

# **2023 NHMA LAND USE LAW CONFERENCE October 14, 2023**

## ***Planning Board Procedures and Policies***

**Stephanie N. Verdile, Principal Planner  
Office of Planning and Development**

**603-271-1765**

**[Stephanie.n.Verdile@livefree.nh.gov](mailto:Stephanie.n.Verdile@livefree.nh.gov)**

# NH Department of Business and Economic Affairs

## Office of Planning and Development Overview

Effective July 2021 – Planning Division of NH Office of Strategic Initiatives was transferred to the Department of Business and Economic Affairs

NH Department of Business and Economic Affairs	
• Division of Economic Development	Initiatives:
• Division of Travel and Tourism	• Office of Broadband Initiatives
• Bureau of Visitor Services	• InvestNH (Housing Initiative)
• Office of Workforce Opportunity	
• Office of Recreation Outdoor Industry Development	
• Office of Planning and Development	

# **NH Department of Business and Economic Affairs Office of Planning and Development Staff**

- **Municipal and Regional Assistance Program**
  - Stephanie N. Verdile, Principal Planner
  - Noah Hodgetts, Principal Planner
  - Alvina Snegach, Assistant Planner
- **Floodplain Management Program (FEMA)**
  - Katie Paight, Principal Planner
- **State Data Center (U.S. Census Bureau) and  
Geographic Information System (NH GRANIT)**
  - Ken Gallager, Principal Planner

# Municipal and Regional Assistance Program

- Provide technical assistance on planning and zoning regulations, processes, boards, and land use topics.
- Provide training for planning and zoning board members (**RSA 673:3-a**) through an annual Planning and Zoning conference for municipalities on planning, land use, and zoning topics.
  - PLAN Webinars and coming soon, “TRAIN” Videos **OPD Website**
  - **2022** - Developed standard self-training materials and corresponding tests **for zoning boards of adjustment and planning boards** which shall be provided to members free of charge.
- Conduct annual updates to OPD’s **Planning Board and Zoning Board of Adjustment handbooks.**
- Conduct an annual survey to municipalities regarding their land use regulations and maintenance of a central file of local land use regulations pursuant to **RSA 675:9**



# Floodplain Management Program

- State coordinating agency for FEMA's National Flood Insurance Program (NFIP) since 2004
- **220 communities participate in the NFIP**
- OPD receives annual grant from FEMA to administer NFIP program for NH.
  - Provide technical assistance on floodplain regulations, floodplain mapping and flood insurance
  - Provide outreach and training on floodplain management
  - Assist and monitor communities that participate in the program.
  - Provide post-disaster assistance
- **Flooding is #1 natural disaster in NH (flash flooding, coastal and inland flooding, ice jam flooding, hurricanes/tropical storm**



# State Data Center

- NH's State Data Center agency since 1982; partner with U.S. Census Bureau
- Since 1968, RSA 78-A:25 directs OPD to estimate annually the resident population for all cities and towns of the state as of July 1 of the preceding year and shall certify the same to the state treasurer on or before August 19 of each year.
- Since 1970s, NH State Data Center conducts an annual survey of municipalities on residential building permit data and each year publishes the
- *Current Estimates and Trends in NH's Housing Supply.*

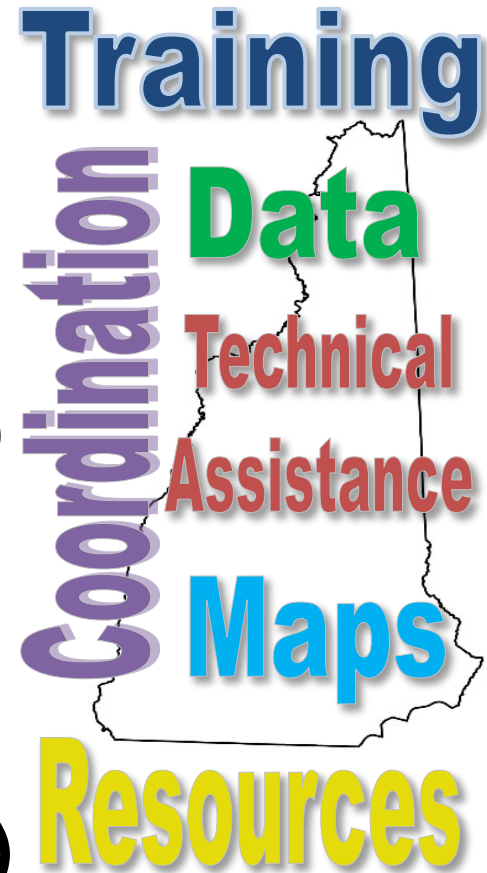
## New Releases:

- 2022 Population Estimates
- 2020-2050 – Population Projections



# Resources

- OPD web site
- Flood Lines quarterly newsletter(600+ subscribers)
- Plan-Link listserv (600+ subscribers)
- Planning News (every Friday)



# Agenda

- Planning Board Organization
- Rules of Procedure
- Planning Board Application processes
- Purpose and need for Checklists and Waivers
- What about site walks?
- Third Party Review
- Technical Review Committee
- Zoning Amendments
- Board member responsibilities
- Q&A



# Planning Process

Create Planning Board(673:2)  
-Elect Officers (673:8)

Set Bylaws/  
Rules Of Procedure(676:1)

Adopt Master Plan(674:2)  
(674:3) (674:4)

Capital Improvement  
Program(674:5-8)

Impact  
Fees(674:21)

GMO(674:22)

Zoning  
Ordinance  
(674:18)

Zoning Board  
of Adjustment  
(673:3)

Subdivision  
Regulations  
(674:35)

Site Plan  
Regulations  
(674:43)

# Rules of Procedure

## **RSA 676:1:**

Board **MUST** Adopt Rules of Procedure

“concerning the method of conducting its business.”

- Outline Method of Conducting Business
  - Do not use Robert’s Rules
  - Days and times of meetings
  - Order of business
- Conduct at meetings
- Rules for Officers, Members and Alternates i.e., absenteeism, discipline, recusals, removal of members
- Rules the board must follow for applications, decisions, etc.
- Be available to the public

## **The Planning Board in NH**

# The Planning Board Duties

## Non-Regulatory-

### Master Plan

- PB drafts and adopts
- SHALL include Vision and Land Use Chapters

### Zoning Amendments-

- ▶ Reviews and drafts proposals based upon needs
- ▶ Holds a public hearing to review feedback on proposed ordinance or amendments
- ▶ Vote to send the ordinance or amendment to the ballot (part of Town Meeting process)
  - Capital Improvement Committee
    - Creation, maintenance, and amendments to the CIP then lies with the Planning Board or a CIP Committee.

## Regulatory-

- ▶ Subdivision Review(674:35)
- ▶ Site Plan Review(674:43)
- ▶ Off-site Improvement Exaction for s/p and sub approvals
- ▶ Earth Excavations-serve as “Regulator”(155:E)
- ▶ Acceptance of Streets(674:40)
- ▶ Construction on Class VI or Private Rds.(674:41)
- ▶ Scenic Road for utilities or road maintenance (231:157-158)
- ▶ Driveway Regulations(236:16)
- ▶ Innovative Land Use Controls (674:21)

# Planning Board Application Process 676:4

1. Application submitted to the planning board according to the board's meeting and deadline schedule or at a minimum of 21 days before a public hearing.
2. 676:4.I(b) the planning board SHALL specify by regulation (*674:36 Subdivision/ 674:44 Site Plan*) what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.
3. A completed application means that sufficient information is included to allow the board to proceed with consideration and make an informed decision.
  - Create and utilize “Checklists”

# Planning Board Application Process Continued

1. Subdivision Regulations 674:36
  2. Site Plan Regulations 674:44
    - Waivers
    - (674:36.II.n) Subdivisions; (674:44.II.e) Site Plans
- ▶ Applicants must show good cause that strict conformity to the regulations would cause an unnecessary hardship and a waiver would not go against the spirit and intent of the regulations.
  - ▶ Waiver requests should be in writing and should identify the section of the regulation in which the waiver is being requested.
  - ▶ The board should be clear in their reason for granting OR not granting the waiver and ask-
    - ▶ ***“Is there enough information to make an informed decision?” (Yes or No)***
  - ▶ PUT DECISION IN WRITING
  - ▶ Work with the applicant

# Application Process Cont'd

1. If you reject an application as incomplete, state in writing what was missing i.e., fees, plans, and explain what is required in order for the application to BECOME complete.
2. There is no public hearing for incomplete applications. The board should not be allowing any input or discussion on the application. (Check with Town Attorney)
3. Resubmission should include all fees
4. Applications that are not “materially” (significant and/or relevant changes) different or do not comply with regulations (without granted waivers) should be rejected

# Site Walks

- Site walks are public meetings-Post an agenda!
- Minutes must be kept, and the public has the right to attend.
- **The property owner must consent to allow board members and the public to visit the site, if that consent not given, the site visit must be canceled.**
- Individual members could visit sites, but not with other members.

# Third Party Review (RSA 676:4-b)

- Hire experts/engineers to help you
  - large applications, controversial issues, unusual subject matter
  - Get an estimate, establish an applicant-funded escrow (separate account)
- Role of the expert/engineer
  - Work with applicant to develop a plan that complies with the local regs and includes sound planning principles.
  - Provide review on behalf of the municipality
  - Support a basis for approval or denial



# What is a TRC?

- A committee appointed and authorized by the Legislative bodies of the municipality either by the City Council/Town Council or Town Meeting vote.
- Made up of municipal officials, department heads, other board or commission members.
- There is a Chair and Vice-Chair of the TRC.
  - It is an arm of the planning board.
- Legislative bodies determine the type of TRC either with site plan review authority or without review authority.

# Technical Review Committee (TRC)

674:43 Power to Review Site Plans. –

674:43. III The local legislative body of a municipality may by ordinance or resolution 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. This special site review committee may have final authority to approve or disapprove site plans reviewed by it...If a municipality authorizes a site review committee in accordance with this paragraph, the planning board shall adopt or amend its regulations specifying application, acceptance and approval procedures and defining what size and kind of site plans may be reviewed by the site review committee prior to authorizing the committee.

# Why have a TRC?

- Part of the development review process.
  - Saves time and money
- Provide technical and planning assistance to applicants on the development process for better plans and developments.
- Informs all town departments on development projects.
- Create and foster communication and cooperation with the planning board, developers, and municipal departments.

# TRC with Site Plan Approval Authority

- TRC with Approval Authority over Minor Site Plan Review process
  - Planning Board creates criteria/thresholds for what constitutes minor site plans. Can include change of use
- TRC included in either the zoning ordinance or planning board regulations as well as in the site plan review regulations.
- TRC should have same rules as planning board i.e., what a completed application should be, approval process, denials, waivers, rules of procedures meeting dates, application, and review process, etc.

# Benefits of a TRC

- TRC with site plan approval authority:
  - Alleviates the planning board from having to review minor site plans.
  - Streamlines the development process for the applicant.
  - Can save municipality and the developer time and money in the development process.
  - Can provide Conceptual Consultation review input for applicant.

# Benefits of a TRC Cont'd

## TRC with site plan approval authority:

- Alleviates the planning board from having to review minor site plans and changes of use applications
- Streamlines the development process for the applicant
- Can save municipality and the developer time and money in the development process
- Can provide Conceptual Consultation review input for applicant

# Benefits of a TRC Cont'd

- Fosters cooperation and communication with municipal departments over development projects
- Inform departments of large projects
- Can assist departments with budgets and CIP

# Tips for Zoning Amendments

- Review sections that have resulted in multiple variances or special exceptions – coordinate with ZBA/CEO.
- Talk with other municipal boards and staff
- Review Table of Permitted Uses and Definitions. (APA, Dictionary)
- Have a planning board member or staff at polls
- State regulatory changes “As amended” (CSPA, Wetlands, Excavation, etc.)

## **Practice Pointer-utilize a “Housekeeping Clause”**

*The Planning Board has the authority to assign and modify numbering and sections to the Zoning Ordinance provided that no substantive change to the ordinance shall occur as a result of the changes*



# Tips for Zoning Amendments Cont'd

- Start EARLY in the process-in the summer!
- Consider adding Work Sessions to monthly meetings
- Keep a running list of potential amendments all year
- Keep good records of notices and minutes
- Don't propose an amendment that will conflict with other sections of the ZO, the Master Plan, or other land use regulations
- Don't take on too many amendments
- Take advantage of RSA 676:12.
  - The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if-
  - (a)Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and..”

# How to be a good board member

- **DO YOUR HOMEWORK!**

- Be fair and unbiased
- Attend the meetings, be on time, look presentable
- Work with staff on learning ordinances
- Cooperate with other boards
- Be respectful to fellow members and the public
- DO NOT COMMUNICATE VIA EMAIL (RSA 91-A)
- Do not use social media to discuss applications/applicants/decisions/opinions

# How to be a good board member cont'd

- Do not develop or express preconceived opinions about any applications
- Do not abstain-it is your duty as a board member to make decisions. You have been elected/appointed to serve and make decisions.
- Don't be afraid to continue an application for more information/counsel
- Recuse yourself when appropriate (674:14,I)
- Juror Standard (500-A:12 Examination) When to recuse?
  - Expects to gain or lose from the case, financially/personally
  - Is related to any party
  - Has advised or assisted either party
  - Directly or indirectly given or formed an opinion
  - When in doubt-don't sit on an application

# Contact Information

**Stephanie N. Verdile**  
**Principal Planner**

**NH Office of Planning and Development**

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**(603) 271-1765**

# THANK YOU!

## NH Office of Planning and Development

### Contact Information

**Email:** [planning@livefree.nh.gov](mailto:planning@livefree.nh.gov)

**Web Site:**

**[www.nheconomy.com/office-of-planning-and-development](http://www.nheconomy.com/office-of-planning-and-development)**