



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: April 28, 2015
To: Robert Best, Chairman, & Members, Planning Board
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **2015 Annual Meeting – Proposed By-Law Amendments**

As you know, the Planning Board is required to have an “Annual Meeting” each year to elect officers and review the Board’s By-Laws. The Annual Meeting is scheduled for the meeting on May 5, 2015.

In preparing the copies of the By-laws for the packets, I observed that there were some minor amendments needed, in order to reflect modifications to State Law regarding minutes and decisions, current practices for storage of recordings, making the document gender-neutral, and a minor consistency change. Staff’s proposed changes are attached, and summarized below:

- Document wide: Replace “Chairman” and “his” with gender-neutral “Chair” and “his/her”;
- Section V.A: Removing the text “NH” before “RSA” to be consistent with how the term is used throughout the remainder of the by-laws;
- Section VI.A.3:
 - Amending “144 hours” to state “5 business days” consistent with current state law (RSA 91-A was amended to change to 5 business days several years ago);
 - Modifying the requirement to keep audio recordings for 5 years. There is no statutory requirement for this, and it is not a practice that has been followed for at least the past 4 years of my employment in Merrimack. Modification of the language would state that the recording must be kept at least until minutes are approved by the Board. As you are all aware, recordings of meetings are now kept on-line by MerrimackTV;
 - Changing the phrase “executive session” to “non-public sessions” per the language of RSA 91-A;
- Section VI.A.6: Same modification as above, amending “144 hours” to state “5 business days”;
- Section VII.D: Same modification as above, modifying the requirement to keep audio recordings for 5 years.

Required Process for Adoption of By-Law Amendments

There are two means of adopting amendments to the By-laws (per Section XIII):

- *If the vote is unanimous, the By-laws can be adopted immediately at the 5/5 meeting; or*

- *By a vote of at least 5 members provided that the proposed change has been read and discussed at a previous regular meeting of the Board (that means if the vote is not unanimous, the vote would need to take place at the 5/19 meeting).*

Recommendation:

- Adopt the proposed By-law amendments as presented by Staff.

Cc: Jillian Harris, AICP, Planning & Zoning Administrator
Donna Pohli, Assistant Planner

**MERRIMACK PLANNING BOARD
BY-LAWS**

I. PURPOSE AND AUTHORIZATION

The Merrimack Planning Board (hereinafter, the Board) duly established by the Merrimack Town Meeting on March 10, 1964 in accordance with RSA 673:1 hereby establishes the following rules of procedure for the conduct of its business, pursuant to RSA 676: 1.

II. NAME

The name of the board shall be the "Merrimack Planning Board".

III. MEMBERSHIP AND TERMS OF OFFICE

A. Appointment of Members: The Board shall consist of seven members, appointed by the Town Council, and shall include one Town Councilor to act as an ex-officio member with power to vote. The appointment of members shall conform to terms and requirements of RSA 673:2 II and RSA 673:5. Members of the Board shall conform to the limitations on multiple membership set forth in RSA 673:7.

B. Alternates: The Town Council may appoint, in addition to regular members, not more than three alternate members who may serve, upon designation by the Chair, in place of a regular member in the event of absence or disqualification. The terms and multiple membership requirements for alternates shall be the same as for regular members.

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IV. OFFICERS AND THEIR DUTIES

A. Election of Officers: The Board shall elect, by a majority vote at its annual meeting, the following officers from among its members. The term of each officer shall be limited to one year; however any officer shall be eligible for re-election.

1. Chair: The Chair shall preside at all meetings and hearings of the Board and shall have the duties normally conferred on such officers. The Chair shall appoint such Committees as directed by the Board, including one member of the Board who shall act as Chair of such Committees. As directed by the Board, the Chair shall affix his/her signature in the name of the Board to all approved plans and all correspondence from the Board. The Chair shall approve the agenda for all regular and special meetings of the Board. In the absence of administrative staff, the Chair or his/her designee shall be responsible for the records of the meeting.

2. Secretary: The Secretary shall act for the Chair in his/her absence. The Secretary shall affix his/her signature to all plans approved by the Board on behalf of the Board.

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V. MEMBERS AND THEIR DUTIES

A. Members: are expected to attend all Regular, Special and Annual Meetings, Public Hearings, and Joint Meetings and Hearings conducted by the Planning Board. If a Member cannot be present at any meeting he shall notify the Chair prior to the meeting of his/her inability to attend. In the absence of a regular member, other than the Town Council Representative, the Chair shall appoint an alternate from among those Alternate Members present to act in the place of the absent member. If a Member is late to arrive for a meeting, the Chair shall appoint an Alternate Member from among those Alternate members present to act in the place of the absent Member until the hearing and Board action is completed on the agenda item being heard. Upon the start of a new agenda item, the regular Member may take his/her seat on the Board replacing the Alternate Member.

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If a Member chooses to step down from the Board for a particular agenda item, the Chair shall appoint an alternate from among those Alternate Members present to act in the place of the Member for that agenda item. Upon start of a new agenda item, the Member may take his/her seat on the Board replacing the Alternate.

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If the Town Council Representative to the Planning Board is absent, an Alternate Member will not be appointed to fill his/her place in accordance with RSA 673:11.

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B. Alternate Members: are expected to attend all Regular, Special and Annual Meetings, Public Hearings, and Joint Meetings and Hearings of the Planning Board. If an Alternate Member cannot be present at any meeting he shall notify the Chair prior to the meeting of his/her inability to attend.

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Alternate Members shall sit at the table with the Planning Board during all regular meetings of the Planning Board, and may participate in questioning applicants and discussion of plans along with the regular Board Members. Alternate Members will not vote on any plan before the Board unless they have been appointed to act as a Member on the hearing item as described in Paragraph V. A., above.

The selection of Alternate Members to act as Members of the Board shall be made by the Chair to fill the place of an absent Regular Member at the start of the Planning Board Meetings. Alternates shall be chosen on a rotational basis in so far as is practical to give each alternate an approximately equal number of agenda items heard on a monthly or quarterly basis. The Chair, through the Community Development Department, shall maintain a record of appointments made to act as Members. In all cases, however, the decision of the Chair to appoint an alternate to act as a Member shall be final.

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VI. MEETINGS

A. **Regular Meetings:** Regular meetings of the Board shall be held at least monthly and shall be open to the public. The time and place of the meetings shall be selected by a majority vote of the Board taken at the annual meeting. Regular meetings shall not be held on Sundays or legal holidays. The following general rules of procedure shall govern the conduct of such meetings:

1. **Quorum Required:** Four (4) members, or designated alternates, of the Planning Board shall constitute the quorum necessary in order to transact business at any meeting.
2. **Notice of Meetings:** Notice of the time, date and place of any public meeting of the Board shall be posted in two public places at least 24 hours, excluding Sundays and legal holidays, prior to the meeting.
3. **Records Required:** Minutes of the events of the meeting shall be taken and shall include the names of members in attendance, persons appearing before the Board, a brief description of the topics discussed, and a record of any actions taken (see Record of Decision, below). Such minutes shall be available for public inspection within 5 business days of the meeting. The meeting shall also be recorded by a sound recording device and such recording shall be kept on file at least until after the Board has approved the minutes of the meeting in question. Minutes of Non-Public Sessions shall conform to the requirements of RSA 91-A:3.
4. **Order of Business:** The general order of business shall be in accordance with the posted agenda unless modified by a majority vote of the Board. The following order of business will be followed for each application to the Board unless otherwise determined by the Chair.
 - (a.) Chair will announce agenda item and application to be considered.
 - (b.) Chair will read aloud applicable background information, letter of request, minutes of previous meetings, etc.
 - (c.) Applicant will present his/her plan to the Board.
 - (d.) Board members question applicant.
 - (e.) Chair will read engineering and/or other technical reviews provided by consultants to the Board.
 - (f.) Board members question applicant.
 - (g.) Chair will ask staff to bring to the attention of the Board any items that have not been considered.
 - (h.) Chair will read all other correspondence such as letters from Abutters, etc.
 - (i.) Chair will solicit testimony from abutters and/or other interested persons. (Note: All persons giving testimony to the

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Planning Board will provide their name and address to the Board secretary for inclusion in the record.)

(j.) Final questions of applicant from the Board.

(k.) Chair will ask for the staff recommendations for Planning Board action.

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(l.) A motion will be made by a member of the Board to accept for engineering review, to approve, disapprove, or table action on the application. (Note: (1) On a vote not to accept a plan for engineering review, the minutes will show the Board's reason for non-acceptance, such as incompleteness of submittal, etc. (2) If a plan is approved with conditions precedent, the Chair and Secretary will not sign the plan until the conditions are satisfied.)

5. Voting: A motion, duly seconded, shall be passed by a majority of members present and voting in the affirmative. The Chair will not make a motion while chairing a meeting of the Board. After all discussion of the motion by Board members has been completed, the Chair will call for a vote on the motion by the Board. If the vote is not unanimous, the minutes of the meeting shall indicate members in favor, opposed, or abstaining by name.

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6. Record of Decision: Pursuant to RSA 676:3, whenever the Board issues a decision, record of the decision shall be placed on file in the Board's office and be available for public inspection within 5 business days after the decision is made.

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B. Special Meetings: Special meeting may be called by the Chair or, in his/her absence, by the Secretary. Notice to members shall be at least 48 hours in advance of the meeting. Notice to the public shall be in the same manner as for a regular meeting. No business shall be acted upon at a special meeting unless a quorum of the members is present. The notice of the meeting shall specify the purpose of the meeting and no other business may be considered except by unanimous consent of the Board members present once a quorum has been established.

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C. Annual Meeting: An annual organizational meeting shall be held at a regular meeting following the close of Town Meeting, but not later than sixty days following the close of Town Meeting. The purpose of the annual meeting will be to elect officers and to review the by-laws which shall be made a part of the minutes of the meeting. Members unable to be present for the election of officers may vote by proxy for the officers of the Board at this meeting.

VII. PUBLIC HEARING

A. Public Hearings Required: Public hearing shall be held, as required by the N.H.Revised Statutes Annotated for:

1. Master Plan or amendment proposed under RSA 674:1
2. Subdivision regulation proposed under RSA 674:35-37
3. Site plan review regulation proposed under RSA 674:43-44
4. Zoning ordinance proposed under RSA 674:16
5. Building code proposed under RSA 674:51
6. Board review of subdivision or site plan proposal under RSA 674:43-44

B. Notice of Hearing: Notice of hearings for items A.1 through A.5 above shall be given at least 10 calendar days prior to the date of hearing by publication in a newspaper of general circulation and by posting in at least 2 public places (the Merrimack Town Hall and the Merrimack Public Library). The 10 calendar days shall not include the day of posting or the day of the meeting.

For hearings involving an application for subdivision or site plan review (item A-6 above) notice to the applicant and abutters shall be given by certified mail at least 10 days prior to the meeting.

The full text of a notice for any hearing need not be included in the notice provided an adequate summary is included in the notice and a location is specified where the proposal may be viewed by the public.

C. Conduct of the Hearing: The Chair or, in his/her absence, the Secretary, or a member appointed by the Chair or his/her designee, shall preside at the public hearing, and shall:

1. Convene the meeting and read the legal advertisement announcing the date, time and purpose of the meeting into the record;
2. Briefly state the manner in which the hearing shall be conducted;
3. Call upon the applicant, or sponsor of any proposal, to present the proposal;
4. Read any written testimony received concerning the proposal into the record;
5. Call upon those appearing in favor of, or in opposition to, the proposal to direct questions or comments to the Chair; and
6. Call the hearing to a close, as appropriate, outlining the Board's anticipated procedure concerning the proposal.

D. Record of Hearing: A public record of the proceedings shall be taken in writing and incorporated into the Board's minutes. The hearing shall also be recorded by a sound recording device and such recording shall be kept on file at least until after the Board has approved the minutes of the meeting in question.

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VIII. JOINT MEETINGS AND HEARINGS

- A. Request for Joint Meetings: The Board, or any applicant, or any other land use board, may request a joint meeting or hearing of the boards on any topic common to their respective jurisdiction. Each board shall have the discretion as to whether or not to hold a joint meeting with another board.
- B. Planning Board Shall Chair: The Planning Board Chair shall chair any joint meeting or hearing in which the Board is involved. (RSA 676:2) The Chair shall follow the general rules of conduct outlined in these by-laws.
- C. Notices and Decisions: Each board participating in the joint meeting or hearing shall be responsible for providing notice, filing minutes and decisions, and for rendering and issuing decisions, as appropriate, for the subject matter within its jurisdiction as prescribed for that board by statute, local ordinance, or other rules of procedure.

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IX. STAFF AND FINANCES

Within the limits of funding made available for its use by the Town Meeting, and in accordance with RSA 673:16, the Board may employ such staff personnel and/or consultants as it may require to aid the Board in its work. Appointments shall be made by a majority of the members present at any regular or special meeting at which a quorum has been established. The Chair may be authorized to sign contracts for employing personnel and contracting for consulting services as approved by the Board. The Chair may authorize expenditure of funds within the Town Meeting approved budget of the Planning Board. The Board shall review and approve its annual budget prior to submittal of the budget to the Town Council.

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X. PUBLIC RELATIONS

The Chair or a duly appointed Board member or staff personnel may be authorized by the Board to act as the principal public relations contact for the Board. Duties shall be as prescribed by the Board.

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XI. COMMITTEES

Special committees may be appointed for purposes and terms approved by the Board.

XII. APPLICATIONS AND FORMS

- A. Applications: Applications for subdivision or site plan review, Conditional Use Permits or gravel excavation permits shall be made on forms provided by the Board.
- B. Submission of Applications: No application shall be placed upon any agenda for acceptance at a regular meeting of the Board unless the application is received by the Community Development Office no less than 15 days prior to the meeting day at which it is to be accepted and/or discussed. No application will be received by the Community Development Office, except in proper form, as prescribed in the subdivision regulations.
- C. Vote of the Board Required: In every instance where a submission of a plat or any other document is made to the Planning Board by a property owner or his/her duly authorized agent, in writing, and whether Planning Board approval is required or not, the plat or other document shall be submitted to the Board for its consideration. Neither the Chair nor the Secretary shall be authorized to execute any plat or document unless approved by the said Board.

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XIII. AMENDMENTS

- A. Amendments: These by-laws may be amended as follows:
1. At any regular meeting of the Board by a unanimous vote of the entire membership of the Board; or,
 2. At any regular meeting of the Board by a vote of five members of the Board provided that the proposed change has been read and discussed at a previous regular meeting of the Board.
- B. Filing with the Town Clerk: These by-laws and any amendments thereto shall be placed on file with the Town Clerk for public inspection. A complete set of by-laws, as amended, shall also be attached to the minutes of the Board's annual organizational meeting and kept on file.
- C. Effective Date: These by-laws, and any subsequent amendments, shall become effective immediately upon passage by the Board.
- D. Record of Amendments: Amendments shall be recorded in the minutes of the meeting at which such action occurs.