

- regulations, master plan modifications, capital improvements plan, and other similar responsibilities.
- B. In voting on proposed regulation changes, zoning amendments, master plan modifications, or capital improvements plans, the Board shall consider each separate item and vote on adoption or disapproval of each proposal at the conclusion of the presentations of that item.
 - C. In voting on citizen zoning amendment proposals, the Board shall vote to approve or to disapprove said proposal. If the Board should be evenly divided or if a motion to approve fails to receive a majority vote, the proposal shall be noted as being “disapproved”.
 - D. In voting on regulation changes or staff proposed zoning amendments, the proposal shall be adopted or submitted to the voters for adoption only if approved by a majority vote.
 - E. Worksession meetings of the Board shall be meetings of the Board to work on and study one or more selected topics.

XI. Site Walks:

- A. A site walk is defined as a visit by the Board or a member of the Board to a location which is the subject of an application before the Board, where the visit is in the company of the owner or applicant, their agents or employees and involves going onto the property or visiting areas which are not customarily available for public inspection. This does not include a view of a site from adjoining public highways or other observations that can be made without entering on the property.
- B. When the Board deems it necessary for the adequate consideration of an application, the Board shall request the applicant to allow a site walk by the Board.
- C. When the Planning Board schedules a site walk for Board members, it shall be posted as a meeting of the Board in accordance with RSA 91-A.
- D. Site walks are public meetings of the Board and the public is allowed to attend. The Chairman has the authority to maintain decorum and order on a site walk just as any other meeting of the Board.
- E. The practice of an applicant directly contacting a member to visit a property without prior Planning Department notice shall be discouraged as an inappropriate course of conduct.
- F. When the Board meets to consider an application, the Board and/or individual members of the Board shall disclose whether they have conducted a site walk on the location under consideration.

From: [Legal Inquiries](#)
To: [Jason Cleghorn](#)
Subject: Milford: Site Walk/Legal Liability for Injury/Milford
Date: Thursday, May 6, 2021 3:13:11 PM

Good Afternoon Jason:

Whether the town would have liability for an injury to a third party, such as an abutter, who was injured while participating in a site walk on property of an applicant, is a question you should ask of your property-liability carrier. I would speculate that in that instance, since the town does not own or control the property where the abutter was injured, the question would arise what duty of care does the town have to protect abutters who are on an applicant's property? The town does not have a sufficient knowledge about the property to provide warning of hidden dangers. So, I would suspect the vicarious liability of the town to an injured abutter while walking on the applicant's property would be minimal. However, you really should seek out a definitive assessment of that liability from your property-liability carrier and the degree to which the town would be covered by your property-liability insurance/risk management agreement for the activity.

As for planning board members who might get injured while conducting a site visit, it is quite possible that appointed municipal officials would be deemed employees while performing official duties, and thus would be able to claim workers compensation coverage for any injuries. RSA 281-A:2, VII (a) (1). Again, you should review this issue with your property-liability insurance carrier/risk manager.

Stephen C. Buckley
Legal Services Counsel
NH Municipal Association
25 Triangle Park Drive
Concord, NH 03301
Tel: (603) 224-7447
Email: legalinquiries@nhmunicipal.org

From: Jason Cleghorn <jcleghorn@milford.nh.gov>
Sent: Wednesday, May 5, 2021 9:13 AM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: Site Walk/Legal Liability for Injury/Milford
Importance: High

Mr. Buckley,

We recently had a situation whereby an applicant for a sand and gravel extraction site plan approval (with state Alteration of Terrain Permit pending) before our Planning Board was asked by the Planning Board to host a Site Walk. For a variety of reasons, the applicant did not want members of the public on their land... There were two options as we saw it. A public meeting, which was posted and noticed which would have opened the meeting to the 'public' and option 2, which was ultimately chosen which was to have individual Planning Board Members visit the site in numbers less than constituted a quorum.

The question at hand, and one of our Planning Board Members has asked for a formal opinion on is that if someone was injured while doing a Site Walk, would A. the applicant or land owner be liable B. the town be liable under its own insurance coverages held by the Town or C. is no one liable.

The Board has asked me to provide a formal memorandum on this matter.

Any help is appreciated.

Jason Cleghorn
Milford Town Planner
1 Union Square
Milford, NH 03055
Phone: (603) 249-0620 x 246
www.milford.nh.gov

From: [Amy Poole](#)
To: [Jason Cleghorn](#)
Cc: [Karen Blow](#)
Subject: FW: Milford: Site Walk/Legal Liability for Injury/Milford
Date: Friday, May 7, 2021 11:09:20 AM

Good morning Jason,
I forwarded your email to our legal counsel. Please see his response below.
Thanks,
Amy

From: Mike Ricker <mricker@nhprimex.org>
Sent: Friday, May 7, 2021 11:07 AM
To: Amy Poole <apoole@nhprimex.org>
Subject: Re: Milford: Site Walk/Legal Liability for Injury/Milford

Hi Amy, I agree with Steve Buckley's assessment below.
Liability to the Town is remote. Primex liability coverage would protect against injury lawsuits filed against the Town stemming from involvement in a site walk.
Employees and officials at the site walk would have workers compensation coverage for injuries arising out of the scope and course of their work duties.
I cannot speak to any potential liability exposure to a private landowner, as that is beyond the scope of my duties/functions; they would need to get their own legal counsel to weigh in if they have questions about liability.

Mike Ricker
General Counsel
New Hampshire Public Risk Management Exchange ("Primex")
mricker@nhprimex.org
603-410-2117

From: Jason Cleghorn <jcleghorn@milford.nh.gov>
Sent: Friday, May 7, 2021 9:35 AM
To: Amy Poole <apoole@nhprimex.org>
Cc: Karen Blow <kblow@milford.nh.gov>
Subject: FW: Milford: Site Walk/Legal Liability for Injury/Milford

Amy,

Can you read this email chain starting at the bottom and weigh in from your POV accordingly?

Jason Cleghorn
Milford Town Planner

1 Union Square
Milford, NH 03055
Phone: (603) 249-0620 x 246
www.milford.nh.gov

From: Paul Calabria
Sent: Thursday, May 6, 2021 4:08 PM
To: Jason Cleghorn
Cc: Paul Calabria
Subject: Milford: Site Walk/Legal Liability for Injury/Milford

Thank you for this Jason!

My contact at Primex is Amy Poole. Her number is (603) 410-2136.
Amy can direct you to the best person to help you.

Good luck!

Thanks,
Paul

From: Jason Cleghorn
Sent: Thursday, May 6, 2021 3:30 PM
To: Paul Calabria
Subject: FW: Milford: Site Walk/Legal Liability for Injury/Milford

FYI

Jason Cleghorn
Milford Town Planner
1 Union Square
Milford, NH 03055
Phone: (603) 249-0620 x 246
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From: Legal Inquiries [<mailto:legalinquiries@nhmunicipal.org>]
Sent: Thursday, May 6, 2021 3:13 PM
To: Jason Cleghorn
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