

**AGENDA
PLANNING BOARD
JULY 22, 2019**

**AGENDA ITEM #4B
STUDY ITEMS**

**Review and Discuss Proposed
Updates to the Site Plan Review
and Subdivision Regulations**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Planning Board

FROM: Planning Staff

CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager
Jim Donison, Department of Public Works Director

RE: Proposed Amendments to the Fee Schedule, Site Plan Review Regulations, and Subdivision Regulations - Third-Party Plan Review

DATE: July 16, 2019

Overview

It is common practice in New Hampshire for Planning Boards to utilize the services of an engineering consultant to review site plan and subdivision applications, and to require applicants to pay the cost of the consultant's review. Historically, however, the City has allowed the City Engineer to serve as the Planning Board's engineering consultant at no cost to applicants.

The Department of Public Works is currently undertaking an internal reorganization, part of which is to shift plan review from the City Engineer to a third-party consultant. This will require the Planning Board to take action to appoint the third-party consultant and to require applicants to pay the cost of the consultant's review.

It is not known at this time whether DPW's need to shift engineering review to a third-party is temporary or permanent. To the extent that it is temporary and engineering review returns in whole or in part to the Department of Public Works, the City would like to begin making applicants responsible for the costs of the City Engineer's review.

Background

The Planning Board's ability to hire a consultant and to make the applicant responsible for the review costs is authorized by state statute, as follows¹:

676:4-b Third Party Review and Inspection. –

- I. A planning board reviewing 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 review and consultation during the review process [...]. The applicant may request the planning board choose a different third party consultant and

¹ Although this memo is focused on third-party engineering review, note that under RSA 676:4-b the Planning Board can require the applicant to pay for *any* expenses "reasonably incurred" by the Board (for example, the Board could require applicants to pay for the cost of any necessary legal review).

the request may include the name of a preferred consultant. The planning board shall exercise reasonable discretion to determine whether the request is warranted. When such a request is granted by the planning board, the 65-day period for the board's action on an application stated in RSA 676:4, I(c)(1) shall be extended 45 days to provide the board adequate time to identify a different consultant. [...]

- III. A planning board retaining services under paragraph I or II shall require detailed invoices with reasonable task descriptions for services rendered. Upon request of the applicant, the planning board shall promptly provide a reasonably detailed accounting of expenses, or corresponding escrow deductions, with copies of supporting documentation.

NH RSA 676:4-b makes clear that the authority to require third party review of proposed site plans and subdivisions is vested with the Planning Board, and that the Planning Board has the authority to choose the consultant to be employed (unless a different consultant is requested by the applicant).

Analysis & Process

As a general matter, staff believes it is good public policy to make applicants responsible for the cost of engineering review, as opposed to the City providing the City Engineer's review at no cost to the applicant. Depending on the complexity of the project, the amount of time required to review a proposal from an engineering perspective can be substantial. The City Engineer's time spent on such review is currently paid for by the taxpayers, yet it's substantially the applicant who will benefit financially from an approved project.

Utilizing a third-party consultant may also help to address another long-standing problem, which is the failure of applicants to submit complete and well-prepared plans, reports, and studies, and to provide timely and adequate information when requested by the City Engineer. This has resulted in delays, confusion, and extensive lists of items to be addressed "to the satisfaction of the City Engineer" as conditions of approval. By requiring applicants to pay for the costs of engineering review, applicants will have a financial incentive to provide timely and complete information to minimize the amount of time the consultant requires to review the proposal.

At least in the short-term, utilizing the services of a third-party consultant is necessary given the reorganization of DPW that is currently underway. DPW has, in fact, already issued a Request for Qualifications to provide plan review services in place of the City Engineer.

Since DPW provides engineering review without cost, it can – without Planning Board approval - hire a third-party to provide those services instead. However, only the Planning Board can require an applicant to pay the costs of the third-party engineering review. As a matter of fairness to the taxpayers, and as a financial reality, the City of Lebanon cannot bear the costs of the third-party review indefinitely. For that reason, staff strongly recommends that the Planning Board take the necessary steps to make the applicant responsible for such costs (and in doing so, the third-party consultant will need to be approved and appointed by the Planning Board).

Staff Recommendations

Amending the fee schedule and appointing a third-party consultant are the only *required* actions that the Board needs to take in order to implement its authority under RSA 676:4-b. Staff will present different options for amending the fee schedule at the July 22nd meeting, and will present the City's recommendation for the third-party consultant at the August 26th work session.

Staff recommends that the Board also amend its Site Plan Review Regulations and Subdivision Regulations to make it clear that applicants will be responsible for the cost of engineering review (whether the review is performed by a third-party consultant or by the City Engineer, if that becomes an option again in the future). Staff will present draft language to the Board for its consideration at the July 22nd meeting.

Since engineering review is required by the Planning Board pursuant to state statute, it is within the Board's purview to also determine which types of applications will be subject to engineering review and the scope of that review. However, rather than adopting an inflexible, one-size fits all approach, staff recommends that the Board delegate its authority to determine whether an application shall require third-party engineering review to Planning staff (this is the approach taken in Londonderry, Merrimack, and many other NH communities).

Authorizing staff to determine which applications require third-party review recognizes that (a) the complexity of projects can vary greatly; and (b) if third-party review is not required by staff at the outset, the Planning Board can still require it when the application is heard by the Board if it deems necessary during the course of its review.

In general, however, staff suggests that third-party review would be required as follows:

Application Type	Require Third-Party Review?
Conceptual Reviews	NO
Site Plan Review (for projects involving increase in impervious coverage)	YES
Site Plan Review (for projects involving minimal/negligible site work/grading changes/increases in impervious coverage)	Normally NO, but will depend on the project
Boundary Line Adjustment	Normally NO
Minor Subdivision	Normally NO
Major Subdivision Design Review	Normally YES
Major Subdivision Final Review	Normally YES
Conditional Use Permits	Normally NO
Extension Requests	Normally NO
Administrative Appeals	Normally NO

Likewise, staff recommends that the Board grant Planning staff the authority to tailor the scope of the third-party engineer's review, on a project by project basis, recognizing that Planning staff is capable of reviewing smaller scale plans for compliance with the applicable site plan or subdivision regulations. Even for larger projects, it may be preferable in some instances for staff to continue reviewing site plans for compliance with, for example, the applicable landscaping and lighting requirements.

However, unless otherwise directed by Planning staff, the engineering consultant would normally perform a comprehensive review of the plan for compliance with:

- Article VI ("Design and Construction Requirements") of the Site Plan Review Regulations, and/or
- Section 13 ("Design Standards") of the Subdivision Regulations, whichever regulations are applicable.

Schedule

At the July 22nd meeting, staff will present the following for the Planning Board's consideration:

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1. suggestions for which application types should normally be subject to third-party engineering review;
 2. suggested scope of third-party engineer's review;
 3. a draft revised Planning Board Fee Schedule requiring fees for third-party engineering review; and
 4. draft language amending the Site Plan and Subdivision Regulations to incorporate the authority granted to the Planning Board by NH 676:4-b.

Following discussion of the above draft proposals, staff recommends that the Planning Board schedule a public hearing on the proposed amendments to the Fee Schedule and Regulations for the Board's August 26, 2019 work session. Preceding the August 26th meeting, staff will forward the amendments to the City's legal counsel for review.

Also at the August 26th meeting, staff will present the City's recommendation for a third-party engineering consultant(s) and will ask the Board to appoint that consultant(s) pursuant to its authority under NH 676:4-b.

Adopting the regulatory amendments and appointing the third-party consultant(s) on August 26th will allow the new third-party review process to be effective for the applications received prior to the September cut-off date and to be heard by the Planning Board at its October regular meeting (so that the applications to be heard by the Planning Board in September will be the last to receive review by the City Engineer at no cost to applicants).