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Title:	State of New Hampshire State Land Use Enabling Act
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Abstract

New Hampshire does not require local governments to adopt zoning, but if a local government chooses to zone it is required first to adopt a master plan. The master plan must include a vision section and a land use element. It may also include transportation, community facilities, economic development, natural resources, natural hazards, and recreation elements. The state's grant of power to local governments extends the purposes of the Standard State Zoning Enabling Act to expressly include the use of innovative planning techniques and the use of phased development for growth management.

Resource

NEW HAMPSHIRE STATE LAND USE ENABLING ACT

Abstract: *New Hampshire does not require local governments to adopt zoning, but if a local government chooses to zone it is required first to adopt a master plan. The master plan must include a vision section and a land use element. It may also include transportation, community facilities, economic development, natural resources, natural hazards, and recreation elements. The state's grant of power to local governments extends the purposes of the Standard State Zoning Enabling Act to expressly include the use of innovative planning techniques and the use of phased development for growth management. Among the innovative techniques mentioned in the statute, the "village plan alternative subdivision" allows for clustering to preserve open space, to reduce infrastructure costs, and to protect property values.*

The full text of the statute is available at:

<http://www.gencourt.state.nh.us/rsa/html/indexes/674.html>

New Hampshire State Land Use Enabling Act

Title LXIV Planning and Zoning

Chapter 674

Local Land Use Planning and Regulatory Powers

674:2 Master Plan; Purpose and Description.

I. The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.

II. The master plan shall be a set of statements and land use and development principles for the municipality with such accompanying maps, diagrams, charts and descriptions as to give legal standing to the implementation ordinances and other measures of the planning board. Each section of the master plan shall be consistent with the others in its implementation of the vision section. The master plan shall be a public record subject to the provisions of RSA 91-A. The master plan shall include, at a minimum, the following required sections:

(a) A vision section that serves to direct the other sections of the plan. This section shall contain a set of statements which articulate the desires of the citizens affected by the master plan, not only for their locality but for the region and the whole state. It shall contain a set of guiding principles and priorities to implement that vision.

(b) A land use section upon which all the following sections shall be based. This section shall translate the vision statements into physical terms. Based on a study of population, economic activity, and natural, historic, and cultural resources, it shall show existing conditions and the proposed location, extent, and intensity of future land use.

III. The master plan may also include the following sections:

(a) A transportation section which considers all pertinent modes of transportation and provides a framework for both adequate local needs and for coordination with regional and state transportation plans. Suggested items to be considered may include but are not limited to public transportation, park and ride facilities, and bicycle routes, or paths, or both.

(b) A community facilities section which identifies facilities to support the future land use pattern of subparagraph II(b), meets the projected needs of the community, and coordinates with other local governments' special districts and school districts, as well as with state and federal agencies that have multi-jurisdictional impacts.

(c) An economic development section which proposes actions to suit the community's economic goals, given its economic strengths and weaknesses in the region.

(d) A natural resources section which identifies and inventories any critical or sensitive areas or resources, not only those in the local community, but also those shared with abutting communities. This section provides a factual basis for any land development regulations that may be enacted to protect natural areas. A key component in preparing this section is to identify any conflicts between other elements of the master plan and natural resources, as well as conflicts with plans of abutting communities. The natural resources section of the master plan should include a local water resources management and protection plan as specified in RSA 4-C:22.

(e) A natural hazards section which documents the physical characteristics, severity, frequency, and extent of any potential natural hazards to the community. It should identify those elements of the built environment at risk from natural hazards as well as extent of current and future vulnerability that may result from current zoning and development policies.

(f) A recreation section which shows existing recreation areas and addresses future recreation needs.

(g) A utility and public service section analyzing the need for and showing the present and future general location of existing and anticipated public and private utilities, both local and regional, including telecommunications utilities, their supplies, and facilities for distribution and storage.

(h) A section which identifies cultural and historic resources and protects them for rehabilitation or preservation from the impact of other land use tools such as land use regulations, housing, or transportation.

(i) A regional concern section, which describes the specific areas in the municipality of significant regional interest. These areas may include resources wholly contained within the municipality or bordering, or shared, or both, with neighboring municipalities. Items to be considered may include but are not limited to public facilities, natural resources, economic and housing potential, transportation, agriculture, and open space. The intent of this section is to promote regional awareness in managing growth while fulfilling the vision statements.

(j) A neighborhood plan section which focuses on a specific geographical area of local government that includes substantial residential development. This section is a part of the local master plan and shall be consistent with it. No neighborhood plan shall be adopted until a local master plan is adopted.

(k) A community design section to identify positive physical attributes in a municipality and provide for design goals and policies for planning in specific areas to guide private and public development.

(l) A housing section which assesses local housing conditions and projects future housing needs of residents of all levels of income and ages in the municipality and the

region as identified in the regional housing needs assessment performed by the regional planning commission pursuant to RSA 36:47, II, and which integrates the availability of human services with other planning undertaken by the community.

(m) An implementation section, which is a long range action program of specific actions, time frames, allocation of responsibility for actions, description of land development regulations to be adopted, and procedures which the municipality may use to monitor and measure the effectiveness of each section of the plan.

674:16 Grant of Power.

I. For the purpose of promoting the health, safety, or the general welfare of the community, the local legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance under the ordinance enactment procedures of RSA 675:2-5. The zoning ordinance shall be designed to regulate and restrict:

(a) The height, number of stories and size of buildings and other structures;

(b) Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;

(c) The density of population in the municipality; and

(d) The location and use of buildings, structures and land used for business, industrial, residential, or other purposes.

II. The power to adopt a zoning ordinance under this subdivision expressly includes the power to adopt innovative land use controls which may include, but which are not limited to, the methods contained in RSA 674:21.

III. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control the timing of development as provided in RSA 674:22.

674:18 Adoption of Zoning Ordinance. – The local legislative body may adopt a zoning ordinance under RSA 674:16 only after the planning board has adopted the mandatory sections of the master plan as described in RSA 674:2, I and II.

674:21 Innovative Land Use Controls.

I. Innovative land use controls may include, but are not limited to:

- (a)** Timing incentives.
- (b)** Phased development.
- (c)** Intensity and use incentive.
- (d)** Transfer of development rights.
- (e)** Planned unit development.
- (f)** Cluster development.
- (g)** Impact zoning.
- (h)** Performance standards.
- (i)** Flexible and discretionary zoning.
- (j)** Environmental characteristics zoning.
- (k)** Inclusionary zoning.
- (l)** Accessory dwelling unit standards.
- (m)** Impact fees.
- (n)** Village plan alternative subdivision.

II. An innovative land use control adopted under RSA 674:16 shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

III. Innovative land use controls must be adopted in accordance with RSA 675:1, II.

IV. As used in this section:

(a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

(b) "Accessory dwelling unit" means a second dwelling unit, attached or detached, which is permitted by a land use control regulation to be located on the same lot, plat, site, or other division of land as the permitted principal dwelling unit.

V. As used in this section "impact fee" means a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. No later than July 1, 1993, all impact fee ordinances shall be subject to the following:

(a) The amount of any such fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

(b) In order for a municipality to adopt an impact fee ordinance, it must have enacted a capital improvements program pursuant to RSA 674:5-7.

(c) Any impact fee shall be accounted for separately, shall be segregated from the municipality's general fund, may be spent upon order of the municipal governing body, shall be exempt from all provisions of RSA 32 relative to limitation and expenditure of town moneys, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

(d) All impact fees imposed pursuant to this section shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. In the interim between assessment and collection, municipalities may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees. Impact fees shall normally be collected as a condition for the issuance of a certificate of occupancy. The above notwithstanding, in projects where off-site improvements are to be

constructed simultaneously with a project's development, and where a municipality has appropriated the necessary funds to cover such portions of the work for which it will be responsible, that municipality may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment.

(e) The ordinance shall establish reasonable times after which any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest. Whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within a reasonable time. The maximum time which shall be considered reasonable hereunder shall be 6 years.

(f) Unless otherwise specified in the ordinance, any decision under an impact fee ordinance may be appealed in the same manner provided by statute for appeals from the officer or board making that decision, as set forth in RSA 676:5, RSA 677:2-14, or RSA 677:15, respectively.

(g) The ordinance may also provide for a waiver process, including the criteria for the granting of such a waiver.

(h) The adoption of a growth management limitation or moratorium by a municipality shall not affect any development with respect to which an impact fee has been paid or assessed as part of the approval for that development.

(i) Neither the adoption of an impact fee ordinance, nor the failure to adopt such an ordinance, shall be deemed to affect existing authority of a planning board over subdivision or site plan review, except to the extent expressly stated in such an ordinance.

VI. (a) In this section, "village plan alternative" means an optional land use control and subdivision regulation to provide a means of promoting a more efficient and cost effective method of land development. The village plan alternative's purpose is to encourage the preservation of open space wherever possible. The village plan alternative subdivision is meant to encourage beneficial consolidation of land development to permit the efficient layout of less costly to maintain roads, utilities, and other public and private infrastructures; to improve the ability of political subdivisions to provide more rapid and efficient delivery of public safety and school transportation services as community growth occurs; and finally, to provide owners of private property with a method for realizing the inherent development value of their real property in a manner conducive to the creation of substantial benefit to the environment and to the political subdivision's property tax base.

(b) An owner of record wishing to utilize the village plan alternative in the subdivision and development of a parcel of land, by locating the entire density permitted by the

existing land use regulations of the political subdivision within which the property is located, on 20 percent or less of the entire parcel available for development, shall provide to the political subdivision within which the property is located, as a condition of approval, a recorded easement reserving the remaining land area of the entire, original lot, solely for agriculture, forestry, and conservation, or for public recreation. The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.

(c) The village plan alternative shall permit the developer or owner to have an expedited subdivision application and approval process wherever land use and subdivision regulations may apply. The submission and approval procedure for a village plan alternative subdivision shall be the same as that for a conventional subdivision. Existing zoning and subdivision regulations relating to emergency access, fire prevention, and public health and safety concerns including any setback requirement for wells, septic systems, or wetland requirement imposed by the department of environmental services shall apply to the developed portion of a village plan alternative subdivision, but lot size regulations and dimensional requirements having to do with frontage and setbacks measured from all new property lot lines, and lot size regulations, as well as density regulations, shall not apply. The total density of development within a village plan alternate subdivision shall not exceed the total potential development density permitted a conventional subdivision of the entire original lot unless provisions contained within the political subdivision's land use regulations provide a basis for increasing the permitted density of development within a village plan alternative subdivision. In no case shall a political subdivision impose lesser density requirements upon a village plan alternative subdivision than the density requirements imposed on a conventional subdivision.

(d) Within a village plan alternative subdivision, the exterior wall construction of buildings shall meet or exceed the requirements for fire-rated construction described by the fire prevention and building codes being enforced by the state of New Hampshire at the date and time the property owner of record files a formal application for subdivision approval with the political subdivision having jurisdiction of the project. Exterior walls and openings of new buildings shall also conform to fire protective provisions of all other building codes in force in the political subdivision. Wherever building code or fire prevention code requirements for exterior wall construction appear to be in conflict, the more stringent building or fire prevention code requirements shall apply.

(e) If the total area of a proposed village plan alternative subdivision including all roadways and improvements does not exceed 20 percent of the total land area of the undeveloped lot, and if the proposed subdivision incorporates the total sum of all proposed development as permitted by local regulation on the undeveloped lot, all existing and future dimensional requirements imposed by local regulation, including lot size, shall not apply to the development.

674:22 Growth Management; Timing of Development. – The local legislative body may further exercise the powers granted under this subdivision to regulate and control the timing of development. Any ordinance imposing such a control may be adopted only after preparation and adoption by the planning board of a master plan and a capital improvement program and shall be based upon a growth management process intended to assess and balance community development needs and consider regional development needs.