

# Planning Board Member Training

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RYE PLANNING BOARD

APRIL 16, 2024

# Planning Board Purpose

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Oversee and guide the orderly development, growth, and land use within the community;



Ensure adherence to zoning ordinances, comprehensive plans, and local regulations;



Promote sustainable development that balances the preservation of natural resources and wellbeing of the community.

# Legal Responsibilities

- Prepare and Adopt a Master Plan to guide the development of the municipality - RSA 674:2
- Prepare a Capital Improvements Program - 674:5
- Drafting, reviewing, recommending zoning ordinances, regulations & amendments - RSA 675:3
- Subdivision Regulations - 674:36
- Site Plan Regulations - 674:44
- Excavation Regulations - 155-E:1 (III) (a)
- Driveway Regulations – 236:13
- Approve or disapprove plans for subdivision of land and site plan review.

# Ethical Responsibilities

- **Avoid conflicts of interest:**
  - Know when to recuse yourself,
  - Disclose any information that could be perceived as bias.
  - Refrain from ex-parte communications
- **Fair and impartial decision-making:**
  - Listen attentively to all viewpoints presented by residents, developers, and stakeholders.
  - Make decisions based on town regulations and the best interests of the community rather than personal preferences or external pressures.
- **Respect for due process:**
  - Ensure that the applicant receives a fair and thorough review process.
  - Adhere to Rules of Procedure.
- **Professionalism and integrity:**
  - Maintain professionalism and integrity in all interactions, both amongst the board and with the public.
  - Refrain from engaging in personal attacks, conflicts of interest, or unethical behavior that could undermine public trust in the planning process and the integrity of the board.

# Meeting Conduct

# Pre- Meeting

- **Come to meetings prepared** – Review all meeting materials thoroughly prior to each meeting.
- **Seek clarification on agenda items and prepare questions in advance.**
- **Refrain from ex-parte discussions** – Do not discuss a current case with other members, applicants, abutters, neighbors, friends, or relatives outside of the public hearing. Direct all planning board related requests or inquiries to appropriate town staff.

# During the Meeting

- **Remain impartial** – Hear all sides; express your position during deliberation, not during testimony.
- **Participate and Vote** - Each board member should vote yes or no on every motion and rarely if ever abstain (i.e., “acquiesce to the will of the majority”) from voting.
- **Be respectful and formal**– Always address the Chair when you wish to speak, do not interrupt others
- **Adhere to the regulations and Rules of Procedure** – Remain objective; all decisions should be rooted in the regulations

# When to Recuse Yourself

- If you have a direct personal or pecuniary (financial) interest in the outcome of a case that differs from the interest of other citizens (RSA 673:14).
- If you would be disqualified as a juror i.e.,if you:
  - Expect to gain or lose upon the disposition of the case;
  - Are related to either party;
  - Have advised or assisted either party;
  - Have directly or indirectly given his opinion or has formed an opinion;
  - Are employed by or employs any party in the case;
  - Are prejudiced to any degree regarding the case; or
  - Employ any of the counsel appearing in the case in any action then pending in the court.
- Abutting landowners are disqualified from hearing an application. *Totty v. Grantham Planning Board*, 120 N.H. 388 (1980) “*we hold that ownership of land abutting a proposed subdivision by a planning board member presents a conflict of interest and requires that the member be disqualified from voting thereon.*”



# Recusal (cont.)

- Only you can recuse yourself, however the board can take a non-binding vote on the question.
- When in doubt, recuse yourself. Can't serve two masters at one time.
- If you should be disqualified yet participate in the board's decision, you may have tainted the entire decision of the board, and it can be invalidated.

# Z-1 v. City of Manchester (2019)

- *Conditional use permit for gas station convenience store came before the planning board.*
- *After two public hearings but before board deliberation and final decision, two planning board members voiced opposition to the project on social media.*
- *At subsequent meeting, members who voiced their opposition were asked to recuse themselves. They refused and later voted to deny the application.*
- *The application was filed to superior court which vacated the decision and sent the case back to the planning board.*
- ***The court ruled that the member's failure to enter into and participate in deliberations with an open mind threatened the integrity of the deliberative process undermining public trust in the overall function of the planning board.***

# Board Members Serving on Other Boards / Committees

- **Understand Roles and Responsibilities** – Abide by the specific rules and regulations of each board/committee you're serving on.
- **Avoid Ex-Parte Communication with other board/committee members.**
- **Avoid Perceived Conflicts:** Even if there isn't a direct conflict of interest, be mindful of situations that could create the appearance of impropriety. Upholding the public's trust requires not only avoiding actual conflicts but also avoiding situations that could undermine confidence in your impartiality.
- **Disclose potential conflicts and recuse yourself when necessary.**
- **Seek Guidance:** If you're unsure whether a particular situation constitutes a conflict of interest, seek guidance from the town staff. It's better to err on the side of caution and seek clarification than risk breaching ethical standards.

# Right to Know Law (RSA 91-A)

- All meetings of the planning board are subject to New Hampshire's Right to Know Law, RSA 91-A.
- A “meeting” occurs whenever a quorum of board members convenes in person, by phone, e-mail or by any other electronic means to discuss or act upon a matter over which the board has supervision, control, jurisdiction, or advisory power (RSA 91-A:2). ***A discussion alone is enough to make a meeting (even by email); the board does not have to make a decision in order to be involved in a public meeting.***
- ***Public meetings*** require 24-hour notice; minutes must be taken and made available to the public within five business days after the meeting (whether approved or not).
- ***Public hearings*** require 10-day notice to all abutters, minutes must be taken and made available to the public within five business days after the meeting (whether approved or not).

# Planning Board Decisions - Findings of Fact

- RSA 676:3, I requires that the applicant be given a final written decision (commonly referred to as a “Notice of Decision”) that documents the board’s decision to approve or disapprove the application
- In general, the board should be clear with identifying how the application meets (or doesn’t meet) their regulations and checklist requirements when determining the findings of fact.
- The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons for your decision, and (2) the applicant has instructions if they want to try a second time.
- Failure of the board to make specific written findings of fact ***supporting a disapproval*** shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15

# Using Expertise in Decision-Making

- Planning board may engage third party review during site plan/subdivision review process – RSA 676:4-b (engineer, wetland scientist, planner, hydrologist, legal, etc.) Cost falls on applicant.
- Expert review can be basis for approval/denial.
- Must have a reason for rejecting expert opinions (what is lacking in qualifications, methodology, data, conclusions?) (**personal feelings are not enough**)
- Lay opinions and anecdotes don't outweigh uncontroverted expert evidence.  
*Appeal of Town of Windham, No. 2021-0473 (10/4/2022); Trustees of Dartmouth College v. Hanover, 171 N.H. 497 (2018); Condos East Corp. v. Conway, 132 N.H. 341 (1989)*

# Resources and Support

- 2023 Planning Board Handbook
  - [https://www.nheconomy.com/getmedia/96399d2a-fa38-4cac-9fcf-a25002f1fe36/2023-PB-Handbook-FINAL\\_1.pdf](https://www.nheconomy.com/getmedia/96399d2a-fa38-4cac-9fcf-a25002f1fe36/2023-PB-Handbook-FINAL_1.pdf)
- NHOPD Planning and Zoning Training and Webinar Series
  - <https://www.nheconomy.com/office-of-planning-and-development/what-we-do/municipal-and-regional-planning-assistance/osi-planning-and-zoning-training>
- New Hampshire Municipal Association
  - <https://www.nhmunicipal.org/events-training>
- Rockingham Planning Commission
  - <https://www.therpc.org/>
- Rye Planning Board: <https://www.town.rye.nh.us/planning-board>

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