



# PLANNING BOARD RESOURCE BOOK

2015

*A simple resource book providing an overview of the major responsibilities given to municipal planning boards in the Massachusetts land use process.*

## ACKNOWLEDGMENTS



A special thank you to Berkshire Bank for providing the funds necessary to develop this important resource to assist municipal planning boards across the Commonwealth of Massachusetts.

# ABOUT BERKSHIRES TOMORROW

Berkshires Tomorrow, Inc. is a non-profit 501 (c)(3) corporation under the direction and control of the Berkshire Regional Planning Commission (BRPC). BRPC is the state designated regional planning agency for Berkshire County located in western Massachusetts. BRPC seeks to enhance the resilience and quality of life in the Berkshires region of Massachusetts through a variety of initiatives and projects encompassing land use, transportation, economic development, environmental management, sustainable communities and public health.

Berkshires Tomorrow is focused on:

- (1) Improving and enhancing the quality of education and learning opportunities for the general public and local officials.
- (2) Planning and integrating innovative methods and technologies into regional and local education and governance, in Berkshire County, Massachusetts, and other regions in the United States.

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## Introduction

The purpose of this resource book is to provide prospective and current planning board members with an overview of the roles and responsibilities of planning boards in the Massachusetts land use process. Planning boards play a vital role in the development of a municipality by planning for its future and overseeing its development and growth. With such a vital role to play it is our hope that this resource book will provide planning board members with a greater understanding of their role in the land use process and instill in them the confidence to make decisions on matters that will have a lasting impact on their municipality for years to come.

The various roles and responsibilities of municipal planning boards can be separated into two different categories; (1) permitting/approvals and (2) planning. A planning board is tasked with planning for the future growth, development and preservation of a municipality's physical resources. Equally important, planning boards are tasked with developing and implementing land use regulations such as the zoning bylaw or ordinance and the subdivision control regulations through the issuance of permits/approvals. This resource book is organized to mirror the two different categories of responsibilities that planning boards are expected to fulfill; permitting/approvals and planning. A third section briefly describes some of the organizational and operational considerations for planning boards, while a fourth section lists the most frequently referenced state land use laws.

This resource book is not intended to provide a comprehensive review and explanation of all the detailed nuances of Massachusetts land use law. If you would like additional information about a topic please refer to the list of additional resources located at the end of each section.

This resource book is not intended to replace the legal advice of the city solicitor or town counsel.

# PARTICIPANTS IN THE LAND USE PROCESS

## Participants in the Land Use Process

The following section contains a brief description of the major participants in the Massachusetts land use process and their main responsibilities.

**Residents:** In municipalities with a town meeting form of government, residents acting as the local legislative body vote on amendments to the local zoning bylaw or ordinance. A resident or a certain number of residents may also initiate a zoning amendment and petition the municipality to call a special town meeting. Residents also play an important role in providing comments to municipal boards during public hearings on permits/approvals and zoning amendments.

**Building Inspector:** The role of the building inspector is to ensure that proposed developments comply with the state building code, local zoning regulations and any other applicable regulation. The building inspector is typically charged with enforcing the local zoning bylaw or ordinance and any permits/approvals issued under the zoning bylaw or ordinance. However, a municipal charter or local bylaw or ordinance may designate someone other than the building inspector to enforce the local zoning regulations.

**Board of Appeals or Zoning Board of Appeals (ZBA):** The ZBA has many roles in the land use process. The ZBA is responsible for deciding petitions for variances and hearing administrative appeals of decisions made by the building inspector or zoning administrator. The ZBA may also review and decide applications for special permits and comprehensive permits. The ZBA may also initiate the process to amend the local zoning bylaw or ordinance.

**Zoning Administrator:** The ZBA may designate several of its responsibilities to a zoning administrator. The zoning administrator may hear administrative appeals, review and decide on applications for special permits and decide petitions for variances.

**Planning Board:** The planning board has many roles in the land use process that are more fully discussed herein. Generally stated, the planning board is responsible for

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planning, reviewing and deciding on certain types of permits/approvals and for administering the subdivision of land within a municipality.

### **Board of Selectmen/City Council:**

The board of selectmen may review and decide upon applications for special permits when designated by the local zoning bylaw or ordinance. The board of selectmen are responsible for coordinating annual and special town meetings. The board of selectmen may also serve as the board of health if a separate board has not been established.

The City Council acts as the legislative body of a municipality so it is responsible for voting on amendments to the local zoning bylaw or ordinance. The City Council may also review and decide upon applications for special permits where designated by the local zoning bylaw or ordinance.

**Board of Health:** The board of health is responsible for reviewing definitive subdivision plans for on-site disposal of wastewater and drainage. The board of health may also enact regulations, separate from zoning regulations, to abate nuisances that deal with land use issues.

**Conservation Commission:** The conservation commission is responsible for administering the state Wetlands Protection Act and the local wetlands bylaw, if one has been adopted by the municipality.

## Permitting/Approvals Overview

Planning boards play a vital role in the land use process by implementing the various land use regulations. In accordance with the local zoning bylaw or ordinance planning boards are oftentimes responsible for reviewing and acting upon applications for site plan approval (as-of-right) and special permits. In addition, planning boards are responsible for reviewing and taking action on applications for definitive subdivision approval and on approval not required (ANR) plans. Planning boards also play several other lesser roles in the implementation of the land use regulations of a municipality.

Planning board members should be mindful that unlike its planning function, its permitting/approval function may involve the direct allocation of various benefits and burdens between applicants, neighbors and the municipality. Permitting decisions made by the planning board have the potential to impact the day to day lives of residents and the livelihood of others. The issuance or denial of a permit is a matter that should be taken very seriously. Planning boards must ensure that all procedural requirements are strictly followed to provide each person with the due process afforded them by the laws and the Constitution. Furthermore, all planning board permitting actions must be reasonable and supported by the information provided to the board by the applicant and other interested parties.

Planning boards are most frequently asked to review and decide upon applications for special permits and to review and endorse ANR plans.

## Special Permits

When designated by the local zoning bylaw or ordinance the planning board serves as the special permit granting authority (SPGA). In this role, the planning board reviews and takes action upon applications for special permits.

- ⊕ A special permit is a discretionary land use approval that a property owner is required to obtain prior to undertaking certain activities on his/her property. The table of use regulations or the list of permitted uses located in the local zoning bylaw or ordinance indicate what activities require a special permit.
- ⊕ As a discretionary land use approval, the request for a special permit may be denied by the SPGA for projects that the SPGA anticipates will adversely impact the community. Alternatively, the SPGA may approve a request for a special permit subject to conditions and limitations to prevent or mitigate potential adverse impacts of the proposed project.
- ⊕ The local zoning bylaw or ordinance typically includes special permit evaluation criteria used by the SPGA to objectively evaluate whether the proposed activity requiring a special permit will have adverse impacts.
- ⊕ The content and form of an application for a special permit are dictated by the local zoning bylaw or ordinance and the SPGA's special permit rules and regulations.
- ⊕ Special permit rules and regulations are adopted or amended by a majority vote of the planning board after notice and a public hearing. Special permit rules and regulations may include application requirements, a fee schedule, procedures for review, site plan review requirements, etc.
- ⊕ Planning boards (and other boards acting as the SPGA) are encouraged to regularly evaluate and amend their special permit rules and regulations so the review process happens smoothly and efficiently. Examples of special permit rules and regulations can be found at the end of this section under Additional Resources. For more information please see M.G.L. c. 40A § 9.

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- ⊕ M.G.L. c. 40A §§ 9 & 11 set forth the required procedures the SPGA must follow when reviewing and taking action upon applications for special permits. The following is a brief outline of the steps required by these sections.

## **Step 1. Submitting a Special Permit Application**

The special permit process begins when the applicant files a special permit application with the town/city clerk and then files a copy of the application, including the time and date of filing certified by the clerk, with the SPGA. If the special permit application is distributed to other municipal boards for advisory opinions then it is sent to those boards at this time. The act of filing the special permit application starts the clock for the time in which the SPGA must take final action.

An applicant may withdraw a special permit application without prejudice any time prior to the date of the first publication of the notice of the public hearing in the newspaper. The applicant may only withdraw its application after that date without prejudice upon the consent of the majority vote of the SPGA, otherwise the withdrawal of the application is with prejudice and the applicant cannot submit the same application for two years.

## **Step 2. Holding a Public Hearing after Complying with Strict Notice Requirements**

M.G.L. c. 40A § 9 instructs the SPGA to hold a public hearing on the special permit application within 65 days from the date of its filing. The purpose of the public hearing is to allow interested persons the opportunity to provide comments on the special permit application. The statute imposes the following strict notice requirements that the SPGA must meet for the public hearing to qualify.

- 1) Notice must be posted in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of the hearing.

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- 2) Notice must be published in a newspaper of general circulation in the city/town in each of two successive weeks – the first publication to be not less than 14 days before the hearing.
- 3) Notice must be mailed to “parties in interest”, which include the petitioner/applicant, abutters, owners of land directly opposite on any public or private street, abutters to abutters within 300 feet of the property line of the petitioner, the planning board of the town/city, and the planning board of every abutting city or town. Please see M.G.L. c. 40A § 11 for more information on “interested parties.”

**Practical Tip:** The local board of assessors can provide you with a certified abutters list that contains the names and addresses of the abutters within 300 feet of the petitioners/applicants property.

**Practical Tip:** A typical format for a public hearing on a special permit applications is as follows:

- 1) Chairman opens the meeting and then opens the public hearing.
- 2) Applicant presents the project to the SPGA.
- 3) Attendees provide comments to the SPGA.
- 4) Applicant may be given the opportunity to respond to comments and answer additional questions from the SPGA members.
- 5) Chairman closes the public hearing.

**Practical Tip:** The SPGA may continue the public hearing if more time is needed to collect additional information. When the public hearing is to be continued, the SPGA shall clearly identify the place, date and time for the continuation of the hearing.

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### **Step 3. Reviewing Relevant Project Information**

At the same meeting or a subsequent meeting after the close of the public hearing, the SPGA members review all of the information collected including site plans and technical reports and each member formulates his/her opinion on whether to approve, deny or approve subject to conditions the special permit application.

### **Step 4. Voting on the Special Permit Application**

At the same meeting or a subsequent meeting the SPGA members vote on the special permit application. The granting of a special permit requires the unanimous vote of a three member board or the vote of at least four members of a five member board. The decision of the SPGA must be in writing and contain a detailed record of the proceedings, an accounting of the vote of each member and the reasons for its decision. The SPGA has 90 days from the date of the public hearing to make its decision. The 90 day time limit may be extended by mutual agreement of the SPGA and the applicant. Please see M.G.L. c. 40A § 9 for additional information.

### **Step 5. Filing Special Permit Decision with the Town/City Clerk & Sending Certified Copy of the Decision to the Applicant**

The SPGA is required to file its decision within 14 days from the end of the 90 day period mentioned above (or extended time) in the office of the town/city clerk and to send a certified copy of the special permit decision to the applicant (and owner if different). The 20 day appeal period from the special permit decision begins with the filing of the decision with the town/city clerk.

### **Step 6. Sending Notice of the Special Permit Decision**

The SPGA must mail a notice of the special permit decision to the applicant, parties in interest as defined in M.G.L. c. 40A § 11 and every

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person at the public hearing who requested that notice be sent and provided an address. Please see M.G.L. c. 40A § 11 for more information.

## **Step 7. Recording the Special Permit Decision at the Registry of Deeds**

The special permit only takes effect upon the recording of the special permit at the appropriate registry of deeds. The recording must include a certification from the town/city clerk that the 20 day appeal period has passed and no appeal has been filed. Please see M.G.L. c. 40A § 11 for more information.

### **Additional Resources:**

Exhibit "A" of this resource book – *Timeline for the Special Permit Process*

*Decision Making Requirements of the Zoning Act*, Donald J. Schmidt, November 2009  
available at: <http://www.mass.gov/hed/docs/dhcd/cd/zoning/decisionmaking.pdf>

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition,  
Chapter 9 & 10, Wolters Kluwer Law & Business.

Examples of Special Permit Rules & Regulations

- Town of Auburn, MA – *Rules & Regulations for Applications for Special Permits and Site Plan Approvals*, available at:  
[http://www.auburnguide.com/Pages/AuburnMA\\_planning/RulesRegs.pdf](http://www.auburnguide.com/Pages/AuburnMA_planning/RulesRegs.pdf)
- Town of Stow, MA – *Town of Stow Planning Board Rules & Regulations for Special Permits*, available at: [http://www.stow-ma.gov/pages/StowMA\\_Planning/Rules%20and%20Regulations/SpecialPermitRules.pdf](http://www.stow-ma.gov/pages/StowMA_Planning/Rules%20and%20Regulations/SpecialPermitRules.pdf)

### Site Plan Approval (As-Of-Right)

When designated by the local zoning bylaw or ordinance the planning board serves as the site plan approval board. In this role, the planning board reviews and takes action upon applications for site plan approval.

A great deal of confusion surrounds the term site plan approval. For our purposes, the term site plan approval describes an administrative review of a project with regards to its layout, scale, appearance, safety and environmental impacts. The review is conducted by the municipal board designated as the site plan approval board in the local zoning bylaw or ordinance.

Site plan approval must be used in conjunction with the special permit process or the as-of-right building permit process. This section describes site plan approval in conjunction with the as-of-right building permit process. When site plan approval is used in conjunction with a special permit process, the site plan approval process typically occurs as part of the special permit process and does not warrant further discussion at this time.

When site plan approval is required as part of the as-of-right building permit process, an applicant must obtain site plan approval from the designated site plan approval board prior to applying for a building permit. It is often stated that site plan approval (as-of-right) can only be used to shape a project.

- ⊕ The Zoning Act (M.G.L. c. 40A) makes no mention of site plan approval used in conjunction with the as-of-right building permit process. The site plan approval (as-of-right) process has been accepted by the courts as a legitimate exercise of municipal authority.
- ⊕ Site plan approval (as-of-right) cannot be used to deny<sup>1</sup> a project that complies with your local zoning bylaw or ordinance. The site plan approval board has the authority to approve a site plan or approve a site plan with conditions.

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<sup>1</sup> Only in very rare cases can a site plan approval (as-of-right) be denied. *See Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 9, Wolters Kluwer Law & Business.

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- ⊕ The following is a brief outline of the typical steps in the site plan approval or site plan review (as-of-right) process. Please check your local zoning bylaw or ordinance to learn if your municipality has adopted site plan approval (as-of-right), and if so, to learn the exact process that is used in your municipality (as the process has not yet been standardized).

## **Step 1. Submitting a Site Plan Approval Application**

The contents and form of an application for site plan approval (as-of-right) are dictated by the local zoning bylaw or ordinance and the board's rules and regulations (if any). A complete application is submitted to the site plan approval board.

## **Step 2. Reviewing the Site Plan Approval Application**

The site plan approval board reviews the site plan approval application during a public meeting and discusses the site plan application with the applicant. A public hearing is not required as part of the site plan approval (as-of-right) process unless the zoning bylaw or ordinance requires that such a hearing be held.

## **Step 3. Voting on the Site Plan Approval Application**

The site plan approval board votes to approve, approve with conditions or deny<sup>2</sup> the site plan approval application. A site plan approval is typically approved by a majority vote of the site plan approval board, unless the zoning bylaw or ordinance requires a greater majority. The reasons for the decision of the site plan approval board need not be in writing. The decision of the site plan approval board is then communicated to the applicant.

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<sup>2</sup> See Footnote # 1.

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## **Step 4. Applying for a Building Permit**

The applicant who obtained site plan approval then applies for a building permit from the building inspector. If any conditions are placed on the site plan approval, the building inspector should incorporate those conditions into the building permit.

### **Additional Resources:**

*Site Plan Review*, Citizens Planner Training Collaborative, available at:

[http://masscptc.org/documents/core-documents/Site%20Plan%20Review%20Module2%20\\_1\\_.pdf](http://masscptc.org/documents/core-documents/Site%20Plan%20Review%20Module2%20_1_.pdf)

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 9, Wolters Kluwer Law & Business.

### Subdivisions & Approval Not Required (ANR) Discussion

For the sake of simplicity, Massachusetts General Law includes two separate review processes for the division of a single tract of land into two or more lots. The circumstances of the tract of land will dictate what approval process is required to legally establish the additional lots<sup>3</sup>. A summary of the two processes and a more detailed discussion are provided below.

**ANR Review Process:** The ANR review process ensures that lots have frontage and access along a way. Generally stated, if at the time the application is made the tract of land (1) has the frontage required by the zoning bylaw or ordinance, (2) on an existing public way or private way, (3) having in the opinion of the planning board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic then the more extensive subdivision review is not required. A tract of land that meets these criteria is entitled to an endorsement by the planning board of the ANR plan that approval under the subdivision control law is not required.

**Subdivision Review Process:** The division of a single tract of land into two or more lots that do not meet the requirements for an ANR endorsement must undergo the complete subdivision review process.

A simple way to conceptualize the difference is that lots on existing roads may be eligible for the ANR review process. Similarly anytime a new road is proposed it will always require the full subdivision review process. Both of these review processes are discussed in greater detail below.

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<sup>3</sup> The use of the term lot here does not mean a “buildable lot.”

## Approval Not Required (ANR) Process

The planning board is designated by M.G.L. c. 41 § 81P as the municipal board responsible for reviewing and taking action on approval not required plans sometimes known as a “form A” or an “ANR plan”. The purpose of the ANR process is to provide a simple method to inform the register of deeds that the planning board is not concerned with the proposed division of land as shown on the plan.

- ⊕ A division of a single tract of land is entitled to the endorsement of the planning board under the ANR process if the circumstances of the land to be divided are as follows:
  1. Each lot created by the ANR plan must have the requisite frontage as set forth in the local zoning bylaw or ordinance.
  2. The frontage of each lot must exist on (1) a public way or a way which the clerk certifies is maintained and used as a public way, or (2) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (3) a way in existence when the subdivision control law became effective in the city or town in which the land lies,
  3. In the opinion of the planning board, the way has sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to such land and building erected or to be erected thereon.
- ⊕ If the planning board finds that the ANR plan shows all of these criteria being met, the planning board must endorse the ANR plan as not requiring subdivision approval. The planning board has no discretion to refuse to endorse the ANR plan if these criteria are met.

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- ⊕ If the planning board finds that the ANR plan does not meet all three of these criteria, it should refuse to endorse the ANR and direct the applicant to commence the subdivision review process.
- ⊕ There are a number of important cases interpreting the ANR process and its many peculiarities concerning frontage, access, status of ways, etc..., well beyond what is appropriate to discuss in this guidebook. For additional information please see the list of resources at the end of this section.
- ⊕ The following is a brief outline of the typical steps in the ANR review process.

### **Step 1. Submitting ANR Plan to Planning Board**

The applicant submits the ANR plan to the planning board and then provides notice to the town/city clerk of the submittal.

### **Step 2. Planning Board Reviews Plan to See if Subdivision is Required**

The planning board reviews the ANR plan at a public meeting to determine if all three criteria are met to warrant the endorsement of the ANR plan. If the planning board finds that the ANR plan is not required to go through the full subdivision process, by majority vote, the planning board shall endorse the ANR plan. No public hearing is required before a planning board endorses an ANR plan. If the planning board finds that such ANR plan must go through the full subdivision process it shall refuse to endorse the ANR plan.

### **Step 3. Planning Board Provides a Notice of its Decision to the Clerk and the Applicant**

If the Planning Board endorses the ANR plan it shall provide the applicant with notice of its decision to endorse and provide the applicant with the signed ANR plan for recording with the register of deeds.

If the Planning Board refuses to endorse the ANR plan it shall within 21 days of the submittal provide notice to the town/city clerk of its refusal

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to endorse the ANR plan and provide notice to the applicant of its decisions. Failure to provide notice to the town/city clerk within 21 days may result in a constructive approval of the ANR plan.

**Practical Tip:** Contrary to common practice, the planning board need not review and endorse an ANR plan at the same meeting upon seeing it for the first time. The allowable review period is 21 days from the submittal of the ANR plan.

### **Additional Resources:**

*The ANR Handbook*, MA Department of Housing & Community Development, January 1997 (revised September 2010) available at:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/anrhandbook.pdf>

*ANR's and Ancient Ways*, Alexandra Dawson, Highland Communities Initiative, 2005, available at <http://masscptc.org/documents/core-documents/ANR-AncientWay.pdf>

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 15, Wolters Kluwer Law & Business.

## Subdivision Review Process

The planning board is designated by M.G.L. c. 41 §§ 81K-81GG as the municipal board responsible for reviewing and taking action on applications for the subdivision of land. The purpose of the subdivision control law is to protect the safety, convenience and welfare of the inhabitants of a municipality by regulating the laying out and construction of ways in subdivisions and by ensuring sanitary conditions in the subdivision.

- ⊕ The planning board is required to adopt, after proper notice and a public hearing, reasonable rules and regulations not inconsistent with the subdivision control law to administer the subdivision process.
- ⊕ Unlike zoning amendments, subdivision rules and regulations are adopted or amended by a majority vote of the planning board after notice and a public hearing. Planning boards are encouraged to regularly evaluate and amend their subdivision rules and regulation to meet the changing needs of the community. Examples of subdivision rules and regulations can be found at the end of this section under Additional Resources. For more information please see M.G.L. c. 41 § 81Q.
- ⊕ A true copy of the subdivision rules and regulations must be kept on file in the office of the planning board and the office of the town clerk. A certified copy of the rules and regulations and any amendments thereto must be sent to the register of deeds and the recorder of the Land Court.
- ⊕ Any subdivision plan that conforms to the recommendations of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions shall receive the approval of the planning board (i.e. the planning board must approve subdivisions that meet the requirements – there is no discretion involved)
- ⊕ The planning board may waive strict compliance with its rules and regulations where such action is in the public interest and not inconsistent with the intent and

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purpose of the subdivision control law. The decision to issue a waiver is at the discretion of the planning board.

- ⊕ The following is a brief outline of the typical steps in the subdivision review process.

## **Step 1. Submitting a Preliminary Plan**

The submission of a preliminary plan is voluntary for residential subdivisions and required for non-residential subdivisions. The form and contents of the preliminary plan are defined entirely by the local subdivision rules and regulations.

The preliminary plan is submitted to the planning board and board of health and the town/city clerk is notified of the submission. The submission will oftentimes include a list of requested waivers for the planning board to consider.

## **Step 2. Decision on Preliminary Plan**

The planning board and board of health have 45 days to render a decision on the preliminary plan. Notice of the decision shall be mailed to the applicant and town/city clerk. If the plan is disapproved, the board shall state its reason for denial.

## **Step 3. Submitting a Definitive Plan**

The applicant delivers the definitive plan at a meeting of the planning board or sent by registered mail and a copy is filed with the board of health. Notice of the filing is sent by the applicant to the town/city clerk. The submission will typically contain a list of requested waivers for the planning board to consider.

**Practical Tip:** In complex cases, the planning board may obtain the services of an engineering firm to assist the board in its review of the proposed subdivision plan.

#### **Step 4. Decision by Board of Health on Definitive Plan**

The board of health has 45 days from the date of submission to render a decision. The board of health decision should indicate its approval or disapproval and for disapprovals the board shall make specific findings as to which if any areas shown are not suitable for building sites and the reasons therefore. A planning board cannot approve a definitive plan that does not conform to the recommendations of the board of health.

#### **Step 5. Holding a Public Hearing after Meeting Strict Notice Requirements**

The planning board holds a public hearing to provide the public an opportunity to provide comments on the proposed definitive plan. The statute imposes the following strict notice requirements that the planning board must meet for the public hearing to qualify.

- 1) Notice must be posted in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of the hearing.
- 2) Notice must be published in a newspaper of general circulation in the city/town in each of two successive weeks – the first publication to be not less than 14 days before the hearing.
- 3) Notice must be mailed to the applicant and owners of land abutting the land proposed for a subdivision.

Practical Tip: A typical format for a public hearing on a special permit application is as follows:

- (1) Chairman opens meeting and then opens the public hearing.
- (2) Applicant presents the proposed subdivision to the planning board.
- (3) Attendees provide comments to the planning board.
- (4) Applicant may be given the opportunity to respond to comments and answer additional questions from the planning board members.
- (5) If the planning board has collected all the information it believes necessary to make a decision the Chairman closes the public hearing. Alternatively, if the planning board needs to collect additional information the Chairman will continue the public hearing to a specific place, date and time to collect the additional information, then the Chairman closes the public hearing.

### **Step 6. Deciding on the Definitive Subdivision Plan**

After the public hearing and receipt of the board of health report, the planning board will vote to approve, approve with modifications or disapprove the definitive plan. A majority vote of the planning board members is required to take action. In a decision to disapprove a definitive plan, the reasons for such disapproval must be included. The planning board has 90 days to take action on a non-residential subdivision; 90 days for a residential subdivision which a preliminary plan was submitted; and 135 days for a residential subdivision where no preliminary plan was submitted or in which 45 days has not elapsed since the submission of the preliminary plan. The time for the planning board to act may be extended at the written request of the applicant. The failure of the planning board to take final action in the allotted time may result in a constructive approval of the definitive plan.

### **Step 7. Notifying the Applicant and the Town/City Clerk**

The planning board shall notify the applicant and the town/city clerk of its decision by certified mail.

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## **Additional Resources:**

Exhibit “B” of this resource book – *Timeline for the Subdivision Review Process*

*Overview of the Subdivision Control Law*, MA Department of Housing & Community Development, October 1996 (revised December 2009) available at:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/overviewofthesubdivision.pdf>

*Municipal Planning & Subdivision Legislation – Annotated*, Massachusetts Department of Housing & Community Development, November 2008, available at

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/subdivisioncontrollaw.pdf>

*Procedural Requirements of the Subdivision Control Law*, Donald J. Schmidt, November 2009, available at:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/proceduralrequirements.pdf>

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Wolters Kluwer Law & Business.

## Examples of Subdivision Rules & Regulations

- Town of Westborough, MA – *Rules & Regulations Governing the Subdivision of Land in Westborough, Massachusetts*, available at:  
<http://edc.town.westborough.ma.us/files/downloads/Subdivision-Rules-&-Regulations.pdf>
- Town of Great Barrington, MA - *Rules & Regulations Governing the Subdivision of Land – Town of Great Barrington, MA*, available at:  
[http://www.townofgb.org/pages/gbarringtonma\\_bos/bylaws/Chapter%20240subdivisionrules&regs.pdf](http://www.townofgb.org/pages/gbarringtonma_bos/bylaws/Chapter%20240subdivisionrules&regs.pdf)

### Other Permitting/Approval Responsibilities of the Planning Board

- ⊕ **Alteration of Scenic Roads:** For locally designated scenic roads under M.G.L. c. 40 § 15C, the planning board is designated as the permitting board. Any repair, maintenance, reconstruction or paving work done with respect to the designated road shall not involve or include cutting or removal of trees or the tearing down or destruction of stone walls except with the prior written consent of the planning board. Prior to issuing its decision the planning board must hold a properly noticed public hearing to obtain public input on the proposed work.
- ⊕ **Advisory Opinions:** When another municipal board is acting as the permitting authority, the planning board may be asked to provide an advisory opinion on a proposed project. The time limit to provide comments to the permitting authority is typically thirty days or as otherwise set by the local zoning bylaw or ordinance.
- ⊕ **Party in Interest:** The planning board is identified as a party in interest in the Zoning Act (M.G.L. c. 40A) and as such is entitled to notice of public hearings from other boards. The designation as a party in interest also provides the planning board with standing to appeal a decision made by another board under the Zoning Act.

#### **Additional Resources:**

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 19 (scenic roads), Wolters Kluwer Law & Business.

## Planning Overview

As Benjamin Franklin aptly noted, “by failing to prepare, you are preparing to fail.” This statement cannot be more true as applied to land use planning. History has shown us that growth and development are coming to our municipalities. A community can plan for its development and growth in an orderly fashion to achieve the collective vision of its residents. Alternatively, the community can do no planning and the growth and development will likely occur in a disorganized and ad hoc manner that oftentimes is divisive and detrimental to the community. In Massachusetts, the planning board is charged with planning for the future growth, development and preservation of a community’s land use resources. This important task is oftentimes the most neglected task as many planning boards are consumed by the permitting of projects and approval of subdivisions and ANR plans. Many planning board members feel there is just not enough time in their monthly or bi-monthly regular meetings to take on such work. If that is the situation, planning boards may wish to consider delegating planning tasks to advisory committees or subcommittees or hiring outside consultants to assist the planning board with this important work.

Planning boards are tasked with two equally important planning tasks and a number of minor ones. Planning boards are required to adopt a master plan as set forth in M.G.L. c. 41 § 81D. In addition, planning boards are identified in M.G.L. c. 40A § 5 as a municipal body with the authority to initiate an amendment to the local zoning bylaw or ordinance and are required to hold public hearings on such amendments. Both of these topics and several others are discussed in this section in greater detail.

## Master Plans

The process of developing a master plan is a long and involved one that will not easily be accomplished during the regular meetings of a planning board. Many communities have formed a master plan advisory committee and obtained the services of a consultant. In this scenario, the advisory committee and the consultant are tasked with conducting public outreach and developing a draft master plan for the planning board to review and adopt. Public outreach and engagement is an important component of developing a master plan.

**Practical Tip: Obtain the services of a planning consultant to assist with the public outreach and development of a master plan.**

- ⊕ Planning boards are required to adopt a master plan in accordance with M.G.L. c. 41 § 81D; however, a municipality that does not adopt a master plan faces no legal consequences.
  
- ⊕ § 81D lays out the topics that must be included in a master plan. The required topics are:
  - Goals & Policies
  - Land Use
  - Housing
  - Economic Development
  - Natural & Cultural Resources
  - Open Space & Recreation
  - Public Services & Facilities
  - Circulation
  - Implementation
  
- ⊕ Other than addressing the required topics, there is no required format for a master plan. § 81D provides that *“such plan shall be a statement, through text, maps, illustrations or other forms of communication that is designed to provide the basis for decision making regarding the long term physical development of the municipality.”* Thus, planning boards have wide latitude as to the complexity and contents of its master plan.

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- ⊕ A master plan is adopted by a majority vote of the planning board. A planning board is not required to hold a public hearing prior to voting on the master plan, but holding a public hearing is strongly encouraged.
- ⊕ § 81D contains no specific requirement that master plans be updated. The prevailing best practice is to update a master plan approximately every ten years or where changed circumstances necessitate an update.

## **Additional Resources:**

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 12, Wolters Kluwer Law & Business.

*Municipal Planning & Subdivision Legislation – Annotated*, Massachusetts Department of Housing & Community Development, November 2008, available at <http://www.mass.gov/hed/docs/dhcd/cd/zoning/subdivisioncontrollaw.pdf>

## Examples of Adopted Master Plans - Massachusetts

- City of North Adams, MA (population 13,533) – *Vision 2030 (2014)*, available at: <http://vision2030.wp.northadams-ma.gov/documents-for-review/>
- Town of Great Barrington, MA (population 7,527) – *Community Master Plan (2013)*, available at: [http://www.townofgb.org/pages/gbarringtonma\\_mstercomm/index](http://www.townofgb.org/pages/gbarringtonma_mstercomm/index)
- City of Malden, MA (population 60,059) – *Master Plan (2010)*, available at: [http://www.cityofmalden.org/sites/default/files/malden\\_master\\_plan\\_final\\_072010.pdf](http://www.cityofmalden.org/sites/default/files/malden_master_plan_final_072010.pdf)
- Town of Harvard, MA (population 5,981) – *Master Plan (2002)* available at: [http://www.harvard.ma.us/Pages/HarvardMA\\_BComm/Planning/master](http://www.harvard.ma.us/Pages/HarvardMA_BComm/Planning/master)

## Zoning Amendments

- ⊕ The planning board will become involved in the zoning amendment process in one of two scenarios.

Scenario 1. The planning board on its own initiative or at the request of another person develops an amendment to the local zoning bylaw or ordinance and then initiates the amendment process by submitting the proposed amendment to the board of selectmen or city council (see step 1 and beyond below). In this situation, the planning board is the sponsor of the zoning amendment.

Scenario 2. Another person or board initiates the amendment process by submitting the proposed amendment to the board of selectmen or city council. In this scenario, the planning board is not the sponsor and the planning board's sole responsibility is to hold a properly noticed public hearing and to make a report to the town meeting or city council (see step 4 and beyond below).

- ⊕ M.G.L. c. 40A § 5 sets forth the required procedure to adopt, amend or delete a zoning bylaw or ordinance. For the purposes of this section, the term "statute" refers to M.G.L. c. 40A § 5. The following is a brief outline of the steps required by the statute. If you prefer more detailed information on this topic please see the list of additional resources at the end of this section.

### **Step 1. Development of the Zoning Amendment Proposal**

Although this step is not explicitly listed in the statute, the implication is that someone has to develop a proposal to amend the local zoning bylaw or ordinance. The development of a proposal to amend the local zoning bylaw or ordinance can be done by the planning board, a resident or other municipal board. If the board or individual is not an eligible entity to initiate the zoning process as described in step 2 then an eligible board or resident(s) must be convinced to initiate it.

Practical Tip: Planning boards are encouraged to regularly evaluate and amend their local zoning bylaws or ordinances as conditions change and new technologies emerge.

## **Step 2. Initiate the Zoning Amendment Process**

The statute identifies the eligible parties which can initiate the zoning amendment process by submitting a proposal to amend the local zoning bylaw or ordinance to the city council or board of selectmen.

- 1) City Council/Board of Selectmen
- 2) Board of Appeals (ZBA)
- 3) Planning Board
- 4) Individual owning land affected by the proposal
- 5) Petition of 10 registered voters in a city
- 6) Petition of 10 registered voters for an annual town meeting
- 7) Petition of 100 registered voters for a special town meeting
- 8) Regional Planning Agency

## **Step 3. Referral to the Planning Board for a Public Hearing**

The statute instructs the city council or board of selectmen to refer the proposal to amend the local zoning bylaw or ordinance to the planning board within 14 days of its receipt. The city council or board of selectmen shall take action to ensure that the proposal to amend the local zoning bylaw or ordinance is acted upon by the legislative body (i.e. by a vote of the city council in a city or by a vote of the residents at a town meeting in a town).

## **Step 4. Planning Board holds a Public Hearing after Complying with Strict Notice Requirements**

The statute instructs the planning board to hold a public hearing on the proposal to amend the local zoning bylaw or ordinance within 65 days from its receipt. The purpose of the public hearing is to allow interested

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persons the opportunity to provide comments on the proposed amendment. The statute imposes the following strict notice requirements that the planning board must meet for the public hearing to qualify under the statute.

- 1) Notice must be posted in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of the hearing.
- 2) Notice must be mailed to the Massachusetts Department of Housing & Community Development, the regional planning agency, the planning board of each abutting city/town, and to non-resident property owners who have made a request with the city/town clerk.
- 3) Notice must be published in a newspaper of general circulation in the city/town in each of two successive weeks – the first publication to be not less than 14 days before the hearing.

**Practical Tip:** Record the dates on which the notice is posted in the city/town hall and mailed to the required parties. Clip the public notices from the newspaper ensuring that the date of publication is included. You will need this information when submitting the adopted zoning amendment to the Attorney General's office for approval.

**Practical Tip:** A typical format for a public hearing on a proposal to amend a local zoning ordinance or bylaw is as follows:

- 1) Chairman opens the meeting and then opens the public hearing.
- 2) Proponent of the proposal to amend the zoning bylaw or ordinance presents the proposal to the planning board.
- 3) Attendees provide comments to the planning board.
- 4) Chairman closes the public hearing.
- 5) Planning board members discuss the proposal at the meeting and formulate a report to the legislative body (see step 5 below).

## **Step 5. Planning Board Prepares a Report for the Legislative Body**

The statute provides that no vote to adopt a proposed amendment may be taken until the planning board submits its recommendations or 21 days has elapsed since the date of the public hearing. The report of the planning board typically contains a recommendation to either accept the proposal, reject the proposal or accept the proposal with changes.

## **Step 6. Vote to Adopt the Proposal by the Legislative Body**

The proposal to amend the local zoning bylaw or ordinance will be taken up for a vote at a future session of the legislative body. In cities, the city council will process the proposal according to its rules and regulations eventually resulting in a vote on the proposal. In a town, the residents or elected representatives will vote to adopt the proposal at an annual or special town meeting. The adoption of a zoning amendment requires a supermajority, two-thirds vote. If the proposal is not adopted the process ends in both cities and towns. If the proposal is adopted the process ends in cities, but towns have to take several additional steps as outlined in Step 7 below.

**Practical Tip:** One common misconception is that a zoning amendment defeated by the legislative body cannot be re-introduced within two years of the date of its defeat. The truth is that a zoning amendment defeated by the legislative body can be re-introduced within two years of the date of its defeat with the consent of the planning board.

## **Step 7. Referral of the Adopted Amendment to the Attorney General's Office for Review**

In accordance with M.G.L. c. 40 § 32, the town clerk must submit certified copies of the zoning amendment along with adequate proof that the procedural requirements of M.G.L. c. 40A § 5 have been met. The Attorney General has 90 days to review the zoning bylaw or ordinance

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and can either accept, accept with changes or reject the zoning amendment. Upon acceptance of the zoning amendment by the Attorney General, the town clerk is responsible for posting, publishing or delivering the zoning amendment in accordance with M.G.L. c. 40 § 32. If the zoning amendment is rejected by the Attorney General it never becomes law and the local zoning bylaw or ordinance in effect prior to the town meeting remains in effect.

### **Additional Resources:**

*Adopting and Amending Zoning Bylaws*, Donald J. Schmidt, November 2009, available at: <http://www.mass.gov/hed/docs/dhcd/cd/zoning/adoptingamending.pdf>

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 3, Wolters Kluwer Law & Business.

*The Zoning Act – Annotated*, Massachusetts Department of Housing & Community Development, August 2010, available at: <http://www.mass.gov/hed/docs/dhcd/cd/zoning/zoningact.pdf>

*Tips on Drafting Bylaws*, Bob Ritchie, Citizens Planner Training Collaborative, available at: <http://masscptc.org/documents/core-documents/bylaw-writing.html>

## Other Planning Considerations for Planning Boards

- ⊕ **Scenic Road Designations:** The planning board is one of three municipal boards that can initiate the process to designate a local road as a “scenic road” within the meaning of M.G.L. c. 40 § 15C. The effect of a scenic road designation is that any work in the public right-of-way that involves the cutting of trees or alteration of stonewalls along the scenic road can only be done after obtaining a permit from the planning board. The purpose of the designation is to protect the scenic, aesthetic and historic aspect of the designated roads. A vote of the legislative body is required to designate a local road as a scenic road. For more information please see M.G.L. c. 40 § 15C.
  
- ⊕ **Official Map:** A planning board may adopt an official map that shows the public ways and parks therein as laid out and established by law and the private ways then existing and used in common by more than two owners. For more information please see M.G.L. c. 41 § 81E.

### **Additional Resources:**

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Chapter 19 (scenic roads) and Chapter 1 (official maps), Wolters Kluwer Law & Business.

# PLANNING BOARD ORGANIZATION & OPERATIONS

## Organizational and Operational Considerations

This section briefly describes some of the organizational and operational considerations for planning boards.

- ⊕ **Meetings.** Planning boards typically have a set meeting schedule and meet at additional times as needed to responsibly conduct its business in a timely manner.
- ⊕ **Rules & Regulations.** The planning board as a public body may adopt rules and regulations to manage its business and affairs in an orderly fashion.
- ⊕ **Fees.** A planning board is allowed to charge fees to offset the cost of its operation attributable to a particular applicant. Planning boards are encouraged to review and update its fee schedule to ensure the fees are sufficient to offset costs.
- ⊕ **Open Meeting Law.** The planning board is subject to the requirements of the Open Meeting Law to ensure transparency in all the actions that it takes. The Open Meeting Law has a number of requirements that the planning board must follow. For additional information please see the Attorney General's Open Meeting Law Guidebook.

Open Meeting Law Guide: <http://www.mass.gov/ago/docs/government/oml/oml-guide.pdf>

- ⊕ **Public Records Laws.** The planning board as a public body is required to follow the Public Records Laws (M.G.L. c. 66) and the requirements set forth therein.

A Guide to the Massachusetts Public Records Law:  
<http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

- ⊕ **Distinction Between a Public Meeting and a Public Hearing.** A public meeting is a meeting of a public body at which the public have the right to attend and observe, but no right to speak or provide input. A public hearing is a formal period of time

## PLANNING BOARD ORGANIZATION & OPERATIONS

within a public meeting where the public are invited to speak and provide input on a specific issue.

- ⊕ **Development Review Fees.** Planning boards are encouraged to adopt development review fees that require an applicant to pay the cost for the board to hire a technical expert to peer review complicated or technical material contained in an application. This requirement is sometimes adopted in conjunction with M.G.L. c. 44 § 53G which allows a board to create an independent revolving account to keep the applicant's fees separate from the municipality's general fund.
- ⊕ **Associate Members.** M.G.L. c. 40 § 9 allows a special permit granting authority through its local zoning bylaw or ordinance to have an associate member that will take the place of an absent member during the special permit process. This helps alleviate some difficulty boards have with meeting the supermajority vote requirement for special permits.
- ⊕ **Filling Planning Board Vacancies.** A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term, in a city, in the same manner as an original appointment, and, in a town, if the members of the board are appointed, in the same manner as the original appointment. If the members of a planning board are elected, any unexpired term shall be filled by appointment by the board of selectmen and the remainder of the members of the planning board until the next annual election, at which time, such office shall be filled, by election. Please see M.G.L. c. 41 § 81A.

### **Additional Resources:**

*Handbook of Massachusetts Land Use & Planning Law*, Mark Bobrowski, 2011, 3<sup>rd</sup> edition, Wolters Kluwer Law & Business.

## FREQUENTLY REFERENCED STATE LAND USE LAWS

### Frequently Referenced State Land Use Laws

The following section contains a brief description of the frequently referenced state land use laws. For additional information about these laws please explore the reference material following each topic.

**Home Rule Amendment (Massachusetts Constitution Article LXXXIX, § 6)** – With the adoption of the Home Rule Amendment in 1966 the state legislature granted to municipalities the authority to exercise any power through the adoption of an ordinance, by-law or charter that the state legislature has the authority to delegate. However, this grant of authority is limited to those powers not reserved to the Commonwealth, those powers not denied by a municipality’s charter, and those powers that do not conflict with the state constitution and laws enacted by the state legislature. The bottom line is that the home rule amendment may serve as the legal basis for innovative local land use regulations not mentioned elsewhere in state law.

*What is Home Rule*, Massachusetts Department of Revenue – Division of Local Services, available at: <http://www.mass.gov/dor/docs/dls/mdmstuf/technical-assistance/best-practices/homerule.pdf>

**The Zoning Act (M.G.L. c. 40A)** – The Zoning Act is arguably the most important state land use law containing a number of requirements and procedures that municipalities must follow. The Zoning Act sets forth the requirements, procedures and limitations that a municipality must adhere to when taking certain land use actions. Topics such as zoning amendments, special permits, vested rights, variances, administrative and judicial appeals and zoning exemptions are all covered in the Zoning Act. It is no secret that the Zoning Act is confusing and difficult to read; however, it covers numerous issues that you will likely be faced with in your work on the planning board so the more familiar you can become with it the easier your work on the planning board will be.

The most recent version of the Zoning Act can be found at:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A>

## FREQUENTLY REFERENCED STATE LAND USE LAWS

**Subdivision Control Law (M.G.L. c. 41 §§ 81K-81GG)** - The primary purpose of the Subdivision Control Law is to protect the safety, convenience and welfare of the inhabitants of a municipality by regulating the laying out and construction of ways in subdivisions and by ensuring sanitary conditions on the lots in the subdivision. The approval not required or ANR process is set forth in the Subdivision Control Law. The Subdivision Control Law must be accepted by a municipality before it comes into effect. The Subdivision Control Law together with the local subdivision rules and regulations are the controlling regulations for the subdivision of land in a municipality.

The most recent version of the Subdivision Control Law can be found at:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41>

**Comprehensive Permits (M.G.L. c. 40B §§ 20-23)** – These sections, sometimes referred to as the Anti-Snob Zoning Act, establish a procedure for the state to override local land use regulations or actions taken that result in the exclusion of low income or moderate income housing developments. It is the responsibility of the Zoning Board of Appeals to handle comprehensive permits.

The most recent version of the Anti-Snob Zoning Act can be found at:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40B>

*Also see:*

*Chapter 40B Planning*, Massachusetts Department of Housing & Community Development, available at: <http://www.mass.gov/hed/community/40b-plan/>

**Master Plans (M.G.L. c. 41 § 81D)** – This section sets forth the requirement that municipalities adopt a master plan (although there are no legal consequences if a municipality does not adopt such a plan) and the elements to be included in a master plan. The master plan is an important document that sets forth the vision for a municipality and the strategies for how the municipality can achieve that vision. The planning board of a municipality is responsible for adopting a master plan.

The most recent version of the Master Plan legislation can be found at:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41>

## CONTACT INFORMATION

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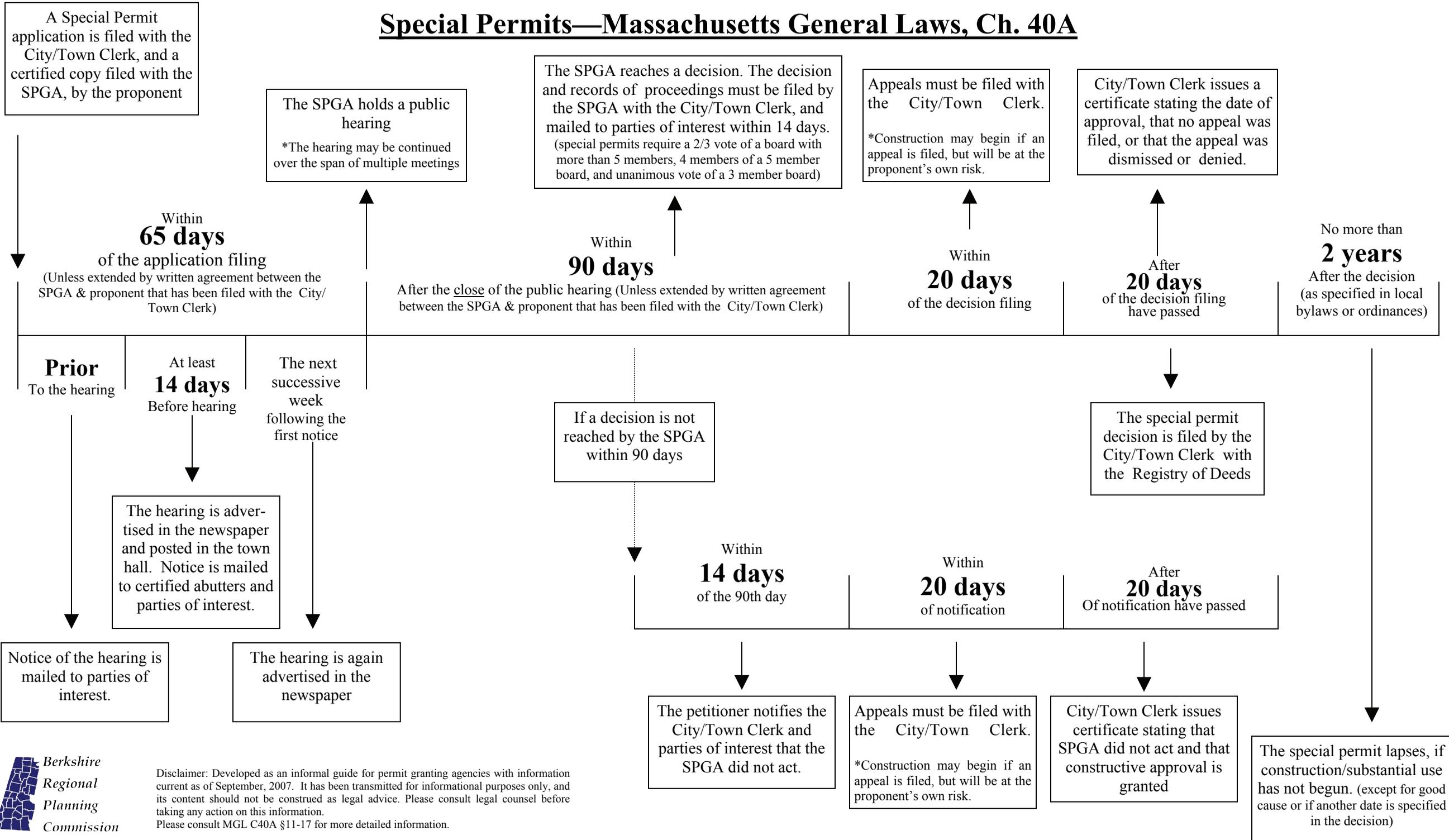
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**EXHIBIT "A"**

*Timeline for the Special Permit Process*

# Special Permits—Massachusetts General Laws, Ch. 40A

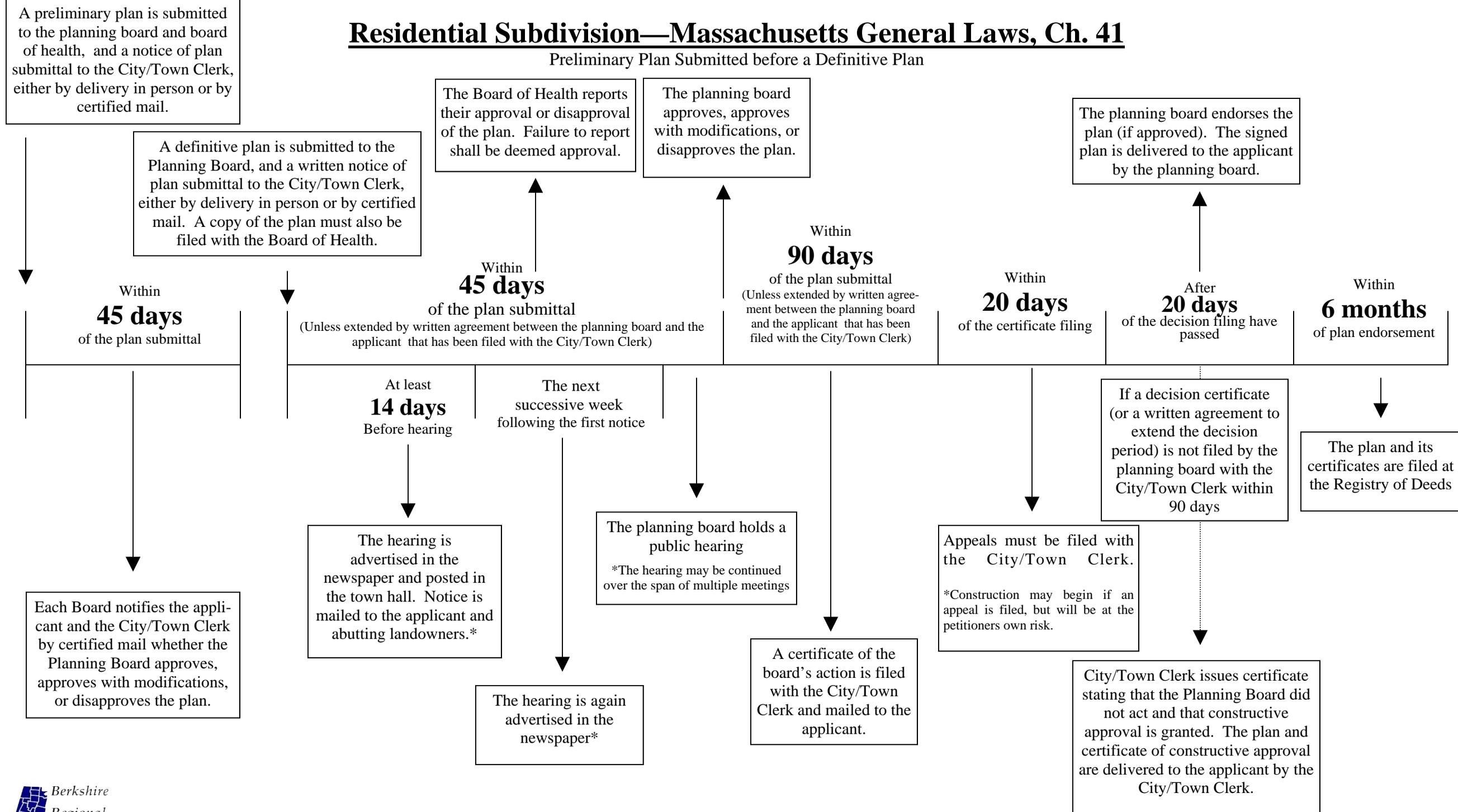


**EXHIBIT "B"**

*Timeline for the Subdivision Process*

# Residential Subdivision—Massachusetts General Laws, Ch. 41

Preliminary Plan Submitted before a Definitive Plan



Disclaimer: Developed as an informal guide for permit granting agencies with information current as of September, 2007. It has been transmitted for informational purposes only, and its content should not be construed as legal advice. Please consult legal counsel before taking any action on this information. Please consult MGL C41 for more detailed information.

\* = at the expense of the applicant.