TOWN OF PITTSFIELD
NEW HAMPSHIRE

SUBDIVISION REGULATIONS

Comment: This draft document has comments of two types: (1) Comments in blue italics. These comments are to explain something and are not to identify a problem. (2) Comments in red italics with underlining. These comments identify a problem or a matter that planning board members might consider not finally resolved.

Comment: "SWRPC" means Southwest Region Planning Commission.

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Article 1. General Provisions

1. Title

These regulations of the SUBDIVISION of land shall be known as the "Town of Pittsfield Subdivision Regulations" and are herein called the "subdivision regulations."

2. Authority

(a) The planning board's authority to adopt the subdivision regulations is

(1) article 27 of the March 8 and 12, 2016, town meeting warrant, authorizing the planning board to approve or disapprove, in its discretion, plats and to approve or disapprove plans showing the extent to which and the manner in which STREETS within SUBDIVISIONS shall be graded and improved and to which STREETS, water, sewer, and other utility mains, piping, connections, or facilities within SUBDIVISIONS shall be installed (see RSA 674:35, I);

(2) New Hampshire Revised Statutes Annotated RSA 674:36, Subdivision Regulations;

(3) other enabling statutes in NH RSA; and

(4) enabling case law.

(b) The purpose of 2016 town meeting warrant article 27 as stated in the warrant article is to revise the planning board's authority to regulate the SUBDIVISION of land according to current RSA 674:35, I. Before March 12, 2016, the planning board's authority to regulate the SUBDIVISION of land came from article 13 of the March 10, 1964, town meeting warrant. Article 13 of the March 10, 1964, town meeting warrant in whole says as follows:

> To see if the Town will vote to authorize and empower the Planning Board to approve or disapprove, in its discretion, plats showing new streets or the widening thereof, or parks, and upon adoption of this article it shall be the duty of the Town Clerk to file with the Registry of Deeds of the County of Merrimack, a certificate or note showing that the said Planning Board has been so authorized, giving the date of authorization, as provided in Sections 19-29 inclusive, Chapter 36 of the New Hampshire Revised Statutes Annotated, 1955.

The town's approval of article 13 of the March 10, 1964, town meeting warrant was the town's only vote before March 12, 2016, to authorize the planning board to regulate the SUBDIVISION of land.

Comment: RSA 36:19 in part said as follows in 1955:

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> *A municipality may by ordinance or resolution authorize and empower the planning board to approve or disapprove, in its discretion, plats showing new streets, or the widening thereof, or parks...*

1964 town meeting warrant article 13 copies RSA 36:19 as the statute was in 1955, but effective August 19, 1963, the state legislature amended RSA 36:19 to delete the word "new" preceding "streets" in the above passage.

The current (2010) subdivision regulations claim authority under 1975 annual town meeting warrant article 12, which in whole says as follows:

> *If action on Article ten (10) is favorable, to see if the Town will vote to authorize and empower the Town Planning Board to approve or disapprove in its discretion new subdivisions and plats thereof as provided in N.H. RSA Chapter 36: Section 19-29 inclusive and Section 34.*

1975 town meeting warrant article 12 did not have the "new streets" limitation, but the town meeting tabled this article and never voted to approve it or to disapprove it. The planning board advised the town meeting that a vote was unnecessary because the town meeting had already voted to authorize the planning board to regulate the subdivision of land.

3. Conditions for the Subdivision Regulations to Take Effect

(a) The town clerk recorded notice of the town's approval of article 13 of the March 10, 1964, town meeting warrant in the Merrimack County Registry of Deeds on March 30, 1964, at book 939, page 23. This recording was according to RSA 36:19 effective 1949, RSA 36:19 effective 1963, RSA 36:20 effective 1935, and 1964 town meeting warrant article 13:

> upon adoption of this article it shall be the duty of the Town Clerk to file with the Registry of Deeds of the County of Merrimack, a certificate or note showing that the said Planning Board has been so authorized, giving the date of authorization, as provided in Sections 19-29 inclusive, Chapter 36 of the New Hampshire Revised Statutes Annotated, 1955.

(b) The town clerk recorded notice of the town's approval of article 27 of the March 8 and 12, 2016, town meeting warrant in the Merrimack County Registry of Deeds on April 5, 2016, at book 3510, page 2410. This recording was according to RSA 674:35, II; RSA 674:37; and 2016 town meeting warrant article 27:

> If this article passes, then the town clerk shall have the duty to file with the register of deeds of Merrimack County a certificate of notice showing that the planning board has been so authorized and giving the date of such authorization. (RSA 674:35, II.)

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(c) With notice of the town's approval of 2016 town meeting warrant article 27 having been recorded, these subdivision regulations shall take effect when a majority of the planning board

(1) has held a public hearing on the subdivision regulations (RSA 675:6, I, and RSA 673:10, III),

(2) has voted to adopt the subdivision regulations (RSA 675:6, II),

(3) has certified a copy of the subdivision regulations (RSA 675:6, III), and

(4) has filed a copy of the subdivision regulations with the town clerk (RSA 675:6, III).

(RSA 674:35, II; RSA 675:6; RSA 673:10, III; and RSA 674:37.) Article 14, Certification of Adoption and Effective Date, presents the board's vote to adopt the subdivision regulations, the board's certification of the adoption, and the date when the subdivision regulations became effective upon the board's filing a copy of them with the town clerk.

4. Amendment

(a) The subdivision regulations may be amended as provided in RSA chapter 675.

(b) No amendment to the subdivision regulations shall be legal or have any force and effect until a majority of the planning board certifies copies of the amendment and files them with the town clerk. (RSA 675:6, III.)

5. Applicability

(a) No land shall be subdivided except according to the subdivision regulations and with the planning board's approval.

(b) Except as provided in RSA 676:18, II and III, and RSA 676:4, I, (c), no plat shall be filed or recorded unless it is prepared and certified by a licensed land surveyor since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981, and until it has been approved by the planning board and such approval has been endorsed in writing according to article 5, section 8, (b). (RSA 674:37.)

(c) No land within a SUBDIVISION shall be transferred or sold before

(1) the planning board has approved the SUBDIVISION plat,

(2) the board's agents have endorsed the plat according to article 5, section 8, (b), and

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(3) the board has recorded the plat in the registry of deeds.

(RSA 676:16.)

(d) Preapproval Construction Prohibited: The following acts on any land intended for SUBDIVISION are prohibited before, first, the planning board has approved the SUBDIVISION plat, second, the board's agents have endorsed the plat according to article 5, section 8, (b), and, third, the board has recorded the plat in the registry of deeds:

(1) Burying any stumps, topsoil, or other yielding material. (See RSA 674:36, II, (h), and RSA 674:44, II, (g).)

(2) Grading or improving any STREET. (See RSA 674:36, III, and RSA 674:44, IV.)

(3) Installing any utilities. (See RSA 674:36, III, and RSA 674:44, IV.)

If any of these acts happens, then the board may require the owner to restore the land before the board approves the SUBDIVISION.

Comment: Previously prohibited acts

Cutting any trees or vegetation
Removing any stumps, topsoil, or other materials
Leveling or otherwise changing the grade of the land.

have been deleted as prohibited acts because they are generally permissible acts in the absence of subdivision. (See current (2010) subdivision regulations, section 2, F, 5, (page 8) for the list of previously prohibited acts.) Burying yielding material remains a prohibited act because burying yielding material could create unsafe building conditions. But note that the New Hampshire Department of Environmental Service's solid waste rules speak to burying stumps from off site (but not from on site) and permit such burial on certain conditions. (Env-Sw 810.09, Off-site Stump Dumps.) "Constructing any street" has been changed to "Grading or improving any STREET" to match RSA 674:36, III, and RSA 674:44, IV.

(e) Occupancy Permits Restricted: No building permit shall be denied on the grounds of uncompleted STREETS or utilities when the construction of such STREETS or utilities has been secured to the municipality by a bond or other security approved by the planning board pursuant to RSA 674:36, III or RSA 674:44, IV; provided, however, that on land which is part of a SUBDIVISION plat or site plan, no building shall be used or occupied prior to the completion of required STREETS and utilities, except upon such terms as the planning board may have authorized as part of its decision approving the plat or site plan. (RSA 676:12, V.)

6. Jurisdiction

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The subdivision regulations shall be effective within the corporate boundaries of the town of Pittsfield, New Hampshire.

7. Purpose

Pursuant to RSA 674:36, II; RSA 674:44, II; RSA 674:37; and enabling case law, the subdivision regulations are designed for the following purposes:

(a) To regulate the SUBDIVISION or development of land so that the land will be used safely. (See RSA 674:36, II, (a), (e), (h), (i), and (j), and RSA 674:44, II, (a), (e), (g), and (h).)

(b) To promote safe and convenient traffic access and circulation, both vehicular and pedestrian, through the proper arrangement and coordination of STREETS within SUBDIVISIONS in relation to other existing or planned STREETS. (See RSA 674:36, II, (b), (c), and (e), and RSA 674:44, II, (b), (d), and (e).)

(c) To minimize the pollution of air and water by ensuring that all utilities are properly designed and installed. (See RSA 674:36, II, (a), (h), (i), and (j), and RSA 674:44, II, (a), (g), and (h).)

(d) To promote the amenities of the town through provisions for parks, playgrounds, and other recreation areas and through provisions for preserving trees and natural or historic features. (See RSA 674:36, II, (b), (d), (f), and (g), and RSA 674:44, II, (b) and (c).)

(e) To ensure that applicants for SUBDIVISION or site plan approval bear the apportioned cost of off-site improvements—highway, drainage, and sewer and water upgrades pertinent to that development—that the applicants' projects make necessary, and to ensure that applicants do not impose these costs on the town. (See RSA 674:36, II, (a) and (e); RSA 674:36, III; RSA 674:44, II, (e); RSA 674:44, IV; RSA 674:21, V, (j); KBW v. Bennington, 115 N.H. 392, 342 A.2d 653 (1975); Land/Vest Properties v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977); New England Brickmaster v. Salem, 133 N.H. 655, 582 A.2d 601 (1990).)

(f) To promote proper legal description and boundary marking of subdivided land and to provide land records adequate for future use. (See RSA 674:37.)

(g) To provide consistent and fair treatment of applicants and ABUTTERS by stating the requirements of the subdivision regulations clearly.

Comment: This statement was previously worded as follows: "to secure equitable handling of all subdivision plans by providing uniform procedures and standards for observance, both of the applicant and the Planning Board." (Current (2010) subdivision regulations, section 1, C (page 5).)

8. Enforcement

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(a) The board of selectmen shall have charge of enforcing the subdivision regulations except as follows:

(1) If the subdivision regulations explicitly designate a specific enforcement agent for a specified part of the subdivision regulations, then that enforcement agent shall enforce that part of the subdivision regulations.

(2) The board of selectmen's charge to enforce the subdivision regulations shall not interfere with any state or federal law empowering a specific enforcement agent, for example, RSA 676:13, I, (building inspector) and RSA 676:4-a (planning board).

(b) The board of selectmen may authorize an agent to enforce the subdivision regulations on the board's behalf and may revoke that authorization at any time. Such an authorization or revocation shall be effective if and only if the board's minutes record the board's vote to authorize or revoke.

9. Conflicting Provisions; Relationship to Other Ordinance or Regulation

Wherever provisions of the subdivision regulations conflict, or wherever a provision of these subdivision regulations conflicts with a provision of another ordinance or regulation, the provision that imposes the greater restriction or higher standard shall control. (RSA 676:14.)

10. Separability

The invalidity of any provision of the subdivision regulations shall not affect the validity of any other provision.

11. Waiver of Regulations

Upon the request of an applicant for SUBDIVISION or site plan approval, the planning board may waive any of these regulations upon the following conditions:

(a) The applicant shall request the waiver in writing at the time when the application for SUBDIVISION or site plan approval is filed with the planning board.

Comment: The requirement that all requests for waivers must be made in writing at the time when the application is filed with the board is necessary to give abutters proper notice of what the application is proposing.

(b) The request shall cite the regulations for which the applicant requests waivers.

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(c) (1) Strict conformity to the regulation for which the waiver is requested would pose an unnecessary hardship to the applicant, and the waiver would not be contrary to the spirit and intent of the regulations, or

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

(RSA 674:36, II, (n), (1) and (2), and RSA 674:44, III, (e), (1) and (2).)

(d) The request shall explain how each requested waiver will satisfy condition (c), (1) or (2).

12. Penalty Clause

(a) Any owner, or agent of the owner, of any land located within a SUBDIVISION in a municipality that has adopted subdivision regulations who transfers or sells any land before a plat of the SUBDIVISION has been approved by the planning board and filed with the appropriate recording official under RSA 674:35, II, shall forfeit and pay a civil penalty of $1,000 for each LOT or parcel so transferred or sold; and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The municipality may enjoin a transfer or sale which violates the provisions of this paragraph and may recover the penalty imposed by civil action. In any action to recover a penalty, the prevailing party may recover reasonable court costs and attorney's fees as may be ordered by the court. (RSA 676:16; also see RSA 676:15 through RSA 676:18, Penalties and Remedies.)

(b) Any person who violates any of the provisions of these subdivision regulations, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of these subdivision regulations shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty of $275 for the first offense, and $550 for subsequent offenses, for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. Each day that a violation continues shall be a separate offense. (RSA 676:17, I.)

(c) Building Permits Prohibited in Unapproved Lots: The building inspector shall not issue any building or occupancy permit for any proposed construction, remodeling, or maintenance on any LOT created or sold in violation of these subdivision regulations. (RSA 676:13, I.)

13. Reconsideration of Decisions

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The planning board may reconsider any of its decisions concerning a plat or SUBDIVISION, upon the board's own motion or at the request of any aggrieved person, within 30 days after the date when the board voted the decision. (74 Cox Street v. Nashua, 156 N.H. 228, 931 A.2d 1194 (2007).)

14. Appeals of Decisions

Any persons aggrieved by a decision of the planning board may appeal the decision's zoning matters to the board of adjustment and its planning matters to the superior court. (RSA 677:15; RSA 676:5, III; and Hoffman v. Gilford, 147 N.H. 85, 786 A.2d 93 (2001).) Except as provided in RSA 677:15, I-a, (b), an appellant appealing zoning matters must appeal to the board of adjustment within 30 days after the date when the planning board voted the decision. (RSA 677:15, I and I-a; RSA 676:5, I; and Pittsfield Zoning Board of Adjustment Rules of Procedure, rules XI, 1 and 2.) An appellant appealing planning matters must appeal to the superior court within 30 days after the date when the planning board voted the decision unless the appellant is also appealing zoning matters. If the appellant is also appealing zoning matters, then the appellant must appeal the planning matters to the superior court after but not more than 30 days after the date when the board of adjustment resolves the zoning matters and denies a motion for rehearing under RSA 677:3. (RSA 677:15, I-a, (a).)

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Article 2. Interpretation Rules and Definitions

1. Word or Phrase Interpretation Rules

(a) All words and phrases of the subdivision regulations shall be interpreted according to this section.

(b) In this section, "headword" means a word or phrase spelled in all capital letters and placed at the beginning of a definition in article 2, section 3, Definitions.

(c) If the subdivision regulations explicitly say that a word or phrase has a specific meaning to be used in a specified part of the subdivision regulations, then the word or phrase has that specific meaning throughout the specified part.

(d) If a word or phrase is a headword in article 2, section 3, Definitions, then the word or phrase has the meaning stated for it as a headword in article 2, section 3, except as provided in paragraph (c) of this section.

(e) If a word or phrase is not a headword in article 2, section 3, Definitions, then the word or phrase has the meaning stated for it in *Webster's Third New International Dictionary of the English Language, Unabridged*, Merriam-Webster, except as provided in paragraph (c) of this section.

2. All-Capital-Letters Spelling of Defined Words and Phrases

Throughout the subdivision regulations, all-capital-letters spelling is used to indicate that a word or phrase has the meaning stated for it as a headword in article 2, section 3, Definitions. In this section, "headword" means a headword as defined in article 2, section 1, (b).

3. Definitions

ABUTTER:

(a) In this definition of "ABUTTER," "street" means a street as defined in RSA 672:13.

(b) "ABUTTER" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "ABUTTER" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a CONDOMINIUM or other collective form of ownership, the term "ABUTTER" means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as

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defined in RSA 205-A:1, II, the term "ABUTTER" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board. (See RSA 672:3, Abutter.)

BASE FLOOD: "BASE FLOOD" means the FLOOD having a one-percent possibility of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION: "BASE FLOOD ELEVATION" means the computed elevation to which floodwater is anticipated to rise during the BASE FLOOD.

BRIDGE: "BRIDGE" means a structure, having a clear span of 10 feet or more measured along the center line of the roadway at the elevation of the BRIDGE seats, spanning a watercourse or other opening or obstruction, on a road to carry the traffic across, including the substructure, superstructure and approaches to the BRIDGE. (See RSA 234:2, Bridge Defined.)

Comment: This comment is on a definition of "building," not on the definition of "bridge." The current (2010) Pittsfield Subdivision Regulations define "building," but the definition is very similar to the dictionary definition of "building," and the SWRPC model subdivision regulations do not define "building" at all. Neither the Pittsfield Subdivision Regulations nor the SWRPC model subdivision regulations define "structure."

CLUSTER SUBDIVISION:

(a) "CLUSTER SUBDIVISION" means the SUBDIVISION of a parent LOT into descendant LOTS for which an exemption from area and frontage requirements for conventional SUBDIVISION is permitted upon conditions that include the following: the descendant LOTS shall consist of two or more residential LOTS and one or more CONSERVATION LOTS.

(b) When appropriate to the context, "CLUSTER SUBDIVISION" relates to the process of cluster subdividing or to the land or territory that is cluster subdivided.

CONDOMINIUM: "CONDOMINIUM" means a condominium as defined in RSA 356-B:3, V.

CONSERVATION LOT: "CONSERVATION LOT" means a LOT that has a CONSERVATION RESTRICTION.

CONSERVATION RESTRICTION: "CONSERVATION RESTRICTION" means a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area, including improvements thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, OPEN SPACE or forest use, or in any other use or condition consistent with the protection of environmental quality. (See RSA 477:45, Definitions, I.)

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DEVELOPMENT OF REGIONAL IMPACT: "DEVELOPMENT OF REGIONAL IMPACT" means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:
(a) Relative size or number of DWELLING UNITS as compared with existing stock.
(b) Proximity to the borders of a neighboring community.
(c) Transportation networks.
(d) Anticipated emissions such as light, noise, smoke, odors, or particles.
(e) Proximity to aquifers or surface waters which transcend municipal boundaries.
(f) Shared facilities such as schools and solid waste disposal facilities.
(See RSA 36:55, Definition.)

DRIVEWAY: "DRIVEWAY" means a private road giving access from a highway to a building or buildings on abutting grounds.

DWELLING: "DWELLING" means a building or part thereof that is designed or used principally for residential occupancy by one or more human beings. In this definition of "DWELLING," the term "residential occupancy" excludes occupancy in accommodations that are principally for transient lodging.

DWELLING UNIT: "DWELLING UNIT" means a DWELLING or part thereof that is designed as the living quarters for a single FAMILY and that has food storage and cooking equipment, bathroom facilities with washbowl and toilet, at least one area for eating, and at least one area for sleeping.

FAMILY: "FAMILY" means a group of one or more human beings not necessarily related by blood, marriage, adoption, or guardianship that live together according to a common housekeeping plan.

FLOOD or FLOODING: "FLOOD" or "FLOODING" means a general and temporary condition of partial or complete inundation of normally dry land areas from
(a) the overflow of inland or tidal waters or
(b) the unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN: "FLOODPLAIN" means any land area susceptible to being inundated by water from any source (see definition of "FLOODING").

INTERIOR LOT LINE: See LOT LINE, INTERIOR.

INTERSECTING (as applied to ways): As applied to ways, "INTERSECTING" means the joining of one way to another way at an angle, whether the ways cross each other or not. (See RSA 259:45, Intersecting Way.)

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LOT: "LOT" means a parcel of land established as an undivided whole for the purpose, whether immediate or future, of ownership transfer or building development. (See Gagnon v. Moreau, 107 N.H. 507, 225 A.2d 924 (1967) ("It is familiar law that where lots are sold by reference to a recorded plat or plan showing existing or proposed streets which constitute boundaries of the lots, a conveyance ordinarily operates to convey to the grantee the fee simple to land underlying adjoining streets and rights of way to the center line thereof, together with easements to use such rights of way as well as others which do not bound the lot conveyed."); RSA 674:54, III, (a) ("the erection of a highway or utility easement across a parcel of land, shall not, in and of itself, be deemed to subdivide the remaining land into 2 or more lots or sites for conveyance for development purposes in the absence of subdivision approval under this title.").)

LOT LINE: "LOT LINE" means a continuous straight or curved segment of the boundary of a LOT.

LOT LINE ADJUSTMENT: "LOT LINE ADJUSTMENT" means relocating the shared LOT LINES of two LOTS.

LOT LINE, INTERIOR: "INTERIOR LOT LINE" means a LOT LINE no part of which lies on any highway, on the boundary of any highway, on any road dedicated to the public use, or on the boundary of any road dedicated to the public use.

OPEN SPACE:

(a) In this definition of "OPEN SPACE," "structure" means something constructed or built that has a fixed location on or in the ground or that is permanently attached to something that has a fixed location on or in the ground.

(b) "OPEN SPACE" means land where no structures other than fences more than 50 years old and permanent boundary markers are on or in the land.

SETBACK:

(a) In this definition of "SETBACK," "orthographic projection of a specified object onto the ground" means the projection of a single view of the object in which the view is projected from above the object to the ground along lines parallel to the direction of the Earth's gravity.

(b) "SETBACK" means the distance from a specified boundary to the nearest part of the orthographic projection of a specified object onto the ground.

SPECIAL FLOOD HAZARD AREA: "SPECIAL FLOOD HAZARD AREA" means land subject to a one-percent or greater possibility of FLOODING in any given year. The area is designated as zones A and AE on the Federal Emergency Management Agency's FLOOD insurance rate map.

STREET:

(a) "STREET" means a road that will serve more than one LOT or FAMILY. (See RSA 674:36, III, and Davis v. Barrington, 127 N.H. 202, 497 A.2d 1232 (1985), for the planning board's authority to impose road-construction standards on roads that will serve more than one LOT or FAMILY.)

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(b) Where "STREET" refers to a road that is a right-of-way, "STREET" includes the whole area between the right-of-way boundaries.

SUBDIVISION:

(a) "SUBDIVISION" means the division of the LOT, tract, or parcel of land into 2 or more LOTS, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, CONDOMINIUM conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

(b) The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a SUBDIVISION under these subdivision regulations.

(c) The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a SUBDIVISION under these subdivision regulations, and shall not be deemed to create any new division of land for any other purpose.

(d) The rent, lease, development, or grant of an easement to a person for the purpose of placing and maintaining a wireless communications facility shall not be construed as a SUBDIVISION under these subdivision regulations, and shall not be deemed to create any new division of land for any other purpose. For purposes of this subparagraph, "wireless communications facilities" means any towers, poles, antennas, or other unstaffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions. This subparagraph shall not be deemed to affect other local zoning, site plan, or regulatory authority over wireless communications facilities.

(See RSA 672:14, Subdivision.)

WETLANDS: "WETLANDS" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (RSA 674:55, Wetlands, and RSA 482-A:2, Definitions, X.)

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~~Article N. Application for Lot Merger Approval~~

Comment: Regulations for lot mergers should not be in the subdivision regulations because a lot merger is not a subdivision. In addition, the law of lot mergers is strictly state law: RSA 674:39-a. Accordingly, the SWRPC model subdivision regulations, section II, paragraph 2, (page SUB - 1) say as follows (bold emphasis added):

> *These regulations apply to Planning Board review and approval or disapproval of all subdivisions as defined by RSA 672:14 and minor lot line adjustments or boundary agreements.* ***They do not apply to voluntary mergers as defined by RSA 674:39-a.***

~~1. Application Procedure~~

~~Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. Except where such merger would create a violation of then-current ordinances or regulations, all such requests shall be approved, and no public hearing or notice shall be required. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the planning board or its designee, shall be filed for recording in the registry of deeds, and a copy mailed to the municipality's assessing officials. No such merged parcel shall thereafter be separately transferred without subdivision approval. (RSA 674:39-a.)~~

~~2. Application Form~~

~~Every application for LOT merger approval under RSA 674:39-a shall use the planning board's notice of voluntary LOT merger form contained in section 3, Sample Form for a Lot Merger.~~

~~3. Sample Form for a Lot Merger~~

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Article 3. Application for Preliminary Review of a Subdivision or Site Plan

1. Consultation with the Building Department

The planning board encourages applicants seeking SUBDIVISION or site plan approval to consult the building department for guidance on procedure; on the project's conformance to the subdivision regulations, the zoning ordinance, the state building code, and all other applicable regulations; on all permits that the project may require; and on all other matters that may affect the project's merits for approval.

Comment: This section, Consultation with the Building Department, is new and comes from the Concord Subdivision Regulations, section 9.01, Planning Division Inquiry (page 15). The advice to consult the building department is consistent with discussion at all-boards meetings that the economic development committee sponsored in 2015, to establish the building inspector as the point of clear first contact for potential applicants.

2. Types of Preliminary Review by the Planning Board

(a) An applicant for SUBDIVISION or site plan approval may apply to the planning board for preliminary review of his application. Preliminary review by the planning board may be either preliminary conceptual consultation or design review. (RSA 676:4, II, (a) and (b).)

(b) Discussions and determinations that the planning board makes during preliminary review are nonbinding, and statements that board members make during preliminary review shall not be the basis for disqualifying said members or invalidating any action taken. (RSA 676:4, II, (a) and (b).)

(c) Preliminary review by the planning board shall be separate and apart from formal consideration under article 5, Application-Review Procedures, and the time limits for acting under article 5, shall not apply to preliminary review by the planning board. (RSA 676:4, II, (c).)

3. Procedure for Preliminary Conceptual Consultation

Applications for preliminary conceptual consultation (RSA 676:4, II, (a)) shall be for consultation with the planning board and may consist of informal materials, such as hand sketches. 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 town's master plan. Such discussion may occur without the necessity of giving formal public notice according to article 5, section 1, (b), but such discussions may occur only at formal meetings of the board. (RSA 676:4, II, (a).) There shall be no fee to apply for preliminary conceptual consultation.

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4. Procedure for Design Review

(a) Applications for design review shall be for consultation with the planning board. (See RSA 676:4, II, (b).)

(b) Every application for design review shall meet the content standards and the submission procedure of article 4 for an application to approve the same land use except that applications for design review shall be clearly marked "Design Review" on the list of information required by article 4, section 1, (a); on every sheet of the plat required by article 4, section 1, (d); and on all printable information submitted under article 4, section 1, (e).

(c) Upon an applicant's filing an application for design review, the board shall schedule and give notice of the design review in the same manner as the board would schedule and give notice of a completeness review and a merits review of an application to approve the same land use except that the notice shall state that the application is for design review. (See RSA 676:4, II, (b) and (c), and subdivision regulations, article 5, section 1, Schedule and Notice for Meetings for Formal Subdivision or Site Plan Applications.)

(d) The board's administrative secretary shall get reports as specified in article 5, section 2, (a), as if the application for design review were an application for formal review.

(e) The board's administrative secretary shall tell the building inspector and the board's regular third-party consultant that the board has received the application, except that the applicant may request the planning board choose a different third party consultant and the request may include the name of a preferred consultant. (RSA 676:4-b, I.) The planning board shall exercise reasonable discretion to determine whether the request is warranted. (RSA 676:4-b, I.)

(f) The building inspector shall contact the third-party consultant, and the building inspector and the third-party consultant shall evaluate the application and report to the board as specified in article 5, section 2, (e), as if the application for design review were an application for formal review.

(g) The board will do the design review in the same manner as the board would do a completeness review and a merits review of an application to approve the same land use except as follows:

(1) The time limits for determining the application's completeness and merits shall not apply to the design review. (RSA 676:4, II, (c).)

(2) The applicant may change his application during either (a) the completeness review of the design review or (b) the merits review of the design review.

(3) The board's determinations of the application's completeness and merits during the design review shall be nonbinding. (RSA 676:4, II, (b).)

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(4) The board's determinations of the application's completeness and merits during the design review shall be by nonbinding consensus of board members, not by formal motion and vote, and shall use wording substantially as follows: "Board members agreed by nonbinding consensus that the application is complete (or incomplete) for the purposes of design review" or "Board members agreed by nonbinding consensus that the application satisfies (or does not satisfy) the requirements of the subdivision regulations for the purposes of design review."

(h) At a public meeting, the board may determine that the design review process of an application has ended and shall inform the applicant in writing within 10 days of such determination. (RSA 676:4, II, (b).) For every application for design review, the board shall determine that the design review has ended within 180 days after the date when the applicant filed the application. If the board does not determine by vote that the design review has ended, then the design review process shall end, without any action of the board, 180 days after the date when the applicant filed the application.

Comment: Some time limit on design review is necessary because RSA 676:12, VI, gives one year of grandfathering to plans submitted to the planning board for design review and because the one-year grandfathering period begins when the design review process ends.

(i) After the design review has ended, the board shall memorialize in a memorandum to the applicant the board's opinions on all deficiencies, if any, that the applicant must correct to complete the application and to obtain approval.

(j) The board shall file a copy of the memorandum with the application for design review.

(k) Board members and the third-party consultant are cautioned to be mindful of Batakis v. Belmont, 135 N.H. 595, 607 A.2d 956 (1992), where the New Hampshire Supreme Court held that a planning board was bound by its preliminary vote during design review and could not deny final approval. The court avoided examining the legal standards for either estoppel or vested rights and instead relied on the court's ability to overturn a planning board decision that the court believes is "unreasonable." (RSA 677:15, V.)

*Comment: See **Grandfathered - The Law of Nonconforming Uses and Vested Rights** (2009) edition), page 15:*

> *[Unfortunately this rule is clouded by the case of Batakis v. Town of Belmont, 135 N.H. 595 (1992). Based solely on the Planning Board's "preliminary approval" (part of what's now called "design review phase" – see RSA 676:4, II(b)), the applicant spent $290,000 purchasing land for a mobile home park. The Court held that the Board was bound by its "preliminary" vote, and could **not** deny final approval. The Court weaseled out of examining the legal standards for either "estoppel" or "vested rights," relying instead on its ability to overturn a planning board decision which it believes is "unreasonable" (RSA 677:15)]*

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Article 4. Application for Formal Review of a Subdivision or Site Plan

1. Contents Required for Every Subdivision or Site Plan Application

Every application to the planning board for SUBDIVISION or site plan approval must be complete. (RSA 676:4, I, (c), (1).) 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. (RSA 676:4, I, (b).) The following information and materials, except as the board grants waivers, shall constitute a completed application sufficient to invoke the board's jurisdiction to consider approval:

(a) A listing of the following information:

(1) A statement of the type of review sought: conceptual consultation (see article 3, sections 2 and 3), design review (see article 3, sections 2 and 4), or formal review (see article 5).

Comment: The justification for putting this item in the list of information required for a completed application is that the statement of the type of review sought tells the planning board explicitly that an application for formal review is an application for formal review. Without the statement of the type of review sought, the board would have to infer that an application for formal review was an application for formal review by the absence of a statement saying that the application was something else.

(2) The name and address of the applicant. (RSA 676:4, I, (b).)

(3) The name and address of the applicant's representative, if any.

Comment: This requirement is new.

(4) The names and addresses of all owners of the land under consideration.

(5) The owner's statement authorizing the applicant to apply for SUBDIVISION or site plan approval if the applicant is not the owner.

(6) The name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board. (RSA 676:4, I, (b).)

(7) The names, business addresses, and functions of the applicant's other agents.

Comment: This requirement is new.

(8) The names and addresses of all holders of CONSERVATION, preservation, or agricultural preservation RESTRICTIONS as defined in RSA 477:45. (RSA 676:4, I, (b).)

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(9) The names and addresses of all ABUTTERS as indicated in the town records not more than 5 days before the day of filing. (RSA 676:4, I, (b).)

(10) The STREET address or addresses, if any, of the land under consideration.

Comment: The requirement for the street address location of the land under consideration is new but seems like common sense. But the land under consideration may not have been assigned a street address if the land is vacant. The current (2010) subdivision application form asks for only the tax map and lot number. The land under consideration is the parent tract to be subdivided if the application for land use approval is for subdivision approval.

(11) The tax map and LOT number or numbers of the land under consideration.

Comment: The land under consideration is the parent tract to be subdivided if the application for land use approval is for subdivision approval.

(12) The zoning district or districts in which the land under consideration is located.

(13) A statement of whether any structure or proposed building site will be within 500 feet of the top of the bank of any lake, pond, river, or stream. (See RSA 676:4, I, (d), (2).)

Comment: This requirement is new.

(14) A statement of whether the land under consideration is on or within 500 feet of a state highway. The state highways in Pittsfield and the responsible New Hampshire Department of Transportation districts are as follows:

(A) Suncook Valley Road (New Hampshire Route 28), NH DOT district 5.

(B) Catamount Road, NH DOT district 6.

(C) Barnstead Road, NH DOT district 3.

(D) Laconia Road, NH DOT district 3.

(E) Carroll Street, NH DOT district 3.

(F) Loudon Road, NH DOT district 3.

(G) Crescent Street between Loudon Road and Concord Hill Road, NH DOT district 3.

(H) Concord Hill Road between Crescent Street and Main Street, NH DOT district 3.

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(I) Main Street, NH DOT district 3.

(J) South Main Street, NH DOT district 3.

(K) Dowboro Road between Mountain Road and just south of Prescott Road, NH DOT district 3.

Comment: The requirement to say whether the land under consideration is on or within 500 feet of a state highway is new. This requirement comes from Pittsfield's current practice of notifying the New Hampshire Department of Transportation when the land under consideration is on or within 500 feet of a state highway. The New Hampshire Department of Transportation requested this notice practice. (Planning board minutes of June 16, 2011, agenda item added, Exemption from Site Plan Review for the Family Dollar store, page 2, and planning board minutes of October 20, 2011, agenda item 8, Members' Concerns, Members' Concern 5, page 15.)

The list of state highways and the responsible NH DOT districts comes from an e-mail and an attached map that Dean Williams, of Central New Hampshire Regional Planning Commission, sent on June 22, 2016. Dean Williams's e-mail omits Crescent Street between Loudon Road and Concord Hill Road, but the map shows this highway. Dean Williams's e-mail lists Pittsfield Road, but Pittsfield Road is apparently another name for Suncook Valley Road (NH Route 28). (Planning board minutes of September 23, 1992, page 4, entry 2, for Barnstead Road; page 5, entry 22, for Kaime Road; and page 7, entry 9, for NH Route 28.) A Google search for "Pittsfield Road, Pittsfield, NH" on June 26, 2016, produced no results.

Dean Williams's e-mail also states shared responsibilities for certain state highways in Pittsfield: "The only road that the town and the state share responsibility for is Main St/S. Main St/Dowboro Rd from Carroll St to just south of Prescott Rd. The town is responsible for winter maintenance on those sections." An e-mail that town administrator Cara Marston sent on June 22, 2016, says, "the town is responsible from 11/1 to 4/1 for plowing and sanding."

(15) The type of application: LOT LINE ADJUSTMENT, other type of SUBDIVISION, or site plan.

(16) The number of LOTS in the land under consideration before SUBDIVISION if the application proposes a LOT LINE ADJUSTMENT or another type of SUBDIVISION.

Comment: "if the application proposes a LOT LINE ADJUSTMENT or another type of SUBDIVISION" is just for site plan review regulations. (See RSA 674:43, I.)

(17) The number of LOTS in the land under consideration after SUBDIVISION if the application proposes a LOT LINE ADJUSTMENT or another type of SUBDIVISION.

Comment: "if the application proposes a LOT LINE ADJUSTMENT or another type of SUBDIVISION" is just for site plan review regulations. (See RSA 674:43, I.)

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(18) The acreage and square footage of the land under consideration.

(19) A general description of the proposed project. (See RSA 676:4, I, (d), (1).)

(20) A statement of all approvals that the project has from the zoning board of adjustment, from any other town agency, from any state agency, or from any federal agency. The application shall include copies of the notices of decisions or other appropriate certificates granting the approvals.

(21) A statement of all approvals that the project needs but does not have from the zoning board of adjustment, from any other town agency, from any state agency, or from any federal agency.

(b) (1) The signatures, written with the information required by paragraph (a), of the applicant, the applicant's representative, if any, and all owners of the land under consideration.

(2) The date or dates when the applicant, the applicant's representative, if any, and all owners of the land under consideration signed the application.

(c) A check payable to the Town of Pittsfield for the application fee specified in article 4, section 3, (a).

(d) One original, 12 paper print copies, and one electronic portable document format (PDF) copy of the proposed SUBDIVISION plat or site plan meeting the following specifications:

Comment: 12 = 5 board members + 3 regular alternates + 1 alternate for the selectmen's board member + 1 building inspector + 1 Matt Monahan + 1 public copy. Note: the planning board could have as many as 5 regular alternates plus one alternate for the selectmen's board member. (RSA 673:6, II and III.)

(1) The plat shall be prepared by a land surveyor licensed in the State of New Hampshire. (RSA 674:37 and RSA 478:1-a, I.)

(2) The outside dimensions of the plat shall be either 8.5 inches x 11 inches, 11 inches by 17 inches, 17 inches x 22 inches, or 22 inches x 34 inches. (RSA 478:1-a, IV, and the recording standards of the Merrimack County Registry of Deeds.)

(3) Every sheet of the plat shall have a minimum 1/2-inch margin on every side. (RSA 478:1-a, V.)

(4) The plat shall use match lines if the plat divides the land under consideration into separate sections shown on separate sheets.

(5) The plat shall have an index map if the plat divides the land under consideration into separate sections shown on more than two separate sheets.

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(6) The material composition of the plat shall be suitable for electronic scanning and archiving by the register of deeds. (RSA 478:1-a, IV.)

(7) The minimum line widths on plats shall not be smaller than .01 inches. (RSA 478:1-a, XIII.)

(8) All text and dimensions shall be legible for reproduction, and the text sizes shall be no smaller than .08 of an inch for mechanical drafting and 1/8 inch for hand drafting. (RSA 478:1-a, VI.)

(9) Shading over any text shall not be permitted on any plat. Cross hatching or other hatching at a scale large enough not to interfere with text legibility, before and after reproduction, may be permitted. (RSA 478:1-a, XI.)

(10) No lines, whether hatching, boundary lines, or topographic contours, shall obstruct or interfere with the legibility, either before or after reproduction, of any bearings, dimensions, or text. (RSA 478:1-a, XII.)

(11) All certifications, seals, and approval blocks shall have original dates and signatures in a legible, permanent black ink. (RSA 478:1-a, VII.)

(12) The scale of the plat shall be greater than or equal to 1 inch/100 feet.

Comment: The current (2010) subdivision regulations say that the plat shall be "at a scale of not more than one (1) inch equal to one hundred (100) feet." (Section 6, A, 1 (page 21).) "Not more than" 1 inch/100 feet appears to be wrong; the apparent meaning is "not smaller than" 1 inch/100 feet. The SWRPC model subdivision regulations checklist, section VI, Submission Requirements, A, 5, a, (page SUB - 10) says that the allowable scale may be any scale between 1 inch/20 feet and 1 inch/400 feet. ***The Planning Board in New Hampshire - A Handbook for Local Officials*** *(published by the New Hampshire Office of Energy and Planning) appendix D, copies the checklist in the SWRPC model subdivision regulations.*

(13) Every sheet of the plat shall have in the lower right corner a title block, which shall show

(A) the title of the plat or development (RSA 478:1-a, VIII, (c));

(B) the type of survey, such as a boundary survey, SUBDIVISION, American Land Title Association (ALTA) survey, LOT LINE ADJUSTMENT (RSA 478:1-a, VIII, (a)), or site plan;

Comment: To exclude site plan review regulations from this item, change "(ALTA) survey, LOT LINE ADJUSTMENT" to "(ALTA) survey, or LOT LINE ADJUSTMENT", and delete "or site plan".

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(C) the name and address of the applicant if the applicant is not the owner;

(D) the name and address of the owner of record (RSA 478:1-a, VIII, (b));

(E) the name of the town or towns in which the land under consideration is located (RSA 478:1-a, VIII, (e));

(F) the tax map and LOT numbers of all LOTS shown on the sheet (RSA 478:1-a, VIII, (d));

(G) the scale of the drawing on the sheet;

(H) the date when the plat was originally drawn (RSA 478:1-a, VIII, (f));

(I) the dates when the plat was revised (RSA 478:1-a, VIII, (f)); and

(J) the number of the sheet stated as sheet 1 of N, sheet 2 of N, sheet 3 of N, and so forth where N is the total number of sheets.

(14) Every sheet of the plat shall have

(A) the scale as a written representation and as a graphic representation (RSA 478:1-a, IX);

(B) an arrow showing the direction of astronomic north (see RSA 478:1-a, X),

(C) an arrow showing the direction of magnetic north relative to astronomic north (see RSA 478:1-a, X), and

(D) the name, business address, license number, and professional seal of the surveyor.

(15) Every sheet showing information provided by an engineer, WETLANDS scientist, or soil scientist shall show the name, business address, license number, and professional seal of the engineer, WETLANDS scientist, or soil scientist. (See RSA 676:4, I, (b).)

(16) Every sheet to be recorded in the registry of deeds shall have

(A) a blank area for the registry of deeds's use 7 inches long and 1 inch wide at the upper left corner of the sheet but including no part of the sheet's margin (RSA 478:1-a, II, and the recording standards of the Merrimack County Registry of Deeds);

(B) a statement saying as follows: "The subdivision regulations of the Town of Pittsfield, New Hampshire, are part of this plat, and approval of this plat is conditioned upon

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completing all requirements of the subdivision regulations excepting only all waivers made in writing by the Pittsfield Planning Board and attached to this plat.";

Comment: The requirement for this statement comes from current (2010) subdivision regulations, section 6, C, 1 (page 23). The statement above has been revised slightly from the 2010 version.

(C) the names, addresses, and signatures of all owners of the land under consideration;

(D) a signature block with the following statement for the planning board's endorsement by the board's agents according to article 5, section 8, (b): "We certify that the Pittsfield Planning Board gave this plat final approval on _____ and that the board found that all conditions precedent to final approval had been satisfied.";

Comment: The statement in this signature block comes, with some small modifications, from the Land Use Regulations for the Town of Loudon (the Loudon subdivision regulations), section 12.5, item 20 (page 24):

I hereby certify that this plat has been approved by the Town of Loudon Planning Board on _____, and shall be filed with the Merrimack County Registry of Deeds once all conditions of approval have been satisfied:

(E) a signature block for the endorsement by the planning board of each municipality, other than Pittsfield, in which the plat shows land or ways, if the plat does show land or ways in any municipality other than Pittsfield (RSA 674:53, IV);

(F) a signature block for the endorsement by the planning board of that municipality, other than Pittsfield, from which the land under consideration has or is planned to have its sole defined-way access via a private road or class IV, V, or VI highway, if the land under consideration does have or is planned to have its sole defined-way access via a private road or class IV, V, or VI highway located in a municipality adjoining Pittsfield (RSA 674:53, IV);

(G) a statement by each planning board, if the plat needs endorsement by more than one planning board, that that planning board's endorsement applies to only that part of the plat under that planning board's jurisdiction; and

Comment: The registry of deeds requires this statement that each planning board's endorsement is limited to that part of the plat under that planning board's jurisdiction.

(H) a statement by the planning board of each municipality abutting the land under consideration but having no land shown on the plat, that that municipality abuts the land under consideration but that the municipality's planning board has no jurisdiction over the plat because the plat shows no land in the abutting municipality.

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Comment: The registry of deeds requires this statement by the abutting municipality's planning board.

(17) The plat shall show the following additional information or features:

Comment: The information or features listed below, under article 4, section 1, (d), (17), are intended to be what constitutes the plat to be recorded in the registry of deeds (when recording is required; site plans are not recorded). See RSA 478:1-a, III: "Construction plans, construction details, and maps that do not define the limits or extent of legal rights or interest in land shall not be recorded."

(A) A vicinity map, at a suggested scale of 1 inch/2,000 feet, showing the location of the land under consideration in relation to surrounding STREETS and development.

(B) A boundary survey of the land under consideration showing

(1) all existing or proposed LOTS, their INTERIOR LOT LINES, their boundaries on highways, and their boundaries on roads dedicated to the public use but not accepted by the town;

(2) the location, dimensions, and true bearings of all boundary lines;

*Comment: Bearings may be true bearings or compass bearings. True bearing is the bearing relative to true (astronomic) north. Compass bearing is the bearing relative to magnetic north. **New Hampshire Practice**, volume 17, section 5.07, page 115, says, "Until relatively recently, magnetic north was used, which varies with latitude and can be much different than true or astronomical north, which now is more commonly used."*

(3) the length, the associated radius, and the angle subtended (also known as delta) of all curved boundary lines;

(4) the relation of the boundary survey to the New Hampshire coordinate system of 1983 according to RSA chapter 1-A;

(5) the location and type of all existing permanent boundary markers proposed to be left in place; and

(6) the location and type of all permanent boundary markers proposed to be set.

All dimensions of the boundary survey shall be measured and shown to a precision of hundredths of a foot. All bearings of the boundary survey shall be identified as true bearings and shall be measured and shown to a precision of seconds. The boundary survey's precision relative to error of closure shall be stated and shall be less than or

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equal to 1/10,000, that is, better than or as good as 1/10,000. In the immediately preceding sentence, "precision relative to error of closure" means the following ratio:

the distance between the starting and ending points of the boundary's traverse survey, as determined by the measured lengths and bearings of the segments of the traverse survey

divided by

the sum of the lengths of the segments of the traverse survey

Comment:

***Comment 1**: The following comments 2 and 3 are considered to be about resolved matters because surveyors seem to state their measurements to the given tolerances routinely even though, as the two comments indicate, actually meeting the tolerance for distance is probably impossible for most surveys.*

***Comment 2:** Is a distance precision of hundredths of a foot appropriate? The specification for the precision relative to error of closure (1/10,000) suggests that a distance precision of .01 feet is appropriate only for distances less than or equal to 100 feet: 100 feet * (1/10,000) = .01 feet.*

The SWRPC model subdivision regulations, section VII, F, Surveys, (page SUB - 15) states the distance precision for higher-precision surveys (condition 1 or 2 surveys) as "EDM/Steel Tape." "EDM" means electronic distance measuring. EDM is an optical system similar to radar. The SWRPC model subdivision regulations state the distance precision for lower-precision surveys (condition 3 surveys) as "Steel Tape/Stadia." I do not know how "EDM/Steel Tape" or "Steel Tape/Stadia" translates to a distance precision.

***Comment 3:** Is an angular precision of seconds appropriate?*

Current (2010) subdivision regulations, section 6, B, 2, (page 22) says that the bearings must be given "to the nearest minute." By contrast, section 5, C, 2, b, 6, (page 16) says that bearings must be given "to at least minutes and seconds."

The SWRPC model subdivision regulations, section VII, F, Surveys, (page SUB - 15) indicates that the angular precision of a survey should be to at least seconds because the SWRPC regulations require that the lowest-precision survey (condition 3 survey) must use an instrument with at least one graduation per second. The SWRPC regulations require that higher-precision surveys (condition 1 or 2 surveys) must use an instrument with many graduations per second.

But the SWRPC regulations seem to have a problem in the specification of angular precision. These regulations say that the highest-precision survey (condition 1) must use an instrument with

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*at least **20 graduations per second** but that the second-to-highest-precision survey (condition 2) must use an instrument with higher precision: at least **30 graduations per second**. The SWRPC regulations require that the lowest-precision survey (condition 3) must use an instrument with at least "1". The SWRPC regulations do not give a unit for the angular precision of a condition 3 survey, but presumably the unit is "per second," as for the condition 1 or 2 surveys.*

Comment 4:

Current (2010) subdivision regulations, section 5, C, 2, b, 6, (page 16) says, "The error of closure shall exceed 1 to 10,000 for both raw traverse and plat closure."

*This requirement suggests that there are two errors of closure: one error for the raw traverse and one error for the plat closure. **Webster's Third New International Dictionary, Unabridged**, presents two definitions of "error of closure," which also suggest two errors of closure:*

***error of closure 1 :** the ratio of the distance by which a survey fails to close to the **perimeter** of the tract surveyed*
2 :** the sum of the angles of a **traverse** as measured minus the true sum required by geometry — called also **closing error

***traverse : 10 a :** TRAVERSE SURVEY **b :** a line surveyed across a plot of ground*

***traverse survey :** a survey used especially for long narrow strips of country in which a series of lines joined end to end are completely determined as to length and azimuth and are often used as a basis for triangulation*

***azimuth 1 b :** horizontal direction expressed as the angular distance between the direction of a fixed point (as the observer's heading) and the direction of the object **:** BEARING 7c*

But the definition of "precision relative to error of closure" presented above in these draft regulations accounts for both errors in measuring the lengths of the traverse segments (also known as traverse legs) and errors in measuring the bearings of the traverse segments, because the errors in the locations of the vertices of the traverse survey—and thus the error in the location of the last point of the traverse survey—depend on the errors in measuring the lengths of the traverse segments and on the errors in measuring the bearings of the traverse segments. The definition of "precision relative to error of closure" presented above in these draft regulations came from a treatise on the Internet.

Example of a survey's precision relative to error of closure:

Suppose the land under consideration is a triangle.
Let the triangle vertices be labeled A0, B0, and C0.
*Let the traverse survey start at vertex A0, and then **measure** the distance and bearing of first segment A0-B0, then segment B0-C0, and finally segment C0-A0.*

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Because of errors in measuring distance and bearing, the measured location of B0 will differ from the true location of B0. Let B1 denote this measured location of B0.

Likewise, because of errors in measuring distance and bearing, the measured location of C0 and the measured location of A0 (following the measurement of C0) will differ from the true locations of C0 and A0. Let C1 and A1 denote these measured locations of C0 and A0.

If the points B0, C0, A0, B1, C1, and A1 are plotted on a graph, then the distances B0-B1, C0-C1, and A0-A1 will tend to increase from B0-B1 to C0-C1 and finally to A0-A1 because the error of each segment endpoint includes both its own measurement error and the measurement error of the preceding segment endpoint. Thus, typically, the error of segment endpoint X1 in a traverse survey increases as the survey moves farther from the starting point.

The distance between the true starting point, here A0, and the measured ending point, here A1, is the traverse survey's failure to form a closed figure, which is an error because the figure being surveyed is a closed figure, and the survey's precision relative to error of closure is the distance A0-A1 divided by the sum of the lengths of segments A0-B1, B1-C1, and C1-A1.

A closing error detects most unsystematic errors, which typically result from the way the surveyor takes his measurements, but a closing error may not detect some systematic errors, such as a constant distance scale error or a constant angular offset error in bearing.

(C) The STREET address or addresses, if any, of the land under consideration.

Comment: The land under consideration is the parent tract to be subdivided if the application for land use approval is for subdivision approval.

(D) The tax map and LOT number or numbers of the land under consideration.

Comment: The land under consideration is the parent tract to be subdivided if the application for land use approval is for subdivision approval.

(E) The STREET address, if any, of each existing or proposed LOT.

(F) The tax map and LOT number of each existing or proposed LOT.

(G) The acreage and square footage of each existing or proposed LOT.

(H) The zoning district or districts in which each existing or proposed LOT is located.

(I) The names and addresses of all ABUTTERS as indicated in the town records not more than 5 days before the day of filing. (RSA 676:4, I, (b).)

(J) A general description of the proposed project. (See RSA 676:4, I, (d), (1).)

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(K) The intended use of each existing or proposed LOT.

(L) The boundaries, right-of-way widths, traveled ways, traveled way widths, classifications under RSA 229:5, and names of all existing highways within or abutting the SUBDIVISION. (See Holbrook v. Dow, 116 N.H. 701, 366 A.2d 476 (1976) ("We are of the opinion that in their usual meaning the words 'the Northerly sideline of said Route 107' refer to the northerly sideline of the highway layout or right of way and not to the edge of the pavement.").)

Comment: See current (2010) subdivision regulations, section 6, B, 4 (page 22):

> *The location and width of all existing and proposed streets and other public ways and easements and, rights-of-way and building setback lines.*

and SWRPC model subdivision regulations, section VI, B, 14 (page SUB - 11):

> *Existing and proposed streets with names, classification, travel surface widths, right-of-way widths. (See Appendix A for road standards.)*

The width of existing highways is important because the planning board may require that existing highways abutting the subdivision (or site plan) must be widened. See current (2010) subdivision regulations, section 10, A, 2, paragraph 2 (page 32):

> *Subdivisions on existing public streets with Right-of-Ways less than 50 feet shall dedicate land of width equal to one-half the difference between the existing right-of-way and 50 feet, the full length of the frontage.*

The planning board may also require improvements to highways that do not abut the subdivision (or site plan) if the subdivision (or site plan) makes such off-site improvements necessary. See KBW v. Bennington, 115 N.H. 392, 342 A.2d 653 (1975); Land/Vest Properties v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977); New England Brickmaster v. Salem, 133 N.H. 655, 582 A.2d 601 (1990).

(M) The boundaries, right-of-way widths, traveled ways, traveled way widths, classifications under RSA 229:5, and names approved by the board of selectmen (RSA 231:133, I) of all proposed highways. (See Polizzo v. Hampton, 126 N.H. 398, 494 A.2d 254 (1985) ("An offer of dedication of a street may be made in several ways, among them by the filing of a subdivision plan with a planning board."); Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007) ("If the intent to dedicate 'is to be gathered from writings, they must clearly manifest the intent to dedicate.'").)

Comment: The board of selectmen's approval of a highway name may be a condition precedent.

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(N) The boundaries, traveled ways, traveled way widths, and names, if applicable, of all existing or proposed private roads, including every DRIVEWAY serving only one FAMILY.

Comment: See SWRPC model subdivision regulations, section VI, B, 16 (page SUB - 11):

Location and width of existing and proposed driveways.

(O) The boundaries, widths, if applicable, and descriptions of all existing or proposed easements other than existing or proposed highways and existing or proposed private roads. Such other easements may include but are not limited to drainage easements, slope easements, and utility easements.

Comment: See current (2010) subdivision regulations, section 6, B, 19 (page 23):

Full legal description of the drainage easements, site easements, right-of-way, covenants, reservations or other restrictions, shall accompany the final plat with notations of each on the final plat.

A Google search of "site easement" on July 15, 2016, did not disclose what a site easement is.

(P) All areas of land proposed to be dedicated to public use other than proposed highways.

(Q) All existing or proposed parks, existing or proposed playgrounds, existing or proposed areas for other recreational use, and OPEN SPACE to be preserved.

(R) All existing or proposed buildings and other similar structures.

Comment: The SWRPC model subdivision regulations, section VI, B, 10, (page SUB - 11) says that the plat should show

"Location of existing and proposed buildings and other structures."

The word "similar" has been added to the proposed regulation to limit "structures" to structures similar to buildings for two reasons: (1) so that the item refers to something that is logically unified and (2) to avoid being redundant to "man-made or natural features" in article 4, section 1, (d), (17), (X).

The corresponding provisions of the current (2010) Pittsfield Subdivision Regulations say that the plat should show

"Buildings and other man-made features remain" (section 5, C, 2, b, 11 (page 17))

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"The location of existing streets, easements, water bodies, streams and other pertinent features, such as wetlands, railroads, buildings, parks, cemeteries, drainage ditches and bridges within one hundred (100) feet of the parcel to be subdivided" (section 6, B, 3 (page 22); underline emphasis added)

and

"Existing buildings, streets, right-of-ways, streams and easements" (section 6, C, 3, c (page 24); underline emphasis added).

The purposes of this comment are (1) to show the source of the proposed checklist item "All existing or proposed buildings and other similar structures" and (2) to support not defining the words "building" and "structure." The current (2010) Pittsfield Subdivision Regulations define "building" similar to the dictionary definition and do not define "structure." The SWRPC model subdivision regulations do not define either "building" or "structure," and a definition of either word seems unnecessary.

(S) All existing or proposed wells.

(T) The individual sewage disposal system on every LOT that has an individual sewage disposal system.

Comment: Lots that already have an individual sewage disposal system and that are less than 5 acres will still need subdivision approval from the New Hampshire Department of Environmental Services. (RSA 485-A:29, I.) The location of every existing septic system must be shown to ensure that no part of any septic system extends beyond the lot that the septic system serves. The current (2016) zoning ordinance prohibits septic systems in street, side, and rear setback yards. Zoning ordinance, article 3, section 4, (d), Minimum Setbacks from Street Boundaries and Interior Lot Lines, and article 2, section 3, STRUCTURE (emphasis added on "or in"):

***STRUCTURE:** "STRUCTURE" means something constructed or built that has a fixed location on **or in** the ground or that is permanently attached to something that has a fixed location on or in the ground.*

(U) A 4,000 square-foot septic area on every LOT that does not have an individual sewage disposal system. In this item, "septic area" means a connected area suitable for the placement of an individual sewage disposal system. (See New Hampshire Code of Administrative Rules, Env-Wq 1005.02(a)(2).)

(V) The location of all percolation tests.

Comment: In many of the items in this list, the phrase "the location of" is superfluous because showing a feature on the plan will necessarily show the feature's location. But a percolation test

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is not a feature that a plan can show; therefore, "the location of" is not superfluous with "all percolation tests." "All percolation test pits" cannot replace "The location of all percolation tests" because (1) a percolation test pit may or may not have had a percolation test done in it and (2) article 4, section 1, (d), (18), (C), requires the presentation of the results of percolation tests.

(W) All bodies of water, watercourses, WETLANDS, and rock ledges on the land under consideration and at or within 25 feet of any site of proposed construction or other land-surface modification. For the purposes of this requirement to show bodies of water, watercourses, WETLANDS, and rock ledges, "site of proposed construction" includes every 4,000 square-foot septic area required by article 4, section 1, (d), (17), (U).

Comment: The requirement to show each of these features except rock ledges comes from current (2010) subdivision regulations, section 6, B, 3 (page 22). ("water bodies, streams and other pertinent features, such as wetlands...") The requirement to show rock ledges comes from the SWRPC model subdivision regulations, section VI, B, 17 (page SUB - 11). Bodies of water, watercourses, wetlands, and rock ledges have been set apart in their own subparagraph because (1) applicants often request waivers of the requirement to show bodies of water, watercourses, and wetlands, (2) the planning board typically grants the request if the applicant is not proposing construction near where such features may be, and (3) rock ledges are natural features similar to water bodies, watercourses, and wetlands.

(X) All stone walls, cemeteries, railroads, BRIDGES within 100 feet of the tract to be subdivided, drainage ditches, existing or proposed foliage lines, and other similar man-made or natural features other than bodies of water, watercourses, WETLANDS, and rock ledges.

Comment: The requirement to show each of these features except stone walls, existing or proposed foliage lines, and "other similar man-made or natural features" comes from current (2010) subdivision regulations, section 6, B, 3 (page 22). The requirement to show existing or proposed foliage lines and stone walls comes from the SWRPC model subdivision regulations, section VI, B, 17 (page SUB - 11). The current subdivision regulations, section 6, B, 3, (page 22) requires the showing of "other pertinent features," which the SWRPC model subdivision regulations call "other man-made or natural features."

(Y) All SETBACK lines, including but not limited to

(1) SETBACK lines required by the Town of Pittsfield Zoning Ordinance;

(2) 75-foot protective well radii extending from existing or proposed wells (see RSA 485-A:30-b; RSA 485-A:33, IV, (a), (4), (5), and (7); and New Hampshire Code of Administrative Rules, Env-Wq 1000, especially Env-Wq 1008.06 through Env-Wq 1008.12);

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(3) SETBACK lines related to existing or proposed individual sewage disposal systems (see RSA 485-A:30-b; RSA 485-A:33, IV, (a), (4), (5), and (7); RSA 483-B:9, V, (c), (2), (A), (iii); RSA 483-B:9, V, (c), (2), (B); and New Hampshire Code of Administrative Rules, Env-Wq 1000, especially Env-Wq 1008.04 through Env-1008.07);

(4) SETBACK lines related to burial sites, burial grounds, or cemeteries (see RSA 289:3, III); and

(5) other SETBACK lines required by RSA 483-B:9, Minimum Shoreland Protection Standards.

(Z) All land in any SPECIAL FLOOD HAZARD AREA.

Comment: This item comes from current (2010) subdivision regulations, section 5, C, 2, b, 12, (page 17) and from SWRPC model subdivision regulations, section VI, B, 22 (page SUB - 12).

(AA) The BASE FLOOD ELEVATION, relative to the North American Vertical Datum of 1988, if the land under consideration includes land in any SPECIAL FLOOD HAZARD AREA and if the land under consideration includes more than 50 lots or more than 5 acres, whichever is less.

Comment: This item comes from
1. current (2010) subdivision regulations, section 4, B (page 14);
2. SWRPC model subdivision regulations, section VI, B, 22 (page SUB - 12); and
3. SWRPC model subdivision regulations, section X, B (page SUB - 17).

(18) The plat shall have shown on it or attached to it the following additional information or features:

(A) A full legal description of all restrictions and easements, such as deed restrictions, drainage easements, rights-of-way, and dedications to public use. (In respect to dedicating land to public use, see Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007) ("If the intent to dedicate 'is to be gathered from writings, they must clearly manifest the intent to dedicate.'").)

(B) A proposal for a CONSERVATION RESTRICTION if the application is for a CLUSTER SUBDIVISION.

Comment: The standards for the conservation restriction are in article 8, section 15, (c).

(C) The results of the percolation tests of article 4, section 1, (d), (17), (V).

(D) Certification of the town official witnessing the percolation tests of article 4, section 1, (d), (17), (V).

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(E) The existing topography elevations and the proposed topography elevations shown at the following locations on the land under consideration:

(1) At contour lines with 2-foot elevation intervals at all sites of proposed construction or other land-surface modification.

(2) At contour lines with 5-foot elevation intervals outside all sites of proposed construction or land-surface modification but within 25 feet of any such site.

(3) At low points at or within 25 feet of any site of proposed construction or other land-surface modification.

(4) At high points at or within 25 feet of any site of proposed construction or other land-surface modification.

The plat shall show the topography elevations relative to the North American Vertical Datum of 1988. Lines showing existing topography shall be dashed, and lines showing proposed topography shall be solid. For the purposes of this requirement to show existing topography elevations and proposed topography elevations, "site of proposed construction" includes every 4,000 square-foot septic area required by article 4, section 1, (d), (17), (U).

Comment:

***Comment 1**: This topography specification comes from current (2010) subdivision regulations, section 5, C, 2, b, 5 (page 16):*

Topography from field data at five-foot contour intervals, and at two foot contour intervals when conditions warrant this information.

and from current (2010) subdivision regulations, section 6, B, 16 (page 23):

Topographic contours to be five (5) foot interval maximum, also all low points, high points and other areas needing spot elevations should be shown. Two foot contours shall be shown in all areas of proposed construction and land surface modifications or when conditions warrant.

and from current (2010) subdivision regulations, section 6, C, 2 (page 23):

The subdivision's boundary and survey shall be reference to the nearest USGS survey elevation benchmark...

and from current (2010) subdivision regulations, section 9, D, 1 (page 30):

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All [construction] plans shall be made with existing topography shown in dashed lines and proposed contours shown in solid lines at a contour interval no greater than two (2) feet, plus spot elevations...

***Comment 2**: The limitation of the topography survey to locations at or within 25 feet of proposed construction or other land-surface modification comes from the planning board's practice of granting waivers from the topography survey where no construction or other land-surface modification is proposed. Concord's subdivision regulations say, "For minor subdivisions with large remnant parcels and for open space parcels where no development is proposed, the Clerk may allow the applicant to submit topographic information for only that portion of the site to be developed or redeveloped, or where site construction may occur;" (Concord Subdivision Regulations, section 12.08, (3) (page 31).) The SWRPC model subdivision regulations do not specify a limited topography survey, but an explanatory note in the SWRPC model subdivision regulations does say, "if a small lot is being divided off of a very large parcel, the board could relax the standards used for the survey, based on the NHLSA." (SWRPC model subdivision regulations, explanatory note to section VI, B, 5 (page SUB - 11).)*

The 25-foot buffer area for 5-foot contour intervals comes from the following reasoning: (1) a developer typically does not have to measure topography outside the lot, (2) a developer can build immediately adjacent to a setback line, (3) construction interacting with topography to affect a nearby highway is the board's biggest concern with topography, (4) of the various zoning street setback requirements, the minimum street setback in the Light Industrial Commercial is the most strongly based on practical, instead of aesthetic, considerations, and (4) the street setback in the Light Industrial Commercial District is 25 feet.

***Comment 3**: **Webster's Third New International Dictionary, Unabridged**, defines "topography," "contour map," "contour line," and "contour interval" as follows:*

***topography :** the configuration of a surface including its relief and the position of its natural and man-made features <a map showing the topography of the county>*

***contour map :** a map showing the configuration of a surface by means of contour lines drawn at regular intervals of elevation (as one for every 20 feet) [Emphasis added on "intervals of elevation".]*

***contour line :** an imaginary line connecting the points on a land surface that have the same elevation; also : the line representing this on a map or chart*

***contour interval :** the vertical distance between the elevations represented by adjacent contour lines on a map*

***Webster's Third New International Dictionary, Unabridged**, does not define "spot elevation," but it means the elevation at one point (or spot). I do not know what spots other than low points*

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and high points would need a showing of their elevations. The SWRPC model subdivision regulations checklist, section VI, B, 18, (page SUB - 11) just requires topographic contours "with spot elevations where necessary." The SWRPC regulations do not define "where necessary." With the topography-elevations requirement written as proposed above, the technical term "spot elevation" seems unnecessary.

***Comment 4**: "North American Vertical Datum of 1988" is a change from "USGS survey elevation benchmark" in the current (2010) subdivision regulations. (Current (2010) subdivision regulations, section 6, C, 2 (page 23).) The SWRPC model subdivision regulations have "USGS topographical data." (SWRPC model subdivision regulations, section VI, B, 18 (page SUB - 11).) "USGS topographical data" means United States Geological Survey topographical data.*

The floodplain regulations (zoning ordinance article 17), which must satisfy federal requirements, require elevation data relative to the North American Vertical Datum of 1988. The subdivision regulations must also satisfy federal requirements for land in any special flood hazard area. Among these federal requirements is to "include base flood elevation data" for certain subdivisions. (See SWRPC model subdivision regulations, section X, B (page SUB - 17); also see current (2010) subdivision regulations, section 4, B (page 14); article 4, section 1, (d), (17), (AA), herein; and article 4, section 1, (d), (18), (G), (1), (i), herein.) Thus it appears that the standard elevation reference to which topographical data should be related is the North American Vertical Datum of 1988. Jennifer Gilbert, the New Hampshire Office Energy and Planning's expert on floodplain regulations, said as follows in an e-mail on April 13, 2016:

> *The North American Vertical Datum of 1988 is a vertical datum, which is a base measurement point from which all elevations are determined. The boundary of the special flood hazard area for a subdivision proposal must be given relative to the vertical datum that is referenced on the community's FEMA maps. The elevations on the FEMA floodplain maps for Pittsfield are in relation to the North American Vertical Datum of 1988.*
>
> *I was told the elevations on the USGS topo maps are also in relation to the North American Vertical Datum of 1988.*

The Concord Subdivision Regulations require that topographical data be related to the North American Vertical Datum of 1988. See Concord Subdivision Regulations, section 12, General Requirements for All Drawings, 12.08, (3), Topography (page 31):

> *Existing topographic conditions and all proposed changes in ground elevation at a contour interval of two (2) feet, as referred to sea level datum of the North American Vertical Datum 1988 (NAVD88).*

The National Geodetic Survey (formerly known as the United States Coast and Geodetic Survey) says as follows on its web site:

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NGS develops and maintains the current national geodetic vertical datum, NAVD 88.

http://www.ngs.noaa.gov/faq.shtml

Wikipedia says as follows about the North American Vertical Datum of 1988:

> *The North American Vertical Datum of 1988 (NAVD 88) is the vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.*

https://en.wikipedia.org/wiki/North_American_Vertical_Datum_of_1988

(F) A construction plan if the application proposes construction. The construction plan shall meet the following specifications:

(1) The construction plan, including supporting documentation, such as drainage calculations for the construction of roads or utilities, shall be prepared by a professional engineer licensed in the State of New Hampshire. (RSA 310-A:11.)

(2) The construction plan shall be drawn at a scale greater than or equal to 1 inch/50 feet.

Comment: Current (2010) subdivision regulations, section 9, D, 1, (page 30) say that the scale should be "no more" than 1 inch per 50 feet. "No more" than 1 inch per 50 feet would mean that features of the plan would have to be drawn smaller than 1 inch per 50 feet. Requiring features to be drawn no smaller than 1 inch per 50 feet makes more sense.

(3) The construction plan shall show the existing topography elevations and the proposed topography elevations at the following locations on the land under consideration:

(a) At contour lines with 2-foot elevation intervals at all sites of proposed construction or other land-surface modification.

(b) At contour lines with 5-foot elevation intervals outside all sites of proposed construction or land-surface modification but within 25 feet of any such site.

(c) At low points at or within 25 feet of any site of proposed construction or other land-surface modification.

(d) At high points at or within 25 feet of any site of proposed construction or other land-surface modification.

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The plat shall show the topography elevations relative to the North American Vertical Datum of 1988. Lines showing existing topography shall be dashed, and lines showing proposed topography shall be solid. For the purposes of this requirement to show existing topography elevations and proposed topography elevations, "site of proposed construction" includes every 4,000 square-foot septic area required by article 4, section 1, (d), (17), (U).

Comment: This topography specification comes from current (2010) subdivision regulations, section 5, C, 2, b, 5 (page 16):

> *Topography from field data at five-foot contour intervals, and at two foot contour intervals when conditions warrant this information.*

and from current (2010) subdivision regulations, section 6, B, 16 (page 23):

> *Topographic contours to be five (5) foot interval maximum, also all low points, high points and other areas needing spot elevations should be shown. Two foot contours shall be shown in all areas of proposed construction and land surface modifications or when conditions warrant.*

and from current (2010) subdivision regulations, section 6, C, 2 (page 23):

> *The subdivision's boundary and survey shall be reference to the nearest USGS survey elevation benchmark...*

and from current (2010) subdivision regulations, section 9, D, 1 (page 30):

> *All [construction] plans shall be made with existing topography shown in dashed lines and proposed contours shown in solid lines at a contour interval no greater than two (2) feet, plus spot elevations...*

(4) The construction plan shall show soils information from United States Department of Agriculture Natural Resources Conservation Service published data or, where high intensity soil maps are used, a conversion to a soil series map done by a soil scientist certified by the State of New Hampshire Board of Natural Scientists for soil classification and mapping. The construction plan shall show soil types and their boundaries in dotted lines.

Comment: This subparagraph comes from current (2010) subdivision regulations, section 9, D, 1 (page 30):

> *"soil types and boundaries shown in dotted lines"*

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and from ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, August 1992, appendix F,* ***Model Erosion and Sediment Control Regulation****, section 5, B, 1, (g) (page F-4):*

> *"Soils information from Soil Conservation Service published data or, where High Intensity Soil Maps are used, a conversion to a soil series map done by a Certified Soil Scientist"*

The United States Department of Agriculture Soil Conservation Service has been renamed the United States Department of Agriculture Natural Resources Conservation Service. For example, Concord's corresponding requirement for soils information is as follows:

> *The identification and classification of the extent and type of soils using the USDA Natural Resources Conservation Service system*

(Concord Subdivision Regulations, section 12, 12.08, (4) (page 32).)

(5) The construction plan shall show existing tree lines, proposed trees, and all other proposed plants.

Comment: This subparagraph comes from current (2010) subdivision regulations, section 9, D, 1 (page 30): "existing tree lines and proposed trees and all other plantings"

(6) The construction plan shall show all existing or proposed STREETS in or abutting the land under consideration. (See RSA 674:36, III, and Davis v. Barrington, 127 N.H. 202, 497 A.2d 1232 (1985).)

Comment: Current (2010) subdivision regulations, section 9, D, 1 (page 30) requires the construction plan to show "all areas to be disturbed for construction of streets." Section 9, D, 1 (page 30) does not require the construction plan to show existing streets, but showing how proposed streets will relate to existing streets is consistent with the purpose of the subdivision regulations. See article 1, section 7, (b):

> *To promote safe and convenient traffic access and circulation, both vehicular and pedestrian, through the proper arrangement and coordination of STREETS within SUBDIVISIONS in relation to other existing or planned STREETS. (See RSA 674:36, II, (b), (c), and (e), and RSA 674:44, II, (b), (d), and (e).)*

(7) The construction plan shall show profiles of all proposed STREETS. The profiles shall show the existing and proposed elevations along the center lines of the proposed STREETS. The construction plan shall show profiles at a horizontal scale of 1 inch/50 feet and at a vertical scale of 1 inch/10 feet.

Comment: This subparagraph comes from current (2010) subdivision regulations, section 9, D, 2 (page 30).

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(8) The construction plan shall show cross sections of all proposed STREETS at 50-foot stations, at all catch basins, at all culverts, and at all other significant features. The cross sections shall show (1) the traveled way and all areas to be disturbed for the construction of the proposed STREETS, (2) existing grades, (3) proposed subgrade, (4) proposed final grades, and (5) all utilities and other structures. The construction plan shall show cross sections at a scale greater than or equal to 1 inch/10 feet. Both the horizontal and vertical scales shall be the same.

Comment: This subparagraph comes from current (2010) subdivision regulations, section 9, D, 3 (page 30).

(9) The construction plan shall show all existing or proposed paved areas, curbing, and sidewalks.

Comment: This subparagraph comes from current (2010) subdivision regulations, section 9, D, 1 (page 30) and section 9, D, 4 (page 31).

(10) The construction plan shall show all existing or proposed sewerage; water mains; other pipes; gas or electric lines; telephone or cable lines; fire-protection methods, such as hydrants, fire ponds, or on-site supply tanks; other utilities; drainage means; and means to control storm water runoff, erosion, and sedimentation.

Comment: All items in this subparagraph come from current (2010) subdivision regulations, section 9, D, 1 (page 30). "other utilities" comes from "other areas to be disturbed for the construction of improvements." Section 9, D, 5 (page 31) repeats the requirement to show means to control erosion and sedimentation.

(11) The construction plan shall show the sizes and other specifications of all pipes and the specifications of all other construction materials.

Comment 1: "the sizes and other specifications of all pipes and the specifications of all other construction materials" replaces "the size of all structures, piping and other materials". (Current (2010) subdivision regulations, section 9, D, 1 (page 30).)

Comment 2: Current (2010) section 9, D, 1 (page 30) says,

> *All plans shall [show] center line stationing of all proposed roads at fifty (50) foot intervals and the location of all adjacent lot lines with the lot numbers of each lot taken from the appropriate preliminary or final plat.*

"Center line stationing" of a proposed road means putting grade stakes in the center line of the proposed roadway. Grade stakes have attached notes saying how much earth should be either (1) excavated and removed, or "cut" to use the common technical term, or (2) added, or "filled"

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to use the common technical term, from the roadway at that grade stake. The requirement to show "center line stationing ... at fifty (50) foot intervals" is thus redundant to the stated requirement to show (1) existing and proposed profiles and (2) cross sections at 50-foot stations.

Current (2010) section 9, D, 1 (page 30) also requires the construction plan to show "the location of all adjacent lot lines with the lot numbers of each lot taken from the appropriate preliminary or final plat." I have no idea what "adjacent lot lines" are.

(12) The construction plan shall include construction drawings, grading plans, and land treatment plans showing protection from FLOOD damage if the application proposes construction in any SPECIAL FLOOD HAZARD AREA.

Comment: "Construction drawings, grading plans, and land treatment plans" comes from SWRPC model subdivision regulations, section X, B, sentence 2 (page SUB - 17).

(13) The construction plan shall include a time schedule stating the anticipated starting date and the anticipated completion date of the proposed construction.

(G) A plan to control storm water runoff, erosion, and sedimentation if the application proposes any one or more of the following activities:

(a) to disturb a cumulative area greater than 20,000 square feet;

(b) to disturb a cumulative area greater than 2,500 square feet of highly erodible soil, meaning any soil having an erodibility class (K factor) greater than or equal to 0.43 in any layer as found in table 3-1 of *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*, 1992;

(c) to disturb a cumulative area greater than 2,500 square feet within 50 feet of poorly or very poorly drained soil, meaning any soil having a water transmission rate less than 0.15 inches per hour (3.8 millimeters per hour);

(d) to disturb a cumulative area greater than 2,500 square feet within 50 feet of either a body of water or a continuous or intermittent watercourse having a defined channel;

(e) to disturb a cumulative area greater than 2,500 square feet of a WETLANDS or a FLOODPLAIN;

(f) to disturb an area having a length greater than 25 feet at a slope greater than 15%;

(g) to construct a STREET; or

(h) to subdivide for three or more building LOTS or DWELLING UNITS

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except that standard agricultural and silvicultural practices do not have to have a plan to control storm water runoff, erosion, and sedimentation. In this subparagraph, "to disturb" an area means to remove the area's vegetation and expose the underlying soil. The plan to control storm water runoff, erosion, and sedimentation shall contain a graphical site plan and a written narrative as follows:

Comment: The purpose of this comment is to show that the soil-disturbance activities (a) through (h) as conditions triggering the requirement for a plan to control storm water runoff, erosion, and sedimentation are reasonable by explaining where these conditions come from.

Conditions (a) through (d) and (f) through (h) come, with some relaxation, from ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, August 1992, appendix F,* ***Model Erosion and Sediment Control Regulation****, section 3 (page F-2):*

> *The applicant shall submit an erosion and sediment control plan to the Planning Board for any tract of land being developed or subdivided, where one or more of the following conditions are proposed:*
>
> *A. A cumulative disturbed area exceeding 20,000 square feet.*
>
> *B. Construction of a street or road.*
>
> *C. A subdivision of three or more building lots or dwelling units.*
>
> *D. Disturbed critical areas.*

The model erosion and sediment control regulations define "critical areas" as follows (section 2 (page F-2)):

> *Critical Areas: Disturbed areas of* ***any size*** *within 50 feet of a stream, waterbody, or poorly or very poorly drained soils; disturbed areas exceeding* ***2,000 square feet*** *in highly erodible soils; or, disturbed areas containing slope lengths exceeding* ***25 feet*** *on slopes greater than 15 percent.*

The proposed Pittsfield regulation increases 2,000 square feet in critical areas to 2,500 square feet in critical areas because (1) 2,500 square feet is not much bigger than 2,000 and (2) 2,500 square feet is the threshold where the New Hampshire Department of Environmental requires a site-specific alteration of terrain permit in what the NH DES considers critical areas:

> *An area that:*
> *a. Is more than 2,500 square feet in size;*
> *b. Is within 50 feet of any surface water; and*

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c. Has a flow path 50 feet or longer disturbing a grade of 25% or greater, measured at 2- foot intervals

(New Hampshire Code of Administrative Rules, Env-Wq 1502.51, (b), (1), and Env-Wq 1503.03, (e), (3).)

***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire**, 1992, chapter 6, page 6-10, defines poorly drained or very poorly drained soil as being soil having a water transmission rate less than 0.15 inches per hour (3.8 millimeters per hour). The New Hampshire Department of Transportation's **Manual on Drainage Design for Highways**, April 1998, section 2, page 2-3, defines poorly drained or very poorly drained soil the same way.*

Condition (e) comes, with some relaxation, from the SWRPC model subdivision regulations, section VII, E, 1, d (page SUB - 14):

> *The disturbance of critical areas, such as steep slopes, **wetlands**, **floodplains**.*

*The **Stormwater Management** conditions and the SWRPC conditions largely overlap. By contrast, the current (2010) Pittsfield Subdivision Regulations have a much broader condition triggering the requirement for a plan to control storm water runoff, erosion, and sedimentation. 2010 section 10, D, 1, (page 37) says as follows:*

> *All subdivisions except minor subdivisions involving less than five (5) acres shall prepare and construct adequate erosion and sediment control measures and prepare plans for runoff erosion and sediment control.*

"All subdivisions except minor subdivisions involving less than five (5) acres" can be restated as "All subdivisions that create more than three lots or that include 5 acres or more." This condition for requiring an erosion and sediment control plan seems overly broad because a large subdivision could create only two lots and disturb soil only minimally.

The standards to manage or control storm water runoff, erosion, and sedimentation are in proposed article 10, section 1, Storm Water Management, Erosion Control, and Sedimentation Control.

At the planning board meeting of February 4, 2016, a board member said that the proposed erosion and sedimentation control regulation is unenforceable because Pittsfield does not have the expertise to enforce it. (Planning board minutes of February 4, 2016, agenda item 6, page 8.) The board can hire experts to help the board enforce the regulations. (RSA 676:4-b, II.)

(1) The graphical site plan shall show the following information or features:

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Comment: The information required on the graphical site plan comes mostly from ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, August 1992, appendix F, section 5, B, 1 (page F-4).*

(a) The date of the plan.

(b) The scale as a written representation and as a graphic representation.

(c) An arrow showing the direction of astronomic north.

(d) An arrow showing the direction of magnetic north relative to astronomic north.

(e) A vicinity map showing the proposed areas of soil disturbance in relation to the rest of the land under consideration and in relation to surrounding STREETS and development.

Comment: This item comes from current (2010) subdivision regulations, section 10, D, 3, (b), (2), (a) (page 38). ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, 1992, appendix F, section 5, B, 1, (a) (page F-4) has the following comparable item: "Locus map showing property boundaries."*

(f) All existing or proposed easements.

(g) The existing topography and the proposed topography elevations, relative to the North American Vertical Datum of 1988, at contour lines with 2-foot elevation intervals.

(h) All land in any SPECIAL FLOOD HAZARD AREA.

(i) The BASE FLOOD ELEVATION, relative to the North American Vertical Datum of 1988, if the land under consideration includes land in any SPECIAL FLOOD HAZARD AREA and if the land under consideration includes more than 50 lots or more than 5 acres, whichever is less.

(j) All WETLANDS, bodies of water, and continuous or intermittent watercourses having a defined channel.

(k) Soils information from United States Department of Agriculture Natural Resources Conservation Service published data or, where high intensity soil maps are used, a conversion to a soil series map done by a soil scientist certified by the State of New Hampshire Board of Natural Scientists for soil classification and mapping. The graphical site plan shall show soil types and their boundaries in dotted lines.

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Comment 1:

***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire**, 1992, appendix F, section 5, B, 1, (k) (page F-4) requires that the plan show "Areas of poorly and/or very poorly drained soils including any portion to be disturbed or filled." This item seems to me to be redundant to the soil information from the United States Department of Agriculture Natural Resources Conservation Service or from a certified soil scientist.*

Comment 2:

The United States Department of Agriculture Soil Conservation Service has been renamed the United States Department of Agriculture Natural Resources Conservation Service. For example, Concord's corresponding requirement for soils information is as follows:

> *The identification and classification of the extent and type of soils using the USDA Natural Resources Conservation Service system*

(Concord Subdivision Regulations, section 12, 12.08, (4) (page 32).)

(l) All existing structures, existing roads, other existing impervious surfaces, and existing utilities.

(m) All proposed area alterations, including cleared, excavated, filled, or graded areas; proposed structures; proposed public or private roads; other proposed impervious surfaces; proposed utilities; and proposed property lines, if applicable.

*Comment: This item comes from current (2010) subdivision regulations, section 10, D, 3, (b), (2), (d) (page 39): "The proposed area alterations, including cleared, excavated, filled or graded areas and proposed utilities, roads and, if applicable, new property lines and the general location of proposed structures and driveways." **Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire**, 1992, appendix F, section 5, B, 1, (i) and (j) (page F-4) requires the following comparable items: "Areas of soil disturbance" and "Areas of cut and fill."*

(n) All proposed earth stockpiles, equipment storage, and stump disposal.

(o) The location of and design details for all proposed means, both temporary and permanent, to control storm water runoff, erosion, and sedimentation.

Comment: This item comes from current (2010) subdivision regulations, section 10, D, 3, (b), (2), (e) (page 39): "The location of and design details for all proposed soil erosion and sediment control measures and stormwater management facilities."

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(2) The written narrative shall include the following information:

*Comment: The information required in the written narrative comes from **Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire**, August 1992, appendix F, section 5, B, 2 (page F-4) except that item (d) comes from the current (2010) subdivision regulations, section 10, D, 3, (b), (1), (b) (page 38).*

(a) A description of the development.

(b) The construction schedule.

(c) The earth-movement schedule.

(d) The schedule for installing or applying all proposed temporary or permanent means to control storm water runoff, erosion, and sedimentation.

Comment: This item comes from the current (2010) subdivision regulations, section 10, D, 3, (b), (1), (b) (page 38).

(e) A description, including seeding specifications, of all proposed temporary or permanent vegetative means to control storm water runoff, erosion, and sedimentation.

(f) A description, including detailed drawings, of all proposed temporary or permanent structural means to control storm water runoff, erosion, and sedimentation.

(g) The design criteria and calculations for all proposed temporary or permanent means to control storm water runoff, erosion, and sedimentation.

(h) Calculations showing volume, peak discharge, and velocity of present and future runoff leaving the development site.

(i) Identification of each proposed permanent means to control storm water runoff, erosion, and sedimentation.

(j) A description of the maintenance necessary for each proposed permanent means to control storm water runoff, erosion, and sedimentation.

(k) Identification of the party responsible for maintaining each proposed permanent means to control storm water runoff, erosion, and sedimentation.

(H) A proposal to secure the completion of proposed STREET work or utility installations. (RSA 674:36, III, (b); RSA 674:44, III, (d); and RSA 674:44, IV, (b);

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also see article 7, Standards for Performance Security, and article 1, section 5, (e), Occupancy Permits Restricted.)

Comment: The standards for the security are in article 7.

(I) Evidence that an occasion under RSA 231:8 will exist for the town to accept roads that the application dedicates to public use.

(See Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007):

"'The acceptance requirement generally protects the public from having an undesirable dedication thrust upon it, as where the concomitant burdens of maintaining a street, park, or other public service outweigh the public benefits.' [Citation omitted] ... As we explained in State v. Atherton, 16 N.H. 203, 210-11 (1844), if acceptance were not required, 'it would be a great hardship upon towns if an individual could lay out a way upon his own land, throw it open to the public, and then oblige the town to charge themselves with the maintenance and repairs of it.'";

Gallagher v. Windham, 121 N.H. 156, 427 A.2d 37 (1981):

"We recognize that at the time of the site plan approval by the planning board the proposed access to the industrial park was not a public road. We conclude, however, that it was legal and reasonable for the planning board to approve the plans which included a proposed public road."; and

Morin v. Somersworth, 131 N.H. 253, 551 A.2d 527 (1988):

"Neither Gallagher nor Sklar Realty, however, stands for the proposition that a planning board must approve a proposed road in site plan review simply because it has the power to give conditional approval to a proposal. Where, as here, the site plan does not comply with the express terms of the zoning ordinance, the planning board need not approve it.".)

(e) All information in addition to the contents specified in article 4, section 1, (a) through (d), that the planning board needs to decide the application. The board may find that it needs this information during either the completeness review or the merits review and shall either reject the application as incomplete or disapprove the application, depending on which review is in progress, if the applicant does not provide the additional information. (See RSA 676:4, I, (e), (2).) If the board finds that it needs information in addition to the contents specified in article 4, section 1, (a) through (d), then the board shall tell the applicant in writing what the additional information is and why the board needs the additional information. Additional information that the board may need to decide the application includes but is not limited to the following:

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Comment: The Planning Board in New Hampshire - A Handbook for Local Officials, 2015, page IV-13, (page 63 absolute) says as follows:

The board should not grant conditional approval of an application pending receipt of studies or reports that have been required and must be reviewed before a decision can be made. The written decision to disapprove required by RSA 676:3, I should cite lack of specific material or failure to meet an established deadline as the reason for the decision. Under RSA 676:4, I(e)(2) no public hearing is required for this disapproval.

(1) A site inspection. Whenever the board finds that it needs a site inspection to decide an application, the board shall ask the applicant for permission to meet publicly at the site at a time that is reasonable for the applicant and for persons or agencies given notice according to article 5, section 1, (b), (5) through (8).

***Comment 1**: The SWRPC model subdivision regulations, section V, K (Site Inspections), 3, (page SUB - 9) says that the planning board shall summarily deny an application if the board needs a site inspection to decide the application and if the applicant denies permission for a site inspection:*

> *All applications are conditioned upon the owner allowing access to the property, to the extent reasonable and necessary to properly review the application. Denial of access automatically terminates any further consideration of the proposal.*

***Comment 2**: In deciding whether a site inspection is necessary to decide an application, board members should remember two things: (1) board members themselves, not the board's advisors, are the actual decision-makers, and (2) "The board is entitled to rely, in part, upon its own judgment and experience when reviewing applications for various land uses. **See Durant v. Town of Dunbarton**, 121 N.H. 352, 357 (1981). The board's decision, however, must be based upon more than the mere personal opinion of its members. **Id**." (**Richmond Co. v. Concord**, 149 N.H. 312, 821 A.2d 1059 (2003).)*

*In **Durant v. Dunbarton**, the Dunbarton Planning Board did a site inspection, and on the basis of the site inspection, the board rejected a septic-system approval from the New Hampshire Department of Environmental Services. This case shows that justifying a site inspection will typically be easy because the planning board itself, and not some expert, is the decision-maker.*

*But planning boards should not assume from **Durant v. Dunbarton** that the New Hampshire Supreme Court will automatically affirm a planning board's rejection of expert opinion on matters of fact. A number of supreme court decisions have decided whether a planning board may reject expert opinion on matters of fact, and decisions have gone both ways:*

Cases affirming the land-use board's rejection of an expert on matters of fact:

***Vannah v. Town of Bedford**, 111 N.H. 105, 276 A.2d 253 (1971)*
***Durant v. Town of Dunbarton**, 121 N.H. 352, 430 A.2d 140 (1981)*

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***Nestor v. Town of Meredith**, 138 N.H. 632, 644 A.2d 548 (1994)*
***NBAC v. Town of Weare**, 147 N.H. 328, 786 A.2d 867 (2001)*

Case reversing the land-use board's reliance on an expert on matters of fact:

***Garrison v. Town of Henniker**, 154 N.H. 26, 907 A.2d 948 (2006)*

Cases reversing the land-use board's rejection of an expert on matters of fact:

***Condos East Corp. v. Town of Conway**, 132 N.H. 431, 566 A.2d 1136 (1989)*
***Malachy Glen v. Town of Chichester**, 155 N.H. 102, 920 A.2d 1192 (2007)*
***Continental Paving, Inc. v. Town of Litchfield**, 158 N.H. 570, 969 A.2d 467 (2009)*

Other sources:

***Harborside Associates v. Parade Residence Hotel**, 162 N.H. 508, 34 A.3d 584 (2011): "It was for the ZBA, however, to resolve conflicts in evidence and assess the credibility of the offers of proof. **See Continental Paving v. Town of Litchfield**, 158 N.H. 570, 575, 969 A.2d 467 (2009) (zoning board need not accept conclusions of experts)".*

***The Board of Adjustment in New Hampshire - A Handbook for Local Officials**, 2012, page II-12 (page 38 absolute) (conflict resolution); page III-11 (page 67 absolute) (**Continental Paving v. Town of Litchfield**); page APP-D-13 (page 125 absolute) (**NBAC v. Town of Weare**); pages APP-D-31 through APP-D-33 (pages 143-145 absolute) (**Garrison v. Town of Henniker**).*

All of the above references speak to use of experts on matters of fact. Use of experts on matters of law is different. Deference to an expert, such as a lawyer, on what the law says or means is never appropriate because (1) the board, not the lawyer, is the decision-maker and because (2) any court reviewing the decision will not (or at least should not) give any deference to a lawyer on what the law says or means.

***Conclusions: (1)** Justifying a site inspection will typically be easy because the planning board itself, and not some expert, is the decision-maker. **(2)** On matters of fact, land-use boards may accept or reject expert opinion as the board sees fit, because fact-finding and conflict resolution are land-use-board functions. The key is that the board must state a convincing reason for whatever the board does. The higher court will decide whether the reason is convincing or not. **(3)** Deference to a lawyer on what the law says or means is never appropriate.*

(2) A comprehensive plan, in sketch form, showing potential future expansion of the proposed SUBDIVISION and including the prospective future STREET system on adjacent property owned by the subdivider but not a part of the proposal.

(3) An environmental or economic impact statement prepared by a qualified consultant. Such a statement may require documentation on drainage, erosion, forest productivity, ground or surface water quality, traffic safety, traffic study, public services, economic impacts on

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public service and schools, and such other factors that could impact the short-term or long-term well being of the public in the town of Pittsfield.

Comment: Subparagraphs (2) and (3) come from current (2010) subdivision regulations, section 10, N, (1) and (2) (page 43).

2. Permits from Other State or Federal Governmental Bodies

An application shall not be considered incomplete solely because it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal governmental bodies, but the planning board may condition approval upon the receipt of such permits or approvals in accordance with article 5, section 4, (h). (RSA 676:4, I, (b).)

Comment: Receiving permits or approvals from other state or federal governmental bodies is a condition precedent.

3. Fees

(a) The filing fee for an application for SUBDIVISION or site plan approval shall be the ABUTTER notice fee according to paragraph (b), (1), plus the preliminary advertising fee according to paragraph (b), (2), plus the preliminary preapproval third-party review fee according to paragraph (d), (3).

(b) Notice Fees:

(1) Abutter Notice: The fee for ABUTTER notice shall be $7.50 times the number of notices, both for ABUTTERS and others, that article 5, section 1, (b), (5) through (8), require.

(2) Advertising: The preliminary fee for advertising shall be $150 for advertising in the *Suncook Valley Sun* unless the applicant asks the planning board to advertise in the *Concord Monitor*, in which case the preliminary fee for advertising shall be $400.

*Comment: On June 28, 2016, a typical advertisement in the **Suncook Valley Sun** for an application for subdivision approval (the lot line adjustment of James E. Donini Jr.), was $118.25. The fee checklist current on June 28, 2016, says $75 for the local advertising rate.*

(3) The applicant shall pay the ABUTTER notice and advertising fees according to subparagraphs (1) and (2) in advance. (RSA 676:4, I, (d), (1) and (2).)

(4) If the newspaper publisher's charge for the advertisement is less than the advertising fee that subparagraph (2) specifies, then the board shall refund the difference.

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(5) If the newspaper publisher's charge for the advertisement is greater than the advertising fee that subparagraph (2) specifies, then the board shall charge the applicant the difference.

(c) Other Fees:

(1) The planning board may impose reasonable fees in addition to the ABUTTER notice and advertising fees according to paragraph (b) in order to cover the board's administrative expenses and costs of special investigative studies, review of documents, and other matters that particular applications may require. (RSA 676:4, I, (g).)

(2) The applicant shall pay these additional fees before the board approves or disapproves the final plat. (See RSA 676:4, I, (e), (2).)

(d) Preapproval Third-Party Review Fees:

(1) The planning board may require the applicant to reimburse the board for expenses reasonably incurred by obtaining third party review and consultation during the review process, provided that the review and consultation does not substantially replicate a review and consultation obtained by the zoning board of adjustment. The applicant may request the planning board choose a different third party consultant and the request may include the name of a preferred consultant. The planning board shall exercise reasonable discretion to determine whether the request is warranted. (RSA 676:4-b, I.)

(2) The applicant shall pay the cost of such third party review and consultation before the planning board approves or disapproves the final plat. (See RSA 676:4, I, (e), (2).)

(3) The preliminary fee for preapproval third-party review due with the filing of an application shall be $450.00 for 8.5 hours of the planning board's regular third-party consultant's time at $50/hour.

(4) If the board's regular third-party consultant spends less than 8.5 hours on the application, then the board shall refund the difference.

(5) If the board's regular third-party consultant spends more than 8.5 hours on the application, or if the board needs another third-party consultant in addition to or instead of the board's regular third-party consultant, then the board may charge the applicant for the additional time, the additional review, or the alternative review.

(e) Recording Fees: The applicant shall pay all fees for recording his plat in the registry of deeds.

Comment: The SWRPC model subdivision regulations, section V, J, 3, a, (page SUB - 8) include another fee, for "making changes to the Town's tax maps."

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(f) Post-approval Third-Party Review and Inspection Fees: A planning board approval of a SUBDIVISION plat, site plan, or other land use application may require the applicant to reimburse the board for expenses reasonably incurred by obtaining third party inspection during the construction process. (RSA 676:4-b, II.)

(g) Escrow Accounts to Pay Fees: The planning board encourages applicants to establish escrow accounts that the planning board can bill to pay application fees. Such escrow accounts can avoid delays that unpaid fees can cause. Article 5, section 5, Unpaid or Disputed Fees, states such delays.

*Comment: The planning board may not be able to require an applicant to put money in escrow to pay for fees other than notice fees. RSA 676:4, I, (d), (1), says, "All costs of notice, whether mailed, posted, or published, shall be paid **in advance** by the applicant," but there is no similar statutory requirement for advance payment for other fees, and there appears to be no statute explicitly authorizing the board to require advance payment of other fees. In fact, RSA 676:4-b, I, says that the planning board "may require the applicant to **reimburse** the board for expenses reasonably incurred by obtaining third party review and consultation during the review process." The statute's use of the word "reimburse," which means to pay back, indicates affirmatively that the planning board cannot require an applicant to put money in escrow for third-party-review fees.*

4. Application Procedure

(a) Every application to the planning board for SUBDIVISION or site plan approval shall include the contents specified in article 4, section 1, Contents Required for Every Subdivision or Site Plan Application.

(b) Applicants shall file their applications with the planning board's administrative secretary or, if the administrative secretary is absent, the building inspector or the town administrator. The person receiving the application shall stamp the application with the date received, initial the application, and file with the application a copy of the receipt for the application fee paid. If the application fee was paid by check, then the copy of the receipt for the application fee paid shall be a copy of the check.

(c) If the person receiving the application is not the building inspector, then the person receiving the application shall tell the building inspector that the board has received an application. If the person receiving the application is not the planning board's administrative secretary, then the person receiving the application shall tell the administrative secretary that the board has received an application.

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Article 5. Application-Review Procedures

1. Schedule and Notice for Meetings for Formal Subdivision or Site Plan Applications

(a) Upon an applicant's filing an application for SUBDIVISION or site plan approval, the planning board shall schedule a review of the application to determine whether the application is complete according to article 4, section 1, Contents Required for Every Subdivision or Site Plan Application. The board shall schedule the completeness review for the first regular meeting that is 21 days or more after the filing date and that is a meeting for which the board can give notice according to paragraph (b) of this section. (See RSA 676:4, I, (c), (1).)

Comment: "21 days" is RSA 676:4, I, (c), (1), effective July 18, 2016. The previous requirement was 15 days.

(b) The board shall give notice of the completeness review as follows:

(1) The notice shall say that the board will hold a meeting.

(2) The notice shall state the following additional information:

(A) The purpose of the meeting and the board's authority to hold a meeting for that purpose. (See RSA 676:4, I, (d), (1).)

(B) The time and place of the meeting. (RSA 91-A:2, II; also see RSA 676:4, I, (d) (1).)

(C) The applicant's name and address. (See RSA 676:4, I, (d), (1).)

(D) The location of the proposed project both by STREET address, if any, and by tax map and LOT number. (See RSA 676:4, I, (d), (1).)

(E) The zoning district or districts in which the land under consideration is located.

(F) A general description of the proposed project. (RSA 676:4, I, (d), (1).)

(G) Where the application is on file for public inspection.

(3) The notices posted in the town hall or in the post office according to subparagraph (4) shall state the date when the board posted these notices. The notices published in the newspaper according to subparagraph (4) or mailed according to subparagraphs (5) through (8) shall not state any date of posting but shall instead rely on the date of the newspaper edition or the date of the mailing.

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(4) The board shall notify the general public by posting the notice in the town hall and in the post office and by publishing the notice in a newspaper of general circulation in the area at least 10 days before the date of the completeness review. (See RSA 676:4, I, (d), (1).)

(5) The board shall also notify the ABUTTERS, the applicant, holders of CONSERVATION, preservation, or agricultural preservation RESTRICTIONS, and every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board. The board shall give this notice by sending it certified mail at least 10 days before the date of the completeness review. (RSA 676:4, I, (d), (1).)

(6) The board shall also notify the applicant's representative and all owners of the land under consideration if either the applicant's representative or the owner of the land under consideration is not the applicant. The board shall give this notice by sending it certified mail at least 10 days before the date of the completeness review.

Comment: This notice to the applicant's representative and to the owner is Pittsfield practice.

(7) For those proposals in which any structure or proposed building site will be within 500 feet of the top of the bank of any lake, pond, river, or stream, the planning board shall also notify the New Hampshire Department of Environmental Services. The board shall give this notice by sending it first class mail at the same time that the board mailed the notice to ABUTTERS. The sole purpose of notification to the department shall be to provide information to the department for dam hazard classification. This requirement shall not confer upon the department the status of an ABUTTER. Failure by the municipality to notify the department shall not be considered a defect of notice. (RSA 676:4, I, (d), (2).)

(8) The board shall also notify the New Hampshire Department of Transportation if the land under consideration is on or within 500 feet of a state highway. The board shall give this notice by sending it first class mail at least 10 days before the date of the completeness review. The state highways in Pittsfield and the responsible New Hampshire Department of Transportation districts are listed in article 4, section 1, (a), (14).

Comment: This notice to the New Hampshire Department of Transportation is Pittsfield practice at the New Hampshire Department of Transportation's request. (Planning board minutes of June 16, 2011, agenda item added, Exemption from Site Plan Review for the Family Dollar store, page 2, and planning board minutes of October 20, 2011, agenda item 8, Members' Concerns, Members' Concern 5, page 15.)

(c) If the boundary or a part of the boundary of the land under consideration is a municipal boundary, or if the sole defined-way access to the land under consideration is via a private road or class IV, V, or VI highway located in a municipality adjoining Pittsfield, then the board shall inquire in writing to the appropriate administrative officials in the adjoining municipality or municipalities as to the existence of facts or regulations that, under RSA 674:53, I, III, or IV, or otherwise, would preclude approval of or affect the application.

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Response shall be made to such inquiries within the period provided by RSA title 64 for approval or disapproval of the underlying application. A response that invokes an ordinance or regulation of such adjoining municipality may be appealed in that adjoining municipality in the same manner as any other administrative decision. An adjoining municipality in which is located an existing private road or class VI highway that serves as an applicant's sole means of fulfilling the defined-way access requirements under RSA 674:41 shall have the same regulatory powers under that statute with respect to that road or highway as if the proposed building or development were located within that same municipality. (RSA 674:53, II.)

(d) After accepting the application as complete, the board shall hold a public hearing on the merits of the application except as provided in this paragraph. The board shall hold such a merits hearing on every application accepted as complete for SUBDIVISION or site plan approval, including applications accepted as complete for approval of LOT LINE ADJUSTMENTS or boundary agreements that do not create buildable LOTS, except that the board does not have to hold a merits hearing on disapprovals of applications based on either

(1) the applicant's failure to supply information required by the subdivision regulations, including identification of ABUTTERS or holders of CONSERVATION, preservation, or agricultural preservation RESTRICTIONS,

(2) the applicant's failure to meet reasonable deadlines established by the board, or

(3) the applicant's failure to pay costs of notice or other fees required by the board.

(RSA 676:4, I, (c), (1), and RSA 676:4, I, (e).)

(e) The board shall give notice of the merits hearing in the same manner as for the completeness review. (RSA 676:4, I, (d), (1).) Paragraph (b) of this section states the notice requirements for the completeness review. If the notice of the completeness review included a notice of the merits hearing, then the board is not required to give additional notice of the merits hearing. (RSA 676:4, I, (d), (1).) In addition, the board is not required to give additional notice of an adjourned session of a merits hearing with proper notice if the time and place of the adjourned session were made known at the prior hearing. (RSA 676:4, I, (d), (1).)

(f) Sample Form of a Notice of a Completeness Review and a Merits Review for a Subdivision Application:

Notice of Meeting

Notice of Submission and Determination of Completeness
of an Application for Subdivision Approval

The Pittsfield Planning Board will hold a meeting pursuant to RSA 676:4, I, (c), (1), to determine whether a submitted application for subdivision approval is complete according to

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the board's regulation. The time and place of the meeting is (enter here the time and place). The applicant's name and address is (enter here the name and address). The proposal is for land at (enter here the STREET address, if any, tax map and LOT numbers, and zoning district or districts). The applicant proposes (enter here a general description of the proposed project). The application for subdivision approval is on file for public inspection at the town hall, 85 Main Street, Pittsfield, NH.

Notice of Public Hearing

Notice of Hearing on the Merits
of an Application for Subdivision Approval

If the Pittsfield Planning Board determines that the (enter here the applicant's name or last name) application for subdivision approval is complete at the above-noticed meeting, then the board will hold a public hearing pursuant to RSA 676:4, I, (c), (1); RSA 676:4, I, (e); and the Town of Pittsfield Subdivision Regulations, article 5, section 1, (d), and article 5, section 4, (a), on the merits of the application immediately after the board's completeness determination. The board will not give additional notice of a continuance of the merits hearing to a later meeting.

Posted (for notices posted in the town hall or in the post office only, enter here the date when the notice was posted; do not include this "Posted (date)" note in the notices mailed or published in the newspaper)

2. Preapproval Third-Party Review

(a) Except as provided in paragraph (b), upon the planning board's receiving an application for SUBDIVISION or site plan approval, the board's administrative secretary shall get reports from the fire chief, the police chief, the highway agent, the superintendent of the waste water treatment department, and, if the land under consideration has WETLANDS, the conservation commission on the appropriateness of the application as it relates to the reporting agency's specialty. The administrative secretary shall file these reports with the application.

(b) The board's administrative secretary does not have to get reports according to paragraph (a) for an application that is essentially the same as one for which the department heads and the conservation commission, if applicable, have already given reports in design review.

(c) The fire chief's report shall specifically comment on the following matters:

(1) The accessibility of existing or proposed development to emergency personnel and vehicles.

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(2) The availability of existing fire-protection water supply near the land under consideration.

(3) The type, location, and spacing of proposed fire-protection water supply, such as fire ponds, cisterns, and so forth.

(4) Whether the fire-protection water supply conforms to the National Fire Prevention Association's *Standard on Water Supplies for Suburban and Rural Fire Fighting*.

Comment: The specifications for the fire chief's report come from the SWRPC model subdivision regulations, section VII, Subdivision Design Standards, C, Fire Protection (page SUB - 13). But the requirement to submit the report itself is listed in section VI, Submission Requirements, C, 5, (page SUB - 12) as a requirement for a completed application. The department-head reports should not be listed as a requirement for a completed application because the department-head reports are third-party reviews that address the merits of the application, just as Matt Monahan of Central New Hampshire Regional Planning Commission does. The SWRPC regulations do not state any specifications for reports from the police chief or the conservation commission, and the SWRPC regulations do not mention reports from the highway agent or the waste water treatment department.

(d) The board's administrative secretary shall tell the building inspector and the board's regular third-party consultant that the board has received the application, except that the applicant may request the planning board choose a different third party consultant and the request may include the name of a preferred consultant. (RSA 676:4-b, I.) The planning board shall exercise reasonable discretion to determine whether the request is warranted. When the planning board grants such a request, the 65-day period stated in article 5, section 4, (c), for the board's action on an application shall be extended 45 days to provide the board adequate time to identify a different consultant. (RSA 676:4-b, I.)

(e) Except as provided in paragraph (f), the building inspector shall contact the third-party consultant, and within 10 days after the application is filed, the building inspector and the third-party consultant shall evaluate the application and file a report with the application on the following matters:

(1) The application's potential for regional impact according to article 2, section 3, DEVELOPMENT OF REGIONAL IMPACT. If the building inspector and the third-party consultant report that the application has potential for regional impact, then they shall describe the potential regional impact.

(2) The appropriateness of all waivers requested.

(3) The application's completeness according to article 4, section 1, Contents Required for Every Subdivision or Site Plan Application. If the building inspector and the third-party consultant report that the application is incomplete, then they shall describe the information, procedure, or other requirement necessary for the application to be complete.

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(4) The application's merits for approval. If the building inspector and the third-party consultant report that the application should be disapproved, then they shall state the reasons for disapproval.

(f) The building inspector and the third-party consultant do not have to evaluate an application that is essentially the same as one that they evaluated in design review.

3. Completeness Review of a Formal Application for Subdivision or Site Plan Approval

(a) The planning board shall begin its review of every application for SUBDIVISION or site plan approval by determining and voting on whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact. (RSA 36:56, I.)

(b) If the board determines that the development could be construed as having the potential for regional impact, then the board shall continue the matter to allow time to notify the potentially impacted municipalities and the Central New Hampshire Regional Planning Commission. RSA 36:57, I, II, and III, state the notice procedure and the time required.

(c) Next, the board shall consider each requested waiver of subdivision regulations or site plan review regulations and shall vote to grant or deny the waiver. The board shall consider and vote on each requested waiver separately.

(d) If the board votes to grant a waiver, then the board shall state the basis for granting the waiver and shall record the basis in the minutes. (RSA 674:36, II, (n), and RSA 674:44, III, (e).)

(e) Next, the board shall determine whether the application is complete according to article 4, section 1, Contents Required for Every Subdivision or Site Plan Application, and shall vote upon the application's acceptance. (RSA 676:4, I, (c), (1).)

(f) If the board determines that the application is incomplete according to article 4, section 1, then the board shall notify the applicant of the determination in accordance with article 5, section 6, Issuance of Decision, which shall describe the information, procedure, or other requirement necessary for the application to be complete. (RSA 676:4, I, (c), (1).)

4. Merits Review of a Formal Application for Subdivision or Site Plan Approval

(a) The planning board shall begin its review of the merits of every application for SUBDIVISION or site plan approval by holding a public hearing on the merits of the application except as provided in article 5, section 1, (d). (RSA 676:4, I, (c), (1), and RSA 676:4, I, (e).)

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(b) At the hearing, any applicant, ABUTTER, holder of CONSERVATION, preservation, or agricultural preservation RESTRICTION, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as the board deems appropriate. (RSA 676:4, I, (e).)

(c) After the hearing, the board shall vote to approve, approve with conditions, or disapprove the application. (RSA 676:4, I, (c), (1).) The board shall take this vote within 65 days after the board accepted the application as complete, unless the time period for the vote is extended as provided in either paragraph (d) of this section or article 5, section 2, (d). (RSA 676:4, I, (c), (1), and RSA 676:4-b, I.)

(d) The planning board may apply to the board of selectmen 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 65-day period specified in paragraph (c) and consent to such extension as may be mutually agreeable. (RSA 676:4, I, (f).)

*Comment: RSA 676:4, I, (f), in part says, "The applicant may waive the requirement for planning board action within the time **periods** specified in **subparagraph (c)**..." (Emphasis added on "periods" plural and on "subparagraph (c)".) RSA 676:4, I, (c), (1), in part says, "the board shall ... act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in **subparagraph (f)**." (Emphasis added on "subparagraph (f)".) Because the 65-day period is the only time period that RSA 676:4, I, (c), makes "subject to extension or waiver as provided in subparagraph (f)," "the time periods" (plural) is an error and should be "the 65-day period" (singular).*

(e) If the planning board fails to approve, conditionally approve, or disapprove an accepted-as-complete application within the time period that paragraph (c) defines to decide the application, then the board of selectmen shall, upon request of the applicant, immediately issue an order directing the planning board to act on the application within 30 days. If the planning board does not act on the application within that 30-day time period, then within 40 days of the issuance of the order, the board of selectmen shall certify on the applicant's application that the plat is approved pursuant to RSA 676:4, I, (c), (1), unless within those 40 days the board of selectmen has identified in writing some specific subdivision regulation or zoning or other ordinance provision with which the application does not comply. Such a certification, citing RSA 676:4, I, (c), (1), shall constitute final approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15. (RSA 676:4, I, (c), (1).)

(f) If the planning board approves the application with or without conditions, then the board shall specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of the particular project:

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(1) "Active and substantial development or building" for the purpose of fulfilling RSA 674:39, I.

(2) "Substantial completion of the improvements as shown on the subdivision plat or site plan" for the purpose of fulfilling RSA 674:39, II.

(See article 6, section 3, (c); RSA 674:39, III; and AWL Power v. Rochester, 148 N.H. 603, 813 A.2d 517 (2002).)

Comment:

1. *These matters are not conditions precedent per se, but the board should do them at the same time as it imposes conditions precedent.*

2. *See **Grandfathered - The Law of Nonconforming Uses and Vested Rights** (2009 edition), page 16:*

> *The latest and best case on how much investment it takes to obtain vested rights is **AWL Power, Inc. v. City of Rochester**, 148 N.H. 603 (2002). AWL got approval in 1987 for 18 homes and 59 condo units. It had built 70% of the roads and utilities (only 10% of the total project) in 1990 when the market went south. Ten years later, ordinances had changed, and the planning board revoked the approval*
>
> *The Court emphasized that the rationale for vested rights is that a developer has spent money in good faith reliance on the absence of restrictions **(again, good-faith investment-backed expectations**). It said "substantial construction" could not mean the same thing as "substantial completion" (the term used in RSA 674:39, the 4-year Exemption), but instead only requires a substantial **beginning** on the project:*
>
> > ***"The correct standard for "substantial construction" vesting considers not only construction measured against the entire plan, but also whether the amount of completed construction is per se substantial in amount, value or worth."***
>
> ***Important:** The Court said this "per se substantial" standard **does** also apply to the 4-year Exemption statute. Therefore the language of "substantial completion" in that statute cannot be applied literally, but must instead be read consistent with the **AWL Power** case.*

(g) If the board approves the application with conditions, then the board shall state and the minutes shall record a detailed description of all conditions necessary to obtain final approval. (RSA 676:3, I and II.) The board shall vote separately on each condition.

(h) Conditions of approval may include the receipt of state or federal permits relating to a project, and the board may not refuse conditional approval solely for lack of said permits. (RSA 676:4, I, (i).)

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(i) The board shall not conditionally approve any application upon a condition of the board's receiving information that the board needs to decide the application, or upon any condition requiring the board to receive information that the board needs to decide the application. (See RSA 676:4, I, (e), (2), and article 4, section 1, (e).)

Comment: The Planning Board in New Hampshire - A Handbook for Local Officials, 2015, page IV-13, (page 63 absolute) says as follows:

The board should not grant conditional approval of an application pending receipt of studies or reports that have been required and must be reviewed before a decision can be made. The written decision to disapprove required by RSA 676:3, I should cite lack of specific material or failure to meet an established deadline as the reason for the decision. Under RSA 676:4, I(e)(2) no public hearing is required for this disapproval.

(j) If the board votes to disapprove the application, then the board shall state and the minutes shall record the reasons for the disapproval. (RSA 676:3, I and II, and RSA 676:4, I, (h).)

5. Unpaid or Disputed Fees

(a) If an applicant incurs a fee after he files his application but before the planning board gives the application either approval, conditional approval, or disapproval under article 5, section 4, (c), and if the fee is unpaid at the board's next meeting to consider the application, then the board shall notify the applicant of the unpaid fee and shall suspend consideration of the application for the lesser of (1) 10 days after the date of the notice and (2) the time remaining in the time period that article 5, section 4, (c), defines to decide the application. The board's notice to the applicant shall also notify him of his payment or dispute options under paragraphs (b) through (f) of this section.

Comment:

1. *The time period that article 5, section 4, (c), defines to decide the application is the 65-day period plus extension defined in RSA 676:4, I, (c), (1).*

2. *The planning board should develop a standard notice form for unpaid fees.*

(b) The applicant shall either

(1) pay the fee within the suspension time period,

(2) pay the fee within the suspension time period but file a written statement disputing the fee and giving the reasons for the dispute within one year after the notice of the fee, or

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(3) file a written statement within the suspension time period disputing the fee, and extend the time period for a decision under article 5, section 4, (c), by 90 days after the date when the applicant filed his written statement disputing the fee.

Comment: 90 days equals 30 days for the statement of reasons for disputing the fee (paragraph (f), (1)) plus 45 days for the board's decision on whether the disputed fee is valid (paragraph (f), (3)) plus 15 days for the applicant to pay if the board affirms the disputed fee (paragraph (f), (4) and (5)).

(c) If the applicant does not either (1) pay the fee within the suspension time period or (2) file a written statement within the suspension time period disputing the fee, and extend the time period for a decision under article 5, section 4, (c), by 90 days after the date when the applicant filed his written statement disputing the fee, then the board shall disapprove the application. (See RSA 676:4, I, (e), (2).)

(d) If the applicant pays the fee within the suspension time period, then the board shall lift the suspension and resume considering the application.

(e) If the applicant pays the fee within the suspension time period but files a written statement disputing the fee and giving the reasons for the dispute within one year after the notice of the fee, then within 45 days after the applicant files his statement of reasons for disputing the fee, the board shall consider the statement, decide whether the fee is lawful and reasonable, notify the applicant of this decision, and refund the fee if the board decides that the fee is unlawful or unreasonable. The board encourages applicants to state their objections to fees much earlier than one year in order to preserve applicants' appeal options under RSA 677:15. In deciding whether the fee is lawful and reasonable, the board may hear the applicant and such other persons as the board deems appropriate.

Comment:

1. *45 days comes from the 45-day extension that RSA 676:4-b, I, gives when an applicant requests a different preapproval third-party consultant.*

2. *The board cannot give the applicant a hearing as a matter of right because giving a hearing as a matter of right would invoke a requirement to notify the abutters and so forth by certified mail. See RSA 676:4, I, (d), (1):*

   *For **any** public hearing on the application, the same notice as required for notice of submission of the application shall be given.*

(f) If the applicant does not pay the fee within the suspension time period, but if instead the applicant files a written statement within the suspension time period disputing the fee and extends the time period for a decision under article 5, section 4, (c), by 90 days after the date when the applicant filed his written statement disputing the fee, then the board and the applicant shall use the following procedure to decide the dispute:

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Comment: 90 days equals 30 days for the statement of reasons for disputing the fee (paragraph (f), (1)) plus 45 days for the board's decision on whether the disputed fee is valid (paragraph (f), (3)) plus 15 days for the applicant to pay if the board affirms the disputed fee (paragraph (f), (4) and (5)).

(1) Within 30 days after the applicant files his statement disputing the fee, the applicant shall file a written statement of reasons why the fee is unlawful or unreasonable.

(2) The time period during which the board suspends consideration of the application for SUBDIVISION or site plan approval shall be extended, without any action of the board, by 90 days after the date when the applicant filed his written statement disputing the fee.

(3) Within 45 days after the applicant files his statement of reasons for disputing the fee, the board shall consider the statement, decide whether the fee is lawful and reasonable, and notify the applicant of this decision.

Comment: 45 days comes from the 45-day extension that RSA 676:4-b, I, gives when an applicant requests a different preapproval third-party consultant.

(4) If the board decides that the fee is lawful and reasonable, then the applicant shall pay the fee within 15 days of this decision, and the board shall lift the suspension and resume considering the application when the applicant pays the fee.

Comment: 15 days is the remainder of the 90-day dispute-resolution period.

(5) If the board decides that the fee is lawful and reasonable, and if the applicant does not pay the fee within 15 days of this decision, then the board shall disapprove the application. (See RSA 676:4, I, (e), (2).)

(6) If the board decides that the fee is unlawful or unreasonable, then the board shall cancel the fee, lift the suspension, and resume considering the application.

(g) The board shall use either first-class mail or certified mail, whichever the board deems appropriate, for all notices under this section.

Comment: First-class mail, as opposed to certified mail, should be acceptable for these notices for two reasons. First, the board does not have to give any notice at all of an unpaid fee because the board does not have to have a public hearing on an application that the board is denying because of an unpaid fee. See RSA 676:4, I, (d), (1):

> *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****.*

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Also see RSA 676:4, I, (e), (2):

> ***Public hearings shall not be required**, unless specified by the subdivision regulations, when the board is considering or acting upon: ... Disapprovals of applications based upon ... failure to pay costs of notice or other fees required by the board.*

Second, first-class mail should be acceptable for a notice of an unpaid fee because the board does not have to use certified mail for notices of decision under RSA 676:3 for the approval or disapproval of the land use application itself. In fact, RSA 676:3 does not say that such notices of decision have to be mailed at all; RSA 676:3, I, just says that the board must "make a copy of the decision available to the applicant."

The reasoning behind the notice by first-class mail assumes that the board will not have a meeting that the board did not previously announce according to RSA 676:4, I, (d), (1). If the board does have such a meeting, then the board will have to notify all abutters and so forth by certified mail.

6. Issuance of Decision

(a) The planning board shall issue a final written decision which either approves or disapproves an application and make a copy of the decision available to the applicant. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval. (RSA 676:3, I.)

(b) The chair shall write, sign, and date the notice of decision. The secretary shall help the chair to write the notice of decision.

(c) Whenever the planning board votes to approve or disapprove an application, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefor and all conditions of approval, shall be placed on file in the board's office and shall be made available for public inspection within 5 business days of such vote. (RSA 676:3, II.)

(d) Whenever a plat is recorded to memorialize an approval issued by the planning board, the final written decision, including all conditions of approval, shall be recorded with or on the plat. (RSA 676:3, III.)

7. Final Approval of Applications Conditionally Approved upon Conditions Precedent

(a) The planning board shall give final approval to a conditionally approved SUBDIVISION or site plan application with conditions precedent by the board's receiving and voting on documentation proving that all conditions precedent have been satisfied. (See RSA 676:4, I, (i); Simpson Development Corp. v. Lebanon 153 N.H. 506, 899 A.2d 988 (2006); Sklar

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Realty v. Merrimack, 125 N.H. 321, 480 A.2d 149 (1984).) The board shall vote on each condition precedent separately.

(b) Verification that conditions precedent have been satisfied may happen without a public hearing if and only if the conditions precedent under consideration are either

(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, including state and federal permits.

All conditions precedent not specified within this paragraph as minor, administrative, or relating to issuance of other approvals shall require a hearing and notice according to article 5, section 1, (b), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the time and place of the adjourned session were made known at the prior hearing.

(RSA 676:4, I, (i).)

8. Recording of Subdivision Plats That Have Final Approval

(a) After the planning board has given final approval to a SUBDIVISION application, and after all appeals of the board's final approval have affirmed the board's final approval, the applicant shall provide the board with the final plat printed on mylar for recording in the registry of deeds.

(b) The chair and one other board member as specified in subparagraph (1), (2), or (3) shall endorse the board's final approval by signing the mylar plat and dating the signatures. (See RSA 674:37.)

(1) The secretary shall countersign the chair's signature if the secretary is present and is not acting as chair.

(2) The vice-chair shall countersign the chair's signature if the secretary is absent but the vice-chair is present and is not acting as chair.

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(3) A board member that the chair designates shall countersign the chair's signature if the secretary and the vice-chair are both unavailable to countersign according to subparagraphs (1) and (2).

(c) The chair or the secretary shall record the plat (see RSA 674:39, I), the notice of decision (RSA 676:3, III), and the list of waivers (article 4, section 1, (d), (16), (B)) in the registry of deeds within 10 days of the board's receiving the mylar plat according to paragraph (a) of this section. The person recording these documents shall ask the registrar for permission to write the plan number on the notice of decision and on the list of waivers.

Comment: The SWRPC model subdivision regulations, section V, D, 4, (page SUB - 6) say as follows in respect to the time window of recording:

> *An approved plan shall be recorded by the Planning Board with the County Register of Deeds of within **90** days of approval. Any subdivision plan not filed within this timeframe shall be considered void.*

*(Emphasis added on "**90**".) The Concord Subdivision Regulations require recording within 30 days of endorsement. (Concord Subdivision Regulations, section 9, 9.08, (7) (page 19), and section 10, 10.9, (7) (page 24).) "10 days" in the proposed regulation came from the 2010 (and earlier) Pittsfield Planning Board rules of procedure (2010 rules of procedure, section IV, 7 (page 6)); the current (2010) subdivision regulations have no time limit. None of the four documents—the SWRPC model subdivision regulations, the Concord Subdivision Regulations, the current (2010) Pittsfield Subdivision Regulations, or the Pittsfield Planning Board rules of procedure—account for delays resulting from appeals. But the planning board does not want to record a plat that is being challenged in court. Thus the proposed regulations say that plats are to be recorded after all appeals have affirmed the planning board's own final approval.*

9. Limitation on Appeals

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 article 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 the planning board's actions by judicial action only when such defects create serious impairment of opportunity for notice and participation. (RSA 676:4, IV.)

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Article 6. Abandonment, Applicability of New Regulations, Amendment, and Revocation

1. Abandonment of Applications in Process

(a) Incomplete Application: A SUBDIVISION or site plan application that the planning board has found incomplete shall be deemed abandoned if the applicant has not resubmitted the application revised to correct the deficiencies within 12 months after the date when the board found the predecessor version of the application incomplete.

(b) Conditionally Approved Application: A SUBDIVISION or site plan application that the planning board has conditionally approved under article 5, section 4, (c), shall be deemed abandoned if (1) the applicant has not shown that he has satisfied all conditions precedent within 12 months after the date when the board conditionally approved the application and if (2) the board has not granted an extension. The board shall grant one and only one 12-month extension beyond the 12 months after the date of conditional approval if and only if the applicant requests an extension in writing before the end of the 12 months after the date of conditional approval.

(c) Abandoned Application: An abandoned SUBDIVISION or site plan application shall not be revived except as a complete new submission to the planning board.

2. Applicability of Proposed or New Regulations to Applications in Process

(a) Applications Filed after Notice of Proposed Regulation: The building inspector shall not issue any building permit within the 120 days prior to the annual or special town meeting if:

(1) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7; and

(2) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

(RSA 676:12, I.)

Comment: Paragraph (a) could apply to subdivision applications because the plat must show "The intended use of each existing or proposed LOT." (Article 4, section 1, (d), (17), (K).)

(b) Applications Filed before Notice of Proposed Regulation: The provisions of paragraph (a) shall not apply to any plat or application which has been the subject of notice by the planning board pursuant to article 5, section 1, (b), prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to article 5, section 1,

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(b), so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this paragraph shall also apply to proposals submitted to the planning board for design review pursuant to article 3, section 4, Procedure for Design Review, provided that a formal application is filed with the planning board within 12 months of the end of the design review process. (RSA 676:12, VI.)

Comment: Paragraph (b) copies RSA 676:12, VI, except that
1. *"paragraph (a)" replaces "paragraph I"*
2. *"article 5, section 1, (b)," replaces "RSA 676:4, I(d)"*
3. *"article 3, section 4, Procedure for Design Review" replaces "RSA 676:4, II(b)"*

3. Five-Year Exemption for Approved and Recorded Plats

(a) Every SUBDIVISION plat approved by the planning board and properly recorded in the registry of deeds (see article 5, section 8) and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by the town except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that:

(1) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved SUBDIVISION plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the town at the time of commencement of such development;

(2) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(3) At the time of approval and recording, the SUBDIVISION plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such SUBDIVISION plat or site plan.

(b) Once substantial completion of the improvements as shown on the SUBDIVISION plat or site plan has occurred in compliance with the approved SUBDIVISION plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

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(c) The planning board may, as part of its subdivision and site plan regulations or as a condition of SUBDIVISION plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(1) "Substantial completion of the improvements as shown on the SUBDIVISION plat or site plan," for purposes of fulfilling paragraph (b).

(2) "Active and substantial development or building," for the purposes of fulfilling paragraph (a).

(See RSA 674:39, III, and AWL Power v. Rochester, 148 N.H. 603, 813 A.2d 517 (2002).)

(d) Failure of the planning board to specify by regulation or as a condition of SUBDIVISION plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the SUBDIVISION plat or site plan approved by the planning board to the 5-year exemption described in paragraph (a). The planning board may, for good cause, extend the 24-month period set forth in subparagraph (a), (1).

(RSA 674:39.)

4. Amendments to Approved Plats

(a) After the planning board has given final approval to a plat, the applicant shall construct the proposed development as shown on the plat except as provided in this section.

(b) The applicant shall present to the board or the board's designee all proposed changes, and for each change, the board or the board's designee shall determine whether the change is minor or major.

(c) Minor changes: The board or its designee may approve minor changes without giving the notice that article 5, section 1, (e), requires for merits hearings on new applications. By way of illustration, minor changes may include but are not limited to (1) small changes in the location of roads, (2) small changes in the location of utilities and building foundations because of subsurface conditions encountered during construction, and (3) improvement in design such as a lower STREET grade.

(d) Major changes: The board may approve major changes only after (1) the applicant submits new plans showing the changes, (2) the board gives notice according to article 5, section 1, (e), of a merits hearing on the changes, and (3) the board has held the merits hearing. By way of illustration, major changes may include but are not limited to (1) large changes in the location of roads, utilities, or building foundations, (2) reducing the size of utility lines, (3) increasing STREET grades, and (4) decreasing STREET-curve radii.

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(e) If the applicant's construction deviates from the approved plat, and if the board does not approve the deviating construction, then the code enforcement officer shall issue a cease and desist order on his own motion or at the board's request stating the alleged deviation. The board may take other enforcement measures to ensure compliance with the subdivision regulations, including but not limited to revocation of the plat's approval. (See RSA 676:4-a, I, (b), and article 1, section 12, Penalty Clause.)

5. Revocation of Recorded Approval

(a) The planning board may revoke a SUBDIVISION plat, STREET plat, site plan or other approval filed with the appropriate recording official under RSA 674:37 only under the following circumstances:

(1) At the request of, or by agreement with, the applicant or the applicant's successor in interest.

(2) When the applicant or successor in interest to the applicant has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans or specifications upon which the approval was based, or has materially violated any requirement or condition of such approval.

(3) When the applicant or successor in interest to the applicant has failed to perform any condition of the approval within a reasonable time specified in the approval, or, if no such time is specified, within the time periods specified in RSA 674:39.

(4) When the time periods specified in RSA 674:39 have elapsed without any vesting of rights as set forth therein, and the plat, plan or other approval no longer conforms to applicable ordinances or regulations.

(5) When the applicant or successor in interest to the applicant has failed to provide for the continuation of adequate security as provided by RSA 674:36, III(b) and 674:44, III(d) until such time as the work secured thereby has been completed.

(b) Prior to recording any revocation under this section, the planning board shall give notice, as provided by RSA 676:4, I(d), to the public, the applicant or the applicant's successor in interest, and all ABUTTERS and holders of CONSERVATION, preservation, or agricultural preservation RESTRICTIONS. The notice shall include the board's reasons for the revocation. A hearing with notice as provided in RSA 676:4, I(d) shall be held at the request of any party receiving such notice, submitted within 30 days of receiving such notice, or if the planning board determines to hold a hearing.

(c) A declaration of revocation, dated and endorsed in writing by the planning board, and containing reference to the recording information for the plat, plan or other approval being revoked, shall be filed for recording with the register of deeds, no sooner than 30 days after

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written notification of the revocation is served on the applicant or the applicant's successor in interest, in person or by certified mail, or 30 days after any public hearing, whichever is later. If only part of an approval is revoked, that portion of land subject to revocation shall be clearly identified in the declaration. The declaration shall be recorded under the same name or names as was the original approval, as well as the names of subsequent owners, if any, of the land or part thereof subject to revocation, as identified by the municipality.

(d) A revocation under this section may be appealed pursuant to RSA 677:15. Nothing in this section shall affect the municipality's ability, either before or after such a revocation, to pursue other remedies or penalties as set forth in RSA 676:15-17.

(RSA 676:4-a; also see Brewster v. Amherst, 144 N.H. 364, 742 A.2d 121 (1999) ("Planning boards must judiciously use their revocation power under RSA 676:4-a; however, planning boards are not required to ignore a history of violations and noncompliance. The record reveals a pattern of complaints and alleged violations by the plaintiffs, followed by hearings before the board and promises of remedial action by the plaintiffs, only to recur again.").)

6. Revocation of Unrecorded Approval

The planning board may revoke the approval of an unrecorded SUBDIVISION plat, STREET plat, site plan or other approval, whether the approval is unconditional or conditional, if the revocation will not cause more than one principal structure to be on any single LOT and if

(a) the applicant or the applicant's successor in interest requests the revocation (see RSA 676:4-a, I, (a)), or

(b) the applicant will not conform to the applicable subdivision regulations or site plan review regulations or will not satisfy one or more of the approval's conditions precedent or conditions subsequent (Simpson Development Corp. v. Lebanon, 153 N.H. 506, 899 A.2d 988 (2006); also see Brewster v. Amherst, 144 N.H. 364, 742 A.2d 121 (1999) (requiring planning boards to use their revocation power under RSA 676:4-a judiciously) and DHB v. Pembroke, 152 N.H. 314, 876 A.2d 206 (2005) (prohibiting planning boards from holding an application in "legal limbo")).

Comment: This section is new. It covers the revocation situation that the planning board faced in the Stagecoach Station case of AHG Properties. It also accounts for grandfathered subdivisions, such as Wayne Summerford's, that would have more than one principal structure on one lot if the subdivision were revoked.

Revoking the approval of an application with (allegedly) unsatisfied conditions precedent requires the board to balance two considerations: first, the board must be judicious (Brewster v. Amherst), but, second, the board also cannot simply refuse to give the plat final approval until the applicant yields, because this course of inaction holds the application in "legal limbo," which, under DHB v. Pembroke, is reason to appeal to the superior court:

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> *In the present case, the plaintiff did not petition the trial court to review a decision of the board to approve or disapprove its application, as the application never reached that stage; rather, the plaintiff is appealing the Board's determination that the application is not complete. Thus, the plaintiff had no statutory right to petition the trial court under RSA 677:15.*
>
> *Nonetheless, the trial court had jurisdiction to hear the case because, although RSA 677:15 provides no means for judicial review of the Board's determination, the court had jurisdiction to consider a petition for writ of certiorari.*
>
> *...*
>
> *In the present case, were the Board to have erred in determining not to accept the plaintiff's application, review in the form of a petition for writ of certiorari must apply; otherwise, an applicant could be kept in "legal limbo," as a planning board could exercise an unchallengeable veto over even the most meticulous, meritorious and undeniably complete application by simply refusing to accept it.*

In Simpson Development Corp. v. Lebanon, the Lebanon Planning Board conditionally approved an application on June 9, 2003, and revoked that conditional approval on October 14, 2003. In the Stagecoach Station case of AHG Properties, the Pittsfield Planning Board began compliance review on August 2, 2012, of a conditional approval and revoked the conditional approval on August 15, 2013, after AHG refused to satisfy the conditions precedent that the board had found unsatisfied. In revoking the conditional approval, the board was mindful that it could not defer a decision on final approval indefinitely; see planning board minutes of August 15, 2013.

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Article 7. Standards for Performance Security

1. Performance Promise and Financial Guarantee

Every applicant proposing STREET work or utility installations as part of a SUBDIVISION, STREET plat, or site plan shall secure the completion of the STREET work or utility installations. The applicant shall establish the security according to the following conditions:

Comment: Article 4, section 1, (d), (18), (H), requires that a completed application must have "A proposal to secure the completion of proposed STREET work or utility installations."

(a) The security shall be established by (1) the applicant's promise to do certain described work and (2) a guarantor's (for example, a bank's or an insurance company's) promise to pay certain amounts if the applicant defaults on his promise to do the described work. In this article, "performance promise" means a promise to do certain described work.

*Comment: **A Hard Road to Travel** - 2004, page 134, says, "Legally, a security arrangement consists of two elements: a promise by the developer to do certain described work and a promise by the guarantor—bank or insurance company—to pay certain amounts in case the developer defaults on that promise." (Emphasis added on "arrangement" and "promise".)*

***Webster's Third New International Dictionary, Unabridged**, defines "security," "arrangement," and "establish" as follows:*

***security 2 a :** something given, deposited, or pledged to make certain the fulfillment of an obligation (as the payment of a debt) **:** property given or serving to make secure the enjoyment or enforcement of a right : GUARANTY, PLEDGE <the security is poor>*

***arrangement 6 b** (1) **:** a mutual agreement or understanding (as between persons or nations)*

***establish 4 a :** to bring into existence, create, make, start, originate, found, or build usually as permanent or with permanence in view*

Thus "security" is the guarantor's money pledged to satisfy the developer's obligation, and the "security arrangement" is the pledge that turns the guarantor's money into security.

***Webster's Third New International Dictionary, Unabridged**, defines "promise," "agreement," and "contract" as follows:*

***promise 1 a :** a declaration that one will do or refrain from doing something specified <never gave a promise that he did not intend to keep> <miserable record of broken promises> <effort of the Conservative government to validate its promise to denationalize the steel industry—Alzada Comstock>*

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agreement 1 a : *the act of agreeing or coming to a mutual arrangement <never any solemn agreement amongst themselves— John Locke>*

agreement 2 a : *an arrangement (as between two or more parties) as to a course of action <entered into an agreement ... to assist in planting a colony— R.J.Stanley>*

agreement 3 a : *a contract duly executed and legally binding on the parties entering into it — see CONTRACT, MEETING OF THE MINDS*

contract 1 a : *an agreement between two or more persons or parties to do or not to do something : BARGAIN, COMPACT, COVENANT; especially : an agreement that is legally enforceable — see QUASI CONTRACT; compare CONSIDERATION 8b, DEED, NUDUM PACTUM, PACTUM, PAROL CONTRACT, SPECIALTY CONTRACT*

Black's Law Dictionary*, 4th edition, says as follows about "promise":*

> *While a "promise" is sometimes loosely defined as a declaration by any person of his intention to do or forbear from anything at the request or for the use of another, Finlay v. Swirsky, 103 Conn. 624, 131 A. 420, 423; Beck v. Wilkins-Ricks Co., 186 N.C. 210, 119 S.E. 235, 236; it is to be distinguished, on the one hand, from a mere declaration of intention involving no engagement or assurance as to the future. Scott v. S. H. Kress & Co., Tex.Civ.App., 191 S.W. 714, 716. And, on the other, from "agreement," which is an obligation arising upon reciprocal promises, or upon a promise founded on a consideration. Abbott.*

The developer's promise to do certain described work seems to be often called an agreement. See, for example, ***New Hampshire Practice****, form 43, Subdivision/Site Review Agreement; Manchester's Subdivision Improvement Agreement; and Pittsfield's Developer Improvement Agreement. But the developer's promise to do certain described work is a unilateral action that the developer must do to satisfy a law, that is, the Pittsfield Subdivision Regulations, that applies the same to everyone. Therefore, the promise is not really an agreement in any practical sense.*

(b) The applicant's performance promise shall state the location of the STREET work or utility installations both by STREET address, if any, and by tax map and LOT number.

(c) The applicant's performance promise shall identify the plat showing the STREET work or utility installations. The identification shall state

(1) the title of the plat,

(2) the date when the plat was originally drawn, and

(3) the dates when the plat was revised.

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(d) The applicant's performance promise shall state the number of phases in which the STREET work or utility installations will be completed.

(e) The applicant's performance promise shall generally describe the work to be completed in each phase of the STREET work or utility installations and shall specifically describe every improvement element of each phase, including paving, curbing, sidewalks, catch basins, drainage, culverts, headwalls, swales, lighting, landscaping, and so forth.

(f) The applicant's performance promise shall include from each public utility that the applicant proposes to use a written statement (1) saying that the public utility will do its assigned work, (2) saying that the applicant will pay for the public utility's work, and (3) stating the public utility's schedule for doing the work.

Comment: This condition comes from the SWRPC model subdivision regulations, section XI, C (page SUB - 17):

> *Where electric lines or other utilities are to be installed by a corporation or public utility, a letter of intent shall be required stating that the work will be done in reasonable time and without expense to the Town.*

Presumably the idea behind this condition is that the public utility has a monopoly that could leave an applicant powerless to find an alternative vendor if the public utility refuses to do the work that the applicant needs to have done.

*"Letter of intent" means a written statement of the intention to enter into a formal agreement. (**Webster's Third New International Dictionary, Unabridged**.)*

(g) The applicant's performance promise shall say who will act on the planning board's behalf to oversee the construction.

(h) The applicant's performance promise shall set time limits for completing the STREET work or utility installations.

(i) The applicant's performance promise shall state (1) the dollar amount of the security for each phase of the STREET work or utility installations and (2) the dollar amount of the security for each improvement element of each phase.

(j) The applicant's performance promise shall state the dollar amount of the security for inspecting the STREET work or utility installations and for correcting all failure of the STREET work or utility installations to conform to the approved plans.

(k) The applicant's performance promise shall state the total dollar amount of the security for the proposed STREET work or utility installations.

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(l) The applicant's performance promise shall state the conditions upon which the planning board shall release part or all of the security. (RSA 674:36, III, (b); RSA 674:44, III, (d); and RSA 674:44, IV, (b).)

(m) The conditions upon which the planning board shall release part of the security for the improvement completed in any given phase of the STREET work or utility installations shall include the following:

(1) The board has issued a temporary certificate of performance according to article 13, section 6, (b) and (c), for the improvement completed in the given phase.

(2) The amount of the security that the planning board shall release for the improvement completed in the given phase shall be the release amount stated in the temporary certificate of performance.

(3) A title-insurance policy for the improvement, if the improvement is to be dedicated to public use, has been furnished to and approved by the board, and the improvement is ready for the Town of Pittsfield to accept free of all liens and encumbrances.

(4) The board shall retain security equal to either 25% of the total cost of the improvement for which security release is sought or $2,000, whichever is greater, for two years after the board issues a temporary certificate of performance according to article 13, section 6, (b) and (c), for the improvement.

(n) The planning board shall release the remaining security for the improvement completed in any given phase of the STREET work or utility installations if the board has issued a final certificate of performance according to article 13, section 6, (e), for the improvement completed in the given phase.

(o) Both the applicant and the securing entity shall sign the applicant's performance promise.

(p) The type of the security shall be either an irrevocable letter of credit or cash deposited with the town in an escrow account. (RSA 674:36, III, (b); RSA 674:44, III, (d); and RSA 674:44, IV, (b).) Article 7, section 3, Sample Form of a Letter of Credit, presents an acceptable form of an irrevocable letter of credit.

(q) If the type of security is an irrevocable letter of credit, then

(1) the letter of credit shall be from a bank having a location within 75 miles of 85 Main Street, Pittsfield, NH, where the planning board can call the letter of credit, and

(2) both the applicant and the bank shall sign the letter of credit.

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(r) The applicant shall establish the security and shall have the planning board's approval of the security prior to the board's final approval of the SUBDIVISION, STREET plat, or site plan. (RSA 674:36, III, (b); RSA 674:44, III, (d); and RSA 674:44, IV, (b).)

Comment:

1. *Performance security is a condition precedent.*

2. *Performance security is released as follows:*

   (a) The developer completes a phase defined in the performance promise and applies for a temporary certificate of performance.
   (b) The planning board's engineer inspects the improvement that the developer claims to have completed.
   (c) The planning board's engineer confirms that the improvement has indeed been completed.
   (d) The planning board's engineer confirms the itemized costs claimed against what the performance promise said, what the developer actually did, and what the developer actually spent.
   (e) The planning board's engineer reports his findings to the planning board.
   (f) The planning board issues a temporary certificate of performance stating (1) that the subject improvement is satisfactorily complete, (2) the amount of the performance security that the planning board is releasing for the improvement and (3) how the amount of the security release is distributed between each of the improvement elements that constitute the whole improvement.
   (g) The developer takes the temporary certificate of performance to the bank and either (1) gets a new letter of credit reflecting the reduction if the developer submitted one letter of credit for all phases of the security amount or (2) cancels the letter of credit for the given phase if the developer submitted multiple letters of credit for each phase of the security amount.

   Multiple letters of credit, with one letter of credit for each phase of the security amount, are evidently a conceptually simpler way to provide for phased release of performance security. Concord's planning department told me that phased projects are rare, but there will always be at least two phases of the security amount because the board always retains at least 25% or $2000, whichever is greater, for a temporary certificate of performance. Although multiple letters of credit may be conceptually simpler, they may be problematic in practice because the security-reduction amount that the planning board's engineer recommends may differ from the amount that the performance promise states.

2. Sample Form of a Performance Promise

Performance Promise

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To satisfy the requirement of the Town of Pittsfield Subdivision Regulations, article 4, section 1, (d), (18), (H), and article 7, section 1, for a performance promise as part of performance security for proposed street work or utility installations, the applicant for subdivision approval (enter here the applicant's name) says as follows:

1. The applicant proposes street work or utility installations at (enter here the STREET address, if any, and the tax map and LOT numbers).

2. The street work or utility installations are shown on the applicant's plat entitled (enter here the title of the plat); originally drawn on (enter here the date when the plat was originally drawn); and revised on (enter here the dates when the plat was revised).

3. The applicant will complete the proposed street work or utility installations in (enter here the number of phases) phases.

4. The applicant will complete the following street work or utility installations in each of the following phases:

   (a) Phase 1 will consist of (enter here a general description of phase 1 and the specific improvement elements for phase 1: paving, curbing, sidewalks, catch basins, drainage, culverts, headwalls, swales, lighting, landscaping, and so forth).

   (b) Phase 2 will consist of (enter here a general description of phase 2 and the specific improvement elements for phase 2: paving, curbing, sidewalks, catch basins, drainage, culverts, headwalls, swales, lighting, landscaping, and so forth).

   (c)

5. Included with this performance promise is a written statement from each public utility that the applicant proposes to use (1) saying that the public utility will do its assigned work, (2) saying that the applicant will pay for the public utility's work, and (3) stating the public utility's schedule for doing the work.

6. (Enter here the name of who will act on the planning board's behalf to oversee the construction) will act on the planning board's behalf to oversee the construction.

7. The completion time for each phase of the street work or utility installations will be as follows:

   (a) Phase 1 will be completed by (enter here the date when phase 1 will be completed).

   (b) Phase 2 will be completed by (enter here the date when phase 2 will be completed).

   (c)

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8. The dollar amount of the security for each phase of the street work or utility installations is as follows:

   (a) Phase 1: (Enter here the total dollar amount of the security for phase 1.)

      (1) (Enter here the description of improvement element 1 in phase 1 and the dollar amount of the security for improvement element 1 in phase 1.)

      (2) (Enter here the description of improvement element 2 in phase 1 and the dollar amount of the security for improvement element 2 in phase 1.)

      (3)

   (b) Phase 2: (Enter here the total dollar amount of the security for phase 2.)

      (1) (Enter here the description of improvement element 1 in phase 2 and the dollar amount of the security for improvement element 1 in phase 2.)

      (2) (Enter here the description of improvement element 2 in phase 2 and the dollar amount of the security for improvement element 2 in phase 2.)

      (3)

   (c)

9. The dollar amount of the security for inspecting the STREET work or utility installations and for correcting all failure of the STREET work or utility installations to conform to the approved plans is (enter here the dollar amount of the security for inspecting the STREET work or utility installations and for correcting all failure of the STREET work or utility installations to conform to the approved plans).

10. The total dollar amount of the security for the proposed street work or utility installations is (enter here the total dollar amount of the security).

11. The planning board shall release part of the security for the improvement completed in any given phase of the STREET work or utility installations upon the following conditions:

   (a) The board has issued a temporary certificate of performance according to article 13, section 6, (b) and (c), for the improvement completed in the given phase.

   (b) The amount of the security that the planning board shall release for the improvement completed in the given phase shall be the release amount stated in the temporary certificate of performance.

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(c) A title-insurance policy for the improvement, if the improvement is to be dedicated to public use, has been furnished to and approved by the board, and the improvement is ready for the Town of Pittsfield to accept free of all liens and encumbrances.

(d) The board shall retain security equal to either 25% of the total cost of the improvement for which security release is sought or $2,000, whichever is greater, for two years after the board issues a temporary certificate of performance according to article 13, section 6, (b) and (c), for the improvement.

(e)

12. The planning board shall release the remaining security for the improvement completed in any given phase of the street work or utility installations if the board has issued a final certificate of performance according to article 13, section 6, (e), for the improvement completed in the given phase.

Date: _____

_____
Signature of the applicant for subdivision approval

_____
Signature for the securing entity

3. Sample Form of a Letter of Credit

*Comment: **New Hampshire Practice** form 38, Irrevocable Letter of Credit, appears usable as the basis of a form that will fit the requirements of article 7, section 1, and the recommendations of **A Hard Road to Travel**. In the 1997-1998 comprehensive revision of subdivision regulations, Fred Welch also prepared a letter of credit form, modeled after the **New Hampshire Practice** form, that may help. Fred Welch's sample letter of credit appears in the planning board minutes of May 21, 1998. Following is Fred Welch's sample letter tailored to refer to the developer's performance promise.*

Pittsfield Planning Board
Town of Pittsfield
85 Main Street

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Pittsfield, NH 03263

Regarding: _____ subdivision at (enter here STREET address, if any, and tax map and LOT numbers)

Dear Pittsfield Planning Board:

By this document, the _____ Bank (hereinafter "bank") issues an irrevocable letter of credit in the amount of $_____ to the Town of Pittsfield on behalf of _____ (hereinafter "developer"). This irrevocable letter of credit guarantees the completion of all improvements stated in the developer's performance promise attached to this letter of credit.

The bank agrees that this letter of credit shall be issued for a period of _____ months. If the Pittsfield Planning Board has not issued a temporary certificate of performance according to the Town of Pittsfield Subdivision Regulations, article 13, section 6, (b) and (c), for the secured improvements by _____ (date), then this letter of credit shall be automatically considered to have been called, and without further action by the Town of Pittsfield or its planning board, the bank shall forward a check in the amount of $_____ to the treasurer of the Town of Pittsfield. The funds so forwarded to the town treasurer shall be used only for the purpose of completing the improvements that this letter of credit guarantees. The Town of Pittsfield shall return to the bank all funds not used for this purpose.

Date: _____

_____
Signature for the bank

I have read this irrevocable letter of credit and agree to its terms.

_____
Signature of the developer

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Article 8. General Standards for Subdivision or Site Plans

1. Character of Land

The planning board shall not approve any SUBDIVISION of or any site plan of land that cannot be used safely for building purposes because of danger to health, including danger to health by reason of fire, FLOOD, poor drainage, excessive slope, or other hazardous conditions. (See RSA 674:36, II, (h), and RSA 674:44, II, (g).)

2. Premature Development

(a) The planning board shall not approve 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. (See RSA 674:36, II, (a).)

(b) The planning board shall not approve a site plan that has such conditions as would involve danger or injury to health, safety, or prosperity by reason of

(1) inadequate drainage or conditions conducive to FLOODING of the property or that of another;

(2) inadequate protection for the quality of groundwater;

(3) undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and

(4) inadequate provision for fire safety, prevention, and control.

(See RSA 674:44, II, (a).)

3. Emergency Access

(a) The planning board shall disapprove every SUBDIVISION or site plan that includes a multiple-FAMILY living or lodging place that emergency personnel and vehicles cannot access safely. In this paragraph, "multiple-FAMILY living or lodging place" means a place designed or used for residential occupancy by two or more FAMILIES or for transient lodging by two or more FAMILIES. (See RSA 674:36, III, and Davis v. Barrington, 127 N.H. 202, 497 A.2d 1232 (1985).)

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(b) The planning board shall disapprove every SUBDIVISION or site plan that includes a shared DRIVEWAY that emergency personnel and vehicles cannot travel safely. In this paragraph, "shared DRIVEWAY" means a DRIVEWAY that will serve more than one LOT. (See RSA 674:36, III, and Davis v. Barrington, 127 N.H. 202, 497 A.2d 1232 (1985).)

4. Fire Protection

(a) An adequate water supply for fire protection shall be available within the SUBDIVISION or within a reasonable distance from the SUBDIVISION. The fire-protection water supply shall conform to the National Fire Prevention Association's *Standard on Water Supplies for Suburban and Rural Fire Fighting*.

Comment:

1. *The second sentence is new and comes from the SWRPC model subdivision regulations, section VII, C, Fire Protection, 2 (page SUB - 13).*

2. *To change this paragraph for site plan review regulations, change "SUBDIVISION" to "proposed development site".*

(b) If a SUBDIVISION is proposed where an existing water supply for fire protection is not readily accessible, then the planning board may require the applicant to install, at the applicant's expense, fire-protection devices including but not limited to fire ponds, dry hydrants, and storage tanks and may require the applicant to allow access to such devices by reserving to the town easements for use, water, and maintenance.

(c) If a SUBDIVISION has water frontage, then the applicant shall grant an easement or easements, if appropriate, at least 30 feet wide to allow the fire department unobstructed access from the nearest public right-of-way to the shoreline for the purpose of installing or maintaining a dry hydrant or other water access device for year-round access to a supply of water for fire protection. The easement shall provide that no obstructions may exist within the easement area. The applicant shall grant this easement prior to the planning board's final approval of the application.

Comment:

1. *This is a condition precedent.*

2. *Do paragraphs (b) and (c) conflict with paragraph (a)? We need to ask the fire chief. He should review this whole section.*

(d) The planning board may require the applicant to comply with the fire department's design and specifications for any improvements under the preceding paragraphs.

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5. Previously Approved Subdivisions

If an applicant includes in an application for SUBDIVISION approval any land that was part of a previous SUBDIVISION approved within 10 years before the new proposal, then the planning board shall treat the previous SUBDIVISION as part of the new proposal for the purpose of deciding the new proposal's merits.

Comment: This regulation is new and comes from the SWRPC model subdivision regulations, section IX, Previously Approved Subdivisions, (page SUB - 16) except that the SWRPC model subdivision regulations leave blank the time period stated above as 10 years.

6. Community Needs

(a) In considering each application for SUBDIVISION or site plan approval, the planning board will consider the needs of the community and the best use of the land.

(b) The board will give particular attention to the following items within the land under the board's consideration for land use approval, and to how these items may affect existing and potential adjoining land use:

(1) Width, arrangement, and location of STREETS. (See RSA 674:36, II, (c) and (e), and RSA 674:44, II, (d) and (e).)

(2) Sanitation. (See RSA 674:36, II, (j), and RSA 674:44, II, (h).)

(3) Drainage systems. (See RSA 674:36, II, (j), and RSA 674:44, II, (h).)

(4) Sizes and arrangement of LOTS within the proposed SUBDIVISION. (See RSA 674:36, II, (b).)

(5) OPEN SPACE. (See RSA 674:36, II, (d), and RSA 674:44, II, (c).)

(6) Parks within the proposed SUBDIVISION. (See RSA 674:36, II, (g).)

(7) Retention of major site features. (See RSA 674:36, II, (b), and RSA 674:44, II, (b).)

(c) The board shall require adequate STREET connections whenever feasible to ensure access to adjoining SUBDIVISIONS and lands. (See RSA 674:36, II, (c), and RSA 674:44, II, (d).)

(d) The board may require that applications for SUBDIVISION or site plan approval include OPEN SPACES of adequate proportions for public recreation. (RSA 674:36, II, (d); RSA 674:44, II, (c); and Patenaude v. Meredith, 118 N.H. 616, 392 A.2d 582 (1978).)

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(e) The board may require that SUBDIVISION plats showing new STREETS or narrowing or widening of such STREETS submitted to the board for approval shall show a park or parks suitably located for playground or other recreational purposes. (RSA 674:36, II, (f).)

(f) The board may require that such OPEN SPACES or parks be land dedicated to public use at a rate of one acre per each 50 persons inhabiting the SUBDIVISION. (RSA 674:36, II, (d) and (g). Also see Patenaude v. Meredith, 118 N.H. 616, 392 A.2d 582 (1978); J.E.D. Associates v. Atkinson, 121 N.H. 581, 432 A.2d 12 (1981); Robbins Auto Parts v. Laconia, 117 N.H. 235, 371 A.2d 1167 (1977).)

Comment: The current (2010) subdivision regulations, section 9, B, (page 29) from which paragraphs (d), (e), and (f) above derive are as follows:

> *The Board may require that the plat show a park or parks suitably located for playground or recreation areas.*
>
> *The subdivider may be required to provide an easement or deed to the Town for public park use or to the Conservation Commission or Land Trust for public conservation or open space land or provide privately maintained recreational facilities and/or open space land within the subdivision at a standard of one (1) acre for each 50 persons.*

(g) When feasible, the board shall require the preservation of all natural features, such as stone walls, rock outcroppings, large trees, bodies of water, water courses, scenic points, historic landmarks, and other community assets that, if preserved, will enhance the value of the land under consideration and enrich the neighborhood. (See RSA 674:36, II, (b), and RSA 674:44, II, (b).) Boundary lines should follow stone walls where possible.

7. Impact on Existing Highways

(a) Width of Existing Highway Rights-of-Way:

(1) SUBDIVISIONS bordering existing highways less than 50 feet wide shall dedicate to public use land of width equal to one-half the difference between the existing highway width and 50 feet. The land dedicated to public use shall extend the full length of the SUBDIVISION'S boundary on the highway.

(2) This widening of highways shall be by dedicating the land to public use only and not by transferring the ownership of the land to the town. The purposes of this prohibition against transferring the ownership of the land to the town are (1) to take only those property rights that the town actually needs and (2) to maintain the protection that the scenic road law, RSA 231:157 and RSA 231:158, ordinarily provides against certain town activities on highways that the town meeting has designated as scenic roads. (In respect to widening a scenic road by transferring ownership of the land to the town, see RSA 231:158, IV ("Designation of a road as a scenic road shall not affect the rights of any

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landowner with respect to work on his own property..."). In respect to dedicating a road to public use, see Polizzo v. Hampton, 126 N.H. 398, 494 A.2d 254 (1985) ("An offer of dedication of a street may be made in several ways, among them by the filing of a subdivision plan with a planning board."); Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007) ("If the intent to dedicate 'is to be gathered from writings, they must clearly manifest the intent to dedicate.'"); State v. Atherton, 16 N.H. 203 (1844) ("the dedication must be by the owner, and not by a lessee for years or person having a limited right.").)

(b) In the case of every proposed SUBDIVISION having a boundary longer than 600 feet along a town or state highway, the planning board may require the construction of a STREET system inside the SUBDIVISION and outside the town or state highway to provide greater safety for the SUBDIVISION occupants and for the highway users. Article 12, Standards for Street Design and Construction, states requirements for designing and constructing new STREETS.

(c) If a SUBDIVISION or site plan requires excessive expenditure of public funds to improve existing STREETS to conform to minimum standards, then the planning board may disapprove the SUBDIVISION or site plan until the board of selectmen has certified that the town has allocated funds for the improvements. (See RSA 674:36, II, (a) and (e); RSA 674:36, III; RSA 674:44, II, (e); RSA 674:44, IV; RSA 674:21, V, (j); KBW v. Bennington, 115 N.H. 392, 342 A.2d 653 (1975); Land/Vest Properties v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977); New England Brickmaster v. Salem, 133 N.H. 655, 582 A.2d 601 (1990).)

8. Off-Site Improvements

Every applicant for SUBDIVISION or site plan approval shall bear the apportioned cost of off-site improvements—highway, drainage, and sewer and water upgrades pertinent to that development—that the applicant's project makes necessary. (See RSA 674:36, II, (a) and (e); RSA 674:36, III; RSA 674:44, II, (e); RSA 674:44, IV; RSA 674:21, V, (j); KBW v. Bennington, 115 N.H. 392, 342 A.2d 653 (1975); Land/Vest Properties v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977); New England Brickmaster v. Salem, 133 N.H. 655, 582 A.2d 601 (1990).)

9. Connection to the Town Sewerage System

If any part of a SUBDIVISION is within 500 feet of a town sewerage line, then the applicant shall connect all building LOTS to the town sewerage line. Article 11, section 2, Sewerage Systems, states requirements for connecting to the town sewerage system.

Comment: The current (2010) subdivision regulations, section 10, H, paragraph 2, (page 41) worded this provision as follows:

> *If any part of **a project** is within 500 feet of a municipal line, the subdivider shall connect all building lots to the sewer.*

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The context ("all building lots") suggested to me that "a project" means "a subdivision."

10. Easements Proposed to Be Publicly Maintained

Every applicant for SUBDIVISION or site plan approval proposing one or more easements requiring maintenance by a public agency shall dedicate the easements to public use. (See Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007) ("If the intent to dedicate 'is to be gathered from writings, they must clearly manifest the intent to dedicate.'") The applicant shall make this dedication prior to the planning board's final approval of the application.

Comment: This dedication of public easements to public use is a condition precedent.

11. Reserve Strips

Reserve strips of land that show the subdivider's intent to control access to land, such as a road, dedicated or to be dedicated to public use are prohibited.

Comment: This regulation is new and comes from the SWRPC model subdivision regulations, section VII, B (page SUB - 13).

12. Lot Design

(a) Every LOT of a SUBDIVISION shall be laid out and graded to eliminate FLOOD or stagnant water pools. Water shall not be permitted to flow across the surface of a STREET but shall instead be directed into catch basins and into underground pipes 15 inches or more in diameter.

Comment: This regulation is new and comes from the SWRPC model subdivision regulations, section VII, A, 2, (page SUB - 13) except that "12 inches in diameter" has been changed to "15 inches in diameter" to be consistent with current Pittsfield Subdivision regulations, section 10, C, 2, a (page 35):

> *All pipes, except under drains, shall be a minimum diameter of fifteen (15) inches and shall have a minimum of four feet of cover below the finished grade of the road over all pipes, including under drains.*

(b) The length of every LOT being created shall not exceed 4 times the average width of the LOT.

(c) Every LOT being created shall have dimensions such that the LOT includes the whole circle of radius 75 feet around each existing or proposed well on the LOT. (See RSA 485-A:30-b; RSA 485-A:33, IV, (a), (4), (5), and (7); RSA 483-B:9, V, (c), (2), (A), (iii); RSA 483-B:9,

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V, (c), (2), (B); and New Hampshire Code of Administrative Rules, Env-Wq 1000, especially Env-Wq 1008.06 through Env-Wq 1008.12.)

The SWRPC model subdivision regulations, section VI, B, 21, (page SUB - 12) says as follows:

> *The plat shall show the following information:*
>
> > *21. Location of existing and proposed well, with 75-foot well radius on its own lot.*

13. State Subdivision Approval

(a) Except as provided in paragraph (b) or RSA 485-A:33, any applicant for SUBDIVISION approval shall submit to the New Hampshire Department of Environmental Services for approval two copies of the SUBDIVISION plan as finally approved by the planning board and two copies of plans and specifications for any sewage or waste disposal systems that will be constructed on any SUBDIVISION or LOT. (RSA 485-A:29, I.) Within 30 days of giving final approval to the application, the planning board shall submit to the department of environmental services one copy of the locally approved SUBDIVISION plan. (RSA 485-A:29, I.) If the locally approved SUBDIVISION plan differs from the plans that the department of environmental services reviewed initially, then the person proposing the SUBDIVISION shall resubmit the locally approved plan to the department of environmental services for reapproval. (RSA 485-A:29, I.)

Comment: This submission to the DES of the locally approved subdivision plan is not a condition precedent but is something that the planning board must do along with the recording of the plat in the registry of deeds. The SWRPC model subdivision regulations have the following explanatory comment (page SUB - 12):

> *Be aware of two revisions to RSA 485-A: 29,I regarding state septic approval. The new law requires local approval of the subdivision prior to the DES review. This conflicts with the usual practice of making approval conditional upon the DES approval. In practice, however, the procedure appears to have stayed the same, in terms of DES review running concurrently with planning board review.*

(b) The applicant need not submit to the New Hampshire Department of Environmental Services plans and specifications for SUBDIVISION approval for SUBDIVISIONS consisting of the division of a tract or parcel of land exclusively in LOTS of 5 or more acres in area. (RSA 485-A:29, I.)

(c) The New Hampshire Department of Environmental Services's regulations of sewage or waste disposal systems are the New Hampshire Code of Administrative Rules, Env-Wq 1000, Subdivision and Individual Sewage Disposal System Design Rules.

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14. Special Flood Hazard Areas

Comment: An explanatory note in the SWRPC model subdivision regulations (page SUB - 17) says as follows:

> *Section X [SPECIAL FLOOD HAZARD AREAS] reflects federal law regarding development in flood hazard areas. Any town that participates in the National Flood Insurance Program and has adopted a floodplain management ordinance must have this language in its regulations.*

(a) The planning board shall review proposed SUBDIVISION or development including land in any SPECIAL FLOOD HAZARD AREA to ensure that the applicant has received all necessary permits from those governmental agencies from which approval is required by state or federal law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

Comment:

1. *Having received "all necessary permits" from state or federal agencies is a condition precedent.*

2. *This requirement to ensure that the applicant has received all necessary permits from state or federal agencies comes from SWRPC model subdivision regulations, section X, A (page SUB - 17)*

3. *The requirement to show all land in any special flood hazard area is in the checklist for a completed application. (Article 4, section 1, (d), (17), (Z).)*

4. *Note that the planning board cannot require these state or federal permits before granting conditional approval. (RSA 676:4, I, (i). Also article 4, section 2, and article 5, section 4, (h).)*

(b) Every application proposing construction in any SPECIAL FLOOD HAZARD AREA shall include sufficient evidence in the form of construction drawings, grading plans, and land treatment plans to allow determination that

(1) all such proposals are consistent with the need to minimize FLOOD damage;

(2) all public utilities and facilities, such as sewerage, gas, electrical, and water systems, are located and constructed to minimize or eliminate FLOOD damage; and

(3) adequate drainage is provided so as to reduce exposure to FLOOD hazards.

Comment:

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1. *The requirement to "submit sufficient evidence in the form of construction drawings, grading plans, and land treatment plans to allow determination that..." comes from SWRPC model subdivision regulations, section X, B, sentence 2 (page SUB - 17).*

2. *The requirement to include construction drawings, grading plans, and land treatment plans in the application is in the checklist for a completed application. (Article 4, section 1, (d), (18), (F), (12).)*

3. *The SWRPC model subdivision regulations, section X, B, sentence 1, (page SUB - 17) says, "The Board shall require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include base flood elevation data." Article 4, section 1, (d), (17), (AA), of these proposed regulations for Pittsfield covers this requirement.*

15. Cluster Subdivision

(a) Every LOT of a CLUSTER SUBDIVISION shall have the LOT'S access from an interior road.

(b) Every LOT of a CLUSTER SUBDIVISION shall have reasonable access to the conservation land but need not abut directly on the conservation land unless the zoning ordinance requires direct abutting.

(c) The CONSERVATION RESTRICTION on the conservation land of a CLUSTER SUBDIVISION shall provide for the ownership and maintenance of the conservation land to ensure permanent protection of the conservation land from development. The applicant shall establish this permanent CONSERVATION RESTRICTION prior to the planning board's final approval of the application.

Comment:

1. *Establishing the conservation restriction is a condition precedent.*

2. *Article 4, section 1, (d), (18), (B), requires that a completed application must have "A proposal for a CONSERVATION RESTRICTION if the application is for a CLUSTER SUBDIVISION."*

16. Conformance to Other Regulations

(a) Every application for SUBDIVISION or site plan approval shall conform to the zoning ordinance and all other applicable local, state, or federal laws. (Cesere v. Windham, 121 N.H. 522, 430 A.2d 1134 (1981); Beck v. Auburn, 121 N.H. 996, 437 A.2d 289 (1981);

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Fernald v. Bassett, 107 N.H. 282, 220 A.2d 739 (1966); Piper v. Meredith, 110 N.H. 291, 266 A.2d 103 (1970); United States Constitution, article VI, clause 2.)

Comment: This paragraph implicitly includes the requirement that the subdivision or site plan approval conform to the floodplain management regulations of the zoning ordinance.

(b) The applicant shall submit to the planning board copies of the notices of decisions or other appropriate certificates of all special exceptions, variances, waivers of dimensional requirements, or other approvals that the project must have from the zoning board of adjustment, from any other town agency, from any state agency, or from any federal agency. (See article 4, section 1, (a), (20) and (21).) The applicant shall submit these notices of decisions or certificates prior to the planning board's final approval of the application. (See article 4, section 2, Permits from Other State or Federal Governmental Bodies.)

Comment: This is a condition precedent.

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Article 9. Standards for Survey Monuments

Comment: The current (2010) subdivision regulations have incomplete specifications for placing survey monuments (permanent boundary markers) on interior lot lines. See current (2010) subdivision regulations, section 10, F, 1, a and b (page 40). Therefore, the specifications below for marking interior lot lines parallel the specifications in current (2010) subdivision regulations, section 10, F, 1, a and b, (page 40) and section 11, I, 3, (page 52) for marking street boundaries.

This article also relies on the boundary-marking requirements of the Concord Subdivision Regulations. The relevant boundary-marking requirements from Concord are presented in whole in a comment at the end of this article.

1. Survey Monument Locations

Every survey required for SUBDIVISION or site plan approval shall set survey monuments (permanent boundary markers) at the following boundary points:

(a) Every vertex (also known as an angle point) of an INTERIOR LOT LINE.

Comment: This location derives from current (2010) subdivision regulations, section 10, F, 1, a (page 40): "all changes in direction of the right of way lines shall be monumented..." Such points read literally would be impossible to mark for curved boundary lines because every point of a curved boundary line is a point where the boundary changes direction.

The Concord Subdivision Regulations, section 19.04, (2), (page 66) requires survey monuments "at all angle points in any [interior lot] line."

*"Vertex" means the termination or intersection of lines or curves <the vertex of an angle>. (**Webster's Third New International Dictionary, Unabridged**.)*

(b) Every point where a straight segment of an INTERIOR LOT LINE meets a curved segment of the INTERIOR LOT LINE.

Comment: This location derives from current (2010) subdivision regulations, section 11, I, 3 (page 52): "points of tangency of curves." The Concord Subdivision Regulations, section 19.04, (2), (page 66) requires survey monuments "at each end of all curves [in interior lot lines]."

(c) Every point where a curved segment of an INTERIOR LOT LINE changes its radius.

Comment: This location is new from the current (2010) subdivision regulations and comes from the Concord Subdivision Regulations, section 19.04, (2) (page 66): "at the point where a curve [of an interior lot line] changes its radius."

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(d) Every point where an INTERIOR LOT LINE meets a meander line of a watercourse or body of water.

*Comment: This location **appears** to be in the current (2010) subdivision regulations. Section 10, Standards for Subdivision, F, Monuments, 1, (b), (page 40) says as follows:*

Iron pipes located along rivers and streams shall be located along the meander line.

*"Meander line" means a usually irregular surveyed line that is not a boundary line; **especially** : one following the outline of a stream, lake, or swamp. "Outline" means a line that marks the outer limits of an object or figure. (**Webster's Third New International Dictionary, Unabridged**.)*

(e) Every point where an INTERIOR LOT LINE meets a STREET boundary or right-of-way boundary.

*Comment: "meet" means to come into contact or conjunction with **:** JOIN <there the brook meets the river> (**Webster's Third New International Dictionary, Unabridged**, "meet" definition 1c as a transitive verb.) When an interior lot line comes out to a street boundary, the interior lot line comes into contact with the street boundary because no gap or point of discontinuity exists between the interior lot line and the street boundary. Thus the interior lot line actually does meet the street boundary even though the meeting point on the street boundary is not part of the interior lot line.*

(f) Every vertex (also known as an angle point) of a STREET boundary (RSA 231:134) or right-of-way boundary.

Comment: This location derives from current (2010) subdivision regulations, section 10, F, 1, a (page 40): "all changes in direction of the right of way lines shall be monumented..." Such points read literally would be impossible to mark for curved boundary lines because every point of a curved boundary line is a point where the boundary changes direction.

RSA 231:134 in whole says, "The corners and angles of all streets shall be marked by a durable marker of stone, metal or other material, of such size and construction that it can be readily found."

The Concord Subdivision Regulations, section 19.04, (2), (page 66) requires survey monuments "at all angle points in any [interior lot] line," but Concord section 19.04, (1), (page 65) surprisingly appears not to have a similar requirement for survey monuments at all angle points in any street line. But Concord section 19.04, (1), (page 65) does require survey monuments "at intermediate points [in the street line] as shall be required by the City Engineer."

*"Vertex" means the termination or intersection of lines or curves <the vertex of an angle>. (**Webster's Third New International Dictionary, Unabridged**.)*

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(g) Every point where a STREET boundary or right-of-way boundary meets another STREET boundary or right-of-way boundary.

Comment: This location derives from current (2010) subdivision regulations, section 11, I, 3 (page 52): "intersection of streets."

(h) Every point where a straight segment of a STREET boundary or right-of-way boundary meets a curved segment of the STREET boundary or right-of-way boundary.

Comment: This location derives from current (2010) subdivision regulations, section 11, I, 3 (page 52): "points of tangency of curves." The Concord Subdivision Regulations, section 19.04, (1), (page 65) requires survey monuments "at the beginning and end of curves in streets."

(i) Every point where a curved segment of a STREET boundary or right-of-way boundary changes its radius.

Comment: This location comes originally from current (2010) subdivision regulations, section 11, I, 3 (page 52): "Permanent survey monuments shall be set ... at ... points of curvature..." What is a "point of curvature"? Curves always have length and thus are never just points. I modified the requirement according to the most similar requirement from Concord's specifications for interior lot lines, Concord section 19.04, (2) (page 66): "at the point where a curve [of an interior lot line] changes its radius."

(j) Other points where survey monuments (permanent boundary markers) are necessary to avoid more than 700 feet between survey monuments on any straight INTERIOR LOT LINE or on any straight STREET boundary or right-of-way boundary.

Comment: These locations derive from current (2010) subdivision regulations, section 10, F, 1, a (page 40): "There shall be no more than 700 feet between bound along the right of way line."

(k) Other points where survey monuments (permanent boundary markers) are necessary to avoid more than 100 feet, as measured along the boundary, between survey monuments on any curved INTERIOR LOT LINE, on any curved STREET boundary or right of way boundary, or on any meander line.

Comment: These locations for survey monuments on curved boundaries and on meander lines are new from the current (2010) subdivision regulations. The locations at paragraphs (a) through (j) above do not provide for good marking of curved boundary lines or of meander lines.

2. Survey Monument Types

(a) Every survey monument (permanent boundary marker) set under article 9, section 1, Survey Monument Locations, in any STREET boundary or right-of-way boundary shall be granite at least 4 inches x 4 inches and at least 36 inches long. A plug, brass plate, pin, or drill hole in

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the survey monument shall serve as a reference point, and a magnetic rod or other suitable metal device shall be located adjacent to the survey monument to allow the survey monument to be recovered.

Comment: This requirement for a granite boundary marker in any STREET boundary or right-of-way boundary comes from current (2010) subdivision regulations, section 11, I, 3 (page 52): "All monuments used as property corners and to designate rights-of-way will be granite..." "All rights-of-way" includes highways and other rights-of-way, such as private, single-family driveways crossing someone else's land. The Concord Subdivision Regulations, section 19.04, (1), (page 65) quoted in a comment at the end of this article, also require granite boundary markers in any STREET boundary.

Granite boundary markers are available (July 15, 2016) from Swenson Granite Works in Concord:

Swenson Granite Works
369 North State Street
Concord, NH 03301
Phone: (603) 225-4322
Fax: (603) 228-2915
Store Manager: Brian Ahern
Web site: http://www.swensongranite.com

As of July 15, 2016, a 4 inch x 4 inch x 36 inch granite boundary marker with a 3/8 inch diameter, 1/2 inch deep hole on top cost $29. Swenson's web site says that granite weighs approximately 165 pounds per cubic foot. A 4 inch x 4 inch x 36 inch granite boundary marker is 1/3 cubic foot, so each such granite boundary marker weighs approximately 55 pounds.

(b) Every other survey monument (permanent boundary marker) set under article 9, section 1, shall be either

(1) granite with a metal recovery device according to paragraph (a) of this section,

(2) a stainless steel rod or pipe at least 36 inches long and at least 9/16 inches in diameter or square, or

Comment: Berntsen International Inc. sells stainless steel survey monuments satisfying this requirement. As of February 7, 2016, they cost about $40 each in quantities of 1 to 99.

http://www.berntsen.com/Surveying/Survey-Monuments/Sectional-Rod-Monuments/9-16-Stainless-Steel-Monuments

(3) a galvanized iron or galvanized steel rod or pipe at least 36 inches long and at least 7/8 inches in diameter or square.

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Comment:

1. *The requirement that iron pipes be galvanized is new from the current (2010) subdivision regulations.*

2. *The current (2010) subdivision regulations apparently intend that all permanent boundary markers for right-of-way lines shall be granite and that all other permanent boundary markers shall be iron pipes:*

   Section 10, F, 1, (a) (page 40): "The front lot corners and all changes in direction of the right of way lines shall be monumented with stone or concrete bounds."

   Section 10, F, 1, (b) (page 40): "All rear lot corners and angle points and side lot lines shall be monumented with iron pipes."

   *Section 11, I, 3, Survey and Monument Standards for Streets and R.O.W.'s (page 52) conflicts with section 10, F, 1, (b) (page 40): "**All** monuments used as **property corners** **and** to designate rights-of-way will be granite..." Section 11, I, 3, conflicts with section 10, F, 1, (b), because section 11, I, 3, literally says that all corners, no matter where they are, must have granite markers. Under RSA 676:14, section 11, I, 3, supersedes section 10, F, 1, (b), because section 11, I, 3, imposes a higher standard (granite), than section 10, F, 1, (b) (iron pipes). But if we attach substantial meaning to the title of section 11, I, 3, Survey and Monument Standards for Streets and R.O.W.'s, then we can infer that the intent of section 11, I, 3, is to specify boundary marker locations for right-of-way lines only.*

3. *Because granite boundary markers and stainless steel boundary markers are both better than iron pipes, the regulations may as well let the applicant use granite or stainless steel in place of iron pipes if the applicant prefers granite over iron pipes. The Concord Subdivision Regulations give the applicant his choice between granite boundary markers or iron boundary markers. See Concord Subdivision Regulations, section 19.04, (2) (page 66):*

   > *[Interior] Lot [line] bounds shall be of granite or reinforced concrete, not less than thirty (30) inches in length, not less than four (4) inches square and marked on top with a cross, brass plug, iron rod, or other durable material securely embedded, or by iron rods or pipes at least thirty (30) inches long and a minimum of one-half (1/2) inch diameter.*

3. Survey Monument Setting

(a) All survey monuments (permanent boundary markers) set under article 9, section 1, Survey Monument Locations, shall be set under the direction of a licensed land surveyor and shall meet or exceed the minimum standards of the New Hampshire Land Surveyors Association for standard property surveys.

(b) Survey monuments (permanent boundary markers) set under article 9, section 1, shall be set

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(1) flush with finished grade if the survey monument is set in pavement,

(2) 5/8 inch to one inch above ground if the survey monument is in a residential area and is not set in pavement, and

(3) 4 to 6 inches above ground if the survey monument is in a wooded area and is not set in pavement.

Comment: These specifications come from the Concord Subdivision Regulations, section 19.04, (1) (pages 65 and 66) for monuments set in right-of-way lines. Concord does not say how high other monuments should be set above the surface of the ground. The current (2010) Pittsfield subdivision regulations say that all monuments must be "set flush with finished grade." See current (2010) Pittsfield subdivision regulations, section 10, F, 2, c, 1 (page 40). Note that section 11, I, 3 (page 52), for boundary markers on rights-of-way lines, does not say how high the survey monument should be set above the surface of the ground.

(c) Survey Monuments (permanent boundary markers) shall be set before the town's final inspection, but no survey monument shall be set until all construction that would disturb or destroy the survey monument is completed.

***Comment on the whole article**: The Concord Subdivision Regulations*

http://concordnh.gov/planning (Internet address of the planning department's web site)

http://nh-concord.civicplus.com/DocumentCenter/View/428 (Internet address where the subdivision regulations are located)

say as follows relative to boundary marking:

Concord Subdivision Regulations, section 19.04, (1), (page 65) in whole:

***Street Right-of-Way Monuments**: Monuments for street line bounds shall be located at all block corners, at the beginning and end of curves in streets, street intersections, and at intermediate points as shall be required by the City Engineer. Monuments shall be placed on both sides of the street and shall be spaced so as to be within sight of each other; the sight lines being contained wholly within the street limits. Monuments shall be of granite or reinforced concrete with a minimum size of four (4) inches square by thirty six (36) inches long and be set as called for in the City of Concord Construction Standards, five-eights (5/8) of an inch to one inch (1) above ground in residential areas, four (4) to six (6) inches above ground in wooded areas, and slightly below grade when set in pavement. Monuments to be set in driveways may be modified as deemed appropriate by the City Engineer.*

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Concord Subdivision Regulations, section 19.04, (2), (page 66) in whole:

***Lot Monuments**: Monuments for the external boundaries of the tract that is being subdivided and the lots that are being created shall be placed not more than one thousand (1,000) feet apart in any straight line and at all corners, at each end of all curves, at the point where a curve changes its radius, at all angle points in any line, and at all angle points along a meander line. Points along a meander line shall not be less than twenty (20) feet back from the bank of any river or stream, except that when such corners or points fall within a street, or proposed future street; the monuments shall be placed in the side line of the street. Lot bounds shall be of granite or reinforced concrete, not less than thirty (30) inches in length, not less than four (4) inches square and marked on top with a cross, brass plug, iron rod, or other durable material securely embedded, or by iron rods or pipes at least thirty (30) inches long and a minimum of one-half (1/2) inch diameter.*

Concord Subdivision Regulations, section 19.04, (4), (page 66) in whole:

***Monuments not Required**: The Board may, on the recommendation of the City Engineer, not require monuments at all courses along a meander line or on rear and side lot lines where lots exceed 10 acres.*

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Article 10. Standards for Construction in General

1. Storm Water Management, Erosion Control, and Sedimentation Control

(a) Throughout this section, italicization is used to indicate that a term has the meaning stated for it in paragraph (b).

(b) Definitions: In this section, the following terms have the following meanings:

Disturb: To "*disturb*" an area means to remove the area's vegetation and expose the underlying soil.

Project area: "*Project area*" means the tract of land under the planning board's consideration for land use approval.

*Comment: The model regulation (**Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire**, August 1992, appendix F) defines "project area" as follows:*

> ***Project Area**: The area within the subdivision or site plan boundaries.*

By defining "project area" as "the tract of land under the planning board's consideration for land use approval" makes the definition generic to either the subdivision regulations or to the site plan review regulations.

(c) Drainage for Construction in General: Storm water management, erosion control, and sedimentation control for construction in general shall meet the following standards:

(1) Storm water drainage systems shall permit unimpeded flow of all natural watercourses and shall ensure adequate drainage of storm water off of and away from all STREETS and LOTS.

(2) Storm water runoff shall be calculated by the United States Department of Agriculture Natural Resources Conservation Service method or by the rational method. *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*, 1992, chapter 6, Estimating Runoff, describes these two methods. (In 1992, the United States Department of Agriculture Natural Resources Conservation Service was called the United States Department of Agriculture Soil Conservation Service.) The rainfall intensity to be used with either of these two methods of calculating storm water runoff shall be as follows:

(A) 10-year frequency, 24-hour duration storm for residential areas.

(B) 25-year frequency, 24-hour duration storm for commercial or industrial areas.

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(C) 100-year frequency, 24-hour duration storm for SPECIAL FLOOD HAZARD AREAS.

Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, 1992, chapter 6, Estimating Runoff, figures 6-6 through 6-11, pages 6-12 through 6-17, presents rainfall maps for these storms in New Hampshire. *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*, 1992, is published by the Rockingham County Conservation District, 110 North Road, Brentwood, New Hampshire 03833-6614, telephone number 603-679-2790.

Comment: The specification for these model storms comes from current (2010) subdivision regulations, section 10, C, 1, b (page 34).

(3) Increased storm water runoff that construction causes during the storm that subparagraph (2) specifies shall be retained on the *project area* in such a way that the peak runoff from the *project area* after the construction finishes will not be greater than the peak runoff from the *project area* before the construction began.

Comment: ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, 1992, chapter 7, page 7-13, says as follows:*

> *Usually a locality will specify that storm-water runoff from a developing drainage area must be controlled so that the post-development peak runoff does not exceed the pre-development of a specific design storm.*

* * * * *

Comment on subparagraphs (4) through (12): The SWRPC model subdivision regulations, section VII, E, 3, (page SUB - 14) says as follows:

> *All stormwater management and erosion control measures in the plan shall adhere to the "****Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire****", published by the Rockingham County Conservation District, and the "****Model Stormwater Management and Erosion Control Regulation****", by the NH Association of Conservation Districts, Water Quality Committee.*

Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire *was revised and renamed* ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, 1992.*

Model Stormwater Management and Erosion Control Regulation *is appendix F in* ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****.*

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*Subparagraphs (4) through (12) below include all of and come almost verbatim from the **Model Stormwater Management and Erosion Control Regulation**, section 4, Design Standards. Design standard A says,*

> *All erosion and sediment control measures in the plan shall meet the Best Management Practices set forth in the "Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire" as amended and adopted by the _____ County Conservation District.*

*The standards in the current (2010) subdivision regulations comparable to **Model Stormwater Management and Erosion Control Regulation**, section 4, Design Standards, are in 2010 section 10, B (page 34); section 10, D, 2, a through g (page 37); section 10, D, 3, b, 1, g (page 38); and section 10, D, 3, b, 1, i through k (page 38).*

2010 section 10, D, 2, d, (page 37) and section 10, D, 3 b, 1, i through k, (page 38) are omitted from these proposed regulations because the best management practices requirement (proposed subparagraph (4)) includes them.

*Subparagraphs (11) and (12) are not in the current (2010) subdivision regulations but are in the **Model Stormwater Management and Erosion Control Regulation** (in section 4, Design Standards, G and H).*

(4) All erosion and sedimentation control means shall meet the best management practices set forth in the *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*, 1992, published by the Rockingham County Conservation District.

(5) The area of *disturbance* shall be kept to a minimum. *Disturbed* areas remaining idle for more than 30 days shall be stabilized against erosion.

(6) Whenever practical, natural vegetation shall be retained, protected, or supplemented.

(7) Appropriate erosion and sedimentation control means shall be installed before vegetation is removed.

(8) Stripping of vegetation, grading, and all other *disturbance* of area shall be done in a manner that minimizes soil erosion.

(9) Means shall be taken to control sedimentation and to retain the sediment within the *project area*. Sediment in runoff water shall be trapped and retained within the *project area* in sediment basins or in other effective means. Bodies of water and very poorly drained soils, meaning soils having water transmission rates less than 0.05 inches per hour, shall be protected from sedimentation.

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Comment: ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, 1992, chapter 6, page 6-10, defines poorly drained soil and very poorly drained soil. The New Hampshire Department of Transportation's* ***Manual on Drainage Design for Highways****, April 1998, section 2, page 2-3, defines poorly drained soil and very poorly drained soil the same way.*

(10) Off-site surface water and runoff from *undisturbed* areas shall be either carried non-erosively through the *project area* or diverted away from *disturbed* areas where feasible.

(11) Naturally occurring streams, channels, and WETLANDS shall be used to carry runoff leaving the *project area*.

(12) All temporary erosion and sedimentation control means shall be removed after final site stabilization. Trapped sediment and *disturbed* areas resulting from the removal of temporary means shall be permanently stabilized within 30 days.

(d) State Alteration of Terrain Permits:

(1) Any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, shall be directly responsible to submit to the New Hampshire Department of Environmental Services detailed plans concerning such proposal and any additional relevant information requested by the department, at least 30 days prior to undertaking any such activity. The operations shall not be undertaken unless and until the applicant receives a permit from the department. (RSA 485-A:17, I.) In this subparagraph, "surface waters of the state" means surface waters of the state as defined in RSA 485-A:2, XIV.

(2) The New Hampshire Department of Environmental Services's regulations of terrain alteration are the New Hampshire Code of Administrative Rules, Env-Wq 1500, Alteration of Terrain.

(3) The New Hampshire Code of Administrative Rules, Env-Wq 1500, Alteration of Terrain, requires that the following alteration of terrain activities must have a site-specific alteration of terrain permit:

(A) Activities that *disturb* a connected area that, over a 10-year period, cumulatively equals or exceeds 100,000 square feet. (New Hampshire Code of Administrative Rules, Env-Wq 1503.03, (e), (1), b.)

(B) Activities that *disturb* a connected area that equals or exceeds 50,000 square feet that is either partially or wholly within protected shoreland subject to RSA 483-B

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jurisdiction. (RSA 483-B:9, V, (d), (3), and New Hampshire Code of Administrative Rules, Env-Wq 1503.03, (e), (1), a.)

(C) Activities that *disturb* an area that

(1) is more than 2,500 square feet in size,

(2) is within 50 feet of any surface waters of the state, and

(3) has a flow path 50 feet or longer disturbing a grade of 25% or greater, measured at 2-foot intervals.

(New Hampshire Code of Administrative Rules, Env-Wq 1503.03, (e), (3).) In subparagraph (C), (2), "surface waters of the state" means surface waters of the state as defined in RSA 485-A:2, XIV, and includes all areas regulated under RSA 482-A. (See New Hampshire Code of Administrative Rules, Env-Wq 1502.60.)

(4) The New Hampshire Code of Administrative Rules, Env-Wq 1500, Alteration of Terrain, permits certain other alteration of terrain activities under a general permit by rule according to Env-Wq 1503.03, General Permit by Rule.

(5) The applicant for SUBDIVISION or site plan approval shall submit to the planning board a site-specific alteration of terrain permit, if the New Hampshire Department of Environmental Services requires a site-specific alteration of terrain permit, prior to the board's final approval of the application.

Comment:

1. *A site-specific alteration of terrain permit is a condition precedent.*

2. *The requirement for an alteration of terrain permit is in current (2010) subdivision regulations, section 10, Standards for Subdivision, D, Erosion and Sediment Control, 3, Erosion and Sediment Control Plan, b, 1, h (page 38).*

3. *The current (2010) subdivision regulations, section 6, B, 14 (page 23) requires results of soil tests required by the New Hampshire Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services:*

   Results of such soil and other tests as may be required by the New Hampshire Water Supply and Pollution Control Division and/or other public agencies having jurisdiction and at locations recommended by such agencies or by the Board.

   The subdivision regulations do not say why they require such soil and other tests as the NH DES may require, but possible reasons are (1) for a septic system and (2) for a site-specific alteration of terrain permit under RSA 485-A:17. Because soil and other tests that the NH

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DES requires are prerequisites for septic system approval and for site-specific alteration of terrain permits, requiring the 4,000 square foot septic area to be shown (article 4, section 1, (d), (17), (U)) and specifying site-specific alteration of terrain permits as conditions precedent make a separate requirement for soil and other tests unnecessary.

For more information on requirements to show soil types for an alteration of terrain permit, see ***Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire****, 1992, appendix E, section II, B, 3, (b), (page E-4) and appendix E, section II, B, 5, (b) (page E-5).*

2. Waste

(a) Tree stumps, cut trees, timber, debris, stones, junk, rubbish, and all other waste materials shall be disposed of properly according to the solid waste rules of the New Hampshire Department of Environmental Services and according to the Town of Pittsfield Zoning Ordinance, article 15, Dumping.

(b) The planning board encourages that stumps for disposal be converted into useful products, such as fuel, mulch, animal bedding, or a bulking agent for composting. Such products, because they are products instead of waste, may be exempt from the solid waste rules of the New Hampshire Department of Environmental Services.

Comment: The current (2010) subdivision regulations, section 10, M, (page 43) says as follows:

> *No cut trees, timber, debris, stones, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on a lot or street. Nor shall any be left or deposited in any area of the subdivision at the time of expiration of the performance bond or dedication of public improvements, whichever is sooner.*
>
> *Stumps: Stumps resulting from the road construction must be disposed of out of the road easement on land owned by the principals of the construction project which is to have a State of New Hampshire, Department of Environmental Services stump disposal permit or letter from the DES stating such a permit is not required. The Town of Pittsfield will not accept stumps from such projects at its Solid Waste disposal facility.*

The New Hampshire Department of Environmental Services says in its environmental fact sheet WMD-SW-7 as follows:

> *the management of stumps and tree parts by above-ground methods is exempt from the requirement for obtaining a permit under the Solid Waste Rules, provided the activity complies with the universal facility requirements in Chapter Env-Sw 1000 of the Solid Waste Rules*

RSA 149-M:4, XXII, in part says,

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> *For purposes of this chapter, it ["solid waste"] does not include ... cut or uprooted tree stumps buried on-site with local approval if required, provided that such burial locations are not located within 75 feet of any drinking water supply...*

The New Hampshire Department of Environmental Services further says in its environmental fact sheet WMD-SW-7 as follows:

> *Chips, shavings and sawdust produced from stumps and other virgin wood are certified by the Solid Waste Rules for distribution and use as fuel, mulch, animal bedding and a bulking agent for composting. This means that when actively managed for the identified purposes, virgin wood chips, shavings and sawdust are considered a product rather than a waste, and are not regulated by the Solid Waste Rules.*

The New Hampshire Department of Environmental Services also says in its environmental fact sheet WMD-SW-7 that the solid waste rules provide for and regulate the on-site and off-site disposal of stumps.

What is the policy of the BCEP transfer and recycling station on accepting tree stumps in general and from construction in particular?

3. Landscaping

(a) The applicant shall install landscaping and shall preserve natural and scenic features wherever possible to enhance the environment of the SUBDIVISION and the town of Pittsfield. (See RSA 674:36, II, (b), and RSA 674:44, II, (b).)

Comment: To change this paragraph for site plan review regulations, change "SUBDIVISION" to "proposed development site".

(b) The applicant shall plant shade trees along all proposed STREETS but outside the right-of-way. The shade trees shall be of a size and species that the planning board approves.

Comment: This requirement for shade trees at the sides of new streets comes from current (2010) subdivision regulations, section 10, K, paragraph 2 (page 42):

> *Shade trees shall be required along all proposed streets outside the right-of-way in a new subdivision and shall be of a size and species approved by the Planning Board.*

*The planning board might be able to make the applicant plant shade trees, but the town probably cannot prohibit the applicant from cutting the trees down, because the planning board requires dedication of only viatic rights when an applicant proposes a new highway. See article 8, section 7, (a), (2); **A Hard Road to Travel**, 2004 edition, page 23; and Laconia v. Morin, 92 N.H. 314, 30 A.2d 479 (1943).*

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(c) All esplanade or planting strip areas at the sides of STREETS shall receive a minimum of 6 inches of compacted, good loam, free of sods, clay, and stones over one inch in diameter, and all organic material over 1/8 inch in diameter shall be raked out and removed.

Comment: 1/8 inch seems like a very tight tolerance for particles in dirt.

(d) After loam has been placed, planting strips shall be seeded with first-quality lawn seed free of dirt and weed seeds and containing at least 30% Kentucky Blue Grass, 45% Creeping Red Fescue, 10% Red Top, and 15% Rye Grass or conservation mix (United States Department of Agriculture) at the rate of 150 pounds per acre.

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Article 11. Standards for Utilities Construction

1. Water Systems

(a) If the water system within a SUBDIVISION is proposed to be served by a private or municipal water company, then the water system shall meet the standards and specifications of the water company in addition to any local, state, or federal governmental requirements.

Comment: A permit to connect to the municipal water and sewerage systems may be necessary. If it is, then the permit is a condition precedent.

(b) When the water company certifies a need, a water main easement shall be established to provide for a future "loop" connection between the adjacent land and a water main if proposed within the SUBDIVISION.

Comment: What is a "loop" connection, and why is "loop" in quotation marks?

(c) Water mains should be constructed outside the surface area and preferably outside the ditch line.

Comment: Outside the surface area of what? The highway?

2. Sewerage Systems

(a) If the sewerage system within a SUBDIVISION is proposed to be served by the Town of Pittsfield Sewer Department, then the applicant shall be responsible for installing and connecting to existing public sewerage lines in accordance with current Sewer Department and State of New Hampshire regulations. If sewerage connections are not practical, then all STREET plans will include adequate area for the future installation of public utilities should such become necessary to control pollution. In areas shown on the Sewer Department's map as planned for town sewerage facilities, the applicant shall be responsible for installing sewerage lines in accordance with current sewerage regulations.

Comment:

***Comment 1**: A permit to connect to the municipal water and sewerage systems may be necessary. If it is, then the permit is a condition precedent.*

***Comment 2**: This paragraph comes from current (2010) subdivision regulations, section 10, H, paragraph 3 (page 41). I copied the above-proposed paragraph almost verbatim from the current subdivision regulations because I understand pretty much none of it.*

> *If the sewer system within a subdivision is proposed to be served by the Town of Pittsfield Sewer Department it shall be the responsibility of the subdivider to install and connect to*

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> *existing public sewage lines in accordance with current Sewer Department and State of NH regulations.*

What is the point of this regulation? Is it (1) that the applicant must do the work and bear the cost of the installation or (2) that the installation must follow current Sewer Department and State of NH regulations?

> *if sewage connections are not practical, all STREET plans will include adequate area for the future installation of public utilities should such become necessary to control pollution.*

What does "not practical" mean in this context? If all street plans must include adequate area for future installation of public utilities, then how would connection to the town sewerage system be not practical? Is the regulation still talking about sewerage connections that the applicant proposes? If so, then why would the applicant propose sewerage connections that are not practical? If the regulation is not still talking about sewerage connections that the applicant proposes, then does "all STREET plans" include street plans very far from the town sewerage system—such as, for example, Stagecoach Station Road? "All STREET plans" including street plans very far from the town sewerage system would conflict with the last sentence:

> *In areas shown on the Sewer Department's map as planned for town sewer facilities, it shall be the responsibility of the subdivider to install sewage lines in accordance with current sewer regulations.*

And once again, what is the point of this regulation? Is it (1) that the applicant must install sewerage lines in this area, that he must do the work, and that he must bear the cost of the installation, or (2) that the installation must follow current Sewer Department and State of NH regulations? Finally, this last sentence either conflicts with or is redundant to

> *If any part of a project is within 500 feet of a municipal line, the subdivider shall connect all building lots to the sewer.*

and the requirement on "all STREET plans" likewise conflicts with the "within 500 feet" regulation.

(b) Sewerage mains should be constructed outside the surface area and preferably outside the ditch line.

Comment: Outside the surface area of what? The highway? This paragraph comes from current (2010) subdivision regulations, section 10, L (page 42).

***Comment on the whole section, Sewerage Systems**: The current (2010) Pittsfield Subdivision Regulations have no regulations on existing septic systems in a subdivision. The only mention of individual septic systems is the following short statement in section 10, H, paragraph 1 (page 41):*

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Individual and community sewage disposal systems shall comply with the requirements of NH Department of Environmental Services.

The SWRPC model subdivision regulations talk about individual septic systems more specifically. Section VI, C, 2, (page SUB - 12), as part of a completed application, says as follows (bold emphasis added):

*State subdivision approval for septic systems; septic design approval where applicable; or certification by septic designer of adequacy of **existing** system.*

Section VII, D, Septic systems and Water Supply, (page SUB - 14) says as follows:

1. *In areas not currently served by public sewer systems, it shall be the responsibility of the subdivider to prove that the area of **each** lot is adequate to permit the installation and operation of an individual septic system.*

2. *On new lots of less than five (5) acres, not less than two (2) test pits and at least one (1) percolation test shall be required within the 4,000 square-foot area designated for a leach field. The subdivider shall be required to provide the necessary equipment and labor for the making of these tests, which shall be overseen by the Town Health Officer.*

3. *In subdividing parcels with **existing** dwellings, the subdivider must demonstrate to the satisfaction of the board that the **existing** septic system is in good working order.*

These proposed (Pittsfield) subdivision regulations require that the 4,000 square foot area be shown as part of a completed application (article 4, section 1, (d), (17), (U)) because the New Hampshire Department of Environmental Services requires such a showing. But these proposed (Pittsfield) subdivision regulations say nothing about existing systems. What to do about existing systems is a policy decision that the planning board will have to make. An explanatory note in the SWRPC model subdivision regulations (page SUB - 14) says as follows:

While the state regulates the placement of new septic systems, the adequacy of existing systems continues to be problematic for planning boards. A letter of certification from a licensed septic designer is one way to ensure system adequacy.

Question: On what basis should the Pittsfield Planning Board decide whether to have or not have a requirement that existing septic systems be in good working order?

3. Electrical Utilities

(a) Every application proposing new STREET construction or new homes more than 300 feet from the highway shall submit to the planning board preliminary approval from the utility

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companies (electricity, telephone, and cable television). The applicant shall submit this preliminary approval prior to the board's final approval of the application.

Comment:

1. *Utility-company approval is a condition precedent.*

2. *This paragraph comes from current (2010) subdivision regulations, section 10, L (page 42).*

(b) Every application proposing electrical utilities must propose underground or aerial service systems.

Comment: Is there any kind of electrical utility other than underground or aerial? The current (2010) subdivision regulations, section 10, L, (page 42) says as follows:

> *"Prior to any new road construction, subdivision approval or the approval of new homes greater than three hundred (300) feet from the public roads, written preliminary approval must be included from utility services (telephone, electricity and cable TV). Any plot plan or subdivision plan must include underground or aerial service systems."*

(c) Lighting poles should be kept close to the right-of-way line, in no case in the ditch line and always well back of a curb.

(d) In all cases where new STREETS are proposed, all electrical utilities—electricity, telephone, cable television, and other electrical lines—shall be placed underground.

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~~Article N. Driveways~~

Comment: This section should be deleted because driveway regulation is a separate body of law. (RSA 236:13, V.) The planning board has a separate body of driveway regulations. The board adopted it in 1997.

A driveway permit, either local or state, may be a condition precedent.

~~All driveways connecting to town roads must be built and maintained in accordance with the following specifications:~~

~~(a) In essence, driveways shall not interrupt the natural or ditch line flow of drainage water. In some cases where shallow ditch lines or natural drainage courses exist, driveways may be swaled at a point beyond the road shoulder to accommodate the flow of storm water. In all other cases, driveways must have sufficiently sized culverts installed and maintained by the landowner.~~

~~(b) In no case shall the culvert pipe under a driveway be less than 12-inch diameter pipe when, at the discretion of the highway department, a pipe is required.~~

~~(c) An all-season safe-sight distance of at least 200 feet in each direction must be present for a building permit to be issued, with an additional 50 feet of all-season safe-sight distance added for each 5 miles per hour that the posted speed limit exceeds 30 miles per hour.~~

~~(d) The angles of any driveway intersection with any other road shall be at least 75 degrees. The preferred angles of intersection shall be 90 degrees.~~

~~(e) Return radii for residential driveways shall not exceed 25 feet. Commercial driveway radii shall be designed for an AASHTO SU design vehicle unless deliveries from larger vehicles are anticipated on a regular basis.~~

Comment: (1) What is a return radius? (2) What does AASHTO SU stand for? AASHTO SU stands for "American Association of State Highway and Transportation Officials" and "single-unit."

~~(f) No driveway will be permitted within 100 feet of an intersecting street in the urban compact area or within 200 feet of an intersecting street outside the urban compact area.~~

~~(g) No residential driveway shall be wider than 20 feet or narrower than 10 feet. The preferred width of a residential driveway shall be 12 feet.~~

~~(h) No commercial driveway shall be wider than 50 feet or narrower than 30 feet. The preferred width of a commercial driveway shall be 12 feet.~~

~~(i) Final driveway acceptance shall rest with the Superintendent of Public Works.~~

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Comment: This provision has caused nothing but trouble for as long as I can remember. The planning board has the ultimate authority to regulate driveways (RSA 236:13, V), and the only actual authority that the planning board can delegate to the highway agent is for "administrative duties" (RSA 236:13, V). Nonetheless, some planning board members over the years have consistently insisted that the highway agent has the ultimate authority to regulate driveways.

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Article 12. Standards for Street Design and Construction

1. Street Design

(a) Purpose: The purpose of these standards for STREET design is to ensure safe vehicular travel on roads serving more than one LOT or FAMILY (RSA 674:36, III, and Davis v. Barrington, 127 N.H. 202, 497 A.2d 1232 (1985)) and on roads subject to site plan approval (RSA 674:44, IV). Proper design requires the position, shape, and grade of the STREET to be safe and to minimize impacts on the existing terrain and environment. These standards for STREET design are also intended to be flexible for different traffic volumes and terrain conditions.

Comment: "position, [and] shape" replaces "layout." See current (2010) subdivision regulations, section 10, A, introductory paragraph (page 31): "Proper design requires the blending of safe roadway layout and grade with minimization of impacts on the existing terrain and environment."

(b) Minimum Design Standards:

(1) New STREETS shall be designed to conform to the minimum design standards established in subparagraph (2), Table of Minimum Road Design Standards, and in subparagraph (3), Typical Roadway Cross Section.

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(2) Table of Minimum Road Design Standards:

Table of Minimum Road Design Standards

	Traffic Load (Average Daily Traffic)			
	0 to 50	50 to 250	250 to 400	400 to 750 or greater
Design Speed (miles per hour)	20	20	30	35
Center Line Curve Radius (feet)	120	150	250	425
Roadway Width (feet)	22	22	24	24
Shoulder Width (each side) (feet)	3	3	4	8 to 10
Vertical Curve Crest: Sag: K values (minimum)	 15 24	 15 24	 30 40	 50 50
Sight Distance (feet)	150	200	300	350
Sight Distance at Road Intersections (feet)	200	300	350	400
Profile Grade (%) Minimum: Maximum:	 0.5 8	 0.5 8	 0.5 8	 0.5 7
Minimum Platform at Road Intersections	2%-50 ft	2%-75 ft	2%-100 ft	2%-100 ft
Minimum Pavement Radius at Road Intersections (feet)	30	30	35	40
Bank Run Gravel Base Course Depth (inches)	18	18	18	18
Crushed Gravel Course Depth (inches)	10	10	10	10
Bituminous Concrete Base Course Depth (inches)	2	2	2	2
Bituminous Concrete Wearing Course Depth (inches)	1	1	1	1

Comment: This table was reconstructed from appendix 1 of the 1998 subdivision regulations: Minimum Road Design Standards. It is similar to a table in the SWRPC subdivision regulations, appendix A (page App. A - 2).

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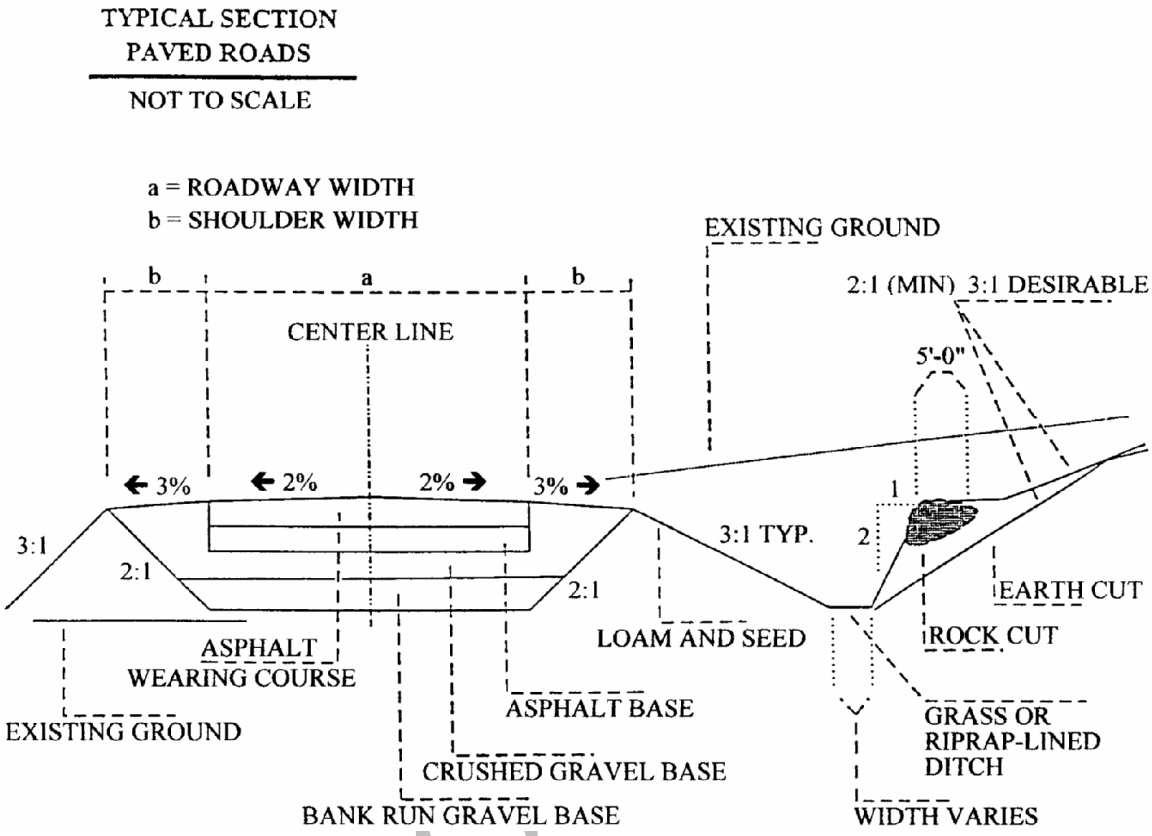
(3) Typical Roadway Cross Section:



Comment: This diagram was reconstructed from appendix 4 of the 1998 subdivision regulations: Typical Roadway Cross Section. I used the SWRPC model subdivision regulations, appendix A, page App. A - 10, to help in the reconstruction.

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(4) Average daily traffic shall be determined by the manual entitled *Institute of Transportation Engineers - Trip Generation*. The average daily traffic as determined by the manual may be supplemented by actual traffic data compiled for local STREET networks and applicable to the proposed project.

(5) For STREETS where the planning board has reason to expect higher average daily traffic than the table of minimum design standards shows, such as STREETS that have the potential to extend to other lands or to other potential STREET networks, the board may require higher design standards than the table of minimum road design standards and the typical roadway cross section show.

(6) STREETS serving commercial or industrial areas shall meet higher design standards than the table of minimum road design standards and the typical roadway cross section show. These commercial or industrial STREETS shall meet at least the standards of a collector road.

Comment: Subparagraphs (5) and (6) come from current (2010) subdivision regulations, section 10, A, 9, c and d (page 33). These two subparagraphs from the 2010 subdivision regulations do not define the higher design standards and do not define "collector road." Because I do not know where the table of minimum road design standards or the cross-section diagram originally came from, I do not know where to find the appropriate higher standards. The New Hampshire Department of Transportation might define "collector road" and appropriate standards. The SWRPC model road construction standards use the term "collector road" but do not define it. Wikipedia defines "collector road" as follows:

> *A collector road or distributor road is a low-to-moderate-capacity road which serves to move traffic from local streets to arterial roads. Unlike arterials, collector roads are designed to provide access to residential properties.*

https://en.wikipedia.org/wiki/Collector_road

(c) New Hampshire Department of Transportation specifications shall apply to road-design matters or road-construction matters that the subdivision regulations do not cover.

(d) Arrangement of Streets:

The STREETS in a SUBDIVISION shall be properly arranged and coordinated with other existing or planned STREETS.

(e) Circulation:

The planning board shall ensure that there is adequate through circulation for emergency vehicle access and overall traffic circulation. Traffic circulation patterns for service and local STREETS shall be designed to discourage through traffic from taking shortcuts through residential neighborhoods. The STREET size needed within a SUBDIVISION

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depends on the traffic that the SUBDIVISION development will generate plus the through traffic from outside the SUBDIVISION. Whenever a STREET is proposed to be extended to an adjoining property, the extent of outside or through traffic must be taken into account in determining the appropriate STREET size within the SUBDIVISION.

Comment: This paragraph comes from the current (2010) subdivision regulations, section 10, A, 3 (page 32). What does "through circulation" mean? What is "secondary emergency vehicle access"? Is the last sentence (or two sentences) redundant to paragraph (b), (5)?

(f) Steep Grades:

Where STREET profiles exceed 5%, the planning board shall give special consideration to drainage and to protection from erosion and sedimentation. This protection may require curbing and special means such as riprap or other means.

(g) Rights-of-Way Width:

Every highway right-of-way shall be at least 50 feet wide and shall be wider where conditions require a wider right-of-way. The apportioning of the highway widths among the traveled way, sidewalks, and possible grass strips shall be subject to the planning board's approval.

(h) Curvature:

Every STREET shall have a minimum curvature of 100 feet.

(i) Intersections:

(1) The angles of INTERSECTING STREETS shall be at least 75 degrees. The preferred angles of intersection shall be 90 degrees.

(2) Every two STREETS joining opposite sides of another STREET shall either lie directly opposite each other or be offset from each other by at least 100 feet inside the urban compact area and by at least 200 feet outside the urban compact area.

(3) The radius of the STREET boundary at the intersection shall be at least 20 feet.

(j) Dead-End Streets:

(1) Every dead-end STREET shall have a turnaround at the closed end as shown in subparagraph (4), Typical Cul-de-Sac Diagram.

(2) Every dead-end STREET shall have a maximum grade of 5%.

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(3) Every dead-end STREET shall have a maximum length of 1,000 feet as measured from the nearest edge of the nearest class V or better INTERSECTING highway, then along the center line of the traveled way in the dead-end STREET, and then to the midpoint of the traveled way in the cul-de-sac turnaround.

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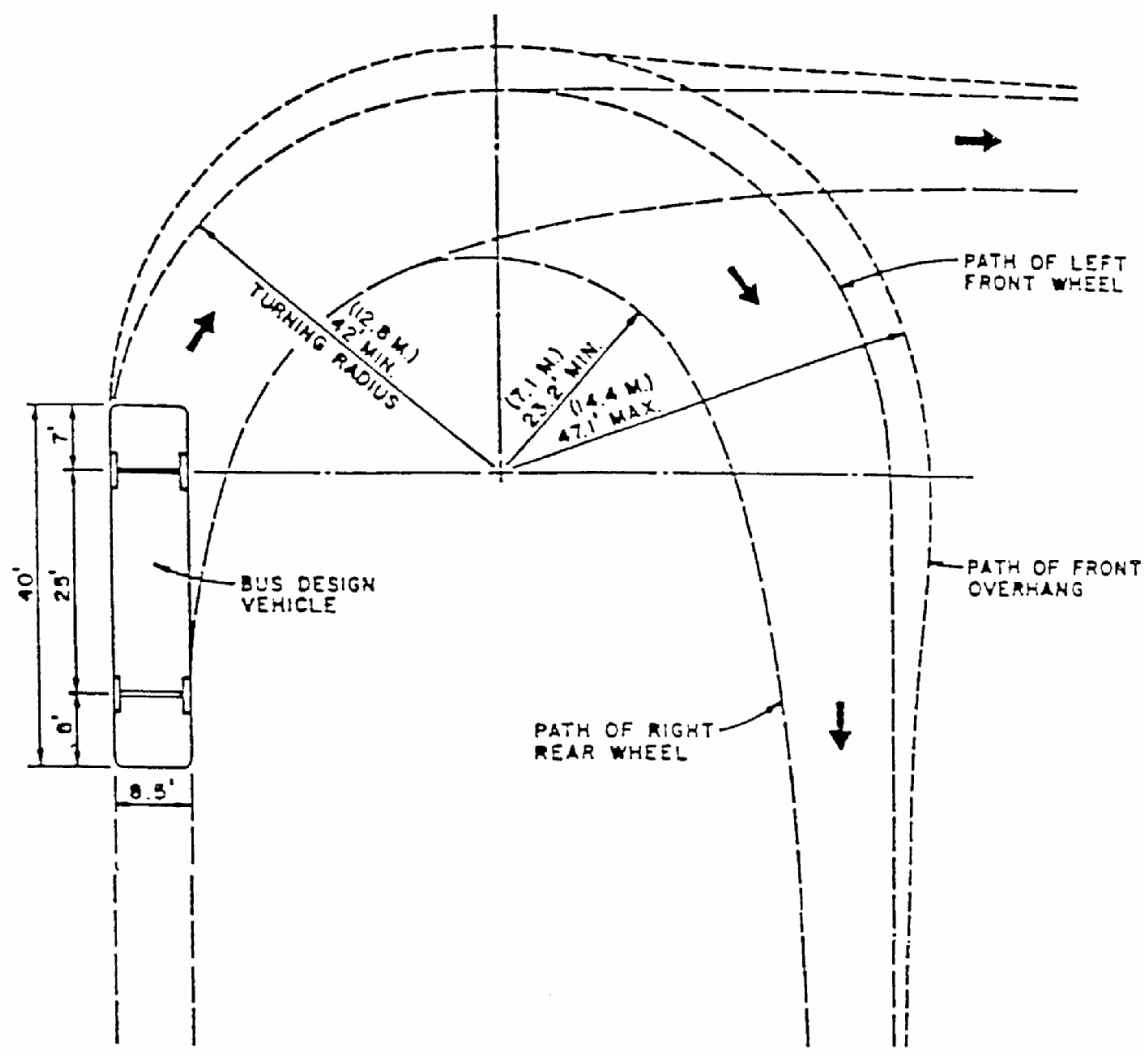
(4) Typical Cul-de-Sac Diagram:

TYPICAL CUL-DE-SAC



MINIMUM TURNING PATH FOR BUS DESIGN VEHICLE
SCALE: 1 inch/20 feet
ADOPTED BY THE PITTSFIELD PLANNING BOARD
AS THE STANDARD FOR ITS EMERGENCY VEHICLES TURNING

This template for a right-hand turn comes from section 5 of the HIGHWAY DESIGN manual of 1983, New Hampshire Department of Public Works and Highways. For left-hand turns, use the mirror image of this template.

Additional Requirement: Allow 2 feet beyond the wheel to curb or edge of pavement for stop and yield traffic, or allow 4 feet for nonstop turning.

Comment:

1. *This diagram and its lettering (except "mirror image" and a few style changes) came from appendix 5 of the 1998 subdivision regulations: Typical Cul-de-Sac.*

2. *"mirror image" replaced "obverse," which means "facing the observer or opponent – opposed to reverse." (**Webster's Third New International Dictionary, Unabridged**.) I believe that the obverse side of a coin is heads, that the reverse side of a coin is tails, and that the diagram should say, "use the mirror image of this template."*

3. *"or allow four" replaced "or allow four" (the underlining is removed) because the underlining does not actually change the meaning and because underlining is a marking reserved for words that an amendment adds.*

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(k) Loop Roads:

Loop roads may be permitted if the single section shall not exceed a total of 900 feet as measured from the nearest edge of the right-of-way of any class V or better INTERSECTING highway to the intersection of the single connecting section and the loop section.

Comment: This paragraph came from current (2010) subdivision regulations, section 10, A, 5 (page 32). I do not understand this specification. What is a loop road? What do "single section," "single connecting section," and "loop section" mean?

(l) Serial Cul-de-Sac Streets and Loop Roads Prohibited:

Neither cul-de-sac STREETS nor loop roads shall join other cul-de-sac STREETS or loop roads.

Comment: "join" replaces the former "be piggybacked onto."

(m) Curbing:

The planning board shall require curbing where it is necessary for drainage, slope stability, or pedestrian safety. Curbing shall be either straight granite or sloped granite.

(n) Sidewalks:

(1) The planning board may require sidewalks where they are necessary for pedestrian safety or pedestrian convenience.

(2) Where sidewalks are necessary, they shall be at least 6 feet wide and shall conform to the grades of the STREET.

2. Intersection Lighting

Intersection STREET lighting shall be installed where the planning board deems such lighting necessary. (See RSA 674:36, III, and RSA 674:44, IV.)

3. Street Signs

(a) The applicant shall provide STREET signs, signposts, and traffic lights at all intersections of new or extended STREETS.

(b) The STREET signs, signposts, and traffic lights shall be of a size and type approved by the New Hampshire Department of Transportation. (RSA 47:17, VIII, (a), and RSA 41:11.) The

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applicant shall submit to the planning board proof of the department of transportation's approval prior to the board's final approval of the application.

(c) Upon installing the signs, signposts, and traffic lights, the applicant shall register them with the New Hampshire Department of Transportation.

Comment:

1. *Approval of street signs, signposts, and traffic lights is a condition precedent.*

2. *When should street signs, signposts, and traffic lights be registered with the New Hampshire Department of Transportation? After they are installed or before?*

3. ***A Hard Road to Travel**, 2004 edition, pages 99 and 106, cites RSA 47:17, VIII, (b), and RSA 259:111. Page 99 of **A Hard Road to Travel**, 2004 edition, says as follows:*

> *New Hampshire law requires that all erection, removal and maintenance of traffic signs and signals "conform to applicable state statutes and the latest edition of the Federal Highway Administration's **Manual on Uniform Traffic Control Devices** (MUTCD)." RSA 47:17, VIII(b).*

As of January 1, 2010, the following statement—" The erection, removal and maintenance of all such devices shall conform to applicable state statutes and the latest edition of the Manual on Uniform Traffic Control Devices."—was in RSA 47:17, VIII, (a), not RSA 47:17, VIII, (b).

The title of RSA chapter 47 is "Powers of City Councils." The title of RSA 47:17 is "Bylaws and Ordinances." The title of paragraph VIII is "Traffic Devices and Signals."

*Page 106 of **A Hard Road to Travel**, 2004 edition, says as follows:*

> *As stated above, all road signs must be in conformity with the **Manual on Uniform Traffic Control Devices**. Importantly, "traffic signals" (RSA 47:17, VIII(b)—see definition at RSA 259:111) must be approved by the New Hampshire Department of Transportation (DOT). Accordingly, a town's inventory of traffic signs should be registered with the DOT.*

4. Street Names

(a) Every STREET that extends or aligns with an existing STREET shall have the same name that the existing STREET has.

(b) Other STREET names must have the board of selectmen's approval. (RSA 231:133, I.)

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(c) Except as provided in paragraph (a), the name of the STREET shall not duplicate or be confusingly similar to any existing STREET name or be a name that may delay locating any address in an emergency. (RSA 231:133, II.) Every STREET name shall conform to the requirements of the enhanced 911 telecommunications system. (See RSA 231:133, I, and RSA chapter 106-H.)

(d) The name of the STREET shall be legibly marked on a suitable signboard or other marker and placed in at least 2 conspicuous places on the STREET. (RSA 231:133, I.)

Comment: "The naming of any new street or highway shall form a part of the return of the layout of the street or highway, or of the acceptance of any dedicated way. The municipality shall not be bound by any name previously assigned to the street or highway by any private owner, developer, or dedicator. No name for a highway or street shall be selected which is already in use, or which is confusingly similar to any such existing name, or which otherwise might delay the locating of any address in an emergency." (RSA 231:133, II, in whole.)

5. Supervision of Street Construction

(a) All construction of STREETS, sidewalks, curbs, drainage facilities for STREETS, water mains, sewer mains, other utility mains, piping, connections, and other facilities on the land under consideration shall be done only under the supervision of the planning board or its agents. (See RSA 674:36, III, and RSA 674:44, IV.)

(b) Preconstruction Meeting:

Before any construction begins, the applicant, his contractors, and the board or its agents, shall have a preconstruction meeting to clarify the design and construction standards contained herein and to establish a workable inspection schedule for the project.

(c) Maintenance of Survey Stakes:

(1) The applicant shall preserve the grade stakes until the STREETS are finished, and if grade stakes are removed or destroyed so that the board or its agent cannot readily check the grade at some location, then the applicant shall replace the grade stakes at the applicant's expense.

(2) Before starting construction of any STREET or improvement, the applicant shall place grade stakes at 50-foot intervals. Every grade stake shall be driven firmly beyond the toe or top of slope in a place where construction operations will not disturb the grade stake. Every grade stake shall be clearly marked by a licensed surveyor to give the following information:

(A) Station number.

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(B) Offset from center line.

(C) Cut or fill to finished center line grade.

(3) The applicant shall also place grade-control stakes at 50-foot intervals and near the shoulder break point or 2 feet outside the proposed curb line on both sides of the roadway. Every grade-control stake shall be marked with the center line station and a finished grade mark.

6. Clearing and Grubbing

(a) The limits of clearing and grubbing shall be laid out on the ground before any other work begins and shall extend 5 feet beyond the excavation and embankment slope limits. Trees that the planning board or its agent has designated shall be saved; particular reference is made to fruit trees, ornamental trees, shade trees, and plants at the edge of roadside slopes.

(b) Clearing: Clearing shall be performed by cutting and disposing of all trees, downed timber, stubs, brush, bushes, and debris.

(c) Grubbing: Remove and dispose of all stumps and large roots within the limits of construction to a depth of 3 feet below subgrade. Excavation caused by grubbing shall be filled with suitable material that shall be compacted to conform to the surrounding ground.

(d) Roadside Cleanup: Roadside cleanup of leaning, dead, unsound, and unsightly trees, branches, stubs, refuse, and slash generally to a limit of approximately 15 feet outside the toe and top of slopes shall be done, and the material shall be disposed of appropriately.

(e) Inspection: The applicant shall notify the planning board or its agent so that the board or its agent can inspect the clearing and grubbing before any further work may progress.

7. Excavation and Embankment

Excavation and embankment work shall consist of excavation, placement and compaction of embankment, and the necessary disposal of other material.

(a) Excavation: Excavation consists of the removal of earth, rock, and muck.

(1) Conservation of Growth: Excavation in the proximity of trees and shrubs designated to be saved shall be done carefully so as to avoid undue injury to the designated plants.

(2) Topsoil: Topsoil and other desirable humus material shall be removed from excavation areas and fill areas to such depths as the planning board or its agent specifies. Topsoil removed from excavation areas and fill areas shall remain on the project site.

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Comment: This subparagraph came from current (2010) subdivision regulations, section 11, C, 1, (b) (page 45) (emphasis added on "following"):

> *Topsoil and other desirable humus material shall be removed in excavation areas and also in fill areas to such depths as directed by the Superintendent of Public Works. Topsoil shall not be removed from the project site without approval of the Board* ***following*** *the issuance of an earth removal permit.*

The 2010 regulations did not say who the permit-granting authority for an earth removal permit was, and the permit seems not to be an excavation permit under RSA 155-E because excavation under RSA 155-E means commercial excavation (RSA 155-E:1, II) and because the earth removal specified here is not described as commercial. In addition, the planning board typically is the permit-granting authority for excavation permits (RSA 155-E:1, III, and RSA 155-E:3), but the planning board's approval for topsoil removal comes ***following*** *the issuance of an earth removal permit, which clearly indicates that the permit-granting authority is not the planning board. Highway construction may require an alteration of terrain permit under RSA 485-A:17.*

(3) Rock Excavation: All boulders that cannot be removed shall be broken off to a depth of not less than 12 inches below subgrade. Solid rock shall be removed to a depth of at least 12 inches below subgrade and as required for ditches in cut sections. No rock excavation by blasting shall be done without prior approval of the planning board or its agent and only after the applicant has obtained all required permits and has them on site.

Comment: Blasting permits may be a condition precedent.

(4) Muck Excavation: Muck excavation consists of the removal of deposits of saturated or unsaturated mixtures of soils and organic matter not suitable for roadway foundation material regardless of moisture content. Muck shall be removed and suitable portions thereof may be used on the embankment slopes or other appropriate uses that the planning board or its agent approves. The excavation work shall be done so as to avoid trapping muck within the backfill. The backfilling of the excavated area shall follow immediately behind the excavation of the muck so that all soft material pushed ahead of the backfill can be removed.

(5) Common Excavation: Common excavation consisting of all excavation not included in the above classifications and unusable for roadway construction shall be removed. With the approval of the planning board or its agent, suitable material may be used in fill areas and unsuitable material may be used to flatten slopes where possible.

Comment: What is suitable material, and what is unsuitable material?

(b) Embankment: Embankments shall be formed of suitable and acceptable excavated or borrow material and brought to the required lines and grades. Embankment materials shall be placed and compacted in full uniform layers not exceeding lifts of 12 inches. Continuous leveling

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and manipulation shall be done to ensure uniform density. Where end dumping is done, embankment material shall be dumped on the layer of embankment being constructed and bulldozed ahead into place. End dumping over compacted work and allowing material to roll into place is prohibited.

(1) Backfill of Holes: Holes resulting from the removal of stumps, boulders, and the like within the zone of anticipated frost shall be filled and compacted with material similar to that surrounding the hole.

(2) Unstable Areas: Material used to backfill excavated muck shall consist of rock or granular material graded so that, of the material passing the number 4 sieve, not more than 70% will pass the number 40 sieve and not more than 35% will pass the number 200 sieve. The process shall be as specified in paragraph (a), (4), Muck Excavation. Material shall be placed compacted in full uniform layers not exceeding lifts of 12 inches.

(3) Waste Material: Waste materials from clearing, grubbing, roadside cleanup, rock excavation, muck excavation, and common excavation that the board or its agent deems unsuitable for use in the construction of roads, STREETS, or landscaping shall not be deposited in any WETLANDS or other property within the town, including in any public disposal facility if the in-town disposal is at town expense, but the waste materials may be deposited in pits dug on site and covered with material in a manner that the board or its agent approves. The pits shall be away from any construction areas and in a nonbuildable buffer area that the board or its agent approves.

(4) Rock Embankment: Rock embankment shall consist of rock fragments placed in layers not more than 4 feet thick. The rock lifts shall be worked in such a manner as to close the voids with smalls and fines when available; otherwise earth shall be used to make a tight surface before the next lift is placed.

*Comment: **Webster's Third New International Dictionary, Unabridged**, defines "small" (as a noun, definition 2d) as "coal, ore, or ore-bearing rock that passes through small meshes of a specified size — usually used in plural." Webster's does not define "fine" as a noun of similar meaning, but **Stormwater Management and Erosion and Sediment Control Handbook for Developing Areas in New Hampshire** (New Hampshire Department of Environmental Services and Rockingham County Conservation District, August 1992), appendix D, Site Preparation, step (8) (382nd page of the whole Handbook document) defines "fines" as that part of a soil sample that passes through a number 200 sieve.*

(5) Earth Embankment: Earth shall be placed in layers the full width of the roadway, generally parallel to the finished grade. The layers shall not exceed 12 inches of loose depth. Each layer shall be spread to a uniform thickness and compacted to at least 95% of maximum density prior to placing the next layer. The planning board or its agent may require density tests at the applicant's expense.

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(6) Grading: Embankments shall be graded at all times to ensure the proper runoff of water. Any saturation of nonporous material because of the applicant's selected method of operation shall cause additional work to be suspended until the applicant has corrected the situation.

(7) Winter Construction: No embankments shall be constructed on frozen earth materials. Each layer of material shall be compacted to the specified density before the material freezes.

(8) Borrow: When suitable and acceptable to the planning board or its agent, and when excavated material from the job site has been exhausted, borrow materials may be brought onto the job if the board or its agent has given prior written permission concerning the quality of the material at the source.

8. Street Drainage

(a) General Guidelines for Street Drainage:

(1) The design of STREET drainage shall follow the guidelines in the *Manual on Drainage Design for Highways*, published by the New Hampshire Department of Transportation, revision date April 1998. These guidelines shall be in addition to all applicable drainage standards in article 10, section 1, Storm Water Management, Erosion Control, and Sedimentation Control.

(2) All STREETS that are not highways under state or federal jurisdiction shall be taken as minor state aid highways and betterments for the purposes of applying the *Manual on Drainage Design for Highways*. See the *Manual on Drainage Design for Highways*, section 1, page 1-1.

(3) All storm water drainage structures and materials shall meet the standards set forth in *Standard Specifications for Road and Bridge Construction, State of New Hampshire, Department of Transportation*, March 2016.

(b) Additional Specific Guidelines for Street Drainage:

Comment: Paragraphs (a) and (b) need to be reconciled. Because of limited-time considerations, the two paragraphs are presented as they are to avoid accidentally omitting regulations in the current (2010) subdivision regulations, but paragraphs (a) and (b) may conflict or be redundant.

(1) The applicant shall provide adequate disposal of surface water runoff. Location of drainage ways, easements, and structures shall have been designed using the topography contour lines specified in article 4, section 1, (d), (18), (E), and article 4, section 1, (d), (18), (F), (3).

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(2) Culverts: Culverts shall be placed at the locations as determined in paragraph (a), General Guidelines for Street Drainage, and the length of a culvert structure shall be graphically determined by cross-section scale drawings of the proposed STREET showing existing ground, side ditches, back slopes, side slopes, subgrade, finished grade, and the culvert, with headwalls if required. For skew installations, a plan view also shall be drawn with the same scale for all features. Culverts without headwalls or drop inlets shall extend to the intersection of the STREET side slope with the old ground in an earth fill section; or with the back slope in an earth cut section governed by the cover over the culvert specified below. Culverts with headwalls may be shorter as governed by the intersection of the STREET side slope with the back of the headwall 5 inches below the top of the headwall. Culverts can also be terminated by catch basins located on the normal ditch line of an earth cut section. The minimum inside diameter of every culvert under any STREET shall be 15 inches; a larger size may be required as a result of the rainfall information discussed and designs required in these regulations, as well as the general necessity for adequate disposal of surface water. Culverts shall be plastic as approved by the planning board or its agent. Locking bands for field jointing plastic sections shall meet the manufacturer specifications. The minimum diameter of every culvert under any single-FAMILY DRIVEWAY where the DRIVEWAY joins a STREET shall be 12 inches. Culverts shall be placed on prepared bedding of fine granular material to fit the lower 10% of the pipe height and to ensure that the flow line of the pipes will conform to the required grade line. The minimum culvert slope required to maintain a self-cleaning water velocity is 0.4%. Acceptable material for culvert pipes and closed drainage system pipes shall be smoothbore PVC (polyvinyl chloride) pipes.

(3) Underdrains: The planning board may require the applicant to provide underdrains to remove water from the roadway subgrade.

(4) Ditch Grades: Roadside ditch grades shall not be less than .5% to prevent ponding. Steep roadside ditch grades may require energy absorbing crushed stone or cross culvert relief if anticipated flow is significant.

(5) Headwalls and Catch Basins: A stone or masonry headwall on the inlet end of a culvert, when required, shall be designed to prevent physical damage to the culvert pipe and shall have a base below the pipe to avoid seepage and erosion below the culvert. Headwalls on the outlet end of the culvert may be required, but without a deep base. Catch basins or drop inlets may be required in developments with curb inlets or located in normal ditch lines of an earth cut section. All stone or masonry headwalls shall be constructed in accordance with New Hampshire Department of Transportation Standard Specifications. All drainage catch basins, drop inlets, and manholes shall be precast reinforced concrete constructed to New Hampshire Department of Transportation Standard Specifications. All frames and grates shall be cast iron and shall meet or exceed New Hampshire Department of Transportation Standard Specifications.

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(6) Backfilling: All backfill material for culvert trenches, headwalls, drop inlets, catch basins, and manholes shall be soil approved by the planning board or its agent. Backfill material shall be free of hard lumps or clods larger than 3 inches in diameter and shall be free of rocks and stumps. Uniformly fine material shall be placed next to every culvert, headwall, and basin that may otherwise dent or break.

(7) Backfill shall be in layers not exceeding 6 inches thick at near optimum moisture content, and care shall be taken to backfill under the haunches of culverts and in firm contact with the sides. Compaction shall not be less than 95% in the vicinity of pipes.

Comment: The haunches of a culvert are the four quarter-circle arcs that extend between horizontal and vertical lines relative to the surface of the Earth.

(8) Intersections: Special consideration will be needed where STREETS or other roads intersect established STREETS or other roads to provide proper drainage and to avoid conditions leading to accumulation of ice during freezing weather.

(9) Drainage Easements: The applicant shall obtain drainage easements over all adjacent lands where the applicant's project will cause an increased flow of surface water. If the applicant does not have such easements supporting the application as filed for the planning board's completeness review (see article 4, section 1, (d), (18), (A)), then the applicant shall obtain the easements and shall submit to the board a full legal description of the easements prior to the board's final approval of the application.

Comment:

1. *This is a potential condition precedent.*

2. *Article 10, section 1, (c), (3), says as follows:*

> *Increased storm water runoff that construction causes during the storm that subparagraph (2) specifies shall be retained on the **project area** in such a way that the peak runoff from the **project area** after the construction finishes will not be greater than the peak runoff from the **project area** before the construction began.*

(10) Certification of Drainage Materials: The applicant shall certify to the Town of Pittsfield all material supplied for the drainage work.

Comment: The current (2010) subdivision regulations, section 11, E, 8, (page 48) says as follows:

> *All material supplied for the drainage work shall be certified by the applicant to the Town of Pittsfield.*

What does this certification certify?

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(11) Inspections: The applicant shall notify the planning board or its agent as to when each drainage structure or other material will be placed, and before placing the materials, the applicant shall have the board inspect all of the materials and the bases on which the materials will sit. After the materials are placed, the applicant shall have the board or its agent inspect all backfilling.

9. Fine Grading of the Subgrade

(a) Upon completion of excavation, placement of embankment, and installation and backfilling of drainage structures, the subgrade shall be fine graded to conform to the subgrade profile and cross slope. High spots shall be honed down, and low spots shall be filled with material that the planning board or its agent approves. Vibratory compacting shall continue until no further depressions result. Slopes and ditches shall be shaped to reasonable smooth surfaces in keeping with the character of the adjacent terrain and to merge into the adjacent terrain without any noticeable break. Culverts and waterways shall be cleared of all obstructions. Rubbish, brush, loose rock, boulders, and all other debris from the construction work shall be removed and disposed of as the board or its agent specifies. The entire roadway must present a uniformly finished appearance at the completion of fine grading. The applicant shall notify the planning board or its agent so that the board or its agent can inspect the fine grading of the subgrade, side slopes, back slopes, and ditches before any further work may progress.

(b) Base courses shall be furnished and placed on previously prepared subgrade or base course. The materials shall be free of organic materials and shall conform to the following gradations:

(1) Bank Run Gravel: The base course shall consist of bank run gravel to the minimum depth specified by article 12, section 1, (b), (2), Table of Minimum Road Design Standards, for the class of the STREET to be constructed. 25% to 70% of the gravel shall pass the number 4 sieve, and of that passing, no more than 12% shall pass the number 200 sieve. The maximum size of any stone with the gravel shall not exceed 75% of the compacted depth of the gravel specified.

(2) Crushed Gravel:

The top aggregate base course shall consist of crushed gravel to the minimum depth specified by article 12, section 1, (b), (2), Table of Minimum Road Design Standards, for the class of the STREET to be constructed. The following table states the required grading:

Sieve Size	Percentage by Weight Passing
3 inch	100
2 inch	95-100
1 inch	55-85

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number 4	27-52
number 200 (based on the fraction passing the number 4 sieve)	0-12

At least 50% by weight of the materials retained in the 1-inch sieve shall have a fractured face. If the crushed gravel is to be paved with bituminous concrete, then the crushed gravel shall be "washed" to remove fines.

Comment: What does "washed" mean, and why is "washed" in quotation marks?

10. Placement of Bank Run Gravel and Crushed Gravel

(a) The subgrade shall be built to the specified crown and grade and shall be maintained in a smooth condition, free from holes and ruts. If the hauling equipment should cause ruts in the subgrade or previously placed base course, then the hauling equipment shall be operated only on the course being placed, behind the spreading equipment.

(b) Care shall be taken to avoid segregation when placing bank run gravel and crushed gravel. When base course material is dumped in piles, it shall be dumped in the course being placed and spread at once onto the previously placed layer. If spreading equipment is not available, then dumping will not be permitted. All segregation that occurs shall be remedied, or the materials shall be removed and replaced at the applicant's expense.

(c) Every entire layer of bank run gravel shall be thoroughly scarified for the depth of the layer to bring all oversized stones to the surface for disposal before the subsequent course is placed. Such scarifying will not be required when the contractor's method of operation is such that oversized stones are not delivered to the project.

(d) Before the fine grading happens, hard spots in the surface of the top layer shall be eliminated by scarifying the top 4 inches.

(e) Previously tested and accepted materials that no longer meet applicable requirements because the materials have been contaminated by earthen, organic, or other foreign matter or because the materials have been degraded by hauling equipment shall be removed and replaced or otherwise made acceptable at the applicant's expense.

(f) To prevent segregation of crushed gravel during spreading and to help in reaching the required density of the mixture, water shall be added to the crushed gravel before the grading operations happen. The course shall be maintained in a moist condition until it is covered. Water shall be uniformly applied over the other base courses during compaction in the amount necessary for proper consolidation.

(g) The compaction of bank run gravel and crushed gravel shall be done with an approved vibratory roller until 95% of maximum density is achieved.

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(h) The applicant shall notify the planning board or its agent so that the board or its agent can inspect the placement and compaction of the gravel courses before any further work may progress.

(i) Source Approval: The sources of bank run gravel and crushed gravel must have the approval of the planning board or its agent before the applicant brings the materials to the job site.

(j) Fine Grading of Top Course: The top course of 4 inches of crushed gravel shall be fine graded to conform to the profile grade of this course and the cross slope. High spots shall be removed, and low spots shall be filled with approved material. Rolling shall continue until no further depressions result.

(k) Inspection: The applicant shall notify the planning board or its agent so that the board or its agent can inspect the fine grading of the top course before any further work may progress.

11. Pavement Surface

All STREETS shall be surfaced with bituminous materials as follows:

(a) Bituminous Concrete: The base course and the wearing surface of bituminous concrete shall have the thicknesses specified by article 12, section 1, (b), (2), Table of Minimum Road Design Standards, for the class of the STREET to be constructed. The bituminous material for both the base course and the wearing surface shall be asphalt cement of penetration grade 100-200.

(b) Approvals: The paving contractor and materials to be used shall be approved by the planning board or its agent. No paving shall be done until the top course of the base courses has been approved.

(c) Placing Hot Bituminous Pavement:

(1) Weather Limitations: Mixtures shall be placed only when the underlying surface is substantially dry and frost free and when the surface temperature is at least 40 degrees Fahrenheit and rising. In the case of sudden rain, the planning board or its agent may permit the placing of mix then in transit from the plant if the mix is laid on a base free from pools of water and if all other specifications are met. No load shall be sent out so late in the day that spreading and compaction cannot be completed during daylight. Wearing course shall not be placed after October 1 of any year.

(2) In special instances, when the board or its agent determines that it is in the best interest of the town, the board may waive the weather-limitations requirements of subparagraph (1).

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(3) All material cooler than 250 degrees Fahrenheit when delivered to the spreader shall not be used.

(d) Compacting Hot Bituminous Pavement:

(4) Immediately after the bituminous mixture has been spread and struck off and surface irregularities have been adjusted, the bituminous mixture shall be thoroughly and uniformly compacted by rolling. The initial rolling shall be done with a static steel-wheeled roller followed by the use of a vibratory roller. The minimum weight of static steel-wheeled rollers shall be 8 tons. A vibratory steel-wheeled roller shall have a minimum applied dynamic force of 27,000 pounds (manufacturer's rated capacity). Vibratory rollers shall have separate controls for energy and propulsion and shall be specially designed to compact bituminous mixtures. When a vibratory roller is being used, the vibration shall be stopped while the roller is stopped or reversing its direction of travel.

(5) Base courses shall be rolled until all roller marks are eliminated. The wearing course shall be rolled until all roller marks are eliminated and until a minimum density of 95% of laboratory specimens, made by the American Association of State Highway and Transportation Officials T-24 method in the proportions of the job-mix formula, has been obtained.

12. Utilities and Guardrails

(a) Utilities: Utilities shall be placed after the project has been brought to subgrade and after rough slope work has been completed. The respective utilities companies shall inspect the lines.

(b) Guardrails: Guardrails shall be required where slopes drop more than 3 feet vertically from the height of the break in shoulder to the original grade on a slope steeper than 4:1 or in other hazardous areas as the planning board or its agent deems necessary. Where a guardrail is required, it shall be constructed and placed in accordance with New Hampshire Department of Transportation construction specifications and the Roadside Design Guide of the American Association of State Highway and Transportation Officials.

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Article 13. Inspection of Improvements

1. Inspection Required

The planning board or its agent shall inspect all required improvements during their construction.

2. Notice to the Planning Board

The applicant shall notify the planning board of planned construction at least 2 business days before the construction begins.

3. Inspection Schedule for Streets

(a) The applicant shall have the planning board or its agent inspect the progress of STREET construction according to the following schedule:

(1) Preconstruction conference between the town's engineer, the town's highway agent, and the applicant or the applicant's agent.

(2) Review of the design engineer's layout and WETLANDS marking.

(3) Inspection of the clearing, grubbing, and erosion control means.

(4) Inspection of fills placement. In-place compaction testing of fill is required every 1,000 cubic yards or as directed by the inspector.

(5) Inspection of drainage means, drainage materials, and the base upon which drainage structures will sit. Full-time inspection is required, including of all backfilling.

Comment: This inspection is not in the standard inspection schedule of appendix 2 of the 1998 subdivision regulations, but the inspection is in 1998 subdivision regulations, section 11, E, 8, (page 52), which is current (2010) subdivision regulations, section 11, E, 8 (page 48).

(6) Inspection of buried utilities. Full-time inspection is required, including full-time inspection of all backfilling.

(7) Inspection of subgrade and slope work.

(8) Inspection of gravel grade. Compaction testing of the gravel course is required every 200 linear feet of each STREET.

(9) Inspection of crushed gravel grade. Compaction testing of the crushed gravel course is required every 200 linear feet of each STREET.

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(10) Inspection of the fine grading of the top course.

Comment: This inspection is not in the standard inspection schedule of appendix 2 of the 1998 subdivision regulations, but the inspection is in 1998 subdivision regulations, section 11, G, 11, (page 54), which is current (2010) subdivision regulations, section 11, G, 11 (page 50).

(11) Inspection of final ditch work, slope work, landscaping, and erosion control means.

(12) Inspection of headwall construction.

(13) Inspection of binder course paving. Full-time inspection will be performed during the paving.

(14) Inspection of wearing course paving. Full-time inspection will be performed during the paving.

(15) Remaining work inspection by the applicant or his agent and the inspector.

(16) Final walk-through inspection by the planning board, the board of selectmen, and the highway agent.

(17) Follow-up inspection.

(b) For each inspection listed in paragraph (a), the board shall certify the inspection in the manner shown as follows for inspection (1):

(1) Preconstruction conference between the town's engineer, the town's highway agent, and the applicant or the applicant's agent.

___ Proceed

___ Do not proceed

Comments:

_____

Inspector's signature

4. Remedy for Discrepancies

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(a) If, upon the planning board's inspection, any of the required improvements have not been constructed according to the board's construction specifications, then the applicant shall correct the discrepancy. The applicant shall bear all costs that the town incurs because of the inspections, and the town may call the performance security if the applicant does not pay these costs.

(b) Nothing in the subdivision regulations shall oblige the town to build or complete improvements when, in the opinion of the planning board after consultation with the board of selectmen and after a public hearing, the planning board determines that such improvements are not in the public interest.

5. As-Built Plans

(a) Following completion of all improvements, the applicant shall submit to the planning board plans showing the improvements as the improvements have actually been built. These as-built plans shall be drawn with the same scale for all features and shall show, with dimensions and angles where applicable,

Comment: Should the stated dimensions and angles be stated to a certain error tolerance?

(1) all survey monuments (permanent boundary markers),

(2) all easements,

(3) all dedicated roads,

(4) all roadbeds,

(5) all STREET profiles and center line elevations,

(6) all STREET cross sections,

(7) the final road grading plan showing swales and ditches,

(8) all above-ground or underground electrical wiring,

(9) all above-ground or underground pipes,

(10) all other utilities,

(11) all other improvements, and

(12) all burial pits for waste or debris.

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(b) The applicant shall submit the as-built plans as one original paper copy and one electronic portable document format (PDF) copy.

(c) The planning board or its agent shall inspect and certify the as-built plans for completeness, accuracy, and agreement with the final plat and construction drawings for the SUBDIVISION or site plan.

6. Certificate of Performance of Secured Improvements

(a) Upon completing any given phase of STREET work or utility installations as specified in the applicant's performance promise according to article 7, section 1, Performance Promise and Financial Guarantee, the applicant may apply in writing to the planning board for a temporary certificate of performance for the improvement completed in the given phase. (See RSA 674:36, III, (b), and RSA 674:44, III, (d).) The application for a temporary certificate of performance shall include inspection reports from all affected town departments and applicable outside agencies, including but not limited to the board's designated inspector, the highway agent, the fire department, the sewer department, the police department, the Pittsfield Water Company, and the New Hampshire Department of Transportation.

(b) The temporary certificate of performance shall state (1) that the subject improvement is satisfactorily complete, (2) the amount of the performance security that the planning board is releasing for the improvement, and (3) how the amount of the security release is distributed between each of the improvement elements that constitute the whole improvement.

(c) The board shall issue the temporary certificate of performance upon the following conditions:

(1) The inspection reports taken together say that the subject improvement is satisfactorily complete.

(2) The applicant has submitted as-built plans that the board or its agent has certified complete, accurate, and in agreement with the final plat and construction drawings for the SUBDIVISION or site plan. In this condition, "as-built plans" means plans according to article 13, section 5, As-Built Plans, showing the improvement as the improvement has actually been built.

(3) The applicant has submitted performance security according to article 7, Standards for Performance Security.

(4) The board shall retain performance security equal to either 25% of the total cost of the improvement for which security release is sought or $2,000, whichever is greater, for two years after the board issues the temporary certificate of performance.

(d) Two years after the board issued the temporary certificate of performance, the applicant may apply to the board for a final certificate of performance for the subject improvement. The

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application for a final certificate of performance shall include inspection reports from all affected town departments or applicable outside agencies indicating the acceptability of the completed improvement after the two years.

(e) If the inspection reports taken together say that the subject improvement has remained in satisfactory condition after the two years, then the board shall issue a final certificate of performance. The final certificate of performance shall state (1) that the improvement is satisfactorily complete and (2) that the board is releasing the remaining performance security for the improvement.

(f) When the applicant has completed all improvements specified in the approved plans and has met all other requirements of these subdivision regulations, including obtaining a final certificate of performance, the applicant may then ask the board of selectmen to accept the completed STREETS as class V highways (RSA 674:40-a and article 30 of the March 12 and 16, 1991, town meeting warrant) and may ask the other agencies having jurisdiction over the other completed improvements to accept those improvements.

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Article 14. Certification of Adoption and Effective Date

The planning board adopted these subdivision regulations by amendment of prior subdivision regulations by a N - N - N vote after a public hearing on ###, ##, 201#. These subdivision regulations became effective upon the board's filing a copy of them with the town clerk on ###, ##, 201#. (RSA 675:6, III; also see subdivision regulations, article 1, section 3, Conditions for the Subdivision Regulations to Take Effect.)

Comment: The Concord Subdivision Regulations, forward, says as follows:

> *These regulations were revised by the Planning Board in 1964, 1970, with subsequent minor amendments, and in 1985 with subsequent minor amendments. The regulations adopted on December 15, 2010, replace and supersede previous versions of the subdivision regulations.*

The certification at the end of the Concord Subdivision Regulations document says as follows:

> *CERTIFICATION*
>
> *This version of the Subdivision Regulations was adopted on December 15, 2010 at a meeting of the City Planning Board, after a duly notified Public Hearing and consideration of testimony received, 8 members of the Board were present and voted 8-0 in favor of adopting these regulations which shall take effect on January 1, 2011 and after the filing of a copy of this Certificate with City Clerk.*
>
> *Attest: City Planning Board*
> *City of Concord*
> *New Hampshire*
>
> *[8 board member signatures follow.]*

_____
Clayton Wood, chair

_____
Daren Nielsen, vice-chair

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_____
Jim Pritchard, secretary

_____
Pat Heffernan, member

_____
Gerard LeDuc, selectmen's ex officio member

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