

CONWAY PLANNING BOARD

MINUTES

JULY 22, 2010

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CONWAY PLANNING BOARD

MINUTES

JULY 22, 2010

A meeting of the Conway Planning Board was held on Thursday, July 22, 2010 beginning at 7:02 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Robert Drinkhall; Patricia Sell; Ted Sares; Steven Hartmann; Scott Lees; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Drinkhall made a motion, seconded by Ms. Sell, to approve the Minutes of June 24, 2010 as written. Motion carried with Ms. Sell abstaining from voting.

DENNIS HILLER – FULL SITE PLAN REVIEW (PID 276-287) FILE #FR10-05

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to convert the residential, 3-unit apartment building to one commercial unit and one residential unit in the main building and to convert the two-car garage to a commercial unit.

Mr. Irving stated that the applicant has asked due to a family emergency that the Board defer this application to the next meeting. **Ms. Sell made a motion, seconded by Mr. Drinkhall, to continue/defer the application for Dennis Hiller until August 12, 2010. Motion unanimously carried.**

THE PRESIDENTIAL GOLF CORPORATION – 2-LOT/13-UNIT SUBDIVISION REVIEW (PID 291-30) FILE #S10-07

Mr. Lees stepped down at this time. Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to subdivide 696 acres into two lots of 462 and 234 acres and create 13-units on the 462 acre lot.

Mr. Irving asked the Board to defer this application to allow the applicant to work out some details. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to continue/defer the application for The Presidential Golf Corporation until August 12, 2010. Motion unanimously carried.**

OTHER BUSINESS

Mount Washington Valley Economic Council (PID 262-86.2) – File #S09-09 – Conditional Approval Expiring: Mr. Lees rejoined the meeting at this time. Ms. Sell asked why they want another extension. Mr. Cuddy stated that it took them a year and half to get through the process to gain conditional approval at a time the economy was down. Mr. Cuddy stated that they are not developers in the sense of being business developers where the money would go into their pockets for profit. Mr. Cuddy stated that they work with the community and we work with the Town.

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Mr. Cuddy stated that the Business Park is an asset and used by many in the community. Mr. Cuddy stated that the businesses in there are doing well and there are a couple of businesses that are not ready to get into the Park yet, but will be in a few years.

Mr. Cuddy stated that the Park offers something outside the retail and hospitality areas. Mr. Cuddy stated that they have raised a lot of money to go through the site plan review process and to get to the subdivision through selling tax credits to the businesses in the community. Mr. Cuddy stated that it took us a lot to get where we are and we are asking for the opportunity to eventually develop. Mr. Cuddy stated that the only thing they are hung up on is the bond for the infrastructure. Mr. Cuddy stated that they want to see if they can raise that money and submit the bond.

Ms. Sell asked if the Board proceeds with this do they expect to accomplish those goals in the next year. Mr. Cuddy stated that they would like to, but he cannot guarantee anything. Mr. Cuddy stated that the big thing is raising the money for the bond for the infrastructure. Mr. Sares stated when this application first came before the Board you were in a tremendous urgency to get this through and now it's a year and half later. Mr. Cuddy stated that they had funding that needed to be matched.

Mr. Sares stated had the Board approved what was originally proposed we would have violated several issues. Mr. Cuddy stated that they never asked for anything outside of what the ordinance allowed. Mr. Sares stated that he is not saying it was intentional; but he disagrees with Mr. Cuddy's description of their mission. Mr. Sares stated what is described is that you're a landlord and making money renting property. Mr. Cuddy stated that we are not making money.

Mr. Sares asked about the real estate office in the Park. Mr. Cuddy stated that White Mountain Realtors are there with the understanding that if another tenant needs the space they would have to move out. Mr. Cuddy stated this is helping to cover our debt. Mr. Cuddy stated that they are here to help small businesses.

Mr. Porter stated that the Board worked very hard with the Economic Council and this is a trying economic time in the Valley. Mr. Porter stated that he thinks it would be beneficial for all parties to extend this. Mr. Porter stated that they are beneficial in areas that the Valley needs to look at to increase the growth.

Mr. Sares stated did we have a discussion regarding extending conditional approvals with Bayard Kennett and the Board agreed we were having an issue with it. Mr. Sares asked the outcome of that discussion. Mr. Irving stated that the Board had that discussion with the Arlington Group and it was extended.

Mr. Sares asked if there was a decision not to extend. Mr. Irving stated that the Board agreed that that would be their last extension as it was there third year. Mr. Sares stated if a developer wants to extend their conditional approval because they run into problems with wetlands or something to that nature then he could understand, but waiting another year for the economy to change is not right.

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Mr. Drinkhall asked if this would cause any problems for staff. Mr. Irving answered in the negative and stated not unless there is a change to the regulations. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to extend the conditional approval for Mount Washington Valley Economic Council until July 28, 2011. Motion unanimously carried.**

Committee Reports: There were no committee reports.

Street Lights: The Board had a discussion regarding the street lights the Board of Selectmen are proposing to have turned off.

Legislation changes: Mr. Irving submitted a handout to the Board with Legislative Policy Recommendations. Mr. Irving stated if the Board would like to provide comments regarding any of the recommendations to please forward them to him via email by August 2, 2010.

Mr. Irving stated that there is a proposal to change RSA 674:54 to permit municipalities to require development of property for governmental uses to be subject to local land use regulations.

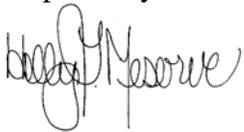
Mr. Drinkhall made a motion, seconded by Mr. Sares, to support the Legislative Policy change to RSA 674:54. Mr. Sares stated if this were passed it would give us the right to say yes or no. Mr. Hartman was concerned that it exempted communication facilities. **Motion unanimously carried.**

Noise Ordinance: Mr. Irving submitted a draft noise ordinance to the Board. Mr. Sares stated that this is a composite of several towns, but basically ended up with one similar to Windham, NH. Mr. Sares stated that their most closely met our objectives.

Mr. Drinkhall stated that we have so many regulations now and stated that this will put a lot more on the Police Department. Ms. Sell submitted information to the Board for their review. Mr. Drinkhall was concerned that this would include lawn mowers. The Board agreed to review the information and discuss it at another meeting.

Meeting Adjourned at 8:05 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant

Thomas Irving

From: Karen Hallowell [khallowell@conwaynh.org]
Sent: Wednesday, July 14, 2010 4:04 PM
To: 'Tom Irving'; 'Paul and Connie'
Cc: 'Holly L. Meserve'; Earl W. Sires
Subject: Legislative Policy Process
Attachments: Legislative Policy Recommendations 2011-12.pdf

Hi

Attached please find information from the NHMA regarding the legislative policy process.

Please review and submit any recommendations from the Planning Board and Conservation Commission no later than August 9.

Any questions, please let Earl know. Thx.

Karen

Karen Hallowell
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7/22/2010



New Hampshire Municipal Association

Memo

TO: Key Officials

FROM: Judy Silva, Director of Legal Services and Government Affairs
Cordell A. Johnston, Government Affairs Counsel

DATE: June 30, 2010

RE: 2011-2012 Legislative Policy Process *Important Dates!*

FLOOR POLICIES DUE: August 13 ♦ POLICY CONFERENCE: September 17

The Legislative Policy Process is moving forward! Enclosed with this memo is a copy of the legislative policy recommendations made by the three policy subcommittees of the Committee on Government Affairs. This document will also be posted on the Local Government Center (LGC) website. *Prior to the Policy Conference, we urge each governing body to vote a position on these recommendations and floor proposals (see below) to provide direction to your voting delegate at the Conference.* Otherwise, your delegate is free to cast your municipality's vote as he/she chooses.

Floor Proposals

Please note that the deadline for submitting floor proposals is **Friday, August 13, 2010**. A floor proposal will be accepted only if it is *approved by a majority vote of the governing body* (Board of Selectmen, Aldermen, or Council) of the town or city submitting the proposal, is submitted in writing, and is received no later than August 13, 2010. We will mail all floor proposals to each municipality so there will be an opportunity to take a position on them before the Policy Conference. Floor proposals should be in the same format as proposals submitted to the policy committees. A Floor Policy Proposal form has been included for your convenience, or you may find it on the LGC website. Please send it to NHMA Floor Proposals, Government Affairs Department, PO Box 617, Concord, NH 03302-0617 or fax to 224-5406 or e-mail to governmentaffairs@nhlgc.org.

Legislative Policy Conference

The 2011-2012 Legislative Policy Conference is scheduled for **Friday, September 17, at 9:00 a.m.** at the Local Government Center in Concord. We will include with the floor proposal mailing a card for each town and city to return indicating who has been appointed as the municipality's voting delegate.

Please call the Government Affairs Office at 1-800-852-3358, extension 384, or email us at governmentaffairs@nhlgc.org if you have any questions.

New Hampshire Municipal Association
2011-2012 Legislative Policy Process

Floor Policy Proposal

Submitted by (name) Crowe Dickinson Date 6-25-2010

City or Town Conway Title of Person Submitting Policy Selectman

Floor Policy Proposal approved by vote of the governing body on (date) _____

To see if NHMA will SUPPORT:

Legislation to require that draft rules be returned to the relevant policy committee prior to submission to the Joint Legislative Committee on Administrative Rules to ensure they accurately reflect the policy committee's intent.

Municipal interest to be accomplished by proposal:

It could save time, testimony and potentially litigation on the part of municipalities who stand to be affected by rules that may not be reflective of original legislative intent.

Explanation:

An excellent example is the lengthy, and ultimately unsuccessful, opposition to the rules proposed by the Department of Environmental Services. The rules, as adopted, are a clear violation of Article 28-a of the NH Constitution and pose new and burdensome costs on NH municipalities. The rules, as adopted, are also clearly outside the scope of the statute DES purports them to reflect. Had the policy committee been required to review the draft and hold public hearings, the dangers that they now hold might have been avoided or at a minimum, mitigated.

A sheet like this should accompany each proposed floor policy and should record the date of the governing body vote approving the proposal. It should include a brief (one or two sentence) policy statement, a statement about the municipal interest served by the proposal, and an explanation which describes the nature of the problem or concern from a municipal perspective and discusses the proposed action which is being advocated to address the problem. Fax to 603-224-5406; mail to PO Box 617, Concord, NH 03302-0617; email to governmentaffairs@nhlgc.org. Must be received by August 13, 2010.

General Government, Revenue, and Intergovernmental Relations (GGRIR)

RECOMMENDED ACTION POLICIES

1. New Hampshire Retirement System

To see if NHMA will:

- a) **SUPPORT** legislation that will strengthen the health and solvency of the New Hampshire Retirement System (NHRS);
- b) **SUPPORT** legislation to ensure the long term financial sustainability of the retirement system for public employers;
- c) **OPPOSE** any legislation which expands benefits that would result in increases to municipal employer costs;
- d) **OPPOSE** any increase in the municipal 65 percent share of employer costs for police, teachers, and firefighters;
- e) **SUPPORT** legislation requiring that all NHRS rate increases are to be shared equally between employees and employers; and
- f) **SUPPORT** legislation creating alternative retirement plan design options.

To see if NHMA will **SUPPORT** continuing to work with legislators and the NHRS Board members about pending retirement fund deficiencies and offer ways to assure the long-term health and solvency of the New Hampshire Retirement System, including changes to the benefit structure and the governance structure of the system. (Contains new and existing policy.)

2. Eliminate Minimum Mill Rate for Motor Vehicle Permit Fee

To see if NHMA will **SUPPORT** eliminating the 3-mill rate from the minimum motor vehicle permit fee under RSA 261:153 for vehicles older than five years, so the minimum fee would be 6 mills on each dollar. (Existing policy.)

3. Evergreen Clause

✓ To see if NHMA will **SUPPORT** the elimination of the recently added so-called "evergreen clause" (RSA 273-A:12, VII.) from RSA 273-A.

Municipal interest to be accomplished by proposal: The ability to control non-negotiated municipal costs.

Explanation: Every year citizens in municipalities in New Hampshire hear the argument that most of the costs in the municipal budgets are fixed and that there is very little discretion available to contain costs. Collective bargaining agreements (CBA) are the biggest part of this because they contain the elements and costs for the largest part of government – the employees who work for government. It is one thing to negotiate contracts which fix costs and cost increases until a contract expires. This is the result of collective bargaining and municipalities ought to be responsible enough to negotiate contracts that they can afford. However, the so-called "evergreen" clause is not

negotiated. Instead, it was a legislative mandate which says that where there is a step pay plan in a CBA, the municipality must continue to pay employees more money for advancing through the pay plan even though the contract may have expired. Not only is this an additional cost mandate from the State to local government in violation of Part 1 Article 28-a of the NH Constitution, but instead of the "leveling the playing field," it arbitrarily mandates additional costs which have not been negotiated on municipalities even after a collective bargaining agreement has expired. Instead of "leveling" the playing field, it tilts the field more in favor of employee bargaining units and against taxpayers. (Submitted by: Berlin Mayor and Council.)

4. Pollution Control Exemption

To see if NHMA will SUPPORT repeal of the so-called "pollution control exemption" (RSA 72:12-a), or in the alternative, to amend the statute a) to exclude any devices that are required by law, b) to require that the primary purpose of the device is to control pollution, and c) to impose a term limitation on any exemption granted.

Municipal interest to be accomplished by proposal: Fairness to the municipal taxpayer.

Explanation: Currently, state law, through the so-called "pollution exemption" (RSA 72:12-a) allows very large and small industries to receive what can be very large property tax exemptions for equipment which is determined by the NHDES to be equipment necessary for pollution control. Presumably, the original reason to do this was to provide an incentive to industry to install pollution equipment and thereby reduce pollution. If this ever made any sense, it certainly does not today. First industry is required by the Federal government to install all the pollution equipment and therefore there is no need for any incentive to do so. Second, if the State still perceives the need to provide such a financial incentive for whatever reason, then the State should provide the financial incentive itself instead of taking it out of the coffers of the municipality which happens to host the industrial facility. Under the law currently, if you have two municipalities which are identical in every respect except one has an industry with this pollution exemption and the other does not, the residents in the municipality which has an industry with this pollution exemption will be forced to pay more in their property taxes than the those residents in the municipality next door even though the total assessed value in the two towns (but for the pollution exemption) is the same simply because the State imposed this exemption on them. (Submitted by: Berlin Mayor and Council.)

RECOMMENDED PRIORITY POLICIES

5. Increase in Road Toll (Gas Tax)

To see if NHMA will SUPPORT an increase in the road toll (gas tax) under RSA 260:32, so long as all additional revenues are used for highway purposes and at least 12 percent of such additional revenues are distributed to cities and towns. (Existing policy.)

6. Right to Know Costs and Specificity Required

To see if NHMA will SUPPORT amendments to RSA 91-A allowing municipalities to recover the actual costs of retrieving, reviewing and reproducing documents and clarifying the level of specificity required when requesting public records. (Existing policy.)

7. Land Use Compliance by Government Entities

To see if NHMA will SUPPORT legislation to strengthen RSA 674:54 to permit municipalities to require that development of property for governmental uses, excluding transportation and telecommunications facilities, be subject to local land use regulations. (Existing policy.)

RECOMMENDED STANDING POLICIES

8. Public Notice Requirements

To see if NHMA will SUPPORT legislation to amend all public notice requirements to allow the choice of electronic notification and/or newspaper print, as well as posting in public places, for official public legal notification. (Existing policy.)

9. Highway Fund

A To see if NHMA will SUPPORT legislative and administrative proposals to limit or eliminate the diversion of highway funds for non-highway purposes, and further, to see if NHMA will continue to SUPPORT working with the legislature and the Department of Transportation on alternative funding sources that will assure the maintenance of existing state and local transportation infrastructure and greater focus and financial support for public transportation, including rail and bus services. (Existing policy.)

10. Charitable Definition and Mandated Property Tax Exemptions

A To see if NHMA will SUPPORT legislation redefining the term "charitable" in RSA 72:23-1, adopting a stricter review of property owned by religious, charitable and educational entities for compliance with the statutes, and creating a method of reimbursement to municipalities for state-owned property and OPPOSE legislation which requires the granting of additional local property tax exemptions, unless the state reimburses municipalities for the loss of revenue. (Existing policy.)

11. Municipal Use of Structures in the Right-of-Way

To see if NHMA will SUPPORT legislation to authorize municipalities to utilize, for any municipal purpose, the space designated for municipal good upon all poles, conduit and other structures within their rights-of-way without paying unreasonable make-ready costs. This includes the right to use that space for data and voice transmission to, from, and by the municipal government, schools, library, and other governmental institutions. It also includes a requirement that the owners of utility poles and conduit do the necessary work for that space to be available. (Existing policy.)

12. Downshifting of State Costs

A To see if NHMA will OPPOSE legislation which will downshift state costs or state program responsibilities, either directly or indirectly, to municipalities and/or counties, resulting in increased municipal and/or county expenditures, whether in violation of Article 28-a or not, and SUPPORT adequate state funding of Medicaid costs. (Existing policy.)

13. Binding Arbitration

To see if NHMA will OPPOSE mandatory binding arbitration as a mechanism to resolve impasses in municipal employee collective bargaining. (Existing policy.)

14. Telecom Company Property Tax Exemption

* To see if NHMA will OPPOSE any exemption from the property tax for poles, wires, and conduits owned by telecom companies. (Modified existing policy.)

15. State Revenue Structure and State Education Funding

To see if NHMA will SUPPORT asking the state to use the following principles when addressing the State's revenue structure in response to its responsibility to fund an adequate education:

- a) That revenues are sufficient to meet the state's responsibilities as defined by constitution, statute, and common law;
- b) That revenue sources are predictable, stable and sustainable and will grow with the long term needs and financial realities of the state;
- c) That changes to the revenue structure are least disruptive to the long-term economic health of the state;
- d) That the revenue structure is efficient in its administration;
- e) That changes in the revenue structure are fair to people with lower to moderate incomes.

To see if NHMA will SUPPORT legislation prohibiting retroactive changes to the distribution formula for adequate education grants after the notice of grant amounts has been given.

To see if NHMA will OPPOSE reductions in state revenue to political subdivisions, such as revenue sharing, meals and rooms tax distribution, highway block grants, water pollution moneys, adequate education grants, or catastrophic aid. (Modified existing policy.)

16. Utility Appraisal Method

To see if NHMA will OPPOSE mandating the exclusive use of the unit method of valuation in the appraisal of utility property, by either administrative or legislative action, and SUPPORT the right of municipalities to use any method of appraisal upheld by the courts. (Modified existing policy.)

17. Minimum Vote Required for Bond Issues

7 To see if NHMA will OPPOSE legislation to increase the 60% bond vote requirement for official ballot communities. (Existing policy.)

18. Mandated Employee Benefits

To see if NHMA will OPPOSE any proposals to mandate employee benefits, including any proposal to enhance retirement system benefits which may increase employer costs in future years for current or future employees. (Existing policy.)

19. Underground Utilities

To see if NHMA will SUPPORT legislation to continue to allow municipalities to incur debt for the purpose of removing overhead utilities, and replacing them with underground utilities. (Modified existing policy.)

Municipal Administration and Finance (MAF)

RECOMMENDED ACTION POLICIES

1. Assessing Practice - Income and Expense Statements on Appeal

To see if NHMA will SUPPORT legislation that prohibits the use of income and expense information by a taxpayer in any appeal of value if the taxpayer, after request by the municipality, has not submitted the requested information. (Existing policy.)

2. Fine for Failure to Submit Current Use Information

✓ To see if NHMA will SUPPORT legislation imposing a fine for failure to submit current use information as needed to update municipal records—*i.e.*, Marlow matrix,

Municipal interest to be accomplished by the proposal: Promote accurate recordkeeping.

Explanation: Municipalities are required to gather this information, but have no way of forcing landowners to submit it. Municipalities are written up for incomplete current use records during certification. (Submitted by Christie Phelps, Town Administrator, Alexandria.)

3. Welfare Lien Priority

* To see if NHMA will SUPPORT legislation giving welfare liens arising under RSA 165:28 priority over other liens, other than property tax liens. (Existing policy.)

4. Supervisor of Checklist Sessions

To see if NHMA will SUPPORT legislation to reduce to one the number of required sessions that the supervisors of the checklist must meet prior to town elections. (Existing policy.)

5. Counting Absentee Ballots

✓ To see if NHMA will SUPPORT legislation to eliminate the requirement that absentee ballots cannot be counted prior to 1:00 P.M., but allow them to be counted through out the time when polls are open.

Municipal interest to be accomplished by the proposal: To accommodate the number of ballots that need to be processed prior to the closing of the polls. (Submitted by Jill Hadaway, Town Clerk/Tax Collector and Peter Imse, Moderator, Bow.)

RECOMMENDED PRIORITY POLICIES

6. Tax Liening Mandatory

✓ To see if NHMA will SUPPORT legislation to change RSA 80:59 to read: "The real estate of every person or corporation shall be subject to the tax lien procedure by the collector, in case all taxes against the owner shall not be paid in full on or before December 1 next after its assessment, provided that the municipality has adopted the provisions of RSA 80:58-86 in accordance with RSA 80:87. A real estate tax lien imposed in accordance with the provisions of RSA 80:58-86 shall have priority over all other liens." (Existing policy.)

7. Municipal Recreation Programs

To see if NHMA will SUPPORT the exemption from state child care licensing for municipal recreation department programs and also SUPPORT the exemption from state camp licensing for municipal recreation department summer programs. (Existing policy.)

8. Requirement to Hold Elected Office

✓ To see if NHMA will SUPPORT legislation clarifying that to run for and hold a local elected office, one must be a registered voter.

Municipal interest to be accomplished by proposal: Eliminate confusion about who is qualified to hold office.

✓ Explanation: The only statutes that appear to require an elected official to be a registered voter are RSA 671:18 for school board and RSA 669:19, which deals with the nonpartisan declaration of candidacy for towns. Nothing in the other town election statutes, or in any of the sections of RSA 669 dealing with replacing an official following a vacancy, requires a domiciled resident over 18 to be a registered voter. Nothing in the Secretary of State's election manual clears this up. (Submitted by Beth LaFreniere, Deputy Town Clerk, Marlow.)

9. Bonds on Official Ballot in Non-SB 2 Towns

To see if NHMA will SUPPORT amending RSA 33:8 and/or RSA 33:8-a to permit warrant articles requesting authorization of bonds or notes in excess of \$100,000 to appear on the "Official Ballot" for any annual or special town meeting at the discretion of the governing body.

7
Municipal interest to be accomplished by proposal: Providing the opportunity for wider participation in a referendum by use of the "Official Ballot" on larger bond issues without the necessity of adopting RSA 40:13 (SB 2). By allowing the election of the required ballot vote to appear on the "Official Ballot," more people will have the opportunity to vote on the question on election day or by absentee ballot.

OK
Explanation: Currently there is no option for a municipality to place a bond issue question in the "Official Ballot" without having to adopt RSA 40:13 (SB 2) in its entirety. Municipalities should not be forced into adopting SB 2 to allow greater access to the ballot vote on bond issues. (Submitted by Paul Deschaine, Town Administrator, Stratham.)

10. Solid Waste Revolving Fund.

To see if NHMA will **SUPPORT** legislation to allow municipalities to establish, by vote of the legislative body, revolving funds for their solid waste programs, including solid waste collection, disposal, and the operation of any municipally operated transfer station, in addition to recycling. (Existing policy.)

11. Governing Body Recommendation for All Warrant Articles.

To see if NHMA will **SUPPORT** legislation to permit governing bodies to state their position on any warrant article where they are not currently required to state a position. (Existing policy.)

RECOMMENDED STANDING POLICIES

12. Pro-Ration of the Disabled Exemption

To see if NHMA will **SUPPORT** legislation prorating the disabled exemption under RSA 72:37-b when a person entitled to the exemption owns a fractional interest in the residence, in the same manner as is allowed for the elderly exemption under RSA 72:41.

Municipal interest to be accomplished by proposal: Limit amount of exemption proportionally and avoid the possibility of "stacking" exemptions with the potential effect of eliminating all tax liability.

✓ Explanation: RSA 72:41 provides that when a person owns a fractional interest in residential property, he may receive an elderly exemption in proportion to his fractional interest. The BTLA has ruled that this proration provision does not apply to the disabled exemption under RSA 72:37-b, so there is no prorating of that exemption. (Submitted by Catherine Grant, Administrative Assistant, Kingston.)

13. Irrevocable Trusts for Other Post-Employment Benefits (OPEB)

To see if NHMA will **SUPPORT** legislation authorizing cities, towns, school districts, and counties to create irrevocable trusts to prefund OPEB liabilities.

Municipal interest to be accomplished by proposal: Provide a tool to pre-fund the unfunded actuarial accrued liability as identified pursuant to GASB Statement 45 in a manner that permits the most advantageous financing mechanism to reduce the liability.

Explanation: Several municipalities have actuarially determined OPEB liabilities to pay for post-employment medical insurance benefits to employees after their termination of service. Municipalities are using a pay-as-you-go approach to funding the OPEB liability. Such legislation will allow municipalities to establish an OPEB trust as a means to fund the actuarial determined liabilities. (Submitted by James Howard, Finance Director, Concord and Dan Lynch, Finance Director, Dover.)

14. Tax Bill Information.

To see if NHMA will **SUPPORT** legislation to amend RSA 76:11-a to allow those municipalities which have adopted the deaf exemption to include the word "deaf" following the word "blind" in the information contained on tax bills. (Existing policy.)

15. Appointment of Town Clerks and Town Clerks/Tax Collectors.

To see if NHMA will **SUPPORT** an amendment to RSA Chapter 41 to give towns the option to authorize the governing body to appoint or elect town clerks and town clerk/tax collectors. (Existing policy.)

16. Recording Fees for Elderly Deferrals

To see if NHMA will **SUPPORT** legislation to waive municipal recording fees for the establishment and release of elderly deferrals at the county Registry of Deeds. (Existing policy.)

Planning and Environmental Quality (PEQ)

RECOMMENDED ACTION POLICIES

1. Notice to Upstream Dam Owners

To see if NHMA will **SUPPORT** the repeal of 2009 N.H. Laws 31:2 and 31:3, which amended RSA 676:4, I(b) and (d), regarding identification and notification to owners of upstream dams on applications and plans submitted to municipal planning boards.

Municipal interest to be accomplished by proposal: Remove the requirement for notice for which there is no ability to comply. The inability to comply results in a potential for statutory violation by both municipalities and applicants and gridlock for review of any application or plat that affects any level of stream or river.

The statement in revised law applying the notice requirement to proposals "near streams or rivers" lacks specificity necessary to identification of proposals that are to be included.

✱ Explanation: Although perhaps well intended, it is not possible to comply with this new requirement, since DES will not release a list of public and private dams based on national security interests under federal Homeland Security laws and regulations. DES has stated that it will research each application upon submission by the municipality and return relevant information. However, DES will not commit to a time frame for response, which is a problem given reductions in state resources. In a "catch 22" situation, without a listing in the case of private dams, municipalities and applicants may not know of the existence of a private dam such that notice would be required. Additionally, it is the applicant's responsibility to provide information for notice and DES's proposed procedure places additional administrative burden and legal liability on the municipality. The results are either non-compliance by municipalities and applicants or complete halt to review of applications and plats that may involve the existence of upstream dams.

The word "near" needs to be defined if the notice requirement is to be retained. Even the Shoreland Protection Act include specific distances to streams and rivers for purposes of determining jurisdiction. "Near" to some is "far" to others. (Submitted by Jane Taylor, City Attorney, Claremont.)

2. Planning Board Appeals

To see if NHMA will SUPPORT legislation that avoids the need for dual appeals of planning board decisions to the superior court under RSA 677:15 and to the ZBA under RSA 676:5, III. (Modified existing policy.)

RECOMMENDED PRIORITY POLICIES

3. Environmental Regulation and Preemption

To see if NHMA will SUPPORT legislation that a) recognizes municipal authority over land use and environmental matters, b) limits state preemption of local environmental regulation to those matters on which there is a compelling public need for uniform state regulation or which municipalities do not have the expertise or resources to regulate, and c) recognizes that even when local environmental regulation is preempted, compliance with other local laws, such as zoning and public health ordinances and regulations, is still required. (Existing policy.)

4. Exemption from Land Use Change Tax

To see if NHMA will SUPPORT amending RSA 79-A, Current Use Taxation, to clarify that no person or entity is exempt from the land use change tax. (Tentative: can be deleted if HB 1609 becomes law. Existing policy.)

5. Impact Fees for State Highways

To see if NHMA will SUPPORT legislation supporting municipalities' ability to collect impact fees or exactions for improvements to state highways. (Modified existing policy.)

6. Conservation Investment

To see if NHMA will SUPPORT permanent funding for the Land and Community Heritage Investment Program and will OPPOSE any subsequent diversion of such funds to other uses. (Existing policy.)

(LCHIP)

RECOMMENDED STANDING POLICIES

7. Energy, Renewable Energy and Energy Conservation

To see if NHMA will SUPPORT legislation encouraging state and federal programs that provide incentives and assistance to municipalities to adopt energy use and conservation techniques that will manage energy costs and environmental impacts, promote the reasonable use of renewable energy sources, and promote energy conservation, so long as such legislation does not override local regulation. (Modified existing policy.)

8. Open Space Retention/Sprawl Prevention/Housing and Conservation Planning

To see if NHMA will **SUPPORT** legislation encouraging statewide programs that provide incentives and assistance to municipalities to adopt land use planning and regulatory techniques that will better prevent sprawl, retain existing tracts of open space, and preserve community character. This policy includes **SUPPORT** for continued funding for the Housing and Conservation Planning Program. (Existing policy.)

9. Sludge/Biosolids

To see if NHMA will **SUPPORT** reliable enforcement of scientifically based health and environmental standards for the management of sludge, septage, and biosolids; will **SUPPORT** the funding of the New Hampshire Department of Environmental Services and the New Hampshire Department of Agriculture, Markets and Food at a level allowing full and adequate development and enforcement of such scientifically based health and environmental standards; will **SUPPORT** an increase in the amount of state aid grants or other financial assistance for wastewater treatment plant upgrades to improve the quality of biosolids produced from Class B to Class A biosolids; will **OPPOSE** any state legislation that would curtail the ability of municipalities to dispose of municipally-generated biosolids through land spreading, when done in accord with such scientifically based health and environmental standards; and will **OPPOSE** any preemption of local authority to regulate in this field. (Modified existing policy.)

10. Current Use

To see if NHMA will **OPPOSE** any legislative attempt to undermine the basic goals of the current use program and will **OPPOSE** any reduction in the 10-acre minimum size requirement for qualification for current use, beyond those exceptions now allowed by the rules of the Current Use Board. (Existing policy.)

Legislative Principles

In addition to the established Legislative Policy positions adopted by the New Hampshire Municipal Association membership, the following principles should guide staff in setting priorities during any legislative biennium:

1. Consider unfunded mandate issues that violate Part I, Article 28-a of the New Hampshire Constitution to be paramount. Identify them and oppose them.
2. Work to maintain existing revenue streams to municipalities, (i.e. revenue sharing, meals and rooms, highway, and other state aid). Be especially watchful of proposals to reduce local aid in order to meet other funding commitments.
3. Advocate to maintain existing local authority.
4. Support issues which provide greater authority to more effectively, efficiently and flexibly govern at the local level, including local option legislation. If the legislature is considering adopting a program that is particularly controversial at the local level, support a requirement that a local legislative body vote is necessary before full implementation of the measure.
5. Support bills proposed by individual municipal members, except when they conflict with these principles or other NHMA policies. Staff should prioritize time and resources when there are competing demands in order to focus on NHMA's broad agenda first.
6. Encourage exemptions from state taxes rather than local property taxes when legislative intent is to preserve statewide resources.
7. Advocate for municipal representation on all state boards, commissions, and study committees which affect municipal government and have non-legislative members.
8. Work cooperatively with other groups and associations to support efforts to improve the delivery of services at the local level.
9. Support municipal efforts toward effective regional cooperation and delivery of municipal services.
10. Support efforts to develop a statewide technology network that fosters increased communication and greater compatibility among levels of government and within and between agencies in all levels of government.

TOWN OF CONWAY, NEW HAMPSHIRE
CHAPTER _____ An Ordinance Regulating Noise

Section I: Purpose

The purpose of this Ordinance is to regulate the making, creation, or maintenance of excessive, unnecessary or unusually loud noises that, in their time, place and manner adversely affect and are a detriment to public health, comfort, safety and welfare of the residents of the Town of Conway.

Section II: Authority

This Ordinance has been enacted pursuant to the statutory authority granted to the Town of Conway by RSA 31:39, I (n)

Section III: Definitions

For the purpose of this Ordinance, the following words and phrases when used herein shall be construed as follows:

- A) Town - The Town of Conway, New Hampshire.
- B) Board - Board of Selectmen of the Town of Conway.
- C) Construction - Any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition.
- D) Continuous Sound - Any sound that exists, essentially without interruption, for a period of 10 minutes or more.
- E) Demolition - Dismantling or intentional removal of structures, utilities, public or private right of way surfaces or similar property.
- F) Impulse Noise - Any noise of short duration, usually less than one second, and of high intensity, with an abrupt onset and rapid decay.
- G) Noise Disturbance - Any sound, whether a continuous sound or an impulse noise which is loud or unreasonable and which disturbs a reasonable person with normal sensitivities.
- H) Person - Any individual, partnership, company, corporation, association, firm, organization, governmental agency, administration or department, or any other group of individuals, or any officer or employee thereof.
- I) Power Tool - Any device powered mechanically, by electricity, by compressed air, by gasoline, by diesel fuel or by any other fuel, which is intended to be used or is actually used for but shall not be limited to, the performance of such functions as cutting, blowing, nailing, stapling, sawing, vacuuming or drilling.
- J) Residential Property - Any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.
- K) Undue hardship - A situation or circumstance in which it is unreasonable to require the applicant to conduct the regulated activity during the hours permitted under the ordinance.

Section IV: Regulation Applicability

It shall be unlawful for any person to carry on the following activities if such activities create a noise disturbance that generates a complaint:

- A) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, trashcans, dumpsters, or similar objects.
- B) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the operation or use of heavy construction vehicles and equipment involved in construction, demolition, property maintenance or similar activity, including, but not limited to, bulldozers, graders, dump trucks, backhoes, earthmoving equipment, front end loaders and log skidders.
- C) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the operation or use of tools, power tools, or construction equipment to include, but not limited to: cement mixers, rock crushers, hammers, staple or nail guns, power tools whether involved in construction, demolition, repair, maintenance or similar activity.

Section V: Exemptions

The following uses and activities shall be exempt from the foregoing noise/time restrictions:

- A) Noise of safety signals, warning devices, and emergency pressure relief valves.
- B) Noise resulting from any public safety vehicle when responding to an emergency call or acting in time of emergency, or any public safety personnel when otherwise performing their duties.
- C) Noise resulting from emergency maintenance work or work that cannot be performed during the day due to mitigating factors such as traffic volume or facility use, as performed by the Town, the School District, the State, public utility companies, or a private property owner in the event of a legitimate emergency.
- D) Noise resulting from snow removal operations performed by the Town, the State, and other types of private or commercial snow removal operations.
- E) Any other noise resulting from activities of a temporary duration permitted by the law and for which a license or permit therefore has been granted by the Town.

Section VI: Waiver

An application for a waiver the provisions of this ordinance on the basis of undue hardship may be made to the Board of Selectmen. Any such waiver granted by the Board of Selectmen shall set forth all conditions pertaining to the specified noise, and a reasonable time limit for its abatement.

Section VII:

These requirements shall not apply where such matters are governed by State Law.

Section VIII: Enforcement and Penalties

Upon receipt of a noise complaint, the Conway Police Department, shall investigate, record their finding(s), and take appropriate action, in the officer's discretion.

Any person who violates the provisions of this ordinance or any landowner who permits violation of the provisions of this ordinance shall be guilty of a violation under RSA 625:9 (V)(a) and may be penalized by a fine of \$100 for the first offense, \$250 for the second offense, and \$500 for the third and any subsequent violations thereafter. Such sums to inure to the general fund of the Town.

Section IX: Severability

Should any provision of this Ordinance be held invalid by any court of authority or competent jurisdiction, such holding shall not affect, impair or invalidate any remaining provisions which shall remain in full force and effect. To this end, the provisions of this Ordinance are severable.

SUBMITTED BY PATRICIA
SELL AT 07-22-10 PB MEETING

General Principles of Nuisance Law

The general premise of the law of nuisance regulation is that no person is absolutely free to perform acts that others find offensive or that interfere with others' rights to safety and the quiet enjoyment of their own property. As noted in one case, "literally, nuisance means annoyance, and in its broadest sense, it is that which annoys or gives trouble or vexation, that which is offensive or noxious; anything that works hurt, inconvenience or damage. The term signifies in law such a use of property or such a course of conduct as, irrespective of actual trespass against others or of malicious or actual criminal intent, transgresses the just restrictions on use or conduct which the proximity of other persons or property in civilized communities imposes on what would otherwise be rightful freedom."

Nuisance activities can be classified in one of three ways: those which are considered nuisances in themselves or nuisances per se; those which are not nuisances per se, but which become nuisances because of the place where the activity is conducted; and those activities which in their nature may be nuisances, but as to which there may be honest differences of opinion.

To be considered a nuisance per se, the activity must of itself and by reason of its inherent capabilities cause injury or threaten the enjoyment of life or property of others, or be restricted by statute. It has been held that trap and skeet shooting ranges are not a nuisance per se when conducted in either rural or suburban areas, *Schneider v. Clothier*, 52 *Lanc. L. Rev.* 113 (1950), although this cannot be declared a universal view.

An activity that is classified as a nuisance because of its location is an activity that is lawful in its own right, but which becomes objectionable because of the location, circumstances or surroundings where it is conducted. In what constitutes a nuisance, courts have placed a paramount importance on the time and locality factors of shooting ranges. In *Oak Haven Trailer Court, Inc. v. Western Wayne County Conservation Association*, 3 *Mich. App.* 83, 141 *N.W.2d* 645 (1966), The residents of a trailer park complained of noise from a gun club. The club was located in a rural area, and residents of the trailer park were the only persons complaining of the noise. The court, in holding for the gun club, stated "that which might be actionable or abateable in one place or locality might not be such in another. The oft quoted observation of the Supreme Court comes to mind here: nuisance may be merely the right thing in the wrong place, like a pig in the parlor instead of the barnyard."

Another description of nuisance activity distinguishes between public and private. In this context the difference lies in the scope of those affected by the acts. If the public at large is affected, the activity is classified as a public nuisance. Such was the situation in which dust from the road to the defendants' gun club caused a nuisance to the public at large. *Davie v. Izaak Walton League of America*, 717 P.2d 984 (Colo. App. 1985). If only a limited number of people are affected, such as only one person or a few people, the activity is considered a private nuisance. In this context, the activities differ only in the extent or scope of the detrimental effect.

In a case where neighbors of a shooting range brought a private nuisance action against a gun club because of the noise, the court held it to be a private nuisance and stated "the law is clear that where a trade or business as carried on interferes with the reasonable and comfortable enjoyment by another of his property, a wrong is done to a neighboring owner for which an action lies at law or equity. In such cases it makes no difference that the business was lawful and one useful to the public and conducted in the most approved method." *Edmonds v. Murphy*, 573 A.2d 853 (Md. App. 1990).

In some contexts a nuisance may be both a public and private nuisance. Such an activity may injure many people as a public nuisance, but also create a special injury to select individuals beyond those injuries suffered by the general public. To those suffering special injury, the activity becomes a private nuisance, while those who suffer the general injury consider it to be a public nuisance. Those activities which are both public and private nuisances are generally referred to as a mixed nuisance.

A suit to abate a nuisance by means of an injunction generally requires that without the intervention of the injunction, the activity will be ongoing, and irreparable harm without a remedy compensable in money damages will occur. Injunctions to abate such activity are granted only where necessary and where caution and judgment indicate to the trial judge that the exercise of the court's discretion to grant the injunction is warranted by clear and convincing grounds. Stated another way, an injunction will be issued only where there is no adequate remedy at law.

In defending an action, disproving any of the elements needed to demonstrate an actionable nuisance activity are available to a defendant. Another defense that has been successful are those that argue that a neighbor's claim of private nuisance must yield to activities, the conduct of

which are in the public interest, or a matter of public necessity. In the case where opponents wanted to close down a shooting range because of noise, the court held that the approval of an unclassified use permit by the zoning authority was reasonable; the facility would fulfill a recreational need in the community in a manner compatible with the surrounding neighborhood. The zoning board found that, "if this use were not permitted to exist in a residential area the end result is that in a total urbanization of this kind all recreation would be excluded because no property could be used in such a manner. The Board does not feel that urbanization of society should be permitted to destroy kinds of recreation, such as in the instant case." Evergreen State Builders, Inc. v. Pierce County, 9 Wash. App. 973, 516, P.2d 775, 778 (1973).

A final argument raised in a challenge to continuing activity is that conducting an activity over a period of time creates the right to continue it, even if it is later held to be a nuisance activity. This argument is a philosophical parallel to prescriptive rights granted under the concept of adverse possession; however, few courts have recognized this concept in support of a defendant's right to continue a public nuisance activity. In the case of private nuisance activity, however, the argument parallels the concept of "laches" and has met some measure of acceptance and recognition if all the required elements of adverse possession have been met.

In summary, it has been generally accepted that shooting ranges are not in and of themselves nuisances. To determine a nuisance, courts rely heavily on time and location factors regarding the shooting range. Nuisance can be both public and private, the former affecting the public in general, whereas in the latter only a limited number of people are affected. The most common way to abate a nuisance is by an injunction, which if permanent could totally close a shooting range. Finally, some defenses to a nuisance action include the fact that the activity benefits a public necessity, and the "first in time, first in right" argument, both of which have been very effective in some courts, yet, have held little weight in others.

Range Protection Statutes

A minority of states have taken the legislative initiative, passing statutes to protect shooting ranges from civil action and criminal prosecution in matters relating to noise or "noise pollution" resulting from operations of the range.

Most of these statutes are very broad. For example, Pennsylvania's statute calls for immunity from all criminal and civil action in any matter relating to noise or noise pollution. Furthermore, it adds that no court shall enjoin any shooting range on the basis of noise. 35 PA. CONS. STAT (450.1 (1985). Another broad statute is Minnesota's, which prevents any local government from regulating the noise and location of a shooting range. Minn. Stat. (116.07 (1978). Missouri also has a broad range protection statute, which calls for immunity from both civil and criminal liability with limited protection for ranges that may open in the future. Mo. Rev. Stat. 9 537.294 (1988).

Other states are not as broad. New Hampshire calls for the noise to be in compliance with the state laws, and also allows local governments to regulate the noise. N.H. Rev. Stat. Ann. (159-B (1990). Additionally, Maryland provides immunity as long as shooting occurs between 9:00 am and 10:00 pm and only if the gun club stays on the same parcel of land as they occupy at the passage of the statute. Md. Ann. Code. art. 4 (3-401. Whether narrow or broad, these statutes have worked greatly to protect the owners of shooting ranges from noise liability.

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Federal Noise Control Act of 1972 (49 U.S.C. ((4901 et seq.) and the tremendous increase in interest regarding noise abatement and control which the Act has precipitated. There are generally three main types of noise control laws. The first is a codification of the common law of nuisance. The Washington State Noise Control Act of 1974 is a prime example of this first type. It states:

"The department is empowered as follows: (1) The department after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety, and welfare of the people, the value of property and the quality of environment." Rev. Code of Wash. 70 (70, 107 (1974).

"A private nuisance exists when an activity substantially and unreasonably interferes with the use and enjoyment of another's property." Dunlop v. Daigle, 122 N.H. 295, 298 (1982). To constitute a nuisance, the defendants' activities must cause harm that exceeds the customary interferences with land that a land user suffers in an organized society, and be an appreciable and tangible interference with a property interest. Id. "In determining whether an act interfering with the use and enjoyment is so unreasonable and substantial as to amount to a nuisance and warrant an injunction, a court must balance the gravity of the harm to the plaintiff against the utility of the defendant's conduct, both to himself and to the community." Treisman v. Kamen, 126 N.H. 372, 375 (1985) (quotation omitted). It is the plaintiffs' burden to prove the existence of a nuisance by a preponderance of the evidence. Dunlop, 122 N.H. at 295.

DETRIMENTAL OR OFFENSIVE USE AS IT RELATES TO NOISE OR NUISANCE: Any use or thing which would be seriously detrimental or offensive to character of neighborhood, or owners or occupants of abutting property, or to the Town, or would tend to radically reduce property values of adjoining or other property is prohibited in The Town of Conway.

Definition to include but not limited to, any use that may be detrimental, injurious obnoxious or offensive by reason of production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions, or that is dangerous or interferes with the reasonable comfort, or quiet and peaceful enjoyment of one's private property, or health, or safety of the community or leading to its disturbance or annoyance to the senses or neighborhood, shall be declared a nuisance and prohibited in the Town of Conway.

The Board of Selectmen shall have authority to designate enforcement procedures in accordance with NH RSA 676 and order the removal or abatement of the foregoing provisions upon complaint.