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Town Planner's Review
Wednesday, February 28, 2024

IX. **Public Hearing – Zoning Amendment - Posting and Mailing of Public Notices – Proposed Zoning Amendments.** The amendment would change the process for noticing public hearings for zoning amendments, conditional uses, historic district reviews, and UNH projects from publishing notices in a local newspaper to posting notices on the Town's website. Notices for conditional use hearings would be sent by verified mail rather than by certified mail.

➤ I recommend that the board vote to initiate the amendments.

Please note the following.

See the enclosed proposed amendments. State law used to require that all notices for public hearings for site plan application, subdivision applications, and zoning amendments be advertised in a local newspaper and sent by certified mail to abutters (for applications only). The law was changed a number of years ago to allow for placement on a town's website instead of buying an ad in the newspaper and to send notices to abutters by verified mail rather than certified mail.

This was a beneficial change since there is no cost, to the applicant nor to the Town, to place a notice on our website, and verified mail is much less expensive than certified mail. Verified mail is defined in RSA 21:53 as *“any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing.”* For verified mail now the Post Office simply provides a receipt to us when we bring the mail to the post office.

We changed our Site Plan Regulations and Subdivision Regulations recently to reflect this change in state law. We had to do so because the regulations specifically still required placing an ad in the newspaper and sending notices to abutters by certified mail. Prior to the change we charged \$225 for the notice in the newspaper and \$9 per abutter for certified mail. Now we do not change anything for posting the notice and only \$5 per abutter for verified mail (since some additional time is needed from the Planning Administrative Assistant).

We should now change the Zoning Ordinance in a similar fashion.

- I mentioned at a recent meeting that we should amend the Planning Board's Rules of Procedure about scheduling of public hearings. See the excerpt from RSA 676:4 highlighted in yellow below. We are required to notify abutters and other parties both of the date that the public hearing will be held on a site plan or subdivision application AND of the date when the application will first be formally submitted to the board (i.e. when it is to be accepted as complete). It would be expensive and burdensome to send two separate notices out so it makes sense to send one notice showing the date the application will be presented to the board and the date of the public hearing. This is generally what we do. However, the practice of the board is for the board to set the date for the hearing after it accepts an application as complete. This is almost always set for the next regular meeting (held two or three weeks later) which we put on the notice. However, **it would make sense to change the Rules of Procedure so that the Town Planner sets the date for the public hearing when the notice is prepared so that we need not send a second corrective notice if the board sets a different date for the public hearing.** The Rules are actually a little vague stating simply in 5.5 that the hearing is held at the second meeting.
- The RSA says that notices must be sent by verified mail defined as: **21:53 *Verified Mail.* – The term " verified mail " means any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing.** The statute used to require use of certified mail. Certified mail provides evidence of mailing and confirmation that the mail was delivered or that a delivery attempt was made. Verified mail is less expensive than certified mail because it involves only a receipt showing evidence of mailing. **We should change the Site Plan and Subdivision Regulations to specify verified mail rather than certified mail as they do now**
- Regarding posting for public hearings for site plan and subdivision applications the RSA used to require that the posting be made in a newspaper. Our regulations currently state that the posting be made in a newspaper. The statute now requires that the posting be made as stated in the Town's Subdivision Regulations. Applicant's will save money if we change the regulations to specify that the public hearing be posted on the Town's website and in two other town facilities at least 10 days in advance rather than in a newspaper (Our fee for the newspaper notice is \$225). **We should change the Site Plan and Subdivision Regulations accordingly.**

If this makes sense then I will offer three proposed amendments at an upcoming meeting for the board's consideration. Amendments to the Rules of Procedure, Site Plan Regulations, and Subdivision Regulations require only a public hearing before being adopted.

676:4 Board's Procedures on Plats. –

I. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:

(a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. 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. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). 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; however, the planning board may condition approval upon the receipt of such permits or approvals in accordance with subparagraph (i). The applicant shall file the application with the board or its agent at least 21 days prior to the meeting at which the application will be accepted, provided that the planning board may specify a shorter period of time in its rules of procedure. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include 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.

(c)(1) The board shall, at the next regular meeting or within 30 days following the delivery of the application, for which notice can be given in accordance with the requirements of subparagraph (b), determine if a submitted application is complete according to the board's regulation and shall vote upon its acceptance. Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in

accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete. Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and 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). In the case of a determination by the board that the application is a development of regional impact requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act to approve, conditionally approve, as provided in subparagraph (i), or disapprove. If the board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension pursuant to subparagraph (f), the board may, in its discretion, deny the application without prejudice, in which case the applicant may resubmit the same or a substantially similar application. If the planning board does not act on the application within that 65-day time period, then the selectmen or city council shall certify on the applicant's application that the plat is approved pursuant to this paragraph. Such a certification, citing this paragraph, 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.

(2) Failure of the selectmen or city council to certify approval of the plat upon the planning board's failure to act within the required time period shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application. The superior court shall act upon such a petition within 30 days. If the court determines that the failure of the selectmen or the city council to act was not justified, the court may order the municipality to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order.

(d)(1) Notice to the applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, and the public shall be given as follows: **The planning board shall 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 by verified mail, as defined in RSA 21:53, of the date upon which the application will be formally submitted to the board. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication as required by the subdivision regulations.** The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. **For any public hearing on the application, the same notice as required for notice of submission of the application shall be given.** If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session was made known at the prior hearing. 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.