

COPY

LLOYD N. HENDERSON  
ATTORNEY AT LAW  
MAIN STREET  
P. O. BOX 177  
ANTRIM, NEW HAMPSHIRE 03440

TELEPHONE  
603-588-8394

October 25, 1987

Harvey S. Goodwin, Acting Chairman  
Antrim Planning Board  
Elm Avenue  
Antrim, New Hampshire 03440

Re: Planning Board procedures/New Legal Notice

Dear Harvey:

Enclosed please find eleven (11) copies of New Hampshire RSA 676:1--3, which deal with general procedures of Land Use Boards, and RSA 676:4, which deals specifically with the Planning Board's procedure on plats. These statutes include all changes which were in effect as of January 1, 1987.

In order for the Board to be in compliance with RSA 676:4, I have prepared and am enclosing several copies of a new form Notice of Meeting and Public Hearing which should be used with all subdivision applications. The important procedural change is that these Legal Notices must be posted and sent to abutters to notify interested parties of the meeting at which the application for subdivision approval will be formally submitted to and accepted by the Board. It will have been filed by the applicant prior to that meeting, but in order for the Board to start considering it for approval, it needs to be accepted as a "completed application", i. e. one where "sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision" at a meeting which abutters have been notified of and then, following acceptance, a public hearing follows. Although the present Subdivision Regulations do not define or use the term "completed application", as is now required by RSA 676:4, I, (b), Section 3.03 and the Preliminary Layout Checklist following Page 36 in the Regulations could be used by the Board in determining whether or not a "completed application" has been submitted.

Although the Antrim Subdivision Regulations are very comprehensive, they do need some revisions to be consistent with present state law, which has been substantially revised in the past three (3) years. I will be trying to arrange a meeting with Bob Panton when I am in Keene on other matters this Tuesday to discuss this with him, and I hope that he will have a copy of some town's regulations which have been updated to incorporate the current statutory references and requirements, which we can "borrow".

Please feel free to contact me if you have any questions concerning these matters.

Very truly yours,

*Lloyd N. Henderson*

Lloyd N. Henderson

cc: Barbara L. Elia, Secretary

CHAPTER 676

ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

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CROSS REFERENCES

Local land use boards generally, see RSA 678.  
 Ordinance, regulation and code adoption procedures generally, see RSA 675.  
 Rehearing and appeal procedures generally, see RSA 677.

LIBRARY REFERENCES

- West Key Number**  
 Zoning and Planning — 351 et seq., 761 et seq.
- CJS**  
 Zoning and Land Planning §§ 177 et seq., 334 et seq.
- ALR**  
 Right to cross-examination of witnesses in hearings before administrative zoning authorities, 27 ALR2d 1304.

General Provisions

**676:1 Method of Adopting Rules of Procedure.** Every local land use board shall adopt rules of procedure concerning the method of conducting its business. Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with city, town, or village district clerk for public inspection.

HISTORY

Source: 1983, 447:1, eff. Jan. 1, 1984.

CROSS REFERENCES

Meetings and records of boards generally, see RSA 673:10, 17.

ANNOTATIONS UNDER FORMER RSA 81:68

1. Cited  
 Somersworth (1957) 101 NH 111, 134 A2d 700; LaVallee v. Bell (1978) 118 NH 131, 333 A2d 709; Pickering v. Fink (1983) 123 NH (1957) 101 NH 76, 133 A2d 501; Dumais v. Stone v. Gray (1988) 89 NH 483, 300 A 517; Shell Oil Co. v. City of Manchester (1957) 101 NH 76, 133 A2d 501; Dumais v.

676:2

PLANNING AND ZONING

676:2 Joint Meetings and Hearings.

I. An applicant seeking a local permit may petition 2 or more land use boards to hold a joint meeting or hearing when the subject matter of the requested permit is within the responsibilities of those land use boards. Each board shall adopt rules of procedure relative to joint meetings and hearings, and each board shall have the authority on its own initiative to request a joint meeting. Each land use board shall have the discretion as to whether or not to hold a joint meeting with any other land use board. The planning board chair shall chair joint meetings unless the planning board is not involved with the subject matter of the requested permit. In that situation, the appropriate agencies which are involved shall determine which board shall be in charge.

II. Procedures for joint meetings or hearings relating to testimony, notice of hearings, and filing of decisions shall be consistent with the procedures established by this chapter for individual boards.

III. Every local land use board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.

HISTORY

Source. 1983, 447:1, eff. Jan. 1, 1984.

CROSS REFERENCES

Adoption of rules of procedure generally, see RSA 676:1.

Issuance of decision generally, see RSA 676:3.

Meetings and records of boards generally, see RSA 673:10, 17.

Powers of boards as to administration of oaths and compulsion of attendance of witnesses generally, see RSA 673:15.

676:3 Issuance of Decision.

I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval.

II. Whenever a local land use board issues a decision, the decision shall be placed on file in the board's office and shall be made available for public inspection within 72 hours after the decision is made. Boards in towns that do not have an office of the board that has regular business hours shall file copies of their decisions with the town clerk.

HISTORY

Source. 1983, 447:1, eff. Jan. 1, 1984.

CROSS REFERENCES

Issuance of decisions in cases involving joint meetings or hearings, see RSA 676:2.

Maintenance of records of boards generally, see RSA 673:17.

Planning Board

CROSS REFERENCES

Master plans generally, see RSA 674:1 et seq.

Official municipal maps generally, see RSA 674:9 et seq.

ADMINISTRATIVE & ENFORCEMENT PROCEDURES 676:4

Site plan review regulations generally, see RSA 674:43 et seq.  
Subdivision regulation generally, see RSA 674:35 et seq.  
Zoning ordinances generally, see RSA 674:16 et seq.

LIBRARY REFERENCES

West Key Number  
Zoning and Planning - 351 et seq.

ALR

Right to cross-examination of witnesses in hearings before administrative zoning authorities, 27 ALR3d 1304.

CIS  
Zoning and Land Planning §§ 97, 177, 181-3, 185.

All important

676:4 Board's Procedures on Plats.

I. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:

(a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). The applicant shall file the application with the board or its agent at least 15 days prior to the meeting at which the application will be accepted. The application shall include the names and addresses of the applicant and all abutters as indicated in town records not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board.

(c) The board shall begin formal consideration of the application within 30 days after submission of the completed application. The board shall act to approve, conditionally approve as provided in subparagraph (f), or disapprove within 90 days after submission, subject to extension or waiver as provided in subparagraph (f). Upon failure of the board to approve, conditionally approve, or disapprove the application, the applicant may obtain from the selectmen or city council an order directing the board to act within 15 days. Failure of the planning board to act upon such order of the selectmen or city council shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application if the court determines that the proposal complies with existing subdivision regulations and zoning and other ordinances. If the court determines that failure to act within the time specified was the fault of the planning board and was not justified, the court may order the planning board to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order. (Amended 1986, 57:2, eff. July 4, 1986.)

(d) Notice to the applicant, abutters and the public shall be given as follows: The planning board shall notify the abutters and the applicant by certified mail of the date upon which the application will be formally submitted to the board. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication as required by the subdivision regulations. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. For any public hearing on the application, the same notice as required for notice of submission of the application shall be given. If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the planning board to terminate further consideration and to disapprove the plat without a public hearing.

(e) Except as provided in this section, no application may be denied or approved without a public hearing on the application. At the hearing, any applicant, any abutter 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. Public hearings shall not be required, unless specified by the subdivision regulations, when the board is considering or acting upon:

- (1) Minor lot line adjustments or boundary agreements which do not create buildable lots, except that notice to abutters shall be given prior to approval of the application in accordance with subparagraph (d) and any abutter may be heard on the application upon request; or
- (2) Disapprovals of applications based upon failure of the applicant to supply information required by the regulations, including abutters' identification, or failure to meet reasonable deadlines established by the board; or failure to pay costs of notice or other fees required by the board.
- (f) The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application. The applicant may waive the requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.
- (g) Reasonable fees in addition to fees for notice under subparagraph (d) may be imposed by the board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications.
- (h) In case of disapproval of any application submitted to the planning board, the ground for such disapproval shall be adequately stated upon the records of the planning board.

(i) A planning board may grant conditional approval of a plat or application, which approval shall become final without further public hearing, upon certification to the board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Final approval of a plat or application may occur in the foregoing manner only when the conditions are:

- (1) Minor plan changes whether or not imposed by the board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or
- (2) Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the board; or
- (3) Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies.

All other conditions shall require a hearing, and notice as provided in subparagraph (d), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place

II. A planning board may provide for preapplication review of applications and plats by specific regulations subject to the following:

(a) Preliminary conceptual consultation phase. The regulations shall define the limits of preliminary conceptual consultation which shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan. Such discussion may occur without the necessity of giving formal public notice as required under subparagraph (d), but such discussions may occur only at formal meetings of the board.

(b) Design review phase. The board or its designee may engage in non-binding discussions with the applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review phase may proceed only after identification of and notice to abutters and the general public as required by subparagraph (d). Statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken.

(c) The applicant may elect to forego or engage in preapplication review or either phase thereof as provided in subparagraphs (a) and (b). Preapplication review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph (c) shall not apply until formal application is submitted under subparagraph (b). [Amended 1986, 229-2, eff. Jan. 1, 1987.]

III. A planning board may, by adopting regulations, provide for an expedited review and approval for proposals involving minor subdivisions which create not more than 3 lots for building development purposes or for proposals which do not involve creation of lots for building development purposes. Such expedited review may allow submission and approval at one or more board meetings, but no application may be approved without the full notice to the abutters and public required under subparagraph (d). A hearing, with notice as provided in subparagraph (d), shall be held if requested by the applicant or abutters any time prior to approval or disapproval or if the planning board determines to hold a hearing.

IV. Jurisdiction of the courts to review procedural aspects of planning board decisions and actions shall be limited to consideration of compliance with applicable provisions of the constitution, statutes and regulations. The procedural requirements specified in this section are intended to provide fair and reasonable treatment for all parties and persons. The planning board's procedures shall not be subjected to strict scrutiny for technical compliance. Procedural defects shall result in the reversal of a planning board's actions by judicial action only when such defects create serious impairment of opportunity for notice and participation.

HISTORY

Source, 1983, 447-1, 1985, 159-1, eff. Amendments—1985, Paragraph (d), Deleted "Return receipt requested" following "mail" in the first sentence. July 26, 1985.

CROSS REFERENCES

Appeals to boards of adjustment, see RSA 676:6 et seq.

ANNOTATIONS UNDER FORMER RSA 86:23

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1. Construction with other laws

Site plan approvals under former RSA 86:19-a (now covered by RSA 674:43) were governed by this statute regulating the board's procedure for approval of plats. *Carter v. City of Nashua* (1976) 116 NH 466, 862 A2d 191, overruled on other grounds, *Weeks Restaurant Corp. v. City of Dover* (1979) 118 NH 541, 404 A2d 294.

2. Submission of application

Where a landowner submitted a plat at a planning board meeting, the plat did not meet the requirement that lot sizes be shown in square feet, the board refused to accept the plat and the landowner took it away to have the required information added, the plat had not been submitted within the meaning of the statute for purposes of the provision requiring approval or disapproval of the application within 90 days after submission. *Allard v. Thalheimer* (1976) 116 NH 289, 358 A2d 395.

3. Time for action on application—Generally

The statute clearly stated that a town planning board had ninety days to act on any plat submitted to it and was required to state its reason for disapproval upon the record, and if an applicant's filing was improper in form, the board had ninety days to disapprove it and was required to state that reason on the record. *Savage v. Town of Rye* (1980) 120 NH 409, 415 A2d 873.

4.—Effect of revision of application

Revision of a plan subsequent to its submission with an application for subdivision approval could result in a new filing date for purposes of the statutory provision requiring a town planning board to approve or disapprove a subdivision within ninety days of submission of the application. *Savage v. Town of Rye* (1980) 120 NH 409, 415 A2d 873.

5. Proceedings upon failure of board to act on application within limitation period

Where a town planning board failed to approve or disapprove a subdivision application within ninety days of submission of the application, the town was required to certify this failure on the plan, thereby allowing the

applicant to record the subdivision plan at the registry of deeds without written endorsement by the planning board. *Savage v. Town of Rye* (1980) 120 NH 409, 415 A2d 873.

6. Hearings

Where a landowner submitted a site plan for nonresidential use of land to the town zoning board of adjustment and applied for a special exception to the zoning ordinance, the board voted to preliminarily approve the application subject to eleven conditions; and an abutting landowner was not given notice of or an opportunity to be heard at a subsequent compliance hearing at which the board found that all the conditions had been satisfied and signed the site plan, the failure to allow testimony from the abutting landowner on the issue of compliance with the conditions was a serious impairment of the opportunity for participation under this section, for which reversal was the only effective remedy. *Slar Realty, Inc. v. Town of Merrimack* (1984) 125 NH 321, 480 A2d 149.

7. Procedure upon disapproval of application

Subdividers were to receive written reasons for a planning board's disapproval of subdivision plans submitted to the board, and a written record, not limited to the minutes of the planning board meeting, was to exist so that a reviewing authority could hold the board accountable. *Palenau v. Town of Merrimack* (1978) 118 NH 616, 392 A2d 582.

Planning boards were not required to reiterate their reasons for disapproval of a submitted plan that contained the same fundamental defect that proved fatal to the original plan. *Palenau v. Town of Merrimack* (1978) 118 NH 616, 392 A2d 582.

Letters from planning boards notifying developers of the reasons for plan disapproval met the statutory requirements and were "records" within the meaning of the statute. *Palenau v. Town of Merrimack* (1978) 118 NH 616, 392 A2d 582.

Where the planning board wrote a landowner that it would approve the plat if one lot was increased to the minimum size, and the letter stated that eight other lots were under

consideration and demanded an "affirmative response" to the problem of the undersized lot, the board's letter constituted disapproval under the statute. *Allard v. Thalheimer* (1976) 116 NH 289, 358 A2d 395.

8. Cited

*Cited in Hancock v. City of Concord* (1974) 114 NH 404, 322 A2d 605; *Carter v. City of Nashua* (1976) 116 NH 466, 862 A2d 191; *Weeks Restaurant Corp. v. City of Dover* (1979) 118 NH 541, 404 A2d 294; *Dearborn v. Town of Milford* (1980) 120 NH 82, 411 A2d 792.

1132: In re Estate of Sawyich (1980) 120 NH 237, 413 A2d 551; *Torky v. Grantham Planning Board* (1980) 120 NH 988, 415 A2d 697; *Town of Nottingham v. Harvey* (1980) 120 NH 885, 424 A2d 1124; *Barry v. Town of Amherst* (1981) 121 NH 836, 430 A2d 132; *Appeal of Concord Natural Gas Corp.* (1981) 121 NH 885, 433 A2d 1291; *Beck v. Town of Auburn* (1981) 121 NH 996, 487 A2d 288; *Winslow v. Town of Holderness Planning Board* (1984) 125 NH 282, 480 A2d 114; *Irwin Marine, Inc. v. Blizzard, Inc.* (1985) 126 NH 271, 490 A2d 792.

**Amendments—1986.** Paragraph (1c) Chapter 57:2 inserted "conditionally approve as provided in subparagraph (1)" following "approve" in the second sentence and "conditionally approve" following "approve" in the third sentence.

Paragraph (1c) added by ch. 57:1.

Chapter 229:1 deleted "conditionally approved" following "approval of a plat or application" in the introductory clause and "conditions and" preceding "minor plan changes" in clause (1) of the second sentence, substituted "whether or not" for "or conditions or minor plan changes" preceding "imposed by the

board" in clause (1) of the second sentence, and rewrote the third sentence. Paragraph 1c. Amended generally by ch. 229:2.

ANNOTATIONS UNDER FORMER RSA 86:23

**4. Generally.** The statute provided no power for a planning board to enact a subdivision regulation that required automatic approval of an application for a subdivision. *Davis v. Town of Barrington* (1985) 127 NH 202, 497 A2d 1232.

ANTRIM PLANNING BOARD

Antrim, New Hampshire

Notice of Meeting and Public Hearing

The Antrim Planning Board will hold a regular meeting at the Little Town Hall on Thursday, \_\_\_\_\_, 198\_ at 7:30 P. M. One item on the agenda will be the consideration of an Application for Subdivision Approval to be formally submitted to the Board by \_\_\_\_\_ which proposes the subdivision of a \_\_\_\_\_ acre parcel located on \_\_\_\_\_ Road into \_\_\_\_\_ lots. If the Application is accepted by the Board at that time, a public hearing will be held at the same time and place.

All persons interested in the proposed subdivision and wishing to be heard concerning it will be recognized at the above time and place.

Antrim Planning Board  
Barbara L. Elia, Secretary

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