

Planning and Zoning Boards in New Hampshire:

Roles and Responsibilities

Part I: Planning Board Functions

Part II: Processing Land Use
Applications

Part III: Zoning Board Roles
and Responsibilities

Part I:

Planning Board Functions

1. Master Plan (RSA 674:2) - Required
2. Subdivision (RSA 674: 35 & 36)
3. Site Plan Review (RSA 674: 43 & 44)
4. Excavation (RSA 155-E)
5. Driveway Regulation (RSA 236:13)
6. Scenic Roads (RSA 231: 157 – 158)
7. Capital Improvements Program (RSA 674:5)
8. Zoning (RSA 674:16)

1. The Master Plan

The Foundation of Land Use Regulations

“Planning is really hard; especially when it’s about the future.”

Yogi Berra

What is a Master Plan?

- Guide to development
- Planning Board's recommendations for desirable development
- Public participation essential
- Is not a regulatory document
- Should provide the framework for zoning

Master Plan Components

Required (for Master Plan and for Zoning)

- Vision Section
- Land Use Section

Optional

- Transportation
- Community Facilities
- Economic Development
- Natural Resources
- Natural Hazards
- Recreation
- Utility and Public Services
- Cultural and Historic Resources
- Regional Concerns
- Neighborhood Plans
- Community Design
- Housing
- Energy
- Implementation*

How often should a Master Plan be updated?

- RSA 674:3 recommends every 5 to 10 years
- Office of Strategic Initiatives recommends every 5 years
- Rule of thumb:
 - When land use conditions have changed significantly since last update
 - When zoning is being considered that is not consistent with Master Plan Vision*
- Adopted by Planning Board vote

Questions to ask during the process:

1. What kind of town do you want?
2. What DON'T you want?
3. What would your town look like if the current zoning ordinance were fully implemented?



Master Plan Implementation

Implementation

According to RSA 674:2, III, the master plan may include the following sections:

“...(m) An implementation section, which is a long range action program of specific actions, time frames, allocation of responsibility for actions, description of land development regulations to be adopted, and procedures which the municipality may use to monitor and measure the effectiveness of each section of the plan.”

In terms of the recommended implementation section, the following list has been created to help put the new master plan into action. This chapter will facilitate the planning board and the selectboard to oversee the completion of the suggested implementation actions of this master plan. Each of these actions has been assigned a timeline and a responsible party to assist with future evaluation of the progress on these tasks. A chapter reference has also been included to tie these actions back to their corresponding chapters. This section of the master plan is dynamic and should be reviewed and modified annually to measure the progress made on the implementation actions.

<i>Implementation Action</i>	<i>Time Period</i>	<i>Agencies</i>	<i>Chapter Reference</i>
Allow cluster development in all zones in Antrim, particularly in the rural and rural conservation zones.	1-2 years	Planning Board	Chapter III, Natural Resources and Conservation
Actively work with the state and the other organizations involved in the Quabbin to Cardigan initiative to preserve those large, undeveloped areas of Antrim, particularly in the western portion of town.	Ongoing	Selectboard, Conservation Commission; Open Space Committee	Chapter III, Natural Resources and Conservation
Work to carry out the recommendations of the Open Space Committee as adopted by Town Meeting, March 2006.	Ongoing	Selectboard, Conservation Commission; Open Space Committee	Chapter III, Natural Resources and Conservation
Offer incentives in the form of property tax exemptions for residents or businesses who install renewable energy systems such as wind turbines and photovoltaic panels.	1-2 years	Selectboard, Energy Committee, Tax Collector	Chapter IV, Energy Usage and Conservation

Master Plan Resources

PREPARING A MASTER PLAN FOR YOUR COMMUNITY

A Handbook for Planning Board
Members, Planners and
Volunteers



MASTER PLANNING

Spring 2007

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- Primary Data Collection -
The Visioning Process
- Data Collection and
Inventory
- Data Analysis and
Evaluation
- Plan Preparation
- Plan Implementation
- Plan Adoption and Review

*Some Final Pointers on9
Master Plans*

*What Makes a Good9
Master Plan?*

INTRODUCTION

Land is a municipality's most basic resource. The use of land determines to a large extent the character and quality of life within the community. The rate, location and type of growth, and protection of unique features affect not only the municipality's physical appearance but also its need for public services and facilities. A municipality that plans wisely for its land use will be far better equipped to anticipate and deal with future demands and problems. The master plan provides a fundamental planning tool to help a community meet the challenge of making sound decisions related to its development.

The master plan is both a reference and policy document. It contains appropriate maps, charts, and supporting text that presents the recommendations of the planning board and offers guidelines for community decision makers. The plan should be the most complete source of information about current conditions and trends within the municipality. By developing coordinated policies within the master plan and addressing such topics as future development, transportation, environmental protection, community facilities, and fiscal management, the plan should help a community meet change responsibly, guiding its growth in an orderly, constructive manner. As stated in RSA 674:2: "The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection."

Preparation of a master plan is the major responsibility of the planning board (RSA 674:1), and it should serve as an aid to the planning board in the performance of its other duties (RSA 674:2). The board may elect to undertake the job itself or may engage professional assistance in completing some or all of the planning elements.

CONTENT OF THE PLAN

The actual content of a master plan may vary from community to community. The determination of what is needed in the plan should be based in part on past experience, estimates of change in the com-

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Planning Board Regulations: Purpose, Content & Process

- All have a specific purpose and authority
- All have content that is specific to the purpose
- All have in common that they are “regulations” as opposed to zoning
 - Which means that they are adopted and amended by the Planning Board based on authorization,
 - and after a Planning Board Public Hearing
- Key distinction between Zoning and Regulation: Planning Board can waive provisions of Regulations*

2. Subdivision Regulations

- Apply to:
 - Divisions of land into two or more parcels or development sites
 - Boundary Line Adjustments
 - Lot Mergers
 - Condominium development
 - either new construction
 - or conversion of existing construction

Basic Requirements

- Boundary Survey
 - of existing and new lots
- Documentation of Zoning Requirements:
 - Lot Sizes (in square feet and acres)
 - of existing and new lots
 - Building Setbacks*
 - Road Frontage
 - Septic & Wells (if applicable)
 - Wetlands/Shorelands

Typical Subdivision Checklist

Checklist for Major Subdivision Regulations

Per Section V of "Antrim Subdivision & Site Plan Review Regulations"

Applicant: _____

Rev. 8/16/07

Item	Para.	Requirement	Satisfied	Waived	Comments
1	A.2	A written statement of purpose describing the subdivision.			
2	C	A Major Subdivision shall include all subdivisions which create more than two new lots in addition to an existing lot from which the subdivision is made or involves the construction of a road or other improvements. The Board may require additional information as deemed necessary in certain situations and is not limited to only the subdivision requirements listed under C.1.			
3	C.1	Information required for all Major Subdivision follows:			
4	C.1.a	Eight (8) copies of a plan or plat drawn at a scale no greater than 1 inch = 100 feet. A scale of 1" = 50' may be required if all details cannot be shown clearly at a greater scale. All plans shall be 22 x 34 inches. Oversized drawings will not be accepted.			
5	C.1.a(1)	Name & addresses of the person or firm preparing the plan			
6	C.1.a(2)	A vicinity sketch showing the location of the site in relation to the surrounding public street system.			
7	C.1.a(3)	North arrow, scale, date of original drawing and revision block.			
8	C.1.a(4)	Current zoning classification (including overlaying districts, tax map and lot number) of the property and location of any district boundaries if located within the site including the fifty (50) foot intrusion into a less restrictive district.			
9	C.1.a(5)	Property boundary lines, distances and bearings of such plotted to scale.			
10	C.1.a(6)	Names of all current abutting property owners with deed book and page #'s and tax map and lot #'s			
11	C.1.a(7)	Names, location and classification of all abutting streets			
12	C.1.a(8)	Lot number, area of the parcel (in square feet and acres) and street frontage. The Major lot retains the primary lot number. Subdivided lots are numbered -1, -2, etc.			
13	C.1.a(9)	Location of all buffers and setbacks by use of dashed lines			

3. Site Plan Review Regulations

- Apply to:
 - Multi-Family Residential (3 or more units)



- Non-residential Uses



Basic Requirements

- Boundary Survey
 - of existing and new lots (if applicable)
- Documentation of Zoning Requirements:
 - Lot Sizes (in square feet and acres)
 - of existing and new lots (if applicable)
 - Building Setbacks*
 - Road Frontage
 - Septic & Wells (if applicable)
- Items applicable to site plans (because of the type of development):
 - Building plans
 - Parking areas
 - Snow storage
 - Lighting
 - Landscaping
 - Signage
 - Road design
 - Stormwater management
 - Fire safety

Typical Site Plan Review Checklist

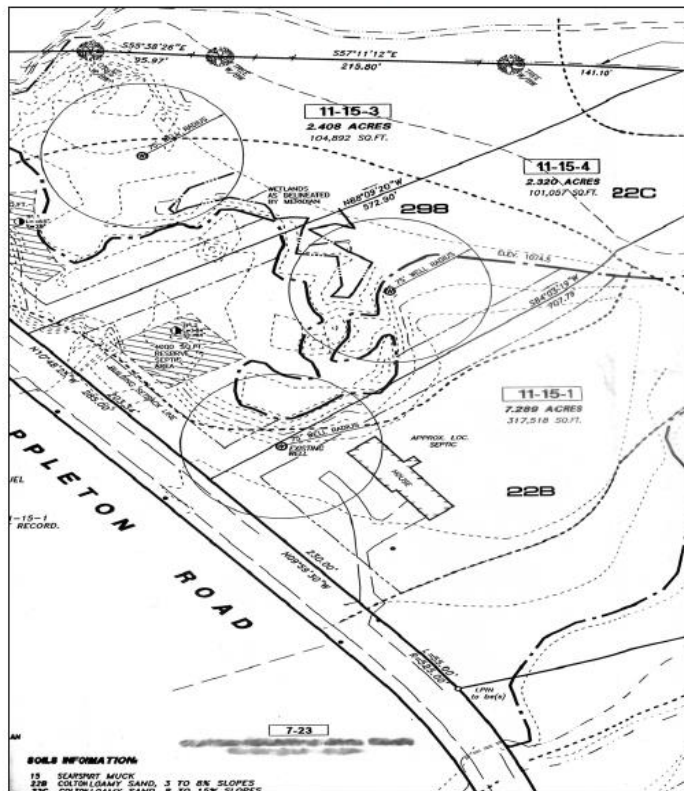
Major Site Plan Review Regulations					
Per Section VI, Para. C of "Antrim Subdivision & Site Plan Review Regulations"					
Applicant: _____					
Revised 8/16/07					
Item	Para.	Requirement	Satisfied	Waived	Comments
1	C	All commercial development and multi-family dwellings other than two family and conversion apartments, whether or not such development includes a subdivision or re-subdivision of the site, and which do not qualify for a Minor Site Plan Review (> 600 sq. ft.), shall include and be in full compliance with the requirements for a Major Site Plan Review listed below.			
2	C.1.(a)	Fully executed and signed copies of the Major Site Plan Review Application, giving the location of the site, zoning district, tax map number, lot number, parcel number (s), name and addresses of the owners of record, of the applicant, of the persons or firm preparing address labels, along with the names of all adjoining streets.			
3	C.1.(b)	A written statement describing the purpose of the proposed project, giving sufficient detail to determine compliance with the provisions of Site Plan Review Regulations and the Town Ordinances and Regulations in effect.			
4	C.3	Eight (8) copies of a plan or plat drawn at a scale no greater than 1 inch = 100 feet. A scale of 1" = 50' may be required if all details cannot be shown clearly at a greater scale. All plans shall be 22 x 34 inches. Oversized drawings will not be accepted.			
5	C.3.(a)	Existing and Data Information:			
6	C.3.a(1)	Name & addresses of the person or firm preparing the plan			
7	C.3.a(2)	A vicinity sketch showing the location of the site in relation to the surrounding public street system			
8	C.3.a(3)	North arrow, scale, date of original drawing and revision block			
9	C.3.a(4)	Current zoning classification (including overlaying districts, tax map and lot number) of the property and location of any district boundaries if located within the site including the fifty (50) foot intrusion into a less restrictive district.			

Adoption and Amendment Process – Subdivision and Site Plan Review

- Planning Board holds public hearing on the Regulation (or amendment)
- Public Hearing requires 10-day notification in the newspaper and two public places
- Approval is by majority vote of the Board, which is
 - 3 members if a 5-member board
 - 4 members if a 7-member board

Subdivision/Site Plan Review Resources

SUBDIVISION AND SITE PLAN REVIEW HANDBOOK



PREPARED BY THE SOUTHWEST REGION PLANNING COMMISSION
DECEMBER 2001

MODEL NON-RESIDENTIAL SITE PLAN REGULATIONS

JUNE 2002



Prepared by the



with funding by New Hampshire Department of Environmental Services

This document was prepared by the Nashua Regional Planning Commission with financial assistance from the New Hampshire Department of Environmental Services. The contents of this document reflect the views of the Nashua Regional Planning Commission which is solely responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views of the above agencies. This document does not constitute a standard, specification or regulation.

4. Excavation Regulations (RSA 155-E)

- Law requires Planning Board to regulate*
- Intent is to locally administer sand and gravel excavation operations
- Primary issues:
 - Protection of aquifers
 - Size of pit that can be open at any one time
 - Management of fuel, etc. from equipment
 - Distance from abutters
 - Noise, dust, etc.
 - Hours of operation
 - Impact on roads
 - Reclamation



- RSA 155-E sets forth process for permitting
 - Provides for certain exemptions for a permit
- All excavations must follow standards for operating and for reclaiming excavation sites
- Statute authorizes Planning Board to adopt regulations
- Board is responsible for regulating, whether or not regulations have been adopted

Some Issues to Consider

- What is and what is not an excavation?
- How much information should the applicant provide?
- What are reasonable conditions to place on a project?
- What about reclamation?

Process and Administration - Excavation

- Process for adopting and amending regulations same as for Subdivision and Site Plan Review
- Regulations provide framework for processing applications
- Grandfathered operations may require special attention

Excavation Resources

RSA 155-E: THE LAW GOVERNING EARTH EXCAVATIONS

*A HANDBOOK FOR NEW HAMPSHIRE
MUNICIPALITIES*



SOUTHWEST REGION PLANNING COMMISSION
1999



United States
Department of Agriculture
Natural Resources Conservation Service

Technical Note
PM-NH-26
May 1991
Revised April 2000

Gravel Pit and Other Sandy And Droughty Site Renovation Trials and Experiences in New Hampshire

Theodore Kelsey

Natural Resources Conservation Service
(Formerly Soil Conservation Service)
State Office
Durham, New Hampshire



Technical Note
PM-NH-21

Rev April 1991
Rev April 2000

Vegetating

New Hampshire

Sand and Gravel Pits



5. Driveway Regulations

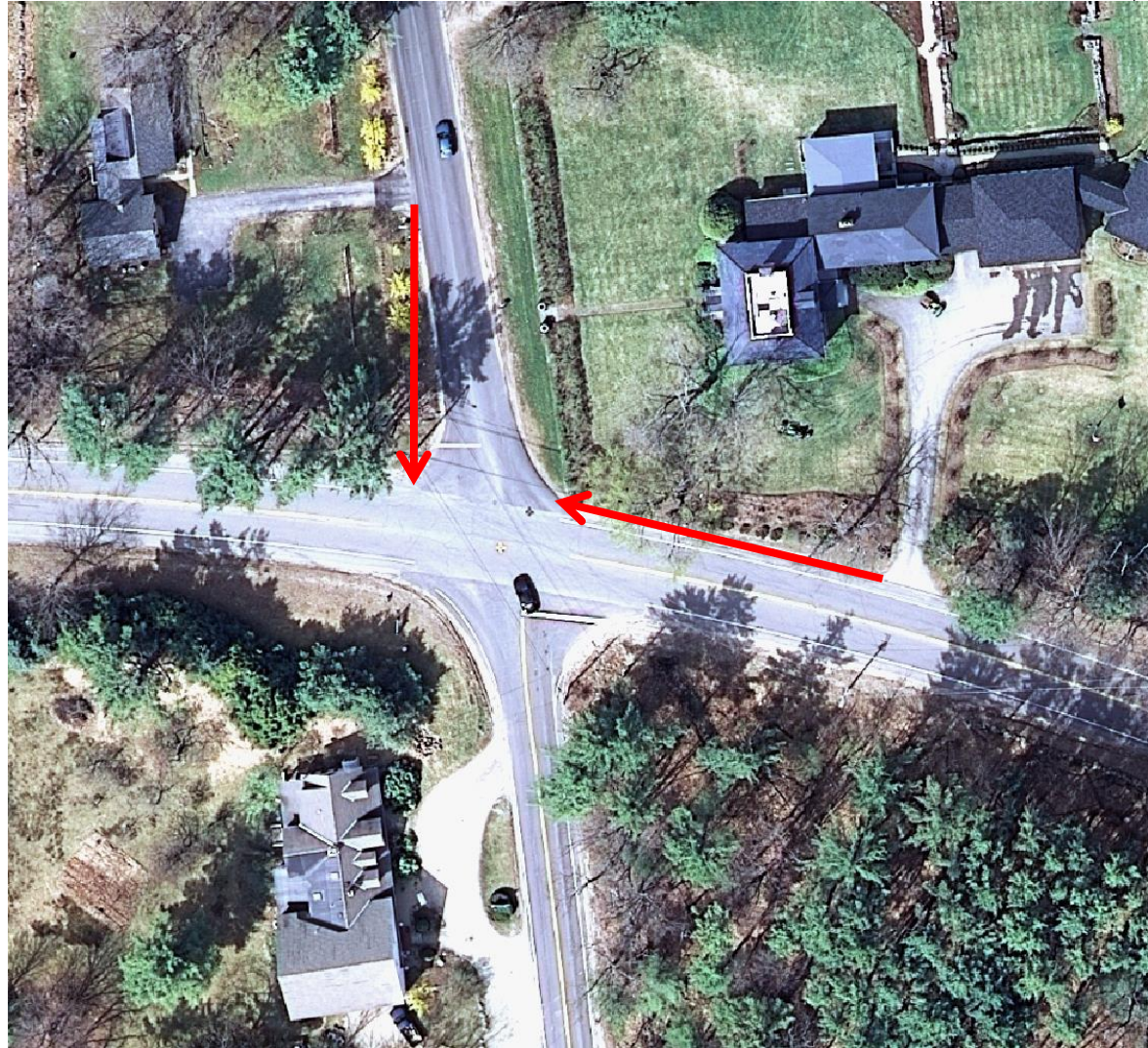
- Statute authorizes Board to adopt and amend regulations for driveways and access points onto town and state roads
- Intention is to assure safe passage for all and no damage to town or state roads



- Why towns choose to regulate driveways. Concerns over various issues such as:
 - Impact on town roads at the juncture
 - Impact on town roads from runoff
 - Steepness, affecting emergency response (and runoff)
 - Width of driveways
 - Length of driveway without a turnout (possible impact on emergency response)
 - Distance from other driveways or roads
 - Sight distance at the road



- Regulations can include standards that address such things as:
 - Width
 - Angle of entry
 - Surfact treatment
 - Vertical clearance
 - Length
 - Passing lanes or turnarounds
 - Slopes
 - Side setbacks
 - Distance from an intersecting road



Process and Administration - Driveways

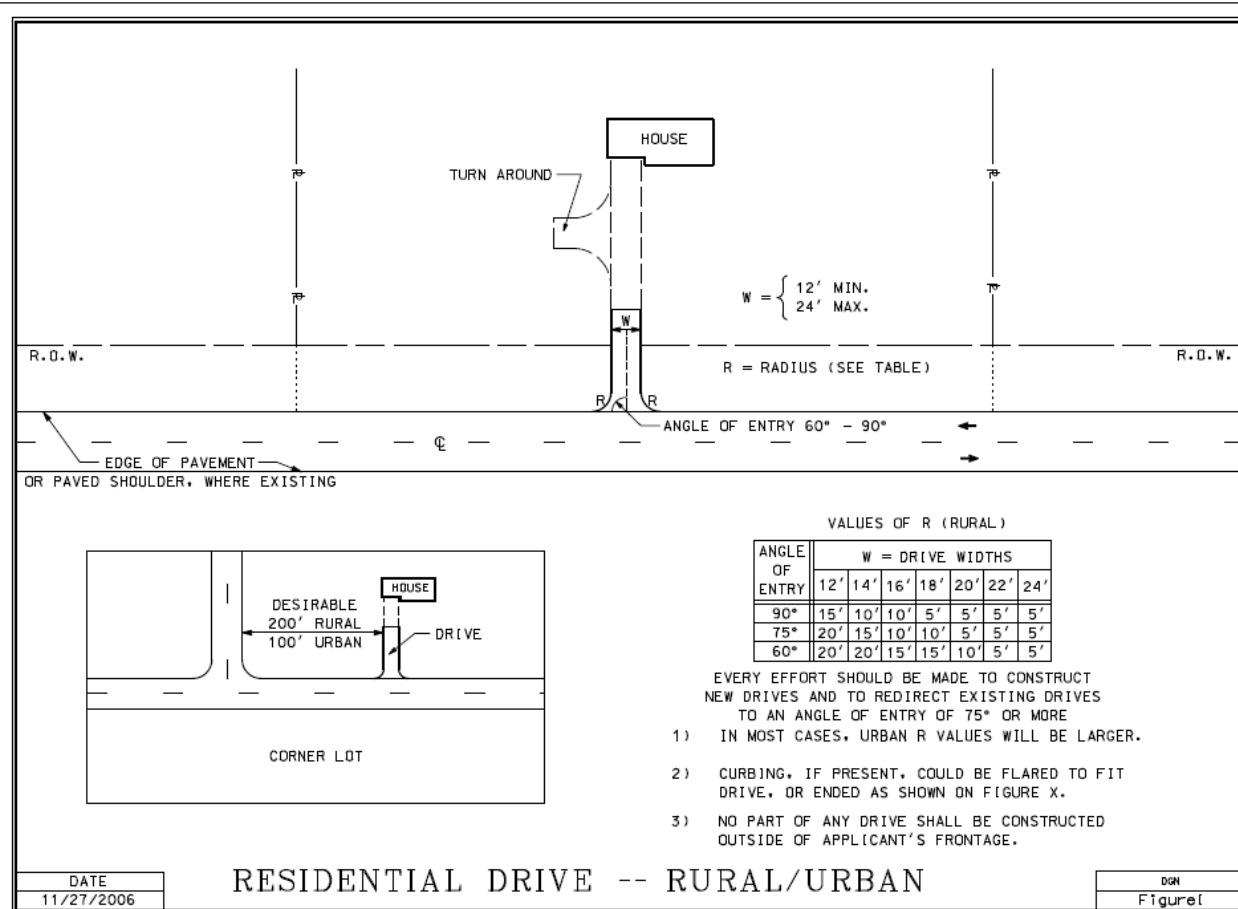
- Process for adopting and amending regulations same as for Subdivision and Site Plan Review
- Planning Board typically designates Road Agent/DPW Director as Administrator

Driveway Resources

POLICY FOR THE PERMITTING OF DRIVEWAYS AND OTHER ACCESSES TO THE STATE HIGHWAY SYSTEM



NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
BUREAU OF HIGHWAY MAINTENANCE



6. Scenic Road Regulations

- Towns may designate Town roads as „Scenic“
- Affect of designation
 - Requires Planning Board hearing for tree cutting in the Right-of-Way (except in emergency)
 - Usually only applies to Town and Public Service
- Towns may then develop specific regulations for maintenance, etc. for those Scenic Roads



- Regulations may treat scenic roads differently than other town roads, for example:
 - Width of traveled way
 - Height of tree canopy
 - Tree removal



Process and Administration – Scenic Roads

- Designation requires Town Meeting vote
- Process for adopting and amending regulations same as for Subdivision and Site Plan Review
- Statute allows Boards to develop specific regulations for roads designated as Scenic

7. Capital Improvements Program

- *What is it?*
 - A recommended program of municipal improvements projected over at least a six-year period
- *What is its purpose?*
 - To aid the Selectmen and Budget Committee in the preparation of the annual budget

- Board can determine the minimum requirements to qualify as a capital project (e.g., minimum of 5 or 10 years life span and a cost of at least \$5- or \$10,000)
- Typical projects are highway, fire, and police vehicles & equipment, road & bridge projects, and municipal building improvement and/or construction

Typical Spreadsheet

Town of Antrim Capital Improvements Program FY 2016 - FY 2021									
REQUESTED ANNUAL APPROPRIATIONS	Unencumbered Fund Balance	2016	2017	2018	2019	2020	2021	Total 6 Years	Sources of Revenues
FIRE DEPARTMENT	\$51,582								
Boiler for Fire Station No. 1 Rt 31/Clinton Rd)		\$20,000						\$20,000	
Cameras		\$13,500						\$13,500	
Capital Reserve Fund		\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$150,000	
1993 Pumper (Co 1)				\$150,000				\$150,000	
	Minus Revenues			-\$150,000				-\$150,000	Capital Reserves
	Sub-Total	\$58,500	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$183,500	
POLICE DEPARTMENT									
Replace ATV								\$0	Taxation
Police Rated Sport Utility Vehicle			\$35,000					\$35,000	Taxation
Police Rated Sport Utility Vehicle					\$38,000			\$38,000	Taxation
	Minus Revenues							\$0	
	Sub-Total	\$0	\$35,000	\$0	\$38,000			\$73,000	
PUBLIC WORKS:	\$127,959								? DOT Funds
Road Projects:									
Elm Avenue - Chip & Seal		\$34,000						\$34,000	
Smith Road (One in. overlay N. Main St. to Alabama Farm)		\$55,000						\$55,000	
Highland Ave & Lower Pleasant Engineering - Estimates		\$202,000	\$202,000	\$202,000	\$202,000	\$202,000	\$202,000	\$1,212,000	
Gregg Lake Road Reclaim & Repave (2016 to Holt Hill Rd; 2017 to Gregg Lake Rd Bridge)		\$170,000	\$170,000					\$340,000	
Pierce Lake Road - Reclaim & Repave (to the end)				\$185,000				\$185,000	
Second NH Turnpike - Grind and Reclaim					\$190,000			\$190,000	
Establish Capital Reserves for Chipping & Sealing		\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$204,000	Taxation
Equipment:									
Replc. 2001 Chevy, w new PU with SP & Poly Sander		\$48,500						\$48,500	
Replace 2007 Inter. 6 Wh w 10 Wh w Plow & 4 Sea. Dump Body (Lease/Purchase)		\$40,000	\$40,000	\$40,000	\$40,000			\$160,000	
Replace 2008 F550				\$40,000				\$40,000	
Rep. Cat 930 w new loader w 3.5 yd. bucket						\$195,000		\$195,000	
Sidewalk Plow		\$27,624	\$27,624					\$55,248	
Backhoe		\$23,150	\$23,150	\$23,150				\$69,450	
Other:									
Capital Reserves for Highway Garage Addition & Salt / Sand Storage Building		\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$300,000	
Transfer Station (ARTS):									
New Baler					\$10,000			\$10,000	
Bridges:	\$139,533								
West Street over Great Brook		\$74,000						\$74,000	
Craig Road Bridge Replacement (2022)									
Grove Street Bridge Replacement									
High Street Bridge									
	Minus Revenues								
	Sub-Total	\$ 758,274	\$ 546,774	\$ 574,150	\$ 526,000	\$ 481,000	\$ 286,000	\$ 3,172,198	

Process and Administration - CIP

- Requires authorization by Town for either:
 - Planning Board prepare the CIP; or
 - Allow the Selectmen to appoint a committee
 - Committee must have at least one Planning Board member
- Document is advisory only

8. Zoning

- Allows towns to regulate and restrict lot sizes, size of yards, height of buildings, location and use of buildings and land
- Purposes are to promote health and the general welfare
- Must be adopted by the voters after public hearing(s) held by the Planning Board
- Must be based on at least two sections of the Master Plan (Vision and Land Use)
- Towns may have only one district, or multiple districts
- Many forms of zoning possible, e.g. innovative land use controls, natural resource overlays
- All zoning MUST be based on valid public purpose

Zoning Overview

Typical Zoning Ordinance

- Purpose (RSA 674:17)
 - Secure safety, promote the general welfare, etc.
- Applicability
 - Applies only to new or substantially different uses of a building or structure (Grandfathering)
- Districts
 - Uses permitted by right
 - Uses permitted by special exception
 - Lot and Yard Standards (minimum lot size, setbacks)
- Signage
- Parking
- Nonconforming Uses (Lots/Buildings)
- Zoning Board of Adjustment
- Definitions
- Administration and Enforcement

Additional Components

- Natural Resource/
Environmental Zoning
 - Wetland Protection
 - Aquifer (Groundwater) Protection
 - Shoreland Protection
 - Steep Slope Protection
- Wireless Telecommunications
- Wind Energy

Specialized Zoning: Innovative Land Use Controls (RSA 674:21)

- Timing Incentives
- Phased Development
- Intensity & Use Incentives
- Transfer of Development Rights
- Planned Unit Development
- Cluster Development
- Impact Zoning
- Performance Standards
- Flexible & Discretionary Zoning
- Environmental Characteristics Zoning
- Inclusionary Zoning
- Impact Fees
- Village Plan Alternative
- Integrated Land Development Permit Option

Zoning Adoption Process

- Zoning initially proposed by Planning Board
- Amendments proposed by Planning Board, submitted by Selectment, or submitted by citizen petition
- Zoning is adopted by the voters, not the Planning Board
- The vote must be by ballot, not in open session
- Any amendment needs only a simple majority to pass
 - unless a Protest Petition is filed against it, then it needs a 2/3 majority to pass
- Statute requires only one public hearing, unless substantive changes are made after that hearing
- Subsequent public hearings must be at least 14 days apart

Adoption Process (Cont.)

- Planning Board responsible for holding public hearings on any zoning amendment
- If an amendment comes in by petition, the ballot must state whether or not the Board supports the amendment
- Due process is essential. Zoning ordinances can be ruled invalid if the public process is flawed (even for missing one day of the 10-day public notice requirement)
- Zoning (and other regulations) is the way master plans get implemented, for example:

From Master Plan to Zoning

Purpose of the Future Land Use Section

The purpose of the Future Land Use Section of the master plan is spelled out in RSA 674:2 II (b) which requires the master plan to include, “A *land use section ...[that addresses] the proposed location, extent, and intensity of future land use.*”

While addressing future land use topics this section will provide guidance to the Planning Board for the establishment of ordinances and regulations that will guide development in Antrim as envisioned by its citizens.

The plan is intended to achieve the following results:

- a. Protect Antrim’s valuable natural resource areas by directing future growth toward land that can accommodate it.
- b. Provide adequate areas for light industrial, commercial, residential, and public service (infrastructure) growth.
- c. Encourage the protection of open space in unfragmented forest lands, wildlife corridors, scenic and historic areas. (See Open Space Conservation Plan for Antrim, September 26, 2005, Appendix 2.)
- d. Protect and preserve Antrim’s rural and small town character.
- e. Provide incentives to create a range of housing types for a range of household incomes.
- f. Direct higher density development toward areas with existing infrastructure (highways, roads, utilities) in order to minimize the cost of providing public services.

Antrim Preferred Development Zone Areas

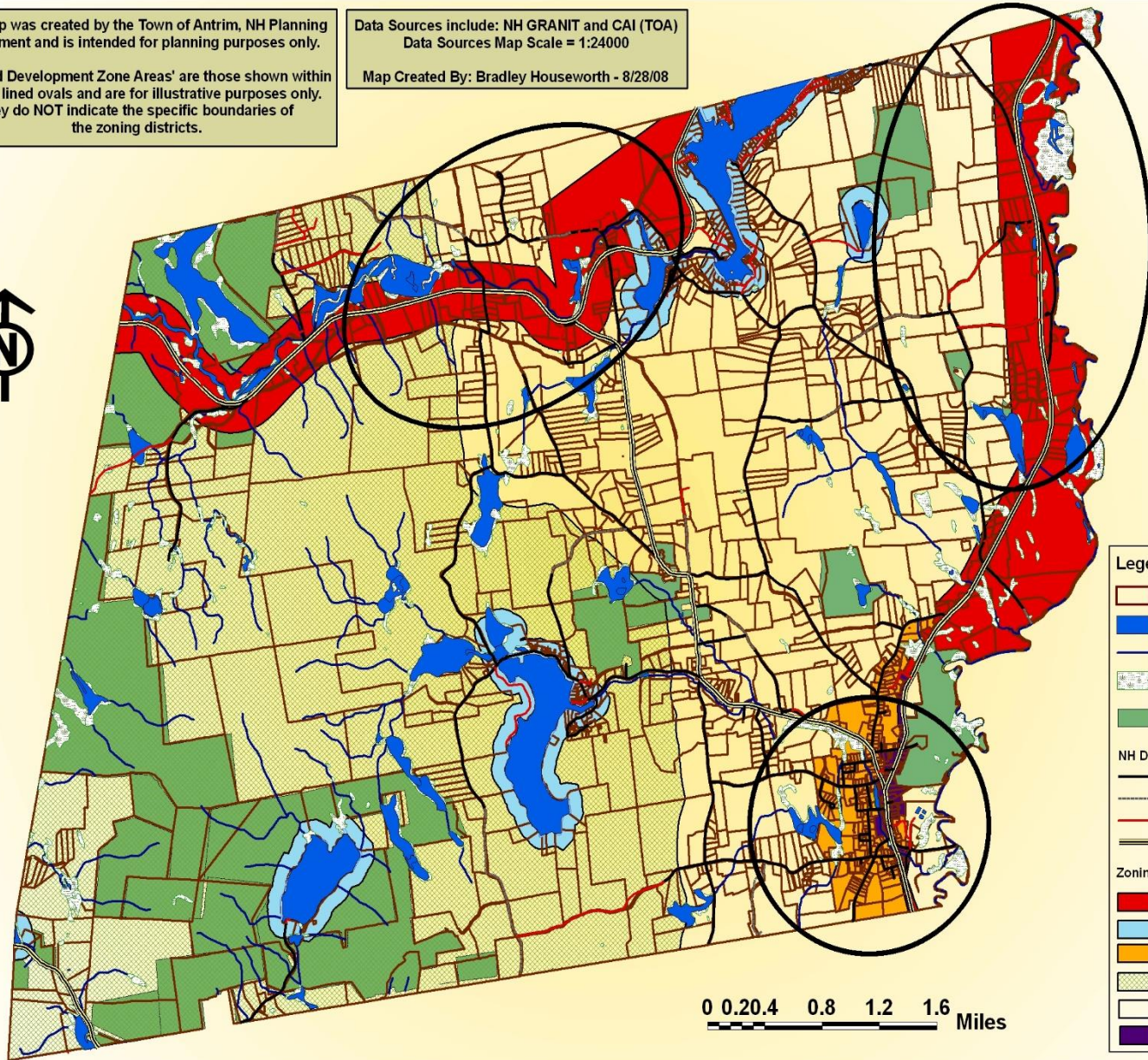
Antrim Planning Department

This map was created by the Town of Antrim, NH Planning Department and is intended for planning purposes only.

'Preferred Development Zone Areas' are those shown within the dark lined ovals and are for illustrative purposes only. They do NOT indicate the specific boundaries of the zoning districts.

Data Sources include: NH GRANIT and CAI (TOA)
Data Sources Map Scale = 1:24000

Map Created By: Bradley Houseworth - 8/28/08



0 0.20.4 0.8 1.2 1.6 Miles

- Legend**
- Tax Map Parcels
 - Surface Water Bodies
 - Surface Water Streams
 - NWI Wetlands
 - Conservation & Public Lands
- NH DOT Roads**
- Local
 - Not Maintained
 - Private
 - State
- Zoning Districts**
- Highway Business
 - Lakefront Residential
 - Residential
 - Rural Conservation
 - Rural
 - Village Business

Part II: Processing Land Use Applications

Process

- Statutes contain certain requirements, e.g. timing for posting public notices (RSA 676:4 – Boards Procedure on Plats)
- Regulation should include:
 - What information is required as part of a Complete Application
 - Time for filing
 - Application fees
- All applications require a public hearing*
- Board has 95 days from filing to final decision
- Extensions may be granted by the applicant

Process (Cont.)

- Applicant files application (at least 21 days prior to regular monthly meeting)
- Board clerk* prepares public notice and notice to abutters, etc.
- Notices posted (in the paper and in two public places) and received by the abutters at least 10 days before meeting
- Notice must give enough information so public knows what is being proposed

Process (Cont.)

- Two-step process:
 - Board must first accept application as complete (is everything there that is called for in the Regulations?)
 - Once Board has accepted application, Chair opens public hearing on the merits of the proposal
- Board begins meeting in public meeting mode, goes into public hearing for the application, then back to public meeting mode for the decision and vote.
- It is only during the public hearing portion that the applicant or the public is allowed to speak (unless the Chair allows otherwise)

Process (Cont.)

- Once Board is satisfied that the proposal has been fully vetted, public hearing is closed and Board deliberates
 - when public hearing closes, no further input allowed
- If approved, applicant may move forward with plan (understanding that there is a 30-day appeal period)
- If denied, reasons for denial must be provided to the applicant in writing
- Either approval or denial must be in writing within 5 business days.

To Waive or Not to Waive?

- Planning Board may waive provisions of its own regulations
- Statute requires waiver provision in Site Plan Review
- Regulation typically requires that any request for waiver be in writing
- Request may be for:
 - Any of the required submission items
 - Any other requirement of the Regulation
- Regulation must include criteria on which a request would be granted

Site Visits

- Land Use Boards may conduct site visits as part of application review
- Must be posted as a public meeting if a quorum is in attendance
- Is the public allowed? Difference of opinion on that.
- When is the proper time for the visit?
 - After the notice is posted
 - Before the public hearing is opened

Board Decisions

- Decisions are based on whether the application complies with the applicable ordinances and/or regulations
- Board may attach conditions to approval
- If the application complies, can you vote no?
- How much does public input matter?

Appeals of Planning Board Decisions

- Appeal is to Superior Court, except:
 - When decision is based on a zoning determination, then appealed to ZBA
- Innovative Land Use Controls (e.g. Conditional Use Permits) are appealed to Superior Court
- Appeal must be taken within 30 days
- Effect of appeal is to suspend the decision until the case is resolved

Revocation of Planning Board Approval

- Subdivision or site plan filed with the Registry may be revoked after public hearing:
 - Request of applicant
 - Work violates the approval
 - Applicant failed to comply with conditions
 - Time for vesting elapsed
 - Performance securities lapsed

Part III:

Zoning Board Roles and Responsibilities

1. Hear Appeals of Administrative Decisions
2. Grant Special Exceptions
3. Authorize Variances from the Terms of the Zoning Ordinance
4. Grant Equitable Waiver of Dimensional Requirements

Appeals of Administrative Decisions

Standard State Zoning Enabling Act (1922)

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

NH Statutes

- **674:33 Powers of Zoning Board of Adjustment.** –
 - I. The zoning board of adjustment shall have the power to:
 - (a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16

Administrative Appeal Example



- **BUILDING** – An independent structure having a roof with structural supports.
- **ROOF** – A rigid building element constructed of solid material.....

Special Exceptions

Standard State Zoning Enabling Act

SEC. 7. BOARD OF ADJUSTMENT.—Such local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

NH Statutes

- IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

Special Exception Example

Uses Permitted by Special Exception

- In the Highway Business District:
 - Conversion Apartments
 - Elderly Housing
 - Manufactured Housing Parks

Special Exception Criteria

- Similar to existing uses
- Would not adversely affect the neighborhood
- Will not create excessive traffic etc.
- Would be consistent with the intent of the Zoning Ordinance
- Adequate and appropriate facilities will be provided
- Is listed as a SE use

Variances

Standard State Zoning Enabling Act

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

NH Statutes

- (b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 - (1) The variance will not be contrary to the public interest;
 - (2) The spirit of the ordinance is observed;
 - (3) Substantial justice is done;
 - (4) The values of surrounding properties are not diminished; and
 - (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Variance Example

Zoning Provisions

- Residential District
Lot and Yard
Standard:
 - Front setback = 50 feet
- Landowner applies to locate a building 25 feet from the front boundary

Variance Criteria (all 5 must be met)

- Use is not contrary to the public interest
- The spirit of the ordinance is observed
- Substantial justice is done
- No diminution in abutting property values
- Enforcement of the ordinance would result in unnecessary hardship***

Equitable Waiver of Dimensional Requirements

674:33-a Equitable Waiver of Dimensional Requirement. –

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

ZBA Decisions

- Must be in writing
- May attach conditions to an approval
- For variances, each of the five criteria should be addressed separately (worksheet is useful)
- BUT – should a vote be taken on each criterion or as one vote?

Joint Board Meetings

- Applicant may request a joint Zoning/Planning Board meeting if application requires both approvals
- Each Board decides whether to participate
- If held, the Planning Board Chair runs the meeting
- Each Board deliberates separately on its own criteria
- Advantages and disadvantages

Board Ethics

What are the Issues?

- Bias
- Conflict of Interest
- *Ex Parte*
Communication
 - With the applicant
 - With the public
 - With other board members
 - When is a „meeting“ a meeting or not?

Why does it matter?

- Taints the process
- Sets the decision up for a challenge
- Solutions:
 - If a question of bias or conflict, best to recuse (is voluntary only)
 - No *ex parte* communication

RSA 91-A “ The Right to Know“

91-A:1 Preamble. – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

What is a Public Meeting?

- The convening of a quorum of the membership of a public body to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power.
- A Public Meeting (Nonpublic Sessions) shall not include:
 - Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made;
 - Strategy or negotiations with respect to collective bargaining; or
 - Consultation with legal counsel.

Conduct at a Public Meeting

- All public proceedings are open to the public.
- Any person may use record the meeting, using tape recorders, cameras, videotape equipment, or other means.
- Secret ballots may not be used in public meetings.

Creating the Public Record

- Minutes must be taken at all public meetings
- Minutes must be available to the public within five business days of the meeting
- Minutes must include at a minimum:
 - Names of all members
 - Names of persons appearing before the body
 - Brief description of the subject matter
 - Any votes taken or decisions made

Resources

- NH Planning and Land Use Regulation
- Planning Board and Zoning Board Handbooks
- NH Office of Strategic Initiatives Resource Library and Annual Conference Page
- NH Local Government Center Annual Law Lectures
- NH Local Government Center Annual Conference