

***Historic District
Commissions:
Roles and
Responsibilities.***

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NHMA Legal Services Counsel

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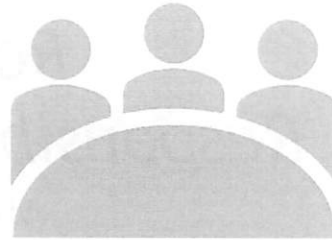
**THE RIGHT-TO-KNOW LAW
& PUBLIC MEETINGS**

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THE HISTORIC DISTRICT COMMISSION IS A PUBLIC BODY

- ▶ Meetings require notice, minutes, and public access
 - “Work sessions” are meetings
- ▶ Hearings have additional requirements



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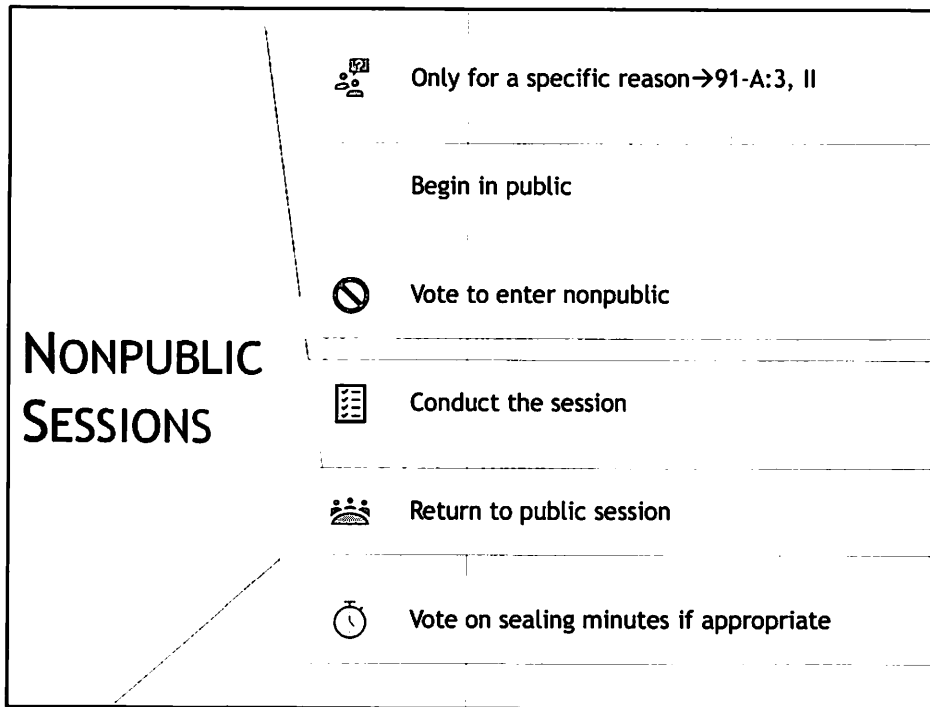
MINUTES

- ▶ Kept and made available upon request within 5 business days
- ▶ Include members present, people participating, summary of subject matter and decisions reached or action taken, persons make and seconding motions.

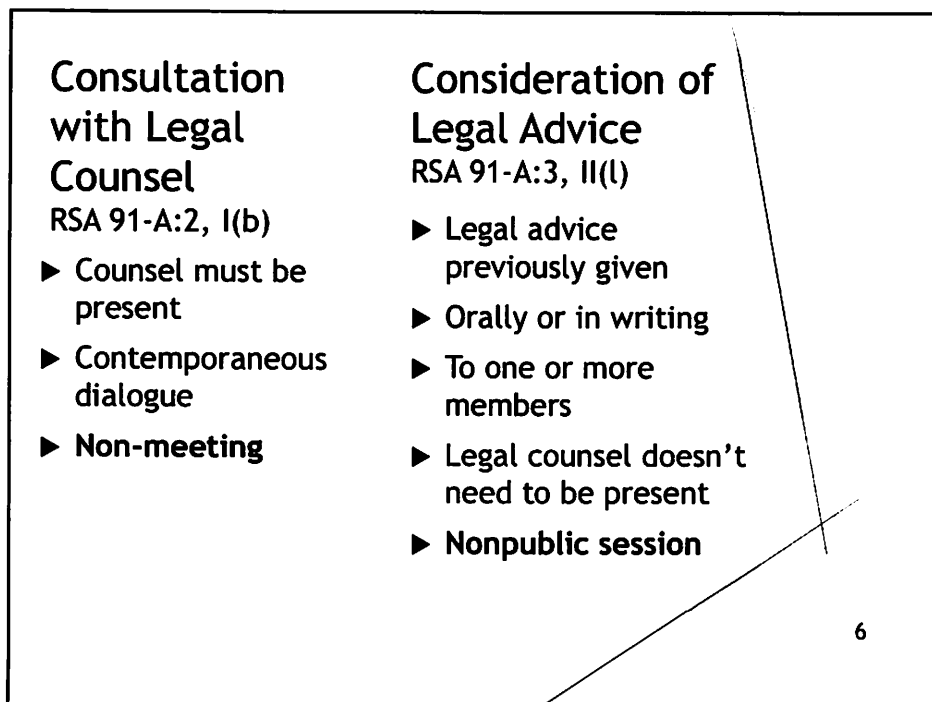


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COMMUNICATIONS OUTSIDE A MEETING



- ▶ No electronic meeting
Don't hit reply all
- ▶ No "meetings" by email string
- ▶ Public bodies may only deliberate in properly held meetings
- ▶ May occur accidentally

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CONFLICTS OF INTEREST & DISQUALIFICATION

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**Land Use
Boards,
RSA
673:14, I**

No member of a . . . planning board . . . shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

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The Juror Standard



500-A:12 Examination. -

I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:

- (a) Expects to gain or lose upon the disposition of the case;
- (b) Is related to either party;
- (c) Has advised or assisted either party;
- (d) Has directly or indirectly given his opinion or has formed an opinion;
- (e) Is employed by or employs any party in the case;
- (f) Is prejudiced to any degree regarding the case; or
- (g) Employs any of the counsel appearing in the case in any action then pending in the court.

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

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Abutters

Owners of property abutting the applicant's property are disqualified from sitting on the application. *Totty v. Grantham*, 120 N.H. 390 (1980).

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Prejudgment

► *Winslow v. Holderness*, 125 N.H. 262 (1984). A member was disqualified where, prior to joining the planning board, he had spoken, in his private capacity, in favor of the project at a public hearing on the subdivision application

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Financial Interest in the Outcome

- ▶ A public officer is disqualified if he or she has “a direct personal and pecuniary interest” in the decision. The interest must be “immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it.” *Atherton v. Concord*, 109 N.H. 264 (1968).

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Employment

- ▶ *Sherman v. Brentwood*, 112 N.H. 122 (1972). A ZBA member employed by Rockingham County in a food surplus program was not disqualified from hearing a case where the county was an applicant for a nursing home expansion.
- ▶ *Appeal of City of Keene*, 141 N.H. 797 (1996). A county commissioner deciding on the public necessity for eminent domain for airport purposes was disqualified because his partner had represented a party to the case.

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Family Relations

► *Webster v. Candia*, 146 N.H. 430 (2001). A planning board member was not disqualified when his spouse was a leading opponent of the project in an earlier phase.

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Business Relationship

McLaughlin v. Union-Leader Corp., 99 N.H. 492 (1955). A person who had regularly run an ad in the Union-Leader was not disqualified from sitting as a juror on a case in which the newspaper was a party.

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What do you do if you have a conflict?



RECUSAL



DISCLOSURE



ADVISORY
VOTE, RSA
673: 14, II



WHEN IN
DOUBT,
DON'T DO IT

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HISTORIC DISTRICT COMMISSION FUNDAMENTALS

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Historic District Commission Purposes- RSA 674:45

- ✓ Preserving districts which reflect cultural, social, economic, political, community and architectural history
- ✓ Conserving property values in such districts
- ✓ Fostering civic beauty
- ✓ Strengthening the local economy
- ✓ Promoting the use of historic districts for the education, pleasure and welfare of the citizens of the municipality

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Powers and Duties of the Historic District Commission - RSA 674:46-a

- ✓ Adopt and amend regulations in the manner provided in RSA 675:6.
- ✓ Administer the regulations within the historic district as provided in RSA 676:8-10.
- ✓ Historic districts and regulations shall be compatible with the master plan and zoning ordinance.
- ✓ The historic district commission may assume, if authorized by the local legislative body, the composition and duties of heritage commissions.

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**Important General Principles:
RSA 674:48**

▶ **674:48 Interpretation.** - Nothing in this subdivision shall be construed to prevent ordinary maintenance or repair of any structure or place within any historic district nor to prevent the construction, alteration, repair, moving or demolition of any structure under a permit issued by the building inspector or other duly delegated authority prior to the establishment of any historic district.

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**Historic
District
Commission
Is a Land
Use Board**

- ▶ 3 to 7 members as decided by town meeting
- ▶ One member may be on the planning board and one member may be on the select board
- ▶ 5 alternates may be appointed
- ▶ When appointing the select board may take into account appointee's interest in historic preservation.

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Land Use Boards Must

- ▶ **Adopt Rules of Procedure - RSA 676:1 - concerning the method of conducting its business.**
 - ❖ Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with the town clerk for public inspection.
 - ❖ The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.

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Land Use Boards Must Also

- ▶ Under RSA 676:3 the commission shall issue a final written decision which either approves or disapproves an application for a permit 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.
- ▶ 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.

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RSA 676:8 Issuing Building Permit Approvals

- ▶ The HDC reviews applications for building permits to assess impact of the permit on the historic district by:
 - ✓ Requesting reports and recommendations the planning board, fire chief, building inspector, health officer and other administrative officials who may possess information concerning the impact of the proposal on the historic district.
 - ✓ Seeking advice from professional, educational, cultural or other groups or persons as may be deemed necessary for the determination of a reasonable decision.
 - ✓ Filing with the building inspector or other duly delegated authority either a certificate of approval or a notice of disapproval following the review and determination of the application.

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676:9 Procedure for Approval of Building Permits

- ▶ The HDC shall file a certificate of approval or a notice of disapproval pursuant to RSA 676:8, III within 45 days after the filing of the application for the certificate, unless the applicant agrees to a longer period of time.
- ▶ No building permit shall be issued until a certificate of approval has been filed with the building inspector; but, in the case of disapproval, notice of disapproval shall be binding upon the building inspector or other duly delegated authority, and no permit shall be issued.
- ▶ Failure to file the certificate within the specified period of time shall constitute approval by the commission.

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Rehearing and Appeal of HDC Decision 677:17

- ▶ RSA 677:17 - Any person or persons jointly or severally aggrieved by a decision of the historic district commission shall have the right to appeal that decision to the zoning board of adjustment in accordance with the provisions of RSA 676:5 and RSA 677:1-14.

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Important Court Cases

- ▶ RSA 676:8 placed on the historic commission the duty to reach a reasoned decision. *Hanrahan v. Portsmouth*, 119 N.H. 944, 409 A.2d 1336, 1979 N.H. LEXIS 425 (N.H. 1979), limited, *Ouellette v. Town of Kingston*, 157 N.H. 604, 956 A.2d 286, 2008 N.H. LEXIS 98 (N.H. 2008).
- ▶ RSA 676:8 imposed a duty on district commissions to make a group assessment of information that was more than the mere personal opinion of one or more members. *Hanrahan v. Portsmouth*, 119 N.H. 944, 409 A.2d 1336, 1979 N.H. LEXIS 425 (N.H. 1979), limited, *Ouellette v. Town of Kingston*, 157 N.H. 604, 956 A.2d 286, 2008 N.H. LEXIS 98 (N.H. 2008).

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***THANK YOU for
inviting NHMA to
Hillsborough!***

The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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