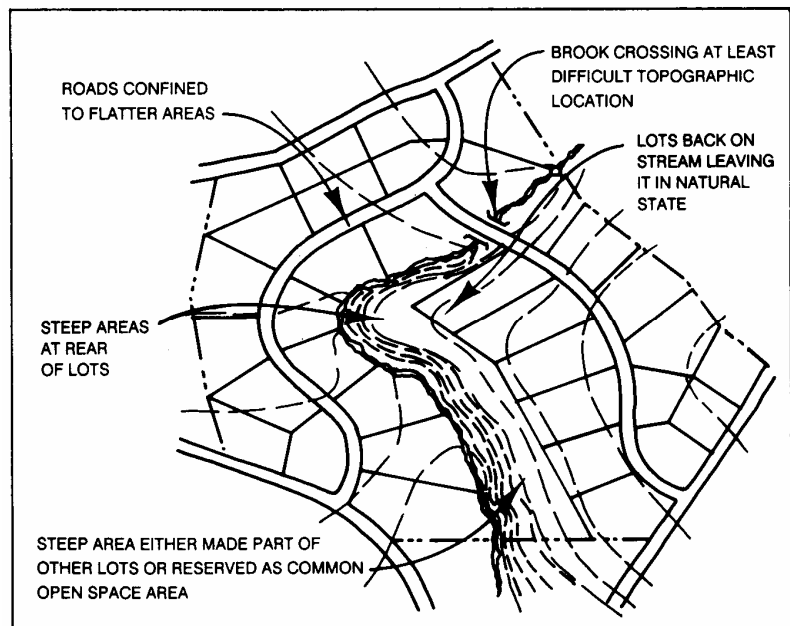


Exhibit 6. LAYOUT OF ROADS AND LOTS

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 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. OEP 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. These 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, which will connect the subdivision to an existing street network, requires coordination between both the applicant and municipal or state government. State law, (**RSA 236:13**), requires that a permit is granted for access to any streets 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 subdivision 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 extension of utility lines should be shown on the plan and recorded on the deed.

The subdivision 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 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 referred to as "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, 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 of land. 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 200 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 as follows.

- 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-WS378) 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 regrading 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 the following state statutes.

- **RSA 485-A: 32, III**, entitled “Prior Approval; Permits”, which requires DES 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 DRED’s approval to exceed the timber harvesting limitations and DES subdivision approval prior to clearing the natural vegetation for subdivision purposes.

- **RSA 483-B**, the “Comprehensive Shoreland Protection Act”, which establishes minimum requirements for use of land within 250 of the reference line of waters of the state. Included are woodland buffer requirements, set backs for subsurface wastewater treatment systems and primary structures and lot sizes by soil type in unsewered areas.

Final planning board approval of a subdivision application should include the condition that the requirements of these and other applicable state and local regulations be met. Once the applicant demonstrates that this condition has been met and comments from abutters and the public have been addressed, the planning board can more thoroughly assess the overall impact of the proposal on the municipal growth pattern. 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 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 designs.

CHAPTER V - WORKING WITH OTHER BOARDS AND ORGANIZATIONS

INSIDE THIS CHAPTER

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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 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 & 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 for a zoning ordinance. A ZBA hears and decides requests for special exceptions to, and variances from, the ordinance and appeals from decisions of the zoning administrator (local official or board of selectmen responsible for enforcing the zoning ordinance). (For more details on the Roles and Responsibilities of the ZBA, refer to the ZBA Handbook, published by the Office of Energy and Planning, 2005)

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 which violates the zoning ordinance. Either the planning board or the zoning board of adjustment could grant conditional approval for such a project. However, as a practical matter, it generally makes more sense to suggest to the applicant that s/he obtain the necessary approval from the zoning board of adjustment prior to seeking planning board approval. Particularly in cases involving the need for a variance, the legal hurdle, which the applicant must overcome, is rather high and difficult. 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 necessary for the zoning board of adjustment to make a decision. Consequently, it is often more economical for a developer to seek zoning board of adjustment approval first and proceed with the engineering for the planning board if, and only if, the threshold issue with the zoning board of adjustment is resolved satisfactorily.

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 the 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 another land use board, each land use board retains discretion as to whether or not to hold a joint meeting with any other land use board.

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 of 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 is also recommended that planning boards and zoning board of adjustments meet at least once a year to discuss necessary and/or possible changes to the zoning ordinance, and to assess how the application review and hearing process works in the community.

BOARD OF SELECTMEN

In most towns, a board of selectmen is the official governing body, responsible for the daily administration of municipal affairs. In most New Hampshire communities the town meeting adopts the municipal budget and selectmen supervise the expenditure of the funds appropriated. Town meeting adopts most town ordinances 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 lay out new roads and decide whether to authorize building permits on Class VI roads (RSA 674:41) For the establishment of appointed planning boards, town meeting votes to establish a planning board and the selectmen appoint its members. In the case of an elected board, each member is elected by vote at town meeting. (For more details see RSA 673:2) As head of the administrative branch of local government, selectmen oversee gathering financial information and budget requests for the budget committee or prepare the budget themselves in the absence of a budget committee.

NH city governments vary because city charters differ. In a city with a strong mayoral form of government, the mayor's responsibilities parallel those of selectmen. The city or town manager fills that role in a city or town with a council, although the power to make appointments to boards and commissions may remain with the council. The board of alderman, city council, or town council is the legislative body that adopts ordinances and budget, unless a town charter provides for official ballots or budgetary town meeting.

There is currently no legal requirement that the governing body of your municipality must approve or adopt a master plan. However, elected officials are very influential in setting municipal policy on growth and development. Consequently, it is extremely important that your governing body participate and become actively involved in the planning process. By not including the governing body in the planning process, you could jeopardize the outcome or implementation of your plan. Unless your master plan can be prepared strictly on a voluntary basis or by municipal staff, you 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 city council appropriates funding through a budgetary process that typically involves the mayor, the budget committee, and the city manager.

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 673:7, a planning board and conservation commission may have one common member. Sharing a member should enhance communications and help ensure mutual understanding and cooperation.

In cities and larger towns, professional planning staff may help build a relationship between planning board and conservation commission, encouraging the exchange of ideas, information and the 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, 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.

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 RPC'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 requires local input to be efficient and successful, there are several opportunities for local 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 said commission. This represents another chance for local communities to be involved with the work of their regional planning commission and to keep an open and close relationship.

In summary a close working relationship will be beneficial for both parties.

NEW HAMPSHIRE OFFICE OF ENERGY AND PLANNING

OEP provides information, data and guidance to assist decision makers on issues pertaining to development, land protection, energy use and community planning. We guide the state's future growth through public policy development, education, research, and partnership building.

The Municipal and Regional Planning Assistance staff provide information and assistance to local planning boards and zoning boards of adjustment. 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 improvement 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 have been established by the Legislature in RSA 9-A. The Office of Energy and Planning 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.

APPENDIX A

SOURCES OF ASSISTANCE - *CONTACTS*

STATE AGENCY/ DEPARTMENT	ADDRESS	PHONE	WEBSITE
Bureau of Emergency Management	107 Pleasant Street Concord, NH 03301-3809	271-2231	www.nhoem.state.nh.us
Department of Environmental Services (DES)	6 Hazen Drive PO Box 95 Concord, NH 03302-0095	Division of Air Resources 271-1370 Division of Waste Management 271-2900 Division of Water 271-3503	www.des.state.nh.us
Department of Justice	33 Capitol Street Concord, NH 03301-6397	Attorney General/Consumer Protection Division Condominium Registration 271-3641	www.doj.nh.gov
Department of Resources and Economic Development (DRED)	172 Pembroke Road, PO Box 1856 Concord, NH 03302-1856	Division of Forests and Land 271-2214 Division of Parks and Recreation 271-3556 Division of Economic Development 271-2341	www.dred.state.nh.us
Department of Transportation (DOT)	John O. Morton Building 1 Hazen Drive PO Box 483 Concord, NH 03302-0483	Permit Section 271-2691 Transportation Planning 271-3344	webster.state.nh.us/dot/index.htm
Office of Energy and Planning	57 Regional Drive, Suite 3 Concord, NH 03301-8519	Municipal and Regional Planning Assistance NFIP 271-2155	www.nh.gov/oepl
Public Utilities Commission	21 South Fruit Street, Suite 10 Concord, NH 03301-2429	Energy Code 271-2431	www.puc.state.nh.us
Cultural Resources - Division of Historical Resources	19 Pillsbury Street, 2nd floor Concord, NH 03301-3570	271-3483	www.nh.gov/nhdhr/

NEW HAMPSHIRE REGIONAL PLANNING COMMISSIONS

NORTH COUNTRY COUNCIL, INC.

The Cottage at the Rocks
107 Glessner Road
Bethlehem, NH 03574-5800
603-444-6303 Fax: 603-444-7588
E-mail: nccinc@ncia.net
Website: www.nccouncil.org

LAKES REGION PLANNING COMMISSION

Humiston Building
103 Main Street, Suite 3
Meredith, NH 03253-5862
603-279-8171 Fax: 603-279-0200
E-mail: lrpc@lakesrpc.org
Website: www.lakesrpc.org

UPPER VALLEY LAKE SUNAPEE REGIONAL PLANNING COMMISSION

77 Bank Street
Lebanon, NH 03766-1704
603-448-1680 Fax: 603-448-0170
E-mail: TBamford@uvlsrpc.org
Website: www.uvlsrpc.org

SOUTHWEST REGION PLANNING COMMISSION

20 Central Square, 2nd floor
Keene, NH 03431-3771
603-357-0557 Fax: 603-357-7440
E-mail: admin@swrpc.org
Website: www.swrpc.org

ROCKINGHAM PLANNING COMMISSION

156 Water Street
Exeter, NH 03833-2487
603-778-0885 Fax: 603-778-9183
E-mail: email@rpc-nh.org
Website: www.rpc-nh.org

CENTRAL NEW HAMPSHIRE REGIONAL PLANNING COMMISSION

20 Commercial Street
Concord, NH 03301-5061
603-226-6020 Fax: 603-226-6023
Website: www.cnhrpc.org

SOUTHERN NEW HAMPSHIRE PLANNING COMMISSION

438 Dubuque Street
Manchester, NH 03102-3546
603-669-4664 Fax: 603-669-4350
E-mail: e-mail@snhpc.org
Website: www.snhpc.org

NASHUA REGIONAL PLANNING COMMISSION

115 Main Street, PO Box 847
Nashua, NH 03061-0847
603-883-0366 Fax: 603-883-6572
E-mail: stephenw@nashuarpc.org
Website: www.nashuarpc.org

STRAFFORD REGIONAL PLANNING COMMISSION

2 Ridge Street, Suite 4
Dover, NH 03820-2505
603-742-2523 Fax: 603-742-7986
E-mail: srpc@strafford.org
Website: www.strafford.org

NEW HAMPSHIRE CONSERVATION DISTRICTS

BELKNAP COUNTY CONSERVATION DISTRICT

719 North Main Street, Room 203
Laconia, NH 03246-2772
Phone: 603-527-5880 Fax: 603-527-8783
Website: www.belknappccd.org

CARROLL COUNTY CONSERVATION DISTRICT

73 Main Street, PO Box 533
Conway, NH 03818-0533
Phone: 603-447-2771 Fax: 603-447-8945

CHESHIRE COUNTY CONSERVATION DISTRICT

11 Industrial Park Drive
Walpole, NH 03608
Phone: 603-756-2988, ext. 116
Fax: 603-756-2978

COOS COUNTY CONSERVATION DISTRICT

4 Mayberry Lane
Lancaster, NH 03584
Phone: 603-788-4651 Fax: 603-788-2538

GRAFTON COUNTY CONSERVATION DISTRICT

USDA Service Center
250 Swiftwater Road, Room 6
Woodsville, NH 03785
Phone: 603-747-2001, line 5 Fax: 603-747-3477

HILLSBOROUGH COUNTY CONSERVATION DISTRICT

Chappell Professional Center
468 Route 13 South
Milford, NH 03055
Phone: 603-673-2409, ext. 4 Fax: 603-673-0594
Website: www.hillsboroughccd.org

MERRIMACK COUNTY CONSERVATION DISTRICT

The Concord Center
10 Ferry Street, Box 312
Concord, NH 03301
Phone: 603-223-6023 Fax: 603-223-6030
Website: www.merrimackccd.org

ROCKINGHAM COUNTY CONSERVATION DISTRICT

110 North Road
Brentwood, NH 03833-6614
Phone: 603-679-3793 Fax: 603-679-2860
Website: www.rockinghamccd.org

STRAFFORD COUNTY CONSERVATION DISTRICT

259 County Farm Road, Unit #3
Dover, NH 03820-6015
Bottom floor of Strafford County Justice and Administrative Building
Phone: 603-749-3037 Fax: 603-743-3667

SULLIVAN COUNTY CONSERVATION DISTRICT

24 Main Street
Newport, NH 03820-1500
Phone: 603-863-4297 Fax: 603-863-4730

SOURCES OF ASSISTANCE - *REFERENCES*

***Publications marked with “*” are available through the Office of Energy and Planning, 271-2155 or on the website at: www.nh.gov/oep

GENERAL

Handbook for Local Officials, 2001, Local Government Center.

Resource Clearinghouse for Growing Communities, UNH Center for Integrative Regional Problem Solving, website: <http://cirps.sr.unh.edu/Clearinghouse>.

THE MASTER PLAN

- *Preparing a Master Plan for your Community: A Handbook for Planning Board Members, Planners and Volunteers*, June 2004, Southern New Hampshire Planning Commission.
- *Master Planning*, OEP Technical Bulletin #3, Summer 2003, NH Office of Energy and Planning.

CAPITAL IMPROVEMENT PROGRAM

- *Capital Improvements Programming Handbook*, February 1994, Southern New Hampshire Planning Commission.

SUBDIVISION AND SITE PLAN REVIEW

Subdivision and Site Plan Review Handbook, 2001, Southwest Region Planning Commission.

Model Non-Residential Site Plan Regulations, June 2002, Nashua Regional Planning Commission.

A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails, 2004, Local Government Center.

Where Road Law & Zoning Collide: RSA 674:41 and Other Paths Around the Rotary, Lecture #2 Municipal Law Lecture Series, 2003, Gary H. Bernier and Bernard H. Campbell.

ZONING

Zoning Ordinance Changes, LGC, website: www.nhlgc.org/Public_Documents/NHLGC_Officials/LegalQA0103

- *Planning for Wireless Telecommunications*, Technical Bulletin #14, Spring 2001, Office of Energy and Planning.

Model Telecommunications Facilities Ordinance, Prepared by Carol Ogilvie, former senior planner with Southwest Region Planning Commission.

- *Outdoor Lighting*, Technical Bulletin #16, Summer 2001, Office of Energy and Planning.

DRIVEWAY PERMITTING

A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails, 2004, Local Government Center.

INNOVATIVE LAND USE CONTROLS

- *Impact Fee Development - A Handbook for NH Communities*, July 1999, Southern New Hampshire Planning Commission.
Growth Management, Lecture #1 Municipal Law Lecture Series, Fall 2002, Stephen C. Buckley, Esquire.
Growing Smart: Strategies for Managing and Directing Growth in New Hampshire Communities, Lecture #1 Municipal Law Lecture Series, Fall 2002, Nancy L. Girard, Esquire.
- *Managing Growth in New Hampshire: Changes and Challenges*, December 2000, Office of Energy and Planning.
- *Achieving Smart Growth in New Hampshire*, July 2005, Office of Energy and Planning, website: nh.gov/oep/programs/SmartGrowth/index.htm.
Access Management Guidelines, 2002, Nashua Regional Planning Commission, website: www.nashuarpc.org/publications/accessmngmt_apr02.pdf.
Housing Solutions for New Hampshire Handbook, October 2004, New Hampshire Housing Finance Authority, website: www.nhhfa.org/frd_housingsolutions.htm.
Village Design Model Ordinance, December 2003, Rockingham Planning Commission, website: www.rpc-nh.org/Village-Design.htm.

PHYSICAL CHARACTERISTICS OF THE SITE

High Intensity Soil Maps for New Hampshire, 2003 Update, Sponsored by the Society of Soils Scientists of Northern New England, SSSNNE Special Publication No. 1, website: www.sssnne.org/publications.html.

Soil Based Lot Sizing: Environmental Planning for On-Site Wastewater Treatment in New Hampshire, 2003, Sponsored by the Society of Soils Scientists of Northern New England, SSSNNE Special Publication No. 4, Version 1, website: www.sssnne.org/publications.html.

Site-Specific Soil Mapping Standards for New Hampshire and Vermont (SSSMS), 1999, Sponsored by the Society of Soils Scientists of Northern New England, SSSNNE Special Publication No. 3.

Best Management Practices to Control Non-point Source Pollution: A Guide for Citizens and Town Officials, 2004, New Hampshire Department of Environmental Services.

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 (for Expedited Review)

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 *bearing*, 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.

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 meeting and 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 144 hours stating the reasons for such disapproval.

Sincerely,

Planning Board Secretary/Clerk

SURVEYOR NOTICE FOR SUBDIVISION OR SITE PLAN REVIEW

According to NH Revised Statutes Annotated 676:4,I (d) and the Town of _____ Subdivision/Site Plan Review Regulations, it is required that any persons who have prepared plans for approval be notified of the submission and hearing on the application.

You are hereby notified that an application prepared by you for a (Subdivision/Site Plan Review - Description of Application; Location of Property; Tax Map and Lot Number) will be submitted to the Planning Board on (DATE, TIME, PLACE) 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 following the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Should this application be disapproved, the applicant will receive written notice from the Planning Board within 144 hours stating the reasons for disapproval, and advising the applicant of what corrective measures would be needed.

Per order of _____, Chairman
_____ Planning Board

APPLICATION FOR WAIVER OF SUBDIVISION/SITE PLAN REVIEW REQUIREMENT

Date: _____

To the Chairman and Members of the _____ Planning Board:

On (DATE) I submitted a plan for (subdivision/site plan review) approval to the Board, entitled _____ and prepared by _____. Pursuant to Section X of the Board's regulations, I am requesting a waiver from the following items for reasons stated below:

- 1. _____

- 2. _____

- 3. _____

Respectfully submitted,

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 144 hours. 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 _____, 199__, 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. _____
- 4. _____

_____, Planning Board Chair

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 OR 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:

(Here 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

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

APPENDIX C

RULES OF PROCEDURE FOR PLANNING BOARDS

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

1. The Planning Board shall consist of _____ members. The Selectmen shall designate one selectman as an 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.
4. 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**.
5. 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 her/his 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 her/himself 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 her/himself, 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 Secretary
 - c. Minutes of previous meeting
 - d. Reading of communications directed to the Board
 - e. Report of officers and committees

- f. Unfinished business
 - g. Hearings on subdivision/site plans
 - h. Other business - public comment
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.

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 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 676:4,1(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.
4. The board shall reject all applications not properly completed.

FORMS

1. All forms 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 at both the (location) and the (location) not less than ten (10) days prior to the date fixed for submission and consideration of the application.

(Note: 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.)

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. Otherwise, separate notices must be given to the applicant and abutters by certified mail for submission, public hearing, and each time the application is on the agenda.)

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. Members of the Board may ask questions at any point during the presentation.
4. Any party to the matter who desires to ask a question of another party must go through the Chairman.
5. 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.
6. Each person who speaks shall be required to state her/his 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.
7. The applicant or agent shall be called to present the proposal and those appearing in favor of the proposal shall be allowed to speak.
8. Those in opposition to the proposal shall be allowed to speak.
9. Those neither in favor nor in opposition may speak.
10. 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.
11. The Chairman shall indicate whether the hearing is closed or adjourned pending the submission of additional material or information or the correction of noted deficiencies. In the case of an adjournment, additional notice is not required if the date, time and place of the continuation is made known 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 144 hours 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.

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 676:3,11**.

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 144 hours of the public meeting as required in **RSA 91-A:2 ,II**.

JOINT MEETINGS AND HEARINGS

1. The Planning Board may hold joint meetings and hearings with other “land use boards” including the 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 chair 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 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

1. These rules of procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken. The amended procedures shall be filed with the municipal clerk.

APPENDIX D

CHECKLISTS

CHECKLIST FOR SUBDIVISION 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 appears on the plat;
3. names and addresses of all holders of conservation, preservation or agricultural preservation restrictions;
4. payment to cover filing and notification fees;
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:
 - 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 Registry of Deeds.
 - c. The material composition shall be suitable for electronic scanning and archiving by the Registers 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:
 - 1) type of survey
 - 2) owner of record
 - 3) title of plan
 - 4) name of the town(s)
 - 5) tax map and lot number
 - 6) plan date and revision dates;
6. a letter of authorization from the owner, if the applicant is not the owner.

B. The plat shall show the following information:

1. Proposed subdivision 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; 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 Section VII).
- 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, and/or Town Conservation Commission.
- 6) Approval for municipal water/sewer connections.
- 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, 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.

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

Impact Criteria shall include, but not be limited to, the following items. 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.

A. Residential Development: Proposals for lots or dwellings that would increase the existing housing stock of the town by more than 25%.

B. Commercial Development: Proposals for new or expanded space of 50,000 square feet or greater.

C. Industrial Development: Proposals for new or expanded space of 100,000 square feet or greater.

D. Other Factors to be Considered:

1. Proximity to other municipal boundaries.
2. Traffic impacts on the regional road network.
3. Potential effect on groundwater, surface water and wetlands that transcend municipal boundaries.
4. The potential to disturb or destroy a significant or important natural environment or habitat.
5. The necessity for shared public facilities such as schools or solid waste disposal.
6. Anticipated emissions such as light, noise, smoke, odors, or particulates.
7. The potential for accidents that would require evacuation of a large area.
8. The generation and/or use of any hazardous materials.

NOTE: Some Regional Planning Commissions in New Hampshire have developed Regional Impact Criteria, with help and input from communities in their region. Contact our Office or your Regional Planning Commission for more information.

APPENDIX F

PROCEDURE FOR APPLICATION REVIEW

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

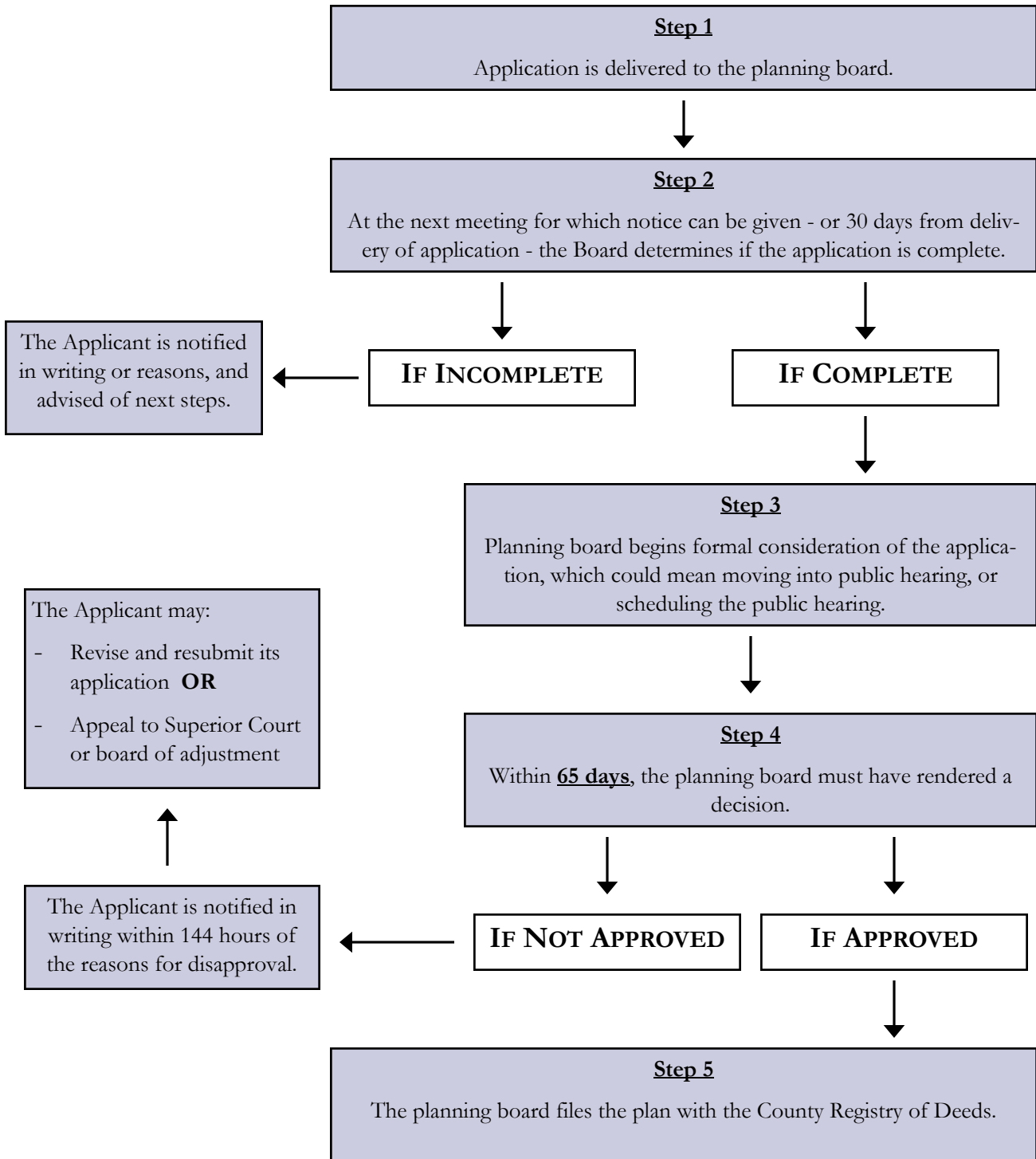
Planning board notifies abutters and the public 10 days prior to the public meeting at which the proposal will be discussed.



Step 3

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

FINAL APPLICATION



Note: For a minor or technical subdivision, the public hearing may take place on the same evening as the vote to accept the application as complete, provided the notice has advised of the possibility.