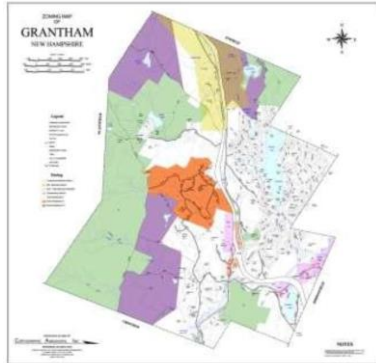


# 2019 Webinar Series



## *ZBA Basics in New Hampshire*

Presented by:

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

August 14, 2019

# Our Presenters



*Stephen Buckley*  
*Legal Services Counsel*

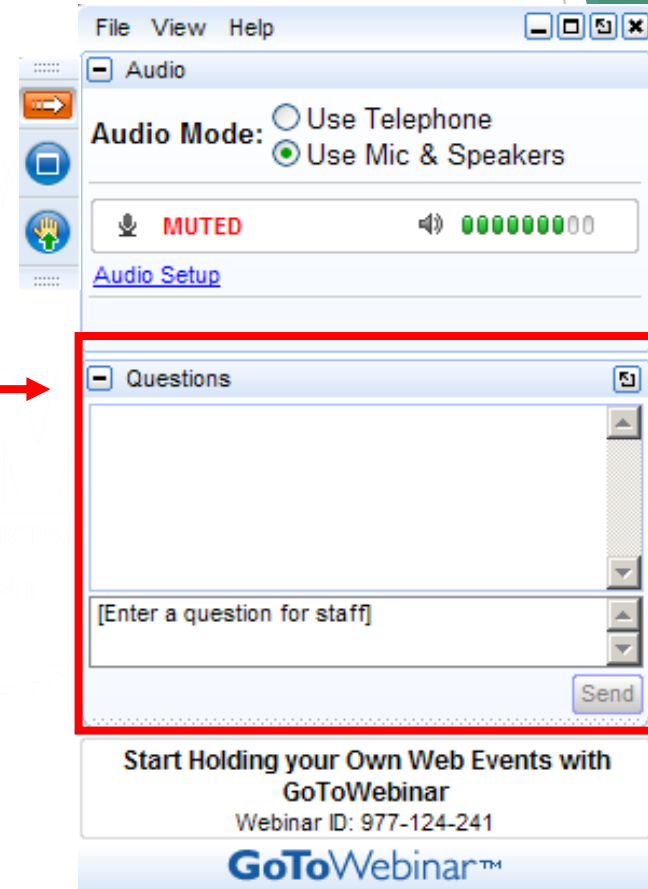


*Natch Greyes*  
*Municipal Services Counsel*

# How to Participate Today



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



# Today's Presentation

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ZBA Basics

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Holding the hearing & making the decision

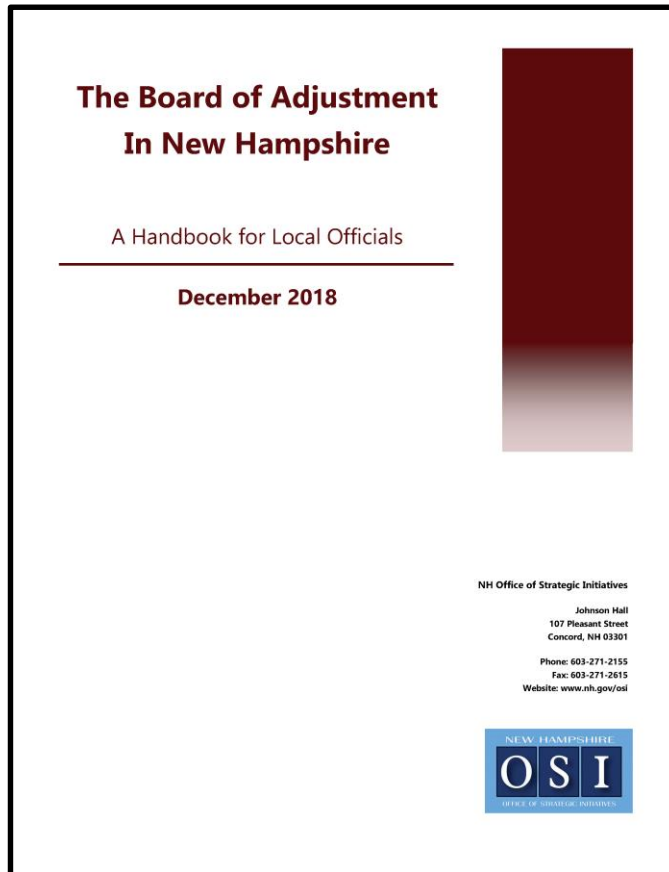
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Special Exceptions & variances

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Rehearings

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



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

# What is the role of the ZBA?

Safety valve

Quasi-Judicial

No enforcement authority

Obligation to assist public  
(reasonable)

Rules of procedure

No requirement for monthly  
meeting

# What's the ZBA's jurisdiction?

- RSA 674:33:
  - Administrative appeals (RSA 674:33 & 676:5)
  - Variances
  - Special Exceptions
- RSA 674:33-a: Equitable waivers of dimensional requirements
- RSA 674:41, II: Special waiver, building on Class VI/private roads
- RSA 674:32-c, II: Special waiver, agricultural uses
- Variances for disabled, RSA 674:33, V
- RSA 236:115: Certificates of approval, junkyards
- Often serves as building code board of appeals



# Membership



- ▶ 5 Members
  - ▶ 3 Year, Staggered Terms
  - ▶ Elected or Appointed?
    - ▶ Elected By Town Meeting
    - ▶ Appointed by Select Board
- ▶ Up-to 5 Alternates
  - ▶ Elected Board?
    - ▶ Appoints Own Alternates
    - ▶ Up to 5 Alternates
    - ▶ No Town Meeting Approval Required
  - ▶ Appointed Board?
    - ▶ Requires Town Meeting Approval for Existence and Number
    - ▶ Appointed by Select Board
- ▶ Select Board member as ex-officio





**POP QUIZ**

# Pop Quiz



- ▶ An alternate takes the place of a absent regular member but the hearing is not completed and continued to another day.
  - ▶ Where the regular member is ready to participate at the continued hearing, who is seated, the member or the alternate?
    - ▶ A. The full member must get his/her seat back.
    - ▶ B. The full member should defer to the alternate.
    - ▶ C. The alternate must hear the rest of the case.
    - ▶ D. None of the above.

# Appeals to the ZBA



RSA 676:5



ZBA hears appeals, per RSA 674:33



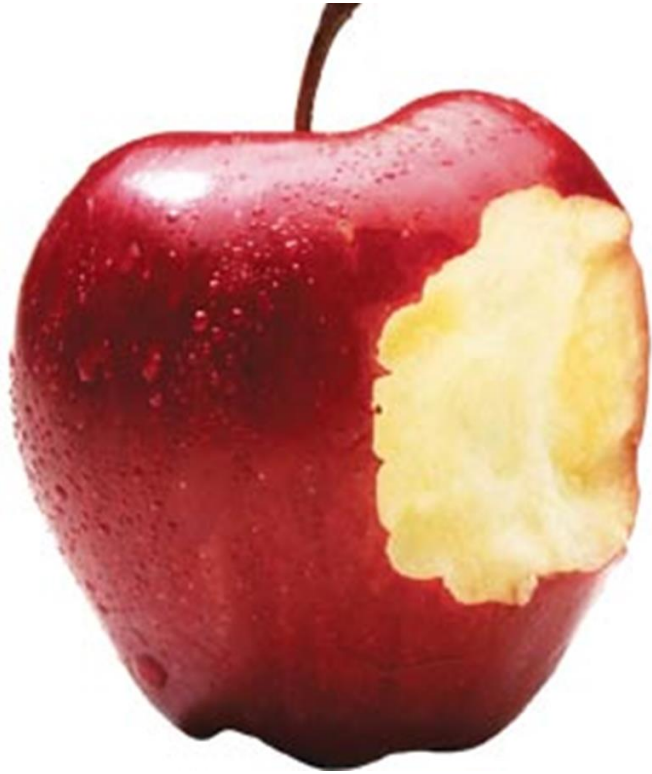
Heard within reasonable time, per  
ZBA rules



ZBA may impose reasonable fees



ZBA may require applicant to  
reimburse for third party review &  
consultation



“One bite  
at the  
apple”



Appeal to the board within a reasonable time (in your rules, RSA 676:5)



Hearing within 45 days



Notice to affected persons, RSA 676:7

Public Notice: 5 days  
Individual Notice  
Continuing the hearing



Opportunity to be heard, RSA 676:7

Certain individuals must be heard  
Other may be heard



Decision based on facts and evidence, RSA 674:33, 91-A



Decision by impartial tribunal, RSA 673:14



Written decision with reasons, RSA 676:3

# The Evidence

## What does the board do during the hearing?

- Collect evidence and determine the facts
- Apply legal tests (e.g., the variance criteria)
- Develop a record for court review

## Board has considerable discretion to choose between competing expert opinions:

- General studies and articles may not be enough to contradict specific expert opinion
- Board may question expert's qualifications, methodology, etc.
- Board may rely on personal knowledge of the area
- BUT uncontradicted expert testimony overcomes general member knowledge

All land use boards may hire consultants, RSA 673:16

ZBA may ask applicants to pay for special investigative Studies

# The Decision, RSA 674:33 & 676:3



3 MEMBERS MUST  
CONCUR



**NEW:** MUST USE  
ONE CONSISTENT  
VOTING METHOD,  
RSA 674:33, I(C)



DECISION MUST  
BE IN WRITING



STATE REASONS



CONDITIONS?



5 BUSINESS DAYS

# Special Exceptions

- ▶ Permission to do something zoning ordinance permits under specific circumstances
- ▶ Must be in zoning ordinance!

# Variances

- ▶ Permission to do something not permitted by zoning ordinance
- ▶ Five criteria, RSA 674:33, I



# Variance Criteria 1 & 2



The variance will not be contrary to the public interest.



The spirit of the ordinance is observed.

# Variance Criteria 3



Substantial justice  
is done.



→ Loss to individual  
outweighed by gain  
to general public?

# Variance Criteria 4

The values of surrounding properties are not diminished.

- Experts
- Residents
- Board member knowledge

# Variance Criteria 5

Literal enforcement of the zoning ordinance would result in an unnecessary hardship.

→ Two ways to establish unnecessary hardship

No fair & substantial relationship between public purposes of ordinance provision and the specific application AND proposed use is a reasonable one.

The property cannot be reasonably used in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of it.

# Time for exercising variances and special exceptions



2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, . . .



RSA 674:33, I-a\*



\*Amended again in 2018

# Rehearings, RSA 677:2



Motion must be filed within 30 days



ZBA may even consider its own decision within time period



Hold meeting to determine whether to grant rehearing



Grant rehearing when board committed technical error or there is new evidence that was not available at the time of the first hearing



If rehearing is granted, may consider certain issue(s) or rehear entire case

# Beyond the Rehearing



Affected party with standing may appeal to Superior Court within 30 days, RSA 677:4



Be sure to compile and preserve “the record” as completely as possible.



If an appeal is filed, the local governing body will manage the litigation with the municipal attorney

# Upcoming Webinars & Workshops





# Upcoming Webinars & Workshops



[nhmainfo@nhmunicipal.org](mailto:nhmainfo@nhmunicipal.org) / 800.852.3358 / [www.nhmunicipal.org](http://www.nhmunicipal.org)

# Upcoming Webinars & Workshops





# Upcoming Webinars & Workshops



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## 2019 Budget & Finance Workshops

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



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



### PROGRAM AGENDA

#### Fundamentals of the Municipal Budget Process

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

*Presented By: NHMA Attorneys*

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

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

*Presented By: NHMA Attorneys and Government Finance Advisor*

#### Budget Pitfalls to Avoid

The local budget process in New Hampshire involves much more than just balancing the numbers, and nothing adds more frustration to the process than a subsequent legal challenge or a "disallowance" by the N.H. Department of Revenue Administration. In this session, key legal requirements for successful budget adoption will be discussed along with examples of common mistakes to avoid.

*Presented By: Natch Greyes, NHMA Municipal Service Counsel  
Jamie Dow, Department of Revenue Administration, Municipal Accounts Auditor*

#### Property Taxes and State Aid to Municipalities

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

*Presented By: Barbara Reid, NHMA Government Finance Advisor*

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

Questions? Call 800.852.3358, ext. 3350, or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)

Register online at [www.nhmunicipal.org](http://www.nhmunicipal.org) under Calendar of Events



# Upcoming Webinars & Workshops



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

## Fall 2019 Land Use Law Conference

(formerly known as the Municipal Law Lecture Series)

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

**The Legal Authority of a Planning Board in New Hampshire**  
*Laura Spector-Morgan, Esquire, Mitchell Municipal Group, P.A.*

This session is for planning board members who want a refresher course on the legal authority of the Planning Board in New Hampshire. Topics for discussion include Subdivision and Site Plan Review, Exoavations, Innovative Land Use under RSA 674:21, Capital Improvement Planning, Master Plans and more.

**Planning Board Procedural Basics**  
*Stephen C. Buckley, Legal Services Counsel, NH Municipal Association*

This session is for planning board members who want a refresher course on procedural basics. Topics for discussion include what is a completed application, the timeline for planning board review, conducting meetings and public hearings, the use of third-party consultants, the zoning amendment process, off-site exactions, conflicts of interests, the Right-to-Know law and more.

**Roles and Responsibilities of the Zoning Board of Adjustment**  
*Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella PLLC, Meredith, NH*

This session will provide a detailed look at the statutory responsibilities of the ZBA including appeals of administrative decisions, special exceptions, and variances. This session will also provide an in-depth discussion of how the case law interprets the five variance criteria. Time will be devoted to participant questions.

**ZBA Decision Making Process**  
*Christine Fillmore, Esq., Drummond Woodsum, Manchester, NH*  
*Matthew Serge, Esq., Drummond Woodsum, Manchester, NH*

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

**Legal Update**  
*Benjamin D. Frost, Esq., AICP, New Hampshire Housing, Bedford, NH*

This session will review recent New Hampshire Supreme Court decisions involving land use issues and the impact they have on municipal planning and zoning. Recently enacted legislation that affects the responsibilities and authority of municipal planning and zoning boards will also be discussed.

**Land Use Board Boot Camp**  
*Tim Corwin, Esq., AICP, Senior Planner, Lebanon, NH*  
*Shawn Tanguay, Esq., Drummond Woodsum, Manchester, NH*

Appropriate for beginning members, seasoned veterans, as well as land use administrators, this session will provide an overview on the mechanics of a land use board meeting. Discussion will touch on requirements for legal notice, meeting procedure and conduct, conflicts of interest, Right to Know issues, and more. The session will conclude with Q&A.

Cost is \$100 and includes continental breakfast, lunch, and program materials

Questions? Call 800.852.3358 or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)

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# Upcoming Webinars & Workshops



## NHMA's 78th Annual Conference and Exhibition

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

### Who Should Attend?

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

# Working Better Together

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

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

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



### Conference Sessions Include:

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

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

*Registration to open in early September.*

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

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

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

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

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*THANK YOU for  
tuning in to our  
webinar!*

The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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