

# Enacting Zoning Ordinances

A Planning Board Checklist

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## Enacting Zoning Ordinances



- Zoning ordinances and amendments must be submitted to town voters
  - RSA 675:3
- Official ballot vote required
  - If official ballot is used to elect town officers
- Majority vote required for passage
- Two-thirds vote required if valid zoning protest petition is submitted - RSA 675:5

## Role of the Planning Board



- Only the PB can propose the town's first zoning ordinance
- Zoning amendments can be submitted by planning board, selectmen, citizen petition
- All zoning amendments, regardless of source, require at least one public hearing held by the planning board

## The Board of Selectmen



- May submit zoning amendment to planning board - RSA 675:3, I
  - Uncommon; check and balance on power
- Planning board holds public hearing
  - Cannot alter substance
- Ballot notation - RSA 675:3, VIII
  - Submitted by selectmen
  - Approved/Disapproved by planning board

## Citizen Petition



- RSA 675:4
- Submitted by 25 or more registered voters
- Voted on only at annual town meeting; not at special town meeting
- Official ballot vote required
- Submitted to board of selectmen
  - Between 120 and 90 days before town meeting
- Selectmen submit petition to planning board

## Citizen Petition



- Planning board sets date for public hearing
  - At first regular meeting following close of petition period
  - Selectmen must submit petition to planning board in a timely manner
- Planning board, selectmen may not alter substance of petitioned zoning amendment
- Notation on official ballot
  - Approved/disapproved by the planning board

## Role of the Planning Board



- Planning board has many duties
  - Drafting zoning ordinance - RSA 674:1, V
    - Implement the master plan
  - Mater Plan -RSA 674:1
    - Most appropriate future development of the town
    - Minimum requirement: vision, land use sections
    - Natural resources section - RSA 674:2, II(d)
      - Including water resources plan

## Importance of Master Plan



- Establishes legal standing for zoning ordinances
- Prerequisite for:
  - Zoning ordinance
  - Historic district
  - Capital improvements plan (CIP)
    - Required for impact fee ordinance
  - Growth management ordinance



## Surviving Legal Challenge



- Zoning ordinances protect/prevent harm to the public health, safety and general welfare
  - RSA 674:16
- General welfare includes aesthetics
  - *Asselin v. Town of Conway*, 137 NH 368 (1993)
- Zoning ordinances may be based on environmental characteristics
  - When supported by the master plan
  - RSA 674:21, I(j)

## Surviving Legal Challenge



- Include purpose and goals of zoning ordinance
  - Supported by master plan
  - Valid if protect health, safety and general welfare
- Types of legal challenge
  - Fairness (substantive due process)
  - Equal protection (similarly situated persons/properties treated differently)
  - Variances (unnecessary hardship, etc.)
  - Procedural due process (notice, hearings, etc.)

## Planning Board Public Hearing



- Notice of public hearing - RSA 675:7
  - At least 10 calendar days before hearing
    - Not including day of posting or day of hearing
  - Published in local newspaper and posted in 2 public places
  - Adequate statement describing proposal; not full text of proposal
  - Place where proposal is on file for public inspection

## Public Hearing



- At least 1 public hearing
- Second hearing required if substantive changes made by planning board after first hearing - RSA 675:3, IV
  - At least 14 days after first hearing
- PB votes to determine final form of ordinance
- Final proposal filed with town clerk by 5th Tuesday before town meeting