

## ENFORCEMENT

The planning board has authority to conduct third party reviews and construction inspections to ensure the terms of the subdivision or site plan approval are met and construction is in accordance with the approved plat or plan. The third party inspector must observe, record, and promptly report any construction defects and deviation from the terms of approval to the planning board or the appropriate municipal authority and the applicant. The applicant may be required to reimburse the planning board for the expenses incurred for the third party review and inspection process (RSA 676:4-b).

The 2008 Municipal Law Lecture Series (Lecture 2) titled “Effective Use of Code Enforcement Tools” and published by the NH Municipal Association provides detail about enforcement issues and the practical considerations prior to superior court action. Local officials should work cooperatively with federal, state or local regulators and public safety officials and balance the facts, competing interest, and points of view before taking action. Consultation with the municipal attorney is also strongly recommended prior to taking enforcement action. The planning board has several tools it can use to enforce its decisions, such as:

- Take no action – Appropriate response to inaccurate complaints.
- Seek voluntary compliance – More often than not, violations are unintended and the violator may be more willing to cooperate than be required to proceed through formal enforcement actions.
- RSA 676:4-a – Revoke an approval when the applicant or the applicant’s successor performs work, erects a structure or structures or uses the land in ways that fail to conform to the plans or specifications upon which the approval was based, or has violated any requirement or condition of approval.
- RSA 676:15 – Institute proceedings for a court injunction against unlawful construction, alteration or reconstruction.
- RSA 676:16 – Recover civil penalties for land transfers or sales of unapproved subdivision lots.
- RSA 676:17 – Recover fines and penalties for violations of local land use regulations and subsequent offenses. Each day a violation continues may be considered a separate offense.
- RSA 676:17-a – Issue a cease and desist order against any violations.
- RSA 676:17-b – Issue a local land use citation in addition to the summons. The defendant receiving such a citation may plead guilty or *nolo contendere* (no contest) by mail. If the court accepts the plea, the defendant shall not be required to appear in court.
- RSA 31:39-d – Use the plea-by-mail process, which is permitted for land use violations but not for violations of the state building code.

### “GRANDFATHERED” APPLICATION (676:12, VI)

Once an application has been the subject of notice by the planning board, pursuant to RSA 676:4, I(d), it is grandfathered or protected from subsequent amendments to the municipality’s subdivision or site plan review regulations or zoning ordinance. However, the application’s first legal notice must occur before the amendment’s first legal notice. In these situations, the application is reviewed under the current version of the regulations as opposed to the proposed amended regulation.

This grandfathered status also applies to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within