

Questions from the “Planner Is In/Q&A Session” From April 29, 2023, Planning and Zoning Conference

When the state approves a wetland building permit (septic) can the town disapprove?

TEB: The town has no authority over state permits but in most instances can have stricter requirements in the zoning ordinance.

May I invite a fellow Planning Board member over for pancakes?

TEB: Of course! Just be careful not to discuss planning board business. From 91-A:2-“A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters.”

Is the Chair allowed to have meetings with legal /staff outside of meetings regarding specific applications?

SNV-Yes however, always check with your town attorney about holding discussions over specific applications.

TEB: Yes.

How do site plan regulations and town ordinances effect/overlap the other?

TEB: They should be in sync and not contain any conflicting requirements. One way to do this is to reference other requirements or approvals in the site plan regulations. Another is having a clause in the regs saying where there is conflict, the stricter of the two will apply.

SNV-site plan regulations and other town ordinances should be written and implemented in a way that fulfils the goals and objectives of the Master Plan so there could be overlapping regulations. I agree with Tara, where there is conflict than the most stringent of the regulations shall apply.

Are questions/discussions of cell towers forbidden at planning board meetings but allowed at visioning meetings (10 year reviews)?

TEB: It depends. The planning board shouldn't discuss a particular tower at a meeting until/unless there is an application, but planning for cell towers in general can be discussed at any meeting.

Can we claw back the responsibility for accepting applications from staff and assign it to the Secretary ?

TEB: Yes, the planning board can designate anyone it wants to receive applications.

Can you define " scattered" , we frequently get applications that still are missing things like traffic studies and letters from committees etc. , these things change several times over the course of the review . Where is the Rubicon to consider an application scattered ?

TEB: The term “scattered” isn't generally associated with the application. It is usually used in reference to “scattered and premature” used here in RSA 674:36: “(a) Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or

prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;”

It sounds like the question is really about incomplete applications. It's pretty common to accept applications as complete so review can begin while traffic studies etc are obtained. If they aren't received by the end of 65 days and the applicant doesn't agree to an extension, the law now allows the application to be denied without prejudice due to insufficient information (RSA 676:4).

Is it proper for the PB to frequently grant waivers, as many as 4 to 6 per application? Doesn't this obviate the zoning ordinance & rules?

TEB: It depends. First, the planning board can't grant waivers from the zoning ordinance. Only the zoning board of adjustment can do that under the variance procedure. Waivers from site plan application requirements often make a lot of common sense for minor projects. A process for minor site plans can even be built into the regulations with simpler requirements. If the same substantive elements are being waived repeatedly, it is probably time to review the regulations.

Should an applicant come to the PB 1st for waiver or ZBA for variance ?

TEB: A waiver from a planning board requirement would be part of an application to the planning board, not a stand-alone request. It's good practice to advise applicants to go to the ZBA and ask for their variance first so they aren't spending money on a surveyor or engineer if the project won't even be approved. There will be times that an application comes to the planning board and it isn't realized until during the review process that it will need something from the ZBA. This application can either be denied based on noncompliance with the zoning or approved with a condition precedent that ZBA grant the variance.

SNV-Sounds like you are confusing a waiver with a variance. A waiver regarding the planning board is a request for the planning board to waive a requirement of the site plan and/or subdivision regulations and/or checklist. A waiver has nothing to do with a variance from the zoning ordinance. A variance is granted from zoning ordinance through the ZBA.

How do you handle an application that hasn't requested a waiver for something they should have and the application has been accepted and the need for a waiver arises in the process of reviewing the application in a public hearing?

TEB: The planning board should discuss the waiver as part of deliberations and, if approved, note that the waiver was granted in the notice of decision.

Just to be clear, I want to confirm that 674:21 does allow the PB to approve variances from certain zoning ordinances as allowed by town vote, right?

TEB: No, only the zoning board of adjustment can grant variances. Under 674:21, the planning board can be given the authority to make certain decisions. These would then not need a variance.

Does addressing Waivers before the acceptance of an application vest the project ?

TEB: No decisions about the application should be made until it is accepted as complete.

SNV-vesting an application is subject to RSA 674:39 and whatever your local site plan and subdivision regulations describe as active and substantial development/completion. Meaning, active work toward completion of the project has to be started and/or finished in order to reach vesting status. A paper plan does not receive vesting protections.

Please define " resubmission " in this context w/ fees.

SNV-when an application is deemed incomplete and not accepted by the planning board, the applicant has the option to re-apply and all fees should apply to the resubmission i.e., notification to the public and abutters etc.

What effect does it have if an applicant refuses to allow a site walk? Can a member visit a site alone where consent has been made for a site visit ? Sorry for a public meeting "site visit".

SNV-then the site walk needs to be cancelled and documented as to why it was cancelled. Review with your town attorney on the status of the application if the applicant does not allow a site walk i.e., is that grounds for denial of the application. At any time, a member can do a "drive by" and visit the site from the public way.

How does a PB decide which engineer to use for 3rd party, can we put out to bid or are we locked in with the " town" engineer?

SNV-you can come up with language in a RFP for what kind of reviews you are looking for from an engineer. They can be specified reviews like traffic or noise. Depends on what experience the "town" engineer has and what their role is with the town and what level/type of review they can provide.

A site visit is a public meeting... but does it require all the requirements of a Public Hearing?

SNV Correct, a site visit is a public meeting but not a public hearing. Notification requirements for a public meeting fall under RSA 91-A.

Does the Engineer review take into account local regulation for setbacks etc. or just State level?

SNV-I don't think a third-party engineering review should include review for compliance with local zoning regulations. That should be completed by town staff usually the CEO/BI or whomever the employee is that does zoning enforcement /interpretation. The state agencies should be the ones reviewing the application for compliance with state laws through their application process.

TEB: Many towns use a consulting professional planner for review for compliance with local regulations. The engineer review provided for in subdivision or site plan regulations should just be looking at compliance with the local regulations, but if something is identified that doesn't comply with other requirements, they should certainly note that in their report as well.

I have been instructed to take the word of the applicant and their experts. Sounds like you are saying it is prudent and recommended to " trust but verify".

SNV-I am not sure why a board member would "be instructed to take the word of the applicant and their experts." Frankly, that is a bit concerning to me. I would not instruct board members to "take the word of the applicant and their experts." I am saying do not rely only on applicants and

their experts for engineering issues. I highly recommend municipalities utilize third party review to have an expert review applications that protects the municipality's interests for sound planning and liabilities purposes.

TEB: In the case where the town did not hire their own expert, the guidance from municipal land use attorneys is that the applicant's experts need to be assumed to be correct unless there is a strong case not to, such as the example we heard during the session where the traffic study did not look at the actual peak traffic time.

Does noticing abutters for a TRC review vest a project against Impact fees and Zoning ?

SNV-I am not aware of any project being protected from Impact Fees. I would ask your town attorney to work with the planning board on TRC process and policies. Refer to RSA [674:39](#) to learn about vesting.

Applicants come out of TRC thinking their application is "complete" and get very upset when the PB doesn't agree. How do mitigate this misconception?

SNV-I am not sure you have a clear understanding of TRCs.

TRCs are not for determining completeness of an application unless it is TRC with minor site plan review authority. Then the TRC must follow the regulations set up in the planning board site plan regulations as to what site plans they review. Not sure how your TRC is set up or how it is being run, but if the TRC has received minor site plan review authority then TRC deems applications complete according to their regulations. There is no need for an applicant to get TRC approval and then go to the planning board for another review and approval. If the TRC does not have site plan review authority, then TRC should be reviewing applications in a technical assistance manner to provide advice and guidance to applicants. They do not have authority for completeness determination and approval. You mitigate the misconception as clarifying what role your TRC plays, and municipal staff should be assisting the applicant through the application process, so the applicants are aware of the purpose and function of the TRC.

For more information on TRC, here is a link to previous [PLAN Webinar](#) Matt Monahan and I did in June 2021 on Technical Review Committees our website you may find helpful.

We will have to do a special town meeting to vote on a financing issue. Can we piggyback a Zoning Amendment to that meeting this Spring or Summer- or does it have to be brought forth at the annual meeting ?

SCB – So long as the proposed zoning amendments are proposed by the planning board or the select board, a special town meeting could consider such amendments at a special town meeting.

TEB: Be sure to carefully read RSA 31:5 before having a special town meeting on a financing issue.

What RSA authorizes the Housekeeping Clause?

SCB – A housekeeping clause that allows a planning board to make non-substantive corrections to the zoning ordinance, such as changing numeration or updating statutory references, is an inherent aspect of the authority to adopt and amend zoning ordinances under RSA 674:16 and RSA 675:3

Can we update them all at once ? " To add " as amended " to every citation of an RSA in all sections of the Zoning Ordinance ." ?

TEB: Yes, you can combine numerous "housekeeping" items into one proposed amendment.

Do draft documents with proposed amendment language need to be included or attached to the minutes even if only discussed?

SNV-I would include all draft documents and notes with the minutes in your zoning amendment files. Discussions on potential or actual zoning amendments can be beneficial for understanding reasons for the changes and interpretations.

There must be an earlier deadline for petitioned zoning amendments than for other petition warrant articles. How does the Planning Board accommodate petitioned zoning amendments?

SNV-Our office as well as NHMA publishes annual zoning amendment calendars that include the deadlines for petition zoning amendments. NHMA's calendar includes deadlines for warrant articles. To be clear-there is a difference between zoning amendments and warrant articles. The planning board is required to hold at least one public hearing, provide a recommendation of whether they support or not support the proposed amendment, and are not allowed to alter the language of the petitioned amendment. All petitioned amendments need to be worded in the language format of other proposed zoning amendments.

May draft amendments in the form of Word documents be shared via email? Or is the only way to share with PB members to include in public notice for meeting?

SNV-Check with your municipal attorney about things that can be shared via email to board members, it is when members start discussing amongst each other via email when issues arise. This should be in the Board's Rules of Procedure.

TEB: Also, anything shared with the members in advance of the meeting by email should be copied to the file and sent using the "BCC" option to ensure that no discussion ensues.

Appointing a member to serve the remaining PB term - Can a ZBA member be appointed to serve the remaining term for a person who resigned for health reasons? I know a PB can serve on the ZBA but can it work the opposite way?

TEB: Yes, if there is only one planning board member on the ZBA in the end (RSA 673:7). However, it presents problems if a project needs to go to both boards as recusal would be necessary for one meeting or the other. Having made a decision on one board and then participating in the other would present the opportunity for bias or prejudging.

SCB – It is permissible but not recommended that a sitting member of the ZBA be appointed to serve on the planning board.

What to do if staff does not return phone calls.

SNV-If you are not getting cooperation with municipal staff than I suggest you reach out to municipal administration and the governing body for assistance with staffing issues.

I have a bias for my town. I have an agenda that compels me to always read the most protective interpretation of our regulations for the safety and well-being of the community. Please tell me this does not fall within the "bias" or as having an " agenda" in the way the law and this discussion mean.

SCB – It is permissible for a member of a land use board to have a point of view on the interpretation of land use regulations, and this does not necessarily mean that member has an impermissible bias or prejudice.

As a new PB member, why not abstain if applications were previously in motion, and no conflict of interest exists?

TEB: It's your decision, but it is even better to get up to speed by reviewing the minutes and application material before your first meeting. (Recusal is for conflicts, not abstention.)

SCB – Abstentions are an abdication of a member's duty to fully participate and vote on matters before the land use board.

SNV-If you are Regular Member on the Planning Board and are coming into a case that has progressed before you were seated on the board, I recommend you "do your homework" and get caught up on the minutes and review the application in order to participate and fulfil your duty as board member. You could announce at the beginning of the next hearing you have missed time participating in the application however, you have reviewed all materials and minutes and you are ready to be an active board member on the application. Part of your job, duty, and responsibility as a board member is to make decisions and participate.

How about if you are the real estate agent of record on an application before the board , seems like a no brainer to me , but, lets say I'm asking for a friend.

MM – Perceived professional benefit for oneself, friends, or family is a good rule of thumb for recusal.

SNV-that is clearly a conflict of interest (IMO) and recusal should be considered. Remember, recusal decision is up to the member however, a member that decides on that type of case with a clear conflict is risking litigation brought against the town and/or board.

Can you speak about alternate Planning Board members? Can they make motions (assuming they are non-voting for a particular meeting/issue)?

MM – If they are seated by the Chair they would participate in motions. Unless seated, they have the right to participate as any member of the public might.

TEB: Most boards I work with encourage alternates to sit at the table and participate like a board member except for motions and votes. It is important that they have a chance to ask any questions they may have so that are prepared in the event they need to be seated for a later decision.

SCB – RSA 676:1 permits a land use board to define the scope of participation of an alternate who has not be designated to serve for an absent or recused regular member. That participation should be limited to participation in the public hearing process only. Once the land use board enters the decision-making phase after closing the public hearing, the participation of the alternate should end.

SNV-Review your board's "Rules of Procedures/By-Laws" for the role and participation of Alternates. It is my suggestion that alternates should be treated as regular members of the board at all times. They should receive all the information the board does, sit at the table, have the ability to ask questions of the applicant and/or public, and partake in discussions with the board in the public hearing process. They cannot make motions nor vote unless they are seated as a regular member. It is important for Alternates to be active on every case, so they are prepared in the event of an absence or recusal of a regular member.

Clarification of question about state allowing but town denying a wetland application for building: ie. if abutter/s concerned that on wet property huge boulder moving or blasting may damage the retention of slope and the brook/s that flow over and effect their or below (down stream) properties.

MM – First, as mentioned before, the town can be more stringent than the state. But secondly, the Board should probably seek 3rd party opinion on something like this (maybe the Town's Engineer?). An abutter speculating on something happening with stormwater may not be as scientific as opposed to an engineer weighing in.

SNV-Municipalities have the legal ability to enact more stringent regulations than state laws. Depending on the permit and who is approving it, I agree with Matt in that a 3rd party review may be appropriate to help the board in their decision.

SCB – This was answered directly to this person through the NHMA Legal Advisory Service

Who makes the determination that a PB application is complete? How is that documented so everyone knows when the 65 day clock starts?

SNV-The planning board determines if an application is complete by voting to "accept as complete". Town Staff/Planner can review the information submitted and make a recommendation to the board on whether or not to accept as complete. Completeness should be based on what the planning board's regulations describe what information and materials make the application complete. The minutes should reflect the acceptance of the application for the "clock to start".

How do issues regarding ordinance review and proposed changes and topics of discussion for future proposals get put onto the PB agenda for review? Are they submitted in writing and if so where can one see those submissions? I am an alternate (of over a year) and do not see how this happens and how our list has grown so much of late -certainly not just during meetings.

SNV-this would be up to staff or possibly the board Secretary to put items on the agenda or anyone from the public can request to be put on the agenda for discussion. Items could be submitted in writing by the public, and they should be available in the land use office. Anything that comes into the land use office is public record. The board should discuss with staff the organization and tracking of zoning amendments for consideration an annual basis. Proposed amendments should also be discussed between other town boards and staff to see if there are sections of the zoning ordinance that need to be amended.

Another neighbor issue may be the dirty electric that these inverters will create on the grid. This also may negatively effect their electric rates and create issues with EMF. Is the state considering cutting trees to put install these huge solar arrays?

SCB – This is a rhetorical question that does not deserve an answer.

TM-Inverters convert AC current to DC current, and DC to AC. I am not aware of any “dirty electric” issues caused by inverters.

Construction of a solar farm is now less expensive than operating a generating plant powered by coal, so solar should have a beneficial impact on rates.

EMF can be an issue for those who live in proximity to transmission lines, but it is not an issue at solar farms.

The tree cutting issue is one worth examining on a case by case basis. The benefits of solar are reliability, cost, and the reduction of greenhouse gas (GHG) emissions. If your primary goal in support of solar is GHG emissions reduction, then you’ll have to consider whether it makes sense to harvest a large number of trees that otherwise would have captured carbon. You may conclude that forest land provides more benefit than a solar farm.

Dont forget the segregationist objectives of Euclidian zoning!

SCB – Again, a rhetorical statement that does not deserve an answer.

TM-Yes, there was plenty of that going on in cities outside of NH. These days, Euclidian zoning is far more likely to be employed in support of segregation by economic class.

Where a NH municipality has a plan involving a "governmental use" it may avoid site plan review. So if a municipality proposes a lease of land for solar power generation in this a traditional governmental use allowing them to avoid site plan review?

SCB – If the solar power installation is going to be owned by the unit of government, then that would be a governmental use exempt from local land use regulations and site plan review. However, if the installation is to be owned and operated by private party, and not and a unit of government, then the installation would be subject to site plan review and all other applicable local land use regulations.

TM-RSA 674:54 does not provide us with a comprehensive list of “traditional” government uses, so it’s best to err on the side of caution. Early in the 20th century, many municipalities engaged

in electrical generation. Then that function was ceded to others. Solar is in its infancy here in NH, so “traditional” is not a good fit. Ask that question ten years from now, and the answer may be different.

Keene has two fast charges in a municipal parking lot downtown.

Kevin, I think there are more than two in Keene now.

TM-Check out plugshare.com and you’ll see that those chargers are Level 2, not DC Fast Chargers. The former will take all day to charge your car, while the latter will do the job in 25 minutes.

Level 2 is a good fit for owner-occupied residential use, hotels, and the 8-hour workplace. The Fast Chargers are better suited to serve traffic to restaurants and shops in downtown Keene, and grocery stores, hence the Fast Charger being installed at the Coop. Fast chargers that are available to the public may also be the only means by which an electric vehicle is a viable choice for renters.

The downtowns have been driving people away for years. They have many excuses but they charge for parking and aggressively ticket parking, so they've driven people to malls and big box stores. It's just a continuation of the trend.

TM-It is certainly possible that the same municipal officials who don’t have a good grasp on parking policies will struggle with an EV charger rollout.

How do you handle an application that hasn't requested a waiver for something they should have and the application has been accepted and the need for a waiver arises in the process of reviewing the application in a public hearing? Specific example has to do with lot line buffer regulation.

MM – I would ask that they address the issue. The applicant can then decide if they would like to pursue a waiver or provide the missing item.

SNV-That is why applications should not be accepted as complete if they are missing required information and a waiver has not been submitted and approved by the board. Remember, a completed application includes the information the board requires in order to make an informed decision. If they do not have information about the lot line buffer regulation, they should not be accepting the application as complete. They can work with the applicant and explain what is needed in order for them to accept the application as complete i.e., a waiver or the missing information needs to be submitted.

SCB – Any application before the planning board should comply with the planning board’s applicable regulations, subdivision or site plan. If that application does not comply with an applicable regulation the plan should be denied, or, the project proponent should be invited to apply to the board for a waiver of that regulation. Whether a waiver should be granted by the board would be governed by RSA 674:36, II (n) for subdivisions or RSA 674:44, III (e) for site plans as follows:

The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Can you speak to what a Board should prepare to recommend to voters a Moratoria on development/building?

MM – The study showing the development pressures should be the first thing. Secondly, the language of such an ordinance should be reviewed by the Town Attorney, but it should include clarity the phasing of building permits as well as when it will “sunset.” Recall that these must be temporary and not permanent. A good first step could be to reach out to your regional planning commission to get more specific guidance.

SNV-moratorium on building/development should not be undertaken without proof the community needs to enact one. *The local legislative body may adopt a growth management ordinance under this section (674:22) only if there is a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance.* Absolutely, reach out to the town attorney and your RPC for guidance.

SCB – This is governed by RSA 674:22 and the following is what the planning board must have prepared to support adoption of a growth moratorium:

The local legislative body may adopt a growth management ordinance under this section only if there is a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance. The need to regulate the timing of development shall be demonstrated by a study performed by or for the planning board or the governing body or submitted with a petition of voters presented under RSA 675:4. The study shall be based on competent evidence and shall consider the municipality's projected growth rate and the municipality's need for additional services to accommodate such growth.

They are looking at water draw and storage capacities.

Where do I find the WFH number for Raymond based on that criteria?

Yes, no water. Not talking contamination. No water draw or storage capacity (currently).

How did you determine we needed 500+ units when we don't know how much we currently have ?

Realistically, we don't have the water infrastructure to support it (again currently , we're working on it) . WE have that report.

If a town is on a state line, does the region definition include towns in that other state?

MM – practically speaking, it should. From the standpoint of RSAs, I don't know that it does.

SCB - Yes, the region for determining the fair share of growth would include towns that abut your municipality in an adjoining state.

TC-It's always a good idea to be a good neighbor. Regional impact is a 2-way street.

Discussions on the regional impact of a proposed project may open the door to collaboration on other issues of interest to both communities.

Can we compel an applicant to put in a deceleration lane if there is not enough width of town road for it ?

MM – So, in general, off site improvements can include such things. I think you could ask for it and it would be on the applicant to work with that abutting landowner. That said, I would suggest talking with your town attorney before requiring such a condition as it can impact the viability of the project.

SNV-This is the time where the board should enlist the service of a 3rd party review engineer that is paid for by the applicant to review the off-site improvement. Boards can require off-site improvements where the improvement has to be tied to that development. As always-speak to the town attorney.

SCB – The planning board can require an offsite improvement such as a deceleration lane provided the need for that improvement is supported by competent traffic engineering opinions.

WE have engineer analysis that show the need for Impact and Growth Mngmt..

We already have them for schools.

Our engineer says we should put a moratorium on water connections, how do we do that from the planning side and not run into deadline issues , don't we HAVE to accept applications ?

SCB – A water connection moratorium can only be implemented by vote of the town's water utility commissioners, not the planning board.

We need money for wells and storage in order to add more development , our engineer says we have no current capacity to add more connections.

It's not being " thrown around" it's the recommendation from our engineer .

I don't think the question about how to address growth management and impact fees has been totally answered. For instance, how can a town know what and how many development projects are coming -- in order to do this kind of infrastructure assessment? If the PB is revising the Master Plan, is there a way to limit or "manage" growth within that process?

MM – Growth Management Ordinances (GMO) need to be based on a study and the 3rd party consultant that conducts the study should ensure that the methodology is legally defensible. This can lead to the establishment of a GMO if it shows that the municipality is experiencing development pressures that are greater than nearby towns. The GMO, based on the study, is the only way to phase (not stop) growth (the Master Plan cannot regulate). Lastly, a GMO must be temporary in nature. A good first step is to reach out to the regional planning commission.

SNV-moratorium on building/development should not be undertaken without proof the community needs to enact one. **The local legislative body may adopt a growth management ordinance under this section(674:22) only if there is a demonstrated need to regulate the**

timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance. Absolutely, reach out to the town attorney and your RPC for guidance.

SCB – A proper planning study must be undertaken, that could be done in conjunction with the master planning process that would address the minimum necessary basis for a growth management ordinance as stated in RSA 674:22 as follows:

The local legislative body may adopt a growth management ordinance under this section only if there is a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance. The need to regulate the timing of development shall be demonstrated by a study performed by or for the planning board or the governing body, or submitted with a petition of voters presented under RSA 675:4. The study shall be based on competent evidence and shall consider the municipality's projected growth rate and the municipality's need for additional services to accommodate such growth.

The applicant says it's "deliveries" and therefore doesn't apply to them...

How long should an applicant be given to complete their application before taking jurisdiction and then voting to deny it due to incompleteness?

SCB – It is the duty of the applicant to submit sufficient information, from their point of view, that complies with the planning board's checklist for a completed application. Once the applicant states they believe the application is ready for a completeness determination, then the board should schedule the public meeting with notice to the abutters to make that decision. The duration of time it takes the applicant to say they are ready to go is up to the applicant.

What right does a municipality have to convince a neighboring municipality that they have a project with regional impact?

MM – If a municipality feels that an abutting community did not act on regional impact, they will need to use formal appeal processes. If it is the PB the PB appeal to the superior court would be the process. If it was a ZBA it would be a motion for a re-hearing. Lastly, the issue the abutting town could contest is whether or not they made a decision (i.e. vote yes or no officially), not whether or not they agree with the decision.

SCB – Whether a project is one of regional impact is a determination by the land use board that has jurisdiction over that project. The abutting municipality can communicate to the board with jurisdiction its point of view and can even challenge an approval accomplished without a Determination of Regional Impact (DRI) in the Superior Court.

The vesting questions come up because we have applications that are commenting to us that their projects are vested against future impacts etc. so I am just trying to see where the line is the sand is in there different scenarios.

SNV- I would review the [RSA 674:39](#) with your municipal attorney and town staff.

If there is MORE than one determination.

If we notice for traffic, do we still have to determine if there is also light emission, and schools are effected . Do we notice for all ?

MM – I would suggest including all things that you feel are DRI in the one motion. No need to do each one individually, and, it wouldn't change how the other town responds – they would still be noticed of the development and provide whatever feedback they wanted to provide.

Affected

But if there is a traffic impact it may only be for one community, if contamination it may be many communities. So don;t we need to check them all ?

Monetary hardship is not a good reason to approve?

SNV-No I do not recommend monetary hardship as a reason to approve a waiver or an application.

Issuance or approval of permits?

MM – receipt of permits (state, federal or local) can be conditions of approval.

I understand we can't deny an application for pending approvals, but can't we require that we review the permit application submittals prior to approval, as we want to verify the information submitted to other agencies matches the information presented to the PB ? Plus, they ask a lot of questions in the applications that can help us make an informed decision.

MM – Many site plan and subdivision checklists ask for copies of applications submitted to the state/fed. Etc. The reality is that many applicants may wait to submit to the state pending a PB approval so that they aren't making multiple revisions to a pending state application based on PB feedback. A common example is AoT. If a PB is going to have their Town Engineer look at it they may want to wait to see what they say before the make state application. It can become a chicken or the egg situation.

SNV-the planning board has no jurisdiction over state applications and permit approvals, so I do not think it is appropriate nor legal to require your review of an applicant's state permit application. You should discuss with your town attorney on how to address state permits and their approval conditions.

SCB - I would not recommend that the applicant be required to cross file their state or federal permit applications with the planning board as the planning board does not have jurisdiction over those permit applications.

Thanks to all presenters. Great job!

like 1

thank you, this has been very helpful.

Thanks everyone!

Great job enjoyed this!!

The scenario you describe is the vicious circle we are in with several applications. Waivers first would have saved us !

We need more discussion on waivers, for sure.

What if the waiver can't be addressed because they don't have the info required to make a determination but want to move forward on other aspects of the application? Thanks again!

SNV- as we have been saying throughout this session and others today-if the applicant has not submitted the required information per the regulations and checklist nor submitted a waiver request to be considered and granted by the board than the application should not be accepted as complete and the board should not be moving forward on other aspects of the application. The board could continue the public hearing on the acceptance portion of the application to another meeting i.e., state the date, time and location, to prevent the applicant from paying to re-notice the application. This would allow the applicant to either submit a waiver or the materials.

Thank you!