

Planning for the 21st Century

Stephen Buckley
HAGE HODES PA
1855 Elm Street
Manchester, NH
sbuckley@hagehodes.com
603-668-2222

CONCEPTUAL CONSULTATION

- Conceptual consultation is a non-binding discussion between a project developer and the Planning Board as provided in RSA 676:4 (II).
- NH RSA 676:4 (II)(a) provides that statements made by Planning Board members during conceptual consultation shall not be the basis for disqualifying members or invalidating any action taken.

Technical Review Committee

- Consider requiring preliminary review and consultation, by having all applications go to a technical review committee. Will require Town Meeting action if you wish to require preliminary consultation for all applications. See, RSA 674:35 (I) and RSA 674:43 (I).

Minor Site Plan Approval by Staff

- NH RSA 674:43 (II) Town Meeting can authorize minor site plan review by 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.

Plan Acceptance Procedure Changes

- Amendment to RSA 674:4 (I). An application shall not be considered incomplete solely because it is dependent upon the issuance of permits or approvals from other governmental bodies; however, the planning board may condition final approval upon the receipt of such permits or approvals.

Plan Acceptance – Process and the meaning of “Public Meeting”

- Recommend you listen to project presentation and accept information from abutters
- *DHB v. Pembroke*, 152 NH 314 (2005) 676:4 does not require letting applicant be heard unless bylaws so provide
- Applicant, board questions, abutter input or questions, back to board, vote on acceptance, determine what reports required, set time for site visit

Role of Preliminary Approval

- Planning Board approvals can be complex
- Allows Board to address matters in stages
- Grant waivers and other permissions prior to final approval
- Scales back scope of what has to be considered at time of final approval (or denial)

676:4-b Third Party Review and Inspection.

- Third party review for Planning Board cannot substantially replicate a review by ZBA.
- A planning board approval may require paying cost for third party inspection during the construction process.
- Planning Board shall promptly provide a reasonably detailed accounting of expenses, or corresponding escrow deductions.
- Third party inspector during the construction process shall observe, record, and promptly report any perceived construction defect or deviation from the terms of the approval or approved project plans

Land Use Board Must Have Regulations & Bylaws

- Before the Planning Board can regulate subdivisions or site plans, subdivision regulations must be adopted under RSA 674:36, and site plan regulations must be adopted under RSA 674:44
- RSA 676:1, every local land use board must have bylaws

Meetings/Quorum/Process

- Planning Board must hold meetings once per month. RSA 673:10 (III)
- Quorum is majority of membership of land use board
- Provide for one week prior to meeting information submission deadline
- Mail all received information to board members Friday before meeting

TIMETABLE FOR PLANNING BOARD ACTION

- The Planning Board must consider acceptance of an application at its next regular meeting or within thirty (30) days following the delivery of the application.
- Upon plan acceptance, the Planning Board has sixty-five (65) days to approve or disapprove the plan.
- Board can request extensions of time for consideration from the project proponent, and these requests are generally granted

Site Visits

- Secure permission for attendance by abutters and board members
- Ensure centerline of road or outline of building are staked in field beforehand, including wetlands
- Walk centerline of road with applicant's engineer/surveyor available to explain elements of project and to answer questions
- Let anyone ask questions or offer information
- Record the meeting in minutes of board afterward – Right to Know compliance.

Disqualification of Members

- Must be raised by applicant or other interested party to permit action by member or board (e.g., before hearing or vote). See, *Fox v. Greenland*, 151 NH 600(2004)
- 673:14 permits advisory vote by board, before public hearing, is non-binding, and can only be requested by affected member
- When in doubt, recuse yourself
- Recused members leave the table, better yet, leave the room.

IMPACT FEES/OFFSITE IMPROVMENTS

- Planning Board authority to impose offsite improvement exactions as a condition of subdivision or site plan approval
- Offsite improvements limited to highway, drainage and sewer and water upgrades pertinent to a development, and must only be a fair and proportional share of the costs of the improvements made necessary by the development.
- Impact Fees under RSA 674:21(V) must be assessed by the Planning Board at the time of subdivision or site plan approval

Written Decisions – RSA 676:3(I)

- Must issue written decisions
- If denial of application, land use board must state written reasons for decision
- Solicit proposed conditions of approval from staff, applicant, even abutters and members of public
- Board members must actively participate

Limited Editions v. Hebron, 162 NH 488 (2011)

- Although Court ruled motion made in meeting minutes sufficient written decision, better practice, send letter notice of decision.
- board was not required to assume that state and federal permits would be issued to landowner.
- record supported board's concerns regarding extraordinary length of proposed road at steep pitch with significant curve radius.

Golf Course Investors v. Jaffrey, 161 NH 675 (2010)

- Persons whose property was near but not abutting a proposed development were not entitled to status as an aggrieved party having standing to appeal.
- One of the residents, was cited as an abutter, that two residents live within 1,000 feet and the others live within 2,400 feet from the Lot 8.9, one of the residents participated in the planning board proceedings.

Final Thoughts

- Treat applicants, abutters and members of public like invited guests
- Chairperson is important, but just as important is the active involvement of all board members
- Remember that the energy and attention of volunteer board members is a precious and increasingly scarce resource.