

# Town of Nelson

## Subdivision Regulations

These regulations were adopted by the Nelson Planning Board on April 20<sup>th</sup>, 2005. The Planning Board recommends that anyone referencing this document for the purpose of planning a subdivision contact the Town Office (603-847-0047) to determine that this is the most current version of these regulations.

## Section 1: INTRODUCTION

### 1:1 Authority

Pursuant to the authority vested in the Nelson Planning Board by the voters of the town of Nelson, and in accordance with the provisions of the Revised Statutes Annotated, Chapters 672 through 677, The Nelson Planning Board adopts the following regulations governing the Subdivision of land in the Town of Nelson, New Hampshire.

### 1:2 Purpose

To provide both the Planning Board and land owners with guidelines as to the process for pursuing Boundary Line Adjustments, Minor Subdivisions, Subdivisions, and the building or improvement of Streets.

To prevent such scattered or premature Subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

To require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health, or without sacrificing the goals of the town as defined in the Nelson Zoning Ordinance, Master Plan, Nelson Priority Conservation Plan, or any other documents developed by the Town or its elected officials.

To provide for open spaces of adequate proportions, being guided in such by the observations and recommendations of the Town of Nelson Priority Conservation Plan.

Encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477.

Provide for efficient and compact subdivision development which promotes retention and public usage of open space and wildlife habitat, by allowing for village planning.

Require innovative land use controls on lands when supported by the Master Plan.

To require streets to be suitably located, with sufficient width to accommodate existing and prospective traffic and to accommodate access of firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system, but having met those requirements, to be sufficiently conservative in their construction so as not to significantly alter the rural character of the town, or be significantly different from existing streets.

### 1:3 Other Regulations

In addition to being charged with observing its own regulations, the Planning Board will endeavor to bring to the attention of the Applicant the existence of State and Federal laws governing relevant subjects outside the jurisdiction of the Board. However, in no case shall the Planning Board be held liable for failing to provide this information, as it is ultimately the responsibility of the Applicant. These laws include (but are not limited to) the topics of wetlands, health, sanitation, pollution of air, water, safety, and nuisance.

The Planning Board specifically calls the Applicant's attention to the Nelson Zoning Ordinance, The Nelson Comprehensive Plan (or Master Plan), The Town of Nelson Priority Conservation Plan, and any other locally-established regulations which shall be on file at the town office, as well as other resources noted in Section 12 of these regulations.

#### 1:4 Validity

1:4.1 If any section, subsection, or phrase of these Subdivision regulations is found for any reason to be legally invalid, this shall not affect the validity of the remaining portion of these regulations.

1:4.2 In the event of conflict with applicable statutes or ordinances, the requirements of these regulations shall be the minimum requirements.

#### 1:5 Amendments

These regulations may be amended, changed, or altered, added to or rescinded whenever this action is deemed necessary or advisable by the Planning Board, but only following a public hearing and a vote of the Board. A statement signed by the Chairman or designated representative of the Board indicating these changes shall be filed with the Cheshire County Registry of Deeds, the Selectmen, Town Clerk, Zoning Board of Adjustment, The New Hampshire Municipal Association, the New Hampshire Office of Energy and Planning, the Southwest Region Planning Commission, and the attorney for the Town of Nelson.

## Section 2: DEFINITIONS

Abutter – anyone whose property lines are at any point the same as those of an adjacent lot which is either being proposed for Subdivision, or which is otherwise being examined in the context of a Subdivision proposal. Abutting property includes that which is across a street, or a non-public body of water.

Applicant – the owner or authorized representative (agent) of the owner of land for which a Subdivision has been applied.

Approval – recognition by the Planning Board, certified by written endorsement on the final plat that the submission meets the requirements of these regulations and satisfies, in the judgment of the Planning Board, all criteria of good planning and design.

Board or Planning Board – unless otherwise noted, refers to the Planning Board of the Town of Nelson.

Boundary Line Adjustment – An adjustment in location of the boundary line between two existing lots which does not result in the creation of any additional lots, and which does not create a building lot from a lot that was heretofore restricted from building according to the Nelson Zoning Ordinance or any other Town ordinances or regulations.

Development – any construction or grading activities to improved or unimproved real estate.

Disturbed Area – an area where the ground cover is destroyed or removed, leaving the land subject to accelerated erosion.

Easement - is a non-possessory interest in land which gives the owner of one parcel of land (the "benefited land") rights over another parcel of land (the "burdened land.") An easement is a property right and carries with it the usual property concepts such as creation by a conveyance and the inability of the burdened land to unilaterally terminate the rights granted in the easement.

Easements are either appurtenant or in gross. An easement is appurtenant when it is used in connection with the benefited land. An easement is an easement in gross when the easement is unconnected to any benefited land. An appurtenant easement passes with the benefited land whether or not the easement is mentioned in the deed.

Erosion – the detachment and movement of soil or rock fragments by water, wind, ice, gravity or other natural forces.

Grading – any excavating, grubbing, filling (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

Minor Subdivision – A Subdivision in which:

- No more than three lots are created within the boundary of an original lot
- Only one of the newly created lots possesses sufficient road frontage and acreage to be qualified for further Subdivision, according to the terms of the Nelson Zoning Ordinance.
- No new streets are proposed.
- None of the newly created lots would be served by a private access in lieu of road frontage (as permitted in the Nelson Zoning Ordinance).
- None of the newly-created lots would meet their road-frontage qualifications by having said frontage on a private Subdivision street.
- No portion of the original lot contains any lot, tract, or parcel of land which was previously subdivided within five years of the date of the present application, pursuant to these or any previous Minor Subdivision procedures. The five-year time period commences with the date of the filing of the previous Subdivision with the Registry of Deeds.
- No portion of the original lot has been subject to municipal improvements within the last five years.

Plat – the drawing or drawings on which the Applicant’s plan of Subdivision is indicated. This must be prepared by a New Hampshire licensed land surveyor.

Final Plat – a Mylar copy of the Plat, (plat specifications must be in conformance with the requirements of the Cheshire County Registry of Deeds) which indicates the final boundary lines and any other adjustments that the Planning Board has indicated are necessary for approval. The Final Plat must include:

- The following statement: “Approved by the Nelson Planning Board, on the \_\_\_\_ day of \_\_\_\_\_, [year], subject to the conditions listed below. Prior to the use of the lots or building development thereon, additional approvals or permits may be required, the issuance of which has neither been considered nor guaranteed by the Planning Board.
- Any actual conditions which the Planning Board requires as necessary for approval of the Subdivision. In the event that these conditions are too extensive to fit on the Final Plat, a reference to them shall be made on the Final Plat.

Preliminary layout - an informal rendering of the plat, for planning and discussion purposes.

Soil Erosion and Sediment Control Plan – a plan that minimizes soil erosion and sedimentation resulting from development and includes, but is not limited to, a map and narrative.

Street or Road – A Class V or better road maintained by the town, or an approved private street (e.g. a Subdivision road approved by the Planning Board which meets Class V specifications, including the entire right-of-way). *NOTE: These regulations refer the reader to RSA 229:5 for more information on road classification.*

#### Subdivision

I The division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development.

II. The creation of an appurtenant easement.

III. The division of a parcel of land held in common and subsequently divided into parts among the several owners.

IV. The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a Subdivision under this title, and shall not be deemed to create any new division of land for any other purpose.

V. The rent, lease, development, or grant of an easement to a person for the purpose of placing and maintaining a wireless communications facility shall not be construed as a Subdivision under this title, and shall not be deemed to create any new division of land for any other purpose. For purposes of this paragraph, "wireless communications facilities" means any towers, poles, antennas, or other un-staffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions. This paragraph shall not be deemed to affect other local zoning, site plan, or regulatory authority over wireless communications facilities.

### Section 3: ADMINISTRATION

3:1. These rules, regulations and standards shall be considered the minimum requirements for the protection of the public health, safety, and well-being of the Town of Nelson. Any action taken by the Planning Board under terms of these Regulations shall give primary consideration to the welfare of the entire community. The Board shall consider all factors which in any way affect the Town, its inhabitants, abutters, and the ecology of the environment, both in general concept and in specific detail.

3:2. Expenses which the Board incurs in pursuit in considering a Subdivision shall be the responsibility of the Applicant for Subdivision or the authorized agent. The Planning Board will preview such expenses prior to them being incurred, and shall allow the Applicant to withdraw or modify their Application should they choose not to bear the costs related to its pursuit.

3:3 The Planning Board has the authority to waive or vary these standards if it determines that the spirit and intention of these Subdivision Regulations, and considerations for public safety and the ecology of the land will be equally or better served by such a waiver or variance. Such a determination may be made only after formal consideration of the recommendations of the Selectmen, and when appropriate, the Road Agent or other town officials or town boards, upon said variance. Should the action of the Planning Board be contrary to those recommendations, the Board must make a formal explanation of why said recommendations were not followed.

#### Section 4: CHARACTER OF SUBDIVISIONS

(note: for the purpose of this section, Boundary Line Adjustments and Minor Subdivisions are included under any references to Subdivisions.

4:1 Subdivisions will be consistent with the intentions and interests of the Town as defined by the Master Plan, the Nelson Priority Conservation Plan, and any other official town documents.

4:2 Due regard shall be given to the preservation and protection of existing features, trees, scenic points, brooks, streams, rock outcroppings, water bodies, and other natural resources and historic landmarks.

4:3 Designs which incorporate narrow strips of land or other unusual characteristics simply to meet technical requirements of the Zoning Regulations may not qualify as appropriate if the Planning Board deems that the spirit of the Ordinance and/or the Master Plan is being violated.

4:4 Fire ponds, dry hydrants and other protective facilities shall be furnished by the Applicant if deemed necessary by the Fire Department and the Planning Board.

4:5 In considering a new Subdivision which occurs on property that has already been Subdivided within the last five years, the Planning Board may consider the combined impact of both subdivisions.

4:6 The Planning Board shall not approve scattered or premature Subdivisions of land that would involve danger of injury to health, safety, or prosperity of land by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services, or which would not allow for the proper scheduling of immediate or future expenses of the Town.

## .Section 5: BOUNDARY LINE ADJUSTMENTS

5:1 The Application for Boundary Line Adjustment shall consist of a form provided by the Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board. The information requested on this form may be modified from time to time to best serve the interests of the town and land owners. A plat shall be submitted as part of the application, and shall include:

- The metes and bounds of each lot to be created
- The acreage rounded to the nearest hundredth
- The Volume and Page reference from the Registry of Deeds, or similar information indicating the source of the Applicant's title
- An indication of all parcels of land abutting the original lot, identified by the names of the landowners, the locations of any buildings, improvements, streets, rights-of-way, utility lines, streams, ponds, or other water sources or wetlands, either on abutting or proposed lots.
- The location of buildings within one hundred feet of the complete parcel proposed for Subdivision.
- The location of any town roads, private roads, and driveways within two hundred feet of the proposed Subdivision's frontage on existing or proposed roads.
- Boundaries of zoning districts lying within the proposed Subdivision.
- All abutters to the property on which the Subdivision is proposed shall be identified on the plat.

5:2 The Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board shall review the Application and supporting material to ensure that it is complete. (NOTE: This action does not constitute "acceptance of a completed application" by the Planning Board, but is simply a review of the requirements for a completed application.) If the individual submitting the Application is not the owner of the property for which the Application is being submitted, they must also include a letter signed by the owner of the property authorizing them to serve as their agent for the Application. Such a letter of authorization shall not be valid for any future Applications involving the same owner and/or property..

5:3 The Applicant will be advised when the next Planning Board meeting will be held, at which time their Application will be reviewed for acceptance by the Board. Acceptance of the application by the Board shall not prevent the board from requiring further information as the hearing process proceeds and more informational needs are identified. The Planning Board Chairman or other designated member of the board may, at their discretion, "conditionally accept" the application, for the purpose of being able to expedite the process. This may be done only in situations where the project is deemed to be simple enough that a separate meeting for Board review is not necessary. The goal of this regulation is to avoid having the process require two meetings: one for review, and one for public hearing and/or ruling.

5:4 The Planning Board shall send notice of the Boundary Line Adjustment to the abutters. The abutters will be advised of the date of the meeting at which the boundary line adjustment application will be reviewed. This notice shall indicate the location of the property, and a description of the boundary line adjustment. This notice will advise the abutters that they may request a Public Hearing for the Boundary Line Adjustment. Should no abutters request such a hearing within ten business days of their receipt of the notice, the Planning Board may proceed to consider the application at the scheduled meeting. However, the Planning Board shall also have the authority to determine, by majority vote, that a public hearing is warranted. If no Public Hearing is held, abutters may still attend the meeting at which the boundary line adjustment is being considered, however unless they are invited by the Planning Board to express their comments or concerns, the Board is not obliged to hear and consider their opinion.

5:5 Prior to the hearing, The Planning Board may circulate copies of the proposed boundary line adjustment to other town departments for their comments and a pre-hearing review.

5:6 The Applicant will appear at the meeting or public hearing to present the proposal, to answer questions and to address issues raised from the Planning Board. If a public hearing is held, questions and concerns from abutters and the general public will also be considered.

5:7 The Board may apply to the Board of Selectmen for an extension not to exceed an additional 65 days before acting to approve, approve with conditions, or deny an accepted Boundary Line Adjustment application. The

applicant may waive these time constraints and consent in writing, to such an extension as mutually acceptable to both the Board and the applicant. In such an event, no extension by the Selectmen is necessary.

5:8 Any fraudulent statement, significant error, or omission in the Application, or within information subsequently provided to the board, shall be cause for immediate disapproval of the Application.

5:9 The Board shall begin formal consideration of the boundary line adjustment at an officially posted meeting of the Planning Board, or in the event that it has been requested or determined by the board to be necessary, a public hearing , within thirty (30) days after the submission and acceptance of the completed application by the Board. In the event that there are components of the application which are at this time determined to be missing, the Board may proceed with the meeting or hearing, making note of what still needs to be provided prior to formal acceptance by the Board.

5:10 In the event that the purpose of the hearing is not able to be fulfilled during the allotted time, The Planning Board may continue the public hearing to such other time and date as the Board deems reasonable (a) based on its upcoming schedule and (b) based on the time requirements for the Board or the Applicant to acquire any additional information that has been determined to be necessary. Such continuation shall not exceed 65 days from the date of the original hearing unless the Planning Board and the Applicant reach mutual agreement on the necessity for such. In the event that the Applicant is not agreeable to an extension, the Planning Board may appeal to the selectmen to grant it.

5:11 At the close of the hearing the Board will discuss the proposal. This discussion may occur immediately following the hearing, or it may be continued at a future meeting.

5:12 During the Board's discussion of the Application, subsequent to a public hearing, the Board, at its sole discretion, may continue consideration of the proposal, pending receipt of further material from the Applicant, Abutters, or other Nelson boards or departments. The presentation of such material will not exceed 30 days, unless a longer period is mutually agreed upon by the Applicant and the Planning Board

5:13 Should the Planning Board determine that the original proposal has become significantly altered during the course of further discussion and negotiation with the Applicant, the Board may, at its sole discretion, have the authority to require a second hearing, which shall be subject to all the terms and conditions of a public hearing for Subdivision as specified in these regulations.

5:14 Within sixty five (65) days after submission and acceptance of the completed application, the Board shall act to approve, approve with conditions, or deny the application. In cases where a boundary line adjustment application is disapproved, the grounds for such disapproval shall be clearly stated in the minutes of the Board's meeting and notice of decision provided to the applicant. In accordance with NH RSA 674:39, the Board may specify, as part of its decision, how much work must be started or completed within one (1) year from conditional approval in order to constitute active and substantial development.

5:15 The Board's decision shall be effective on date of the vote, and the Applicant will be notified by within 24 hours by phone or email so that the decision is known. A written rendering of the decision will follow within three business days of the decision.

#### 5:15.1 Approval

The applicant will provide a Mylar copy of the Plat, complete with any conditions of approval. If a Mylar copy of the proposal is yet not available, then the Planning Board's approval shall be noted as "conditional, upon receipt and signing of the Mylar copy) Paper copies of the plat must also be supplied: one for the overall subdivision plus one for each new lot created.

The Planning Board chairman and another member of the Board will sign the Mylar and all copies.

The approval and any conditions are also provided on a form provided by the Planning Board for this purpose.

Procedure: The original Mylar and appropriate number of copies are filed by the Town at the Cheshire County Registry of Deeds. One copy is retained by the Town of Nelson for its tax records. One copy (or

more, if requested) are provided to the Applicant. The Subdivision shall be considered legally established for the purposes of town records and taxation as of the date of the approval by the Planning Board.

#### 5:15.2 Denial

A Subdivision Application which has been denied by a vote of the Planning Board shall be so indicated by a letter from the Chairman of the Planning Board, or other designated Board member, which clearly states the individual reason(s) why the Application has been denied.

#### 5:15.3 Appeal

The Applicant, or any person affected by the Planning Board's decision, may appeal the decision through the State of New Hampshire Superior Court, in accordance with RSA 677:4-15.

#### 5:15.4 Limit of Filing Period

If the Applicant has not submitted the completed Mylar within 1 year of the time from which it was conditionally approved, the entire subdivision shall be deemed invalid, and a new hearing will be required to re-activate the case.

## Section 6: MINOR SUBDIVISIONS

6:1 The Application for Minor Subdivision shall consist of a form provided by the Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board. The information requested on this form may be modified from time to time to best serve the interests of the town and land owners. A plat shall be submitted as part of the application, and shall include:

- The metes and bounds of each lot to be created
- The acreage rounded to the nearest hundredth
- The Volume and Page reference from the Registry of Deeds, or similar information indicating the source of the Applicant's title
- An indication of all parcels of land abutting the original lot, identified by the names of the landowners, the locations of any buildings, improvements, streets, rights-of-way, utility lines, streams, ponds, or other water sources or wetlands, either on abutting or proposed lots.
- The location of buildings within one hundred feet of the complete parcel proposed for Subdivision.
- The location of any town roads, private roads, and driveways within two hundred feet of the proposed Subdivision's frontage on existing or proposed roads.
- Boundaries of zoning districts lying within the proposed Subdivision.
- All abutters to the property on which the Subdivision is proposed shall be identified on the plat.

6:2 The Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board shall review the Application and supporting material to ensure that it is complete. (NOTE: This action does not constitute "acceptance of a completed application" by the Planning Board, but is simply a review of the requirements for a completed application.) If the individual submitting the Application is not the owner of the property for which the Application is being submitted, they must also include a letter signed by the owner of the property authorizing them to serve as their agent for the Application. Such a letter of authorization shall not be valid for any future Applications involving the same owner and/or property..

6:3 The Applicant will be advised when the next Planning Board meeting will be held, at which time their Application will be reviewed for acceptance by the Board. Acceptance of the application by the Board shall not prevent the board from requiring further information as the hearing process proceeds and more informational needs are identified. The Planning Board Chairman or other designated member of the board may, at their discretion, "conditionally accept" the application, for the purpose of being able to expedite the process. This may be done only in situations where the project is deemed to be simple enough that a separate meeting for Board review prior to acceptance is not considered to be necessary. The goal of this regulation is to avoid having the process require two meetings: one for review, and one for public hearing and/or ruling.

6:4 The Planning Board shall send notice of the Minor Subdivision proposal to the abutters. The abutters will be advised of the date of the meeting at which the Minor Subdivision application will be reviewed. This notice shall indicate the location of the property, and a description of the boundary line adjustment.

6:5 Prior to the hearing, The Planning Board may circulate copies of the proposed Minor Subdivision to other town departments for their comments and a pre-hearing review.

6:6 The Applicant will appear at the public hearing to present the proposal, to answer questions and to address issues raised from the Planning Board. Questions and concerns from the Planning Board, abutters and the general public will be considered in that order.

6:7 The Board may apply to the Board of Selectmen for an extension not to exceed an additional 65 days before acting to approve, approve with conditions, or deny an accepted Minor Subdivision application. The applicant may waive these time constraints, and consent in writing, to such an extension as mutually acceptable to both the Board and the applicant. In such an event, no extension by the Selectmen is necessary.

6:8 Any fraudulent statement, significant error, or omission in the Application, or within information subsequently provided to the board, shall be cause for immediate disapproval of the Application.

6:9 The Board shall begin formal consideration of the Minor Subdivision at an officially posted public hearing , within thirty (30) days after the submission and acceptance of the completed application by the Board. In the event that there are components of the application which are at this time determined to be missing, the Board may proceed with the meeting or hearing, making note of what still needs to be provided prior to formal acceptance by the Board.

6:10 In the event that the purpose of the hearing is not able to be fulfilled during the allotted time, The Planning Board may continue the public hearing to such other time and date as the Board deems reasonable (a) based on its upcoming schedule and (b) based on the time requirements for the Board or the Applicant to acquire any additional information that has been determined to be necessary. Such continuation shall not exceed 65 days from the date at which the application was officially accepted, unless the Planning Board and the Applicant reach mutual agreement on the necessity for such. In the event that the Applicant is not agreeable to an extension, the Planning Board may appeal to the selectmen to grant it.

6:11 At the close of the hearing the Board will discuss the proposal. This discussion may occur immediately following the hearing, or it may be continued at a future meeting.

6:12 During the Board's discussion of the Application, subsequent to a public hearing, the Board, at its sole discretion, may continue consideration of the proposal, pending receipt of further material from the Applicant, Abutters, or other Nelson boards or departments. The presentation of such material will not exceed 30 days, unless a longer period is mutually agreed upon by the Applicant and the Planning Board

6:13 Should the Planning Board determine that the original proposal has become significantly altered during the course of further discussion and negotiation with the Applicant, the Board may, at its sole discretion, have the authority to require a second hearing, which shall be subject to all the terms and conditions of a public hearing for Subdivision as specified in these regulations.

6:14 Within sixty five (65) days after submission and acceptance of the completed application, the Board shall act to approve, approve with conditions, or deny the application. In cases where a Minor Subdivision application is disapproved, the grounds for such disapproval shall be clearly stated in the minutes of the Board's meeting and notice of decision provided to the applicant. In accordance with NH RSA 674:39, the Board may specify, as part of its decision, how much work must be started or completed within one (1) year from conditional approval in order to constitute active and substantial development.

6:15 The Board's decision shall be effective on date of the vote, and the Applicant will be notified by within 24 hours by phone or email so that the decision is known. A written rendering of the decision will follow within three business days of the decision.

#### 6:15.1 Approval

The applicant will provide a Mylar copy of the Plat, complete with any conditions of approval. If a Mylar copy of the proposal is not available, then the Planning Board's approval shall be noted as "conditional, upon receipt and signing of the Mylar copy) Paper copies of the plat must also be supplied: one for the overall subdivision plus one for each new lot created.

The Planning Board chairman and another member of the Board will sign the Mylar and all copies.

The approval and any conditions are also provided on a form provided by the Planning Board for this purpose.

Procedure: The original Mylar and appropriate number of copies are filed by the Town at the Cheshire County Registry of Deeds. One copy is retained by the Town of Nelson for its tax records. One copy (or more, if requested) are provided to the Applicant. The Subdivision shall be considered legally established for the purposes of town records and taxation as of the date of the approval by the Planning Board.

#### 6:15.2 Denial

A Subdivision Application which has been denied by a vote of the Planning Board shall be so indicated by a letter from the Chairman of the Planning Board, or other designated Board member, which clearly states the individual reason(s) why the Application has been denied.

### 6:15.3 Appeal

The Applicant, or any person affected by the Planning Board's decision, may appeal the decision through the State of New Hampshire Superior Court, in accordance with RSA 677:4-15.

### 6:15.4 Limit of Filing Period

If the Applicant has not submitted the completed Mylar within 1 year of the time from which it was conditionally approved, the entire subdivision shall be deemed invalid, and a new hearing will be required to re-activate the case.

## Section 7: SUBDIVISIONS

### 7:1 Pre-Application Review.

The Planning Board encourages potential Applicants to meet for the purpose of a pre-Application review. The Planning Board Chairman, in consultation with at least two other members of the Board, shall have the authority to *require* a Preliminary Review in the event that any of the following conditions are part of the Subdivision Proposal:

- The lot proposed for subdivision is larger than 50 acres.
- The number of new lots to be created is four or more.
- The plan involves the creation or use of private driveways or roads
- The Applicant owns additional land which is contiguous to the lot being proposed for subdivision.

The potential for this requirement will be noted at the time the Application is delivered, and the Application will be advised within five business days if a Preliminary Review will be required.

This meeting shall be limited to such review and commentary that might assist in anticipating and resolving problems prior to fulfilling the requirements for final consideration. The Board shall review the proposal in light of the Nelson Comprehensive Plan, the Zoning Ordinance and these Subdivision Regulations, and any other ordinances or regulations of the Town of Nelson that are relevant, as well as any other State or Federal regulations which may impact the proposed Subdivision.

This discussion may occur without the necessity of giving formal public notice, but may occur only at formal meetings of the Board, which are public. Preliminary consultation and review shall not bind either the potential Applicant or the Planning Board. The time limits for acting shall not apply until formal Application is submitted. The following information is recommended for a pre-application review:

- General description or outline of the existing conditions of the site, and any changes that the proposed development would produce on these conditions. This includes:
  - the number of lots, their size, location, intended use
  - proposed easements, protective covenants and/or deed restrictions
  - proposed utilities
  - street improvement or new street construction
- A location map showing the relationship of the proposed Subdivision to the existing community facilities which serve or influence it. This map should indicate all existing roads, natural landmarks, lakes, streams, wetlands, and other water sources.
- A sketch plan showing the above information.

The Board may request further details or information and additional meetings before advising the potential Applicant to proceed with a formal Application.

7:2 The Application for Subdivision shall include a completed form provided by the Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board. The information requested on this form may be modified from time to time to best serve the interests of the town and land owners. The Application shall also include:

7:2.3 A plat showing the following information:

- The metes and bounds of each lot to be created
- The acreage rounded to the nearest hundredth
- The Volume and Page reference from the Registry of Deeds, or similar information indicating the source of the Applicant's title
- An indication of all parcels of land abutting the original lot, identified by the names of the landowners, the locations of any buildings, improvements, streets, rights-of-way, utility lines, streams, ponds, or other water sources or wetlands, either on abutting or proposed lots.
- The location of buildings within one hundred feet of the complete parcel proposed for Subdivision.
- The location of any town roads, private roads, and driveways within two hundred feet of the proposed Subdivision's frontage on existing or proposed roads.
- Boundaries of zoning districts lying within the proposed Subdivision.
- All abutters to the property on which the Subdivision is proposed shall be identified on the plat.

7:2.4 A completed Application as supplied by the Town of Nelson, along with a fee of \$100. The Planning Board reserves the right to charge a higher fee if it determines that the costs incurred by the Town to publish notice of the hearing, notify abutters, and any other administrative tasks related to the Subdivision Application will exceed \$100.

7:2.5 Narrative description of buildings within 100 feet of the parcel to be subdivided, and intersecting public or private roads, or driveways, within two hundred feet of the parcel to be subdivided.

7:2.6 Narrative description of existing and proposed easements, deed restrictions, and rights-of-ways. These shall be of such size and nature as to carry out their intended use, and shall not in any way be deeded or used to circumvent any Town regulations, or the intent of Town regulations.

7:2.7 A narrative description of how the site will be served by electric and telephone utilities, and any other utilities that may be relevant to the proposed Subdivision

7:2.8 A narrative description of conditions of the land as to suitability for residential development, or for any other proposed type of development. This must include descriptions of streams, springs, and wetlands.

7:2.9 For lots of five acres or less: while it is not required at the time of Application, the Planning Board must have, prior to giving final approval of the Subdivision, a copy of New Hampshire Department of Environmental Services (DES) Subdivision approval. The Final Plat will not be signed without this approval. For lots of any size that are on waterfront, DES approval is required in accordance with the Shoreland Protection Act.

7:3 The Planning Board may require the following information to be submitted prior to considering the Application. Unless a formal waiver has been granted in the Application, this information may still be required by the Planning Board in the course of considering the Application even if it was not originally requested.

7:3.1 A description of the work required on existing public or private streets to meet the standards of these regulations, including cost estimates and methods of meeting such costs.

7:3.2 Preliminary road profiles, including cross-sections

7:3.3 Indications of any bridges or culverts which are part of the proposal, or which are required as a result of it.

7:3.4 A contour map with narrative and drawings in such detail as to clearly indicate the method of storm water drainage on and off the Subdivision.

7:3.5 Watershed and drainage computations

7:3.6 A detailed soils map

7:3.7 Approval, as prescribed by law, from any other municipal, state, or federal agency which may have jurisdiction.

7:4 The Planning Board Chairman, Town Administrative Assistant, or other person designated by the Planning Board shall review the Application and supporting material to ensure that it is complete. (NOTE: This action does not constitute “acceptance of a completed application” by the Planning Board, but is simply a review of the requirements for a completed application.) If the individual submitting the Application is not the owner of the property for which the Application is being submitted, they must also include a letter signed by the owner of the property authorizing them to serve as their agent for the Application. Such a letter of authorization shall not be valid for any future Applications involving the same owner and/or property..

7:5 The Applicant will be advised when the next Planning Board meeting will be held, at which time their Application will be reviewed for acceptance by the Board. Acceptance of the application by the Board shall not prevent the board from requiring further information as the hearing process proceeds and more informational needs are identified. In the event that a preliminary review has yielded adequate information, the Planning Board may, during a meeting for that purpose, vote to accept the Subdivision Application, and to move forward with scheduling a hearing for the next meeting.

7:6 The Planning Board shall send notice of the Subdivision proposal to the Abutters. The abutters will be advised of the date of the meeting at which the Subdivision application will be reviewed. This notice shall indicate the location of the property, and a description of the proposed Subdivision.

7:7 Prior to the hearing, The Planning Board may circulate copies of the proposed Subdivision to other town departments for their comments and a pre-hearing review.

7:8 The Applicant will appear at the public hearing to present the proposal, to answer questions and to address issues raised from the Planning Board. Questions and concerns from the Planning Board, abutters, and the general public will be considered in that order.

7:9 The Board may apply to the Board of Selectmen for an extension not to exceed an additional 65 days before acting to approve, approve with conditions, or deny an accepted Subdivision application. The applicant may waive these time constraints, and consent in writing, to such an extension as mutually acceptable to both the Board and the applicant. In such an event, no extension by the Selectmen is necessary.

7:10 Any fraudulent statement, significant error, or omission in the Application, or within information subsequently provided to the board, shall be cause for immediate disapproval of the Application.

7:11 The Board shall begin formal consideration of the Subdivision at an officially posted public hearing , within thirty (30) days after the submission and acceptance of the completed application by the Board. In the event that there are components of the application which are at this time determined to be missing, the Board may proceed with the meeting or hearing, making note of what still needs to be provided prior to formal acceptance by the Board.

7:12 In the event that the purpose of the hearing is not able to be fulfilled during the allotted time, The Planning Board may continue the public hearing to such other time and date as the Board deems reasonable (a) based on its upcoming schedule and (b) based on the time requirements for the Board or the Applicant to acquire any additional information that has been determined to be necessary. Such continuation shall not exceed 60 days from the date at which the application was officially accepted, unless the Planning Board and the Applicant reach mutual agreement on the necessity for such. In the event that Applicant is not agreeable to an extension, the Planning Board may appeal to the selectmen to grant it.

7:13 At the close of the hearing the Board will discuss the proposal. This discussion may occur immediately following the hearing, or it may be continued at a future meeting.

7:14 During the Board’s discussion of the Application, subsequent to a public hearing, the Board, at its sole discretion, may continue consideration of the proposal pending receipt of further material from the Applicant,

Abutters, or other Nelson boards or departments. The presentation of such material will not exceed 30 days, unless a longer period is mutually agreed upon by the Applicant and the Planning Board

7:15 Should the Planning Board determine that the original proposal has become significantly altered during the course of further discussion and negotiation with the Applicant, the Board may, at its sole discretion, have the authority to require a second hearing, which shall be subject to all the terms and conditions of a public hearing for Subdivision as specified in these regulations.

7:16 Within sixty five (65) days after submission and acceptance of the completed application, the Board shall act to approve, approve with conditions, or deny the application. In cases where a Subdivision application is disapproved, the grounds for such disapproval shall be clearly stated in the minutes of the Board's meeting and notice of decision provided to the applicant. In accordance with NH RSA 674:39, the Board may specify, as part of its decision, how much work must started or completed within one (1) year from conditional approval in order to constitute active and substantial development.

7:17 The Board's decision shall be effective on date of the vote, and the Applicant will be notified by within 24 hours by phone or email so that the decision is known. A written rendering of the decision will follow within three business days of the decision.

#### 7:17.1 Approval

The applicant will provide a Mylar copy of the Plat, complete with any conditions of approval. If a Mylar copy of the proposal is not available, then the Planning Board's approval shall be noted as "conditional, upon receipt and signing of the Mylar copy) Paper copies of the plat must also be supplied: one for the overall subdivision plus one for each new lot created.

The Planning Board chairman and another member of the Board will sign the Mylar and all copies.

The approval and any conditions are also provided on a form provided by the Planning Board for this purpose.

Procedure: The original Mylar and appropriate number of copies are filed by the Town at the Cheshire County Registry of Deeds. One copy is retained by the Town of Nelson for its tax records. One copy (or more, if requested) are provided to the Applicant. The Subdivision shall be considered legally established for the purposes of town records and taxation as of the date of the approval by the Planning Board.

#### 7:17.2 Denial

A Subdivision Application which has been denied by a vote of the Planning Board shall be so indicated by a letter from the Chairman of the Planning Board, or other designated Board member, which clearly states the individual reason(s) why the Application has been denied.

#### 7:17.3 Appeal

The Applicant, or any person affected by the Planning Board's decision, may appeal the decision through the State of New Hampshire Superior Court, in accordance with RSA 677:4-15.

#### 7:17.4 Limit of Filing Period

If the Applicant has not submitted the completed Mylar within 1 year of the time from which it was conditionally approved, the entire subdivision shall be deemed invalid, and a new hearing will be required to re-activate the case.

## Section 8: STREETS

8:1 In all Street proposals and Subdivision proposals involving the construction of new roads, or the upgrading of existing roads, the Planning Board will consult with the Road Agent and the Selectmen for the Town of Nelson about the technical aspects of the road, and shall give due consideration to their opinions. The Planning Board may require additional studies and opinions from a qualified engineer. In this case, the Planning Board shall be responsible for contracting the services, however the Applicant bears the financial responsibility. Prior to formally engaging these services, the Planning Board shall work with the engineer(s) and Applicant to determine exactly what information is being required and how much it will cost.

8:2 In all Subdivision proposals involving the construction of new roads (public or private), or the upgrading of existing roads (public or private), the Applicant must provide an impact statement concerning the physical and economic impact of the proposed Subdivision on the Town.

The statement shall consider:

- The impact resulting from construction of roads and excavation and construction of house sites.
- The number of additional motor vehicle trips per day resulting from full occupancy of the Subdivision, and the impact on other roads serving the new or improved road.
- Any other information that the Planning Board has requested during the pre-Application stage.

In the event that there is a measurable economic impact on the town as a result of the construction process, the Town may require the Applicant to bear a portion of those costs.

8:3 If it is the interest and intent of the Applicant to construct a new road and then turn it over to the Town, the Applicant, along with two other taxpayers to the Town of Nelson, must apply in writing to the Selectmen with a proposal for such. The Selectmen will then hold a Public Hearing to determine if the Town's ownership of the proposed road is in the public interest. This process should occur in the pre-Application review stage.

8:4 If it is the intent of the Applicant to maintain the road as a private road, it shall nevertheless not be closed to public travel. A statement to this effect shall be written into the conditions of the Subdivision.

8:5 In the event of new road construction, written acknowledgement is required of the Applicant's responsibility for maintenance and the assumption of liability for injuries and damages that may occur on any road designated for public use, until the road has been legally accepted by the Town.

8:6 Proposed roads shall be in harmony and conformance with existing and proposed roads as shown on any official Town Maps, and with any guidelines indicated by the Master Plan. Proposed roads within areas that the Nelson Conservation Commission has designated as being environmentally significant shall be specifically discouraged, and may be forbidden if the Planning Board deems it necessary.

## Section 9: TECHNICAL REQUIREMENTS FOR NEW STREETS

The Planning Board shall have the authority to approve roads that do not meet these specifications only with written approval from the Selectmen, who shall, in turn have considered the recommendations of the Road Agent.

**GENERAL STREET PLAN:** Approval of the general development street plan should be required before allowing the construction of small integral phases of the plan.

**TRAFFIC VOLUME:** Construction requirements shall be based on traffic volume, projected 20 years into the future. The Planning Board shall derive this information to the best of its ability from population growth projections from the Master Plan, Census data, or any other documents or resources at its disposal.

**STREET NAMES:** All streets shall be named to comply with the provisions of the "Enhanced 911 System" (RSA 106-H:10,I; RSA 106-H:7, VII).

**RIGHT-OF-WAY:** The minimum width of right-of-way shall be 50 feet. A greater width may be required for arterial and collector streets.

**DEAD-END STREETS:** Dead-end streets, designed to be so permanently, shall not be longer than 1,000 feet. And shall be provided with a T, with the right-angle extension being at least 50 feet in length or a cul-du-sac having an outside roadway diameter of at least 100 feet. Where the completion of a road is temporarily delayed, either according to plan or due to other circumstances, the Applicant shall provide a temporary turn-around facility.

**HIGHWAY RIGHT-OF-WAY BOUNDS:** Highway bounds, of a type approved by the Board of Selectmen, shall be installed at all intersection of streets, at all points of change in direction and at any other points the Board may deem necessary to designate the street lines.

**ALIGNMENT:** No streets shall be constructed with a curvature of less than a 100 foot radius.

**GRADES:** Street grades, where feasible, shall not exceed 10 percent, nor shall any be less than 0.50 percent. Special care shall be taken to provide flat grades at all intersections.

**CONSTRUCTION SUPERVISION:** Construction of the roadway, drainage facilities, sidewalks, curbs and all other elements of the highway must be done under the supervision of and with the approval of the Board of Selectmen.

**INTERSECTIONS:** Streets shall be laid out to intersect as nearly as possible at right angles. No street shall intersect another at an angle of less than 60 degrees. Streets entering opposite sides of another street shall be laid out either directly opposite one another, or with a minimum offset of 150 feet between their center lines. Streets likely to be entered and exited more than 100 times per day shall provide 250 feet of all-season safe-sight distance visibility in each travel direction on a Class V road, and shall provide 400 feet of visibility on a state road.

**VISIBILITY:** No horizontal or vertical curve shall have a clear center line radius of less than 150 feet, except a horizontal curve on a dead-end street. For changes in grade exceeding percent, a vertical curve shall be provided ensuring minimum visibility of 100 feet.

**CLEARING:** The entire area of each street shall be cleared of all stumps, brush, roots, boulders, and like material, and all trees not intended for preservation.

**SUBGRADE PREPARATION:** All loam, humus and unsuitable material such as, but not limited to, stumps, vegetation, demolition debris, and structures shall be removed from the roadway and replaced with suitable fill material. All boulders and ledge shall be removed to a uniform cross sectional depth of not less than 12 inches below the subgrade and replaced with sand or gravel.

**DRAINAGE:** Surface water shall be disposed of by means of culverts of sufficient capacity at water courses as determined by standard hydraulic design methods and by the construction of longitudinal storm drainage systems whenever required to relieve water in the ditch sections. Construction shall be in accordance with New Hampshire Standard Specifications, 2002, Sections 603, 604 and 605.

**CULVERTS:** May not be less than 15 inches in diameter, and drainage swales must be at least 3 feet wide and 16

inches in depth. The Planning Board may require greater dimensions if engineering data or the recommendation of the Road Agent indicates this to be in the best interests of long-term maintenance of the road.

**UNDERGROUND INSTALLATIONS:** No underground installation (culverts, utilities, etc) shall be covered until inspected by the appropriate Town officials or their authorized agents.

**GRAVEL BASE:** All streets shall be constructed with a minimum of 12 inches of gravel per New Hampshire Standard Specifications, 2002, Section 304.

**ASPHALT SURFACE:** The asphalt surface may be a Bituminous Surface Treatment, Section 410 or Hot Bituminous Pavement, Section 403 of the New Hampshire Standard Specifications, 2002, as required by the Selectmen. The minimum traveled way width should be 20 feet for 51 to 750 vpd (vehicles per day), 22 feet for 751 to 1,500 vpd and, 24 feet for roads carrying over 1,501 vehicles. A 44 foot wide pavement may be required in areas where on-street parking is expected on both sides of the travel way. Angle parking shall not be allowed.

**GRAVEL SURFACE:** In cases of low traffic volumes (up to 50 vehicles per day) or where the Selectmen feel an asphalt surface is not required, the total usable roadway width shall be a minimum of 22 feet. Provision for a wider section should be considered to allow for future upgrading to an asphalt surface as recommended above.

**GRAVEL SHOULDERS:** Gravel shoulders, equal to the base course depth, shall be constructed adjacent to all asphalt traveled way surfaces as follows: 51-200 vpd. 2.0 feet; 201-1,500 vpd. 4 feet; over 1,500 vpd 8-10 feet.

**BRIDGES:** Bridges, as defined by State Law (RSA 234:2), are all structures of 10 feet or greater clear span, and shall be designed to MS-18 (HS-20) loading (AASHTO Specifications). The minimum roadway width shall be 24 feet.

**WETLANDS:** Any work that requires impacts (fill, dredge, excavation, etc.) on wetlands or other jurisdictional areas (stream banks, undisturbed tidal buffer zones, etc.) requires coordination with the Department of Environmental Services Water Division (271-3503) to ensure that all applicable rules and regulations are followed.

**EROSION CONTROL:** Slopes and drainage ditches shall be seeded and mulched, or otherwise stabilized to prevent erosion. A Site Specific permit is required from NHDES (271-3503) whenever a project proposes to disturb more than 100,000 square feet of terrain (50,000 sq. ft. if within the protected shoreland), and as of March 10, 2003, construction activity that disturbs one or more acre of land needs a Federal storm water permit (contact EPA at 617-918-1615).. Selection and design of erosion control measures may be found in the publication "Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire", prepared by the Rockingham County Conservation District for the New Hampshire Department of Environmental Services, August 1992 (currently being updated).

**ENVIRONMENTAL IMPACTS:** Environmental documentation may also be required to address the natural, socio-economic, and cultural resource impacts. Contact N.H. Department of Environmental Services and N.H. Division of Historic Resources for assistance.

**UTILITIES:** Utility poles should be kept close to the right-of-way line, in no case closer than the ditch line and always well back of a curb. Water and sewer mains should be constructed outside the surface area and preferably outside the ditch line.

**SAFETY:** Safety is an important factor on all roadway improvements. While it may not be possible or practical to achieve obstacle-free roadsides, every effort should be made to provide clear areas within the maintenance limits. The use of flatter slopes, the use of guardrail where necessary, and warnings signs are other safety factors to be considered. These areas are addressed in the publication "Roadside Design Guide" by AASHTO, 2002.

**OCCUPANCY:** No structure shall be occupied until completion of the base course of the roadway (as specified in the Road Construction Standards).

## Section 10: UPGRADING OF EXISTING ROADS

There are two situations involving the upgrading of existing roads.

The first is where the landowner chooses to upgrade a private road for the purpose of making it an official private Subdivision road, or for upgrading an existing private Subdivision road to accommodate additional traffic.

The second is where the town has determined that an existing public or private Subdivision street must be upgraded as a result of, or in anticipation of, additional construction-traffic impact and subsequently, daily traffic flow, as a result of a Subdivision.

In either case, the following regulations will apply.

10:1 The Town of Nelson Road Construction Standards are part of these regulations. All upgraded roads must be in accordance with these standards.

10:2 The regulations governing streets (Section 9) and the technical requirements for new streets (Section 11) shall be used as goals for the improvement of upgrading existing roads. The Planning Board recognizes that not all of those regulations may be applicable or achievable, and they shall work with the Applicant to determine appropriate requirements.

10:3 The Applicant must present a statement about the physical and economic impact of the proposed Subdivision on all existing Town roads as well as Private Subdivision Roads. In the event that engineering studies, traffic studies, or other impact studies are deemed necessary, the Planning Board shall be responsible for contracting the services, however the Applicant bears the financial responsibility. Prior to formally engaging these services the Planning Board shall work with the engineer(s) and Applicant to determine exactly what information is being required and how much it will cost.

10:4 The Planning Board has the authority to vary these standards if it determines that the spirit and intention of these Subdivision Regulations, and considerations for public safety and the ecology of the land will be equally or better served by such a variance. Such a determination may be made only after formal consideration of the recommendations of the Selectmen and the Road Agent upon said variance. Should the action of the Planning Board be contrary to those recommendations, the Board must provide a formal explanation of why said recommendations were not followed.

## 11: PERFORMANCE GUARANTEE

11:1 No Subdivision involving the construction of new roads, or the improvement of existing roads shall be approved until the Applicant has filed with the Board an engineer's estimate of costs of streets, improvements, drainage structures, and other utilities, together with maps, plans, and supporting data.

11:2 Where it has been determined that the Applicant is to bear a portion of the costs relating to the construction of new roads or the improvement of existing roads, the planning board shall accept a performance bond, irrevocable letter of credit, or other types of security as shall be specified in the Subdivision regulations; provided that in no event shall the exclusive form of security required by the planning board be in the form of cash or a passbook. As phases or portions of the secured improvements or installations are completed and approved by the planning board or its designee, the municipality shall partially release said security to the extent reasonably calculated to reflect the value of such completed improvements or installations. Cost escalation factors that are applied by the planning board to any bond or other security required under this section shall not exceed 10 percent per year. The planning board shall, within the limitations provided in these regulations, have the discretion to prescribe the type and amount of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

11:3 This bond, or escrow arrangement, may be segmented according to the various phases of the project, and the security released as the various phases of the project are completed.

11:4 The performance guarantee, or any segment thereof, shall remain in full force and in effect for one year after the Planning Board has approved all required improvements, or until such time that all the latent defects have been corrected and those corrections have been approved by the Planning Board, which ever is later.

11:5 Prior to final release of security:

The Applicant will provide letters from the Road Agent, Selectmen, Engineers, and any other involved parties stating that all construction requirements have been met.

The Planning Board or authorized representative will inspect the site, and will place in writing, in the Planning Board files, a letter indicating that the project has been completed according to the terms of the Subdivision.

## Section 12: REFERENCES AND RESOURCES

The following references are provided for informational purposes only. Nothing from these references shall be construed to have any authoritative value in the subdivision process unless they are referenced as such within these regulations, or unless they have authority by virtue of being local, state, county, or federal regulations.

- Public Hearing – refer to Town of Nelson Public Hearing Regulations
- Revised Statutes Annotated of the State of New Hampshire
- <http://www.gencourt.state.nh.us/rsa/html/indexes/default.asp>
  - (Includes the Shoreland Protection Act Section 43-B)
- A Hard Road to Travel - NHMA's Handbook on New Hampshire Law of Local Highways, Streets, and Trails (see New Hampshire Municipal Association, below).

### Nelson-specific documents:

The Planning Board recommends that anyone referencing these documents for the purpose of planning a subdivision contact the Town Office to determine that they have the most current version.

- Master Plan – this term is used to reference what will become the Master Plan for the Town of Nelson (currently in development), but meanwhile what is titled the Comprehensive Planning Program, Nelson, NH 1984.
- Town of Nelson Priority Conservation Plan, January 21, 2001
- Nelson Zoning Ordinance – Adopted March 9, 2004, Amended March 8, 2005

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