

# How To ... Get the Development You Planned

*“The purpose of the master plan is ... to guide the board in the performance of its duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.”*

*From the newly revised NH RSA-674:2*

## Introduction

It is 6:45 pm. on Planning Board night. Your thoughts are on the evening’s agenda - packed again for the third month in a row. You review the agenda items: minor land subdivision, major land subdivision, preliminary site plan review for commercial development, public hearing for residential subdivision of 25 units. Applications for residential subdivisions and site plans for commercial development have never been so prolific. You feel a pang of anxiety as you wonder how your community is going to manage all of the growth and still maintain its unique, small community character that the residents planned to preserve.

You are not alone.

Over the last two decades, citizens in New Hampshire have become increasingly concerned about the rate of growth in their communities. Populations are increasing, large tracts of open space are being developed into residential subdivisions or strip shopping centers, new roads are being constructed, and some historic or cultural resources are either dwarfed by out-of scale developments or completely destroyed. Communities are realizing the future depends on finding an answer to the questions: **how do we want to grow, and how can we direct growth to meet our goals.**

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## Use the Master Plan to Make Planning Board Decisions!

Every community in New Hampshire is required to have a Master Plan if it wants to direct growth via land use regulations such as zoning. (See RSA 674:2) However, it is sometimes unclear to Planning Board members how to use the Master Plan in reviewing current zoning related site plan and subdivision applications and to ensure you get the development you want. This is the purpose of this planning guide. It will advise you how to use your Master Plan to make planning decisions.



Goal: Protect rural character.



Goal: Preserve historic landmarks.

## Your Master Plan

The Master Plan is a policy document that states what citizens want in their community and how to achieve it. It is adopted by the Planning Board after review and comment by citizens. Thus, it reflects public policy, or a commitment to do something. New Hampshire law (see RSA 674:2) now requires the Master Plan to include a vision section and a land use section. In addition, the law recommends the Master Plan develop policies on fifteen other topics such as: natural and historic resources, municipal services, sustainable development to achieve balanced growth, transportation, provision of affordable housing, or mixed use development. Use these Master Plan sections and their policies to make planning decisions.

*“Sustainable Development:  
Meeting the needs of the  
present without  
compromising the ability  
of future generations to  
meet their own needs”*

*The World Business Council for Sustainable  
Development*

## The Master Plan and Sustainable Development

Sustainable development is often a Master Plan goal. It is development that attempts to balance three community goals: economic vitality, community well-being, and environmental resource management. When only one or two of these goals are considered, it usually results in an imbalance in another area. The objective is to understand the whole picture, not just the immediate impacts a project may have on the site. Any land use decision that disrupts this delicate balance can affect the community’s character. Sustainability is a goal that planners and community decision-makers strive for every time a decision is made affecting development in the community. It is about ensuring a better quality of life now, and for generations to come.



Goal: Protect important wetlands and wildlife habitats

The Master Plan describes what, where, when and how sustainable development should occur. It may address the need to protect open space, which leads the Planning Board to make a recommendation to adopt new open space subdivision regulations. Or the Master Plan may state minimum lot sizes or maximum densities for residential development. The community’s land use regulations are driven by Master Plan policies and standards. The Master Plan empowers the Planning Board to adopt regulations, and makes regulations easier to defend if challenged in court.

## Empowering Planning Boards

The Master Plan also empowers the Planning Board in their decision-making. While the Board primarily uses the zoning ordinance and site plan and subdivision regulations in its application review process, it can sometimes be faced with more discretionary situations. These decisions are best supported by the goals and standards in the Master Plan. New Hampshire RSA 674:2 states, “the purpose of the Master Plan is ... to aid the Board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire...” Thus, the smart move is to bring your Master Plan to your meetings, and refer to it when making important planning decisions, even after you have updated your ordinances and regulations.

## Master Plan Limitations

Although the Master Plan is the foundation for your community’s planning decisions, it is a policy document, and not law or regulation. Only after a Master Plan’s goals and standards have been adopted by ordinance can they be legally enforced. When the zoning ordinance and the Master Plan differ, only the zoning ordinance is legally binding. This can be a problem for a community, especially when a community has recently updated their Master Plan, but has not updated their zoning ordinances or subdivision regulations. In this case, if the zoning ordinance allows a type of development, the Planning Board cannot deny an applicant’s development proposal based on the new Master Plan.

A Superior Court decision recently issued by the Strafford County Superior Court helps us understand the role and limitations of the Master Plan. In the case of *Motiva Enterprises LLC v. the City of Dover*, the decision stated that “until they (*the recommendations of the Master Plan*) become regulations and ordinances, they are advisory only.” The Court found “any denial based upon a violation of the spirit and intent of the ... City’s Master Plan is not sufficient reason for denial of the application.”

Despite the limitations, the Master Plan should be part of the Planning Board members’ critical thinking as they review development applications. This practice will help ensure the community’s vision for the future, as described in the Master Plan, will be frequently considered.



Goal: Allow for a variety of housing types.

### *Case Law Supporting the Master Plan*

*In a 1991 Law Lecture Series sponsored by the New Hampshire Municipal Association, attorney Bernard Waugh describes the Master Plan as a double edged sword when enforcing its goals and recommendations: “a town can’t regulate without it, but it can’t regulate with it (at least not directly).” He cites a court case where the State Supreme Court recognizes that the goals and analysis contained within the Master Plan help bolster both a town’s ordinances and the decisions of the Planning Boards. In Patenaude v. Town of Meredith, 118 N.H. 616 (1978), the Town’s subdivision disapproval was upheld in part because:*

***“Meredith has commendably developed and published a comprehensive plan for growth... Comprehensive planning with a solid, scientific, statistical basis is the key element in land use regulation in New Hampshire.”***



Goal: Encourage waterfront tourism in the community.

## Using the Master Plan in the Application Process

The Master Plan should be used in the site plan and subdivision application review processes. For example:

- Provide the applicant with a summary of the Master Plan that includes the vision section and other goals (see page 6). Encourage applicants to review the complete document.
- Have copies of the Master Plan available for purchase. Some communities with web sites have their Master Plan available online.
- On an application review checklist (see page 7), highlight the Master Plan goals early in the application process so all involved parties are aware of them. This will help both developers (who typically dislike surprises since they often lead to additional costs) and the volunteer Planning Board members.
- Schedule pre-application review (preliminary conceptual consultation) to help the applicant understand the Planning Board's concerns as well as the Master Plan goals. This is especially helpful in communities where there is no paid planning staff. The preliminary consultation is a non-binding discussion and does not require certified notification of abutters.
- As you discuss the project with the developer, consider whether the project contributes to the goals of the Master Plan. Raise any concerns about conflicts so the developer can address those issues in the formal application review. Remember, you don't have to become friends or enemies with the developer. Most developers want to understand the rules and regulations, satisfy reasonable requests from the Planning Board, and get their project approved in a timely fashion. Although they are in the business to make money, they are usually interested in building a project to the community's satisfaction.

*“Make municipal Master Plans, rather than zoning, the central guiding principle in land use planning and development.”*

*From Ecologically Based Municipal Land Use Planning by William Honachefsky*



Goal: Provide recreational opportunities.

## The Master Plan and Conditions of Approval

Planning Boards are often presented with a development plan that does not completely meet the basic requirements of the land use regulations. When this happens, the Board will impose a condition of approval that must be met before the plan is signed, a permit is issued, or a bond is released. Conditions of approval can also be imposed to improve the overall design of the project or to address potential negative impacts from the project. This type of conditional approval is imposed as a result of the Board's knowledge and understanding of the project's locale. Conditions of approval in these cases sometimes can be more subjective and discretionary since the Board is attempting to estimate how the project will impact the neighborhood. The Master Plan can give strength and credibility to these decisions by stating your community's goals. For example, the Master Plan may have a goal of controlling outdoor lighting to retain the visibility of the night sky. That would justify the Board's request to review and limit the number, design, and height of lighting fixtures being proposed for a development.

## The Master Plan and Neighborhood Concerns

Master Plan goals and standards can assist the Board in evaluating a neighbor's concern about a development and provide a good basis for imposing a condition of approval. There are occasions where the developer sees neighborhood concerns as "unreasonable" or "extreme", and the Planning Board has to mitigate the situation. By developing a solution with some basis in the Master Plan, the Board demonstrates it is incorporating the goals of the Plan and acting in the best interest of the community. While not all issues before the Board can be solved by the Master Plan, it is important to refer to it often and draw on its content to strengthen the Board's deliberations and decisions.

## Developing a Master Plan Compliance Checklist

An application review checklist is an extremely helpful tool for both the applicant and the Board members to ensure basic requirements of the regulation are met. A similar tool can be used to help the applicant understand how the project may or may not help implement Master Plan goals. Since every Master Plan is unique to each community, it is impossible to offer a model checklist. However, the following two pages describe how a checklist can be created using typical Master Plan goals and strategies. Also, there are examples of questions that may be used in a checklist.



Question: "Does the project support the goal of protecting our downtown?"

*"The quality of the built environment should reflect the goals of the individual community."*

*From: "Beyond Euclid: Integrating Zoning and Physical Design" Zoning News, November 2001.*



Condition of Approval: Street trees must be planted within one year of issuance of the certificate of occupancy.

## Fact sheet for a Master Plan Compliance Checklist

Develop a fact sheet that lists Master Plan goals and strategies. It is best to list them according to the chapters in your Master Plan to better understand their context. New Hampshire law (see RSA 674:2) provides a good list of topics that are typical chapters in a Master Plan. This can help you organize your fact sheet, even if you do not have specific chapters on each topic. For example:

### Chapter: Community Vision

**Goal:** Be a unique retail center for the region.

**Strategy:** Ensure new retail development is designed to maintain our traditional New England character.

### Chapter: Housing

**Goal:** Encourage lifecycle housing opportunities.

**Strategy:** Allow accessory apartments in a wider range of zoning districts.

### Chapter: Land Use

**Goal:** Require open space residential development to reduce sprawl.

**Strategy:** Adopt an open space /cluster housing development ordinance.

### Chapter: Natural Resources

**Goal:** Preserve ecological resources.

**Strategy:** Inventory natural resources and establish regulations to protect them from adverse development impacts.

### Chapter: Community Character & Historic Resources

**Goal:** Preserve the historic character of the downtown area.

**Strategy:** Allow for architecturally compatible infill construction in the historic area.

### Chapter: Municipal Facilities and Services

**Goal:** Locate municipal facilities in the village area to reduce sprawling development.

**Strategy:** Locate the new library in the village area.

### Chapter: Economic Vitality and Growth

**Goal:** Promote sustainable economic development.

**Strategy:** Encourage “green” businesses that help protect our natural resources.

### Chapter: Transportation

**Goal:** Reduce impervious surfaces.

**Strategy:** Retain gravel roads.

## Questions for a Master Plan Compliance Checklist

Once your goals and strategies are presented, the next step is to develop the checklist. The questions developed for your community's checklist should be customized to the goals and strategies found in your Master Plan. They can help both the Board and the applicant think about how the proposal implements the Plan for the community. The following are examples you may adapt to reflect the goals of your Master Plan:

- Does the project protect the community's water resources?
- Does the project preserve, restore or enhance any open spaces?
- Does the project preserve or enhance community character?
- Does the project preserve or enhance any historic resources including scenic roadways?
- Does the project enhance the community's rural and agricultural integrity?
- Does the project contribute to scattered or premature subdivision of land which would create excessive strain on municipal facilities or services?
- Does the project include a safe and effective road system designed in a sustainable and environmentally sensitive manner?
- Does the project contribute to the community's vision and goals for economic development?
- Does the project create walkable neighborhoods?
- Does the project support the policy of reducing sprawl?
- Does the project have an impact on wetlands, identified wildlife habitats, steep slopes, and/or water resource?
- Does the project contribute to the goal of providing a variety of housing types to meet the needs of diverse populations?
- Is the project designed to minimize impacts on surface and ground water resources ?



**Question:** Does the project support the policy of reducing sprawl?



**Question:** Does the project help preserve, enhance, or protect the community's historic resources?



**Question:** Does the project create walkable neighborhoods?



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**Addressee**

**Use the Master Plan on a Regular Basis:**

It is:

- The vision for creating the best place for everyone; it is a document stating what the community wants and how to achieve it.
- The foundation and rationale for land use regulations.
- A guide for decision-makers.

Use it to:

- Make discretionary decisions.
- Educate the public and prospective developers.
- Achieve sustainable development.

Economic Vitality

Community Well-being

Resource Management