

*2020 Land Use Law Conference*

*Planning Board Basics Part 2:  
Board Organization, Plat &  
Plan Review, Hearings,  
Decisions*


**Presented by:**

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1

**Planning Board  
Basic Organization**



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

2

## Alternates – RSA 673:6

- ▶ Appointed Planning Board – Town Meeting can authorize 5 alternates
- ▶ Elected Planning Board may appoint 5 alternates
- ▶ Ex-Officio alternate appointed by city council, town council or select board
- ▶ Alternates may participate as non-voting members
- ▶ Chair designates alternate when regular member absent or is disqualified. RSA 673:11
- ▶ Only the Ex-Officio alternate may serve for the Ex-Officio member.

3



Preliminary  
Review:

Conceptual  
consultation

Design  
review

4

4

## Formal Application, RSA 676:4, I



Completed application.



Regulations specify what is completed application.



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



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



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

5

## Timeline for Decision, RSA 676:4, I

Preliminary Consultation No Set Time Limit

Application submitted 21 days before acceptance at meeting

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

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

Issue written decision within 5 business days

6

## Alternative Site Plan Approval and Review Procedures

- ▶ The town meeting or town or city council may authorize the planning board to delegate its site review powers for minor site plans to a committee of technically qualified administrators. RSA 674:43, III.
- ▶ Establish Technical Review Group to provide advice to planning board applicants on their proposed projects.
- ▶ City Council or planning board establish thresholds based on the size of a project or a tract below which site plan review shall not be required. RSA 674:43, IV

7

## Acceptance Vesting RSA 676:12, VI

- ▶ No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this paragraph shall also apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.

8

DEVELOPMENTS OF REGIONAL IMPACT  
DRI DECISION PROCESS - RSA 36:54 - :57

Is it a DRI? Use RSA 36:55.I-VI (may include but not limited to):

- Relative size or number of dwelling units as compared with existing stock.
- Proximity to the borders of a neighboring community.\*
- Transportation networks.
- Anticipated emissions such as light, noise, smoke, odors, or particles.
- Proximity to aquifers or surface waters which transcend municipal boundaries.
- Shared facilities such as schools and solid waste disposal facilities

If voted NO, not a DRI, proceed with application

If voted YES, considered a DRI then:

- ✓ Stop reviewing application, continue acceptance to next meeting
- ✓ Notice RPC and abutting town by certified mail, send minutes
- ✓ Resume consideration at next meeting with RPC and abutting  
Towns deemed to be abutters

9



**Only One Bite of the Apple**

10



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

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



11

### **Waiver of Regulations: RSA 674:36, II (n) - RSA 674:44, III (e)**

- ▶ The basis for any waiver granted by the planning board shall be recorded in the minutes of the board.
- ▶ The planning board may only grant a waiver if the board finds, by majority vote, that:
  - (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations;
  - or**
  - (2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

12

## Public Hearing Procedures



- ▶ Impartially follow rules of procedure
- ▶ Site visits are public meetings
- ▶ Riggins Rules

13

## Public Participation at Hearings - RSA 676:4, I (e)

- ▶ “At the hearing, any applicant, abutter, holder of conservation, preservation, or agricultural preservation restriction, 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 subdivision regulations or the board at each hearing.”

14

## Deliberation & Weighing the Evidence



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

15

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

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

16



## Degree of Discretion

- ▶ *Summa Humma v. Town of Tilton*, planning board limited the height of a flagpole.
- ▶ Owner argued there was no local ordinance that prohibited his proposed 90-foot-tall flagpole.
- ▶ Where the role of site plan review is to ensure that uses permitted by the zoning ordinance are appropriately designed and developed, restricting the board's authority to the specific limitations imposed by ordinances and statutes would render the site plan review process a mechanical exercise.
- ▶ The planning board properly exercised its authority to impose conditions that are reasonably related to the purposes set forth in the site plan regulations.

17

## Three Ponds Resort, LLC v. Town of Milton

- ▶ The Supreme Court distinguished *Condos East* and *Continental Paving* ruling that the ZBA was entitled to question and reject the conclusions of the expert's traffic assessment by relying on objective facts provided through the testimony of town residents and the personal knowledge of board members
- ▶ Critical examination of the methodology of an expert traffic report, combined with direct evidence of objective evidence provided by abutters, residents and board members can support a land use board's decision to reject the conclusions of expert testimony and reports.

18

## Written Notice of Decision



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

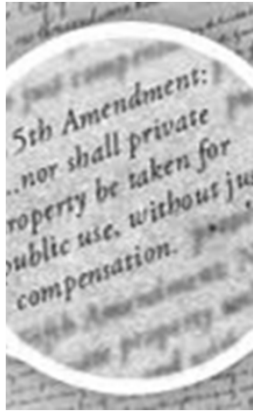
19

## Conditional Approval

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

20

## **“Grandfather Rights”**



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

21

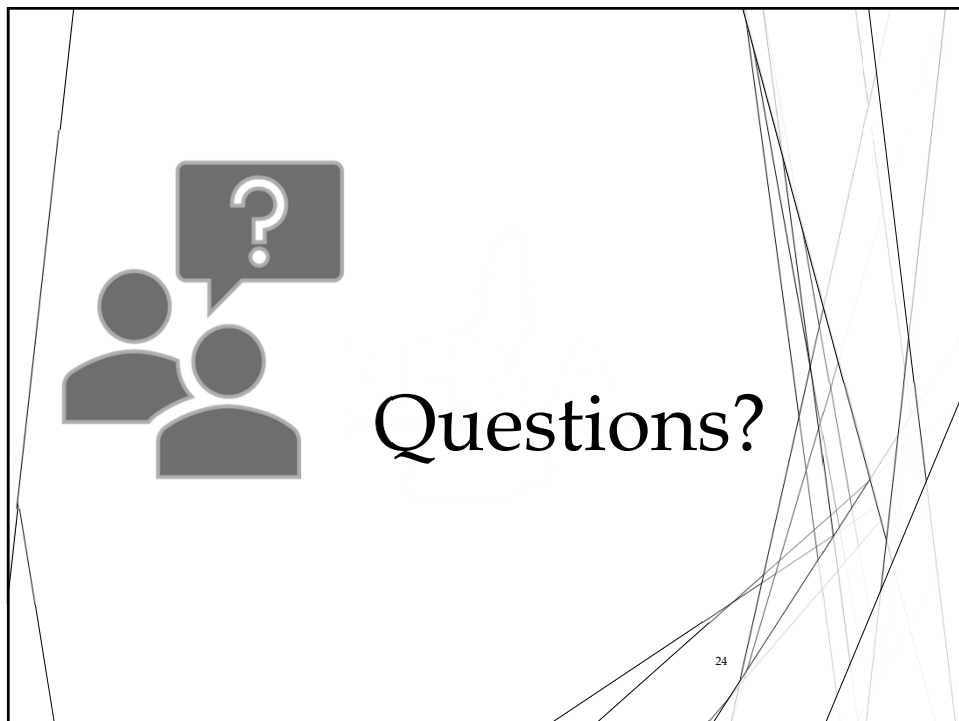
## **Housing Appeals Board**

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

22



23



24