

Massachusetts Citizen Planner Training Collaborative

Roles & Responsibilities of Planning & Zoning Boards Part I



Overview



- Massachusetts is a home rule state and a vast majority of land use decisions are made at the local level.
- However, there are State and Federal exceptions to local control.
- Chapter 40A is “The Zoning Act”, not the Zoning Enabling Act. This is an important distinction.
- There are many other laws, rules and regulations besides zoning and subdivision that have a relationship to local land use issues.

What We Cover

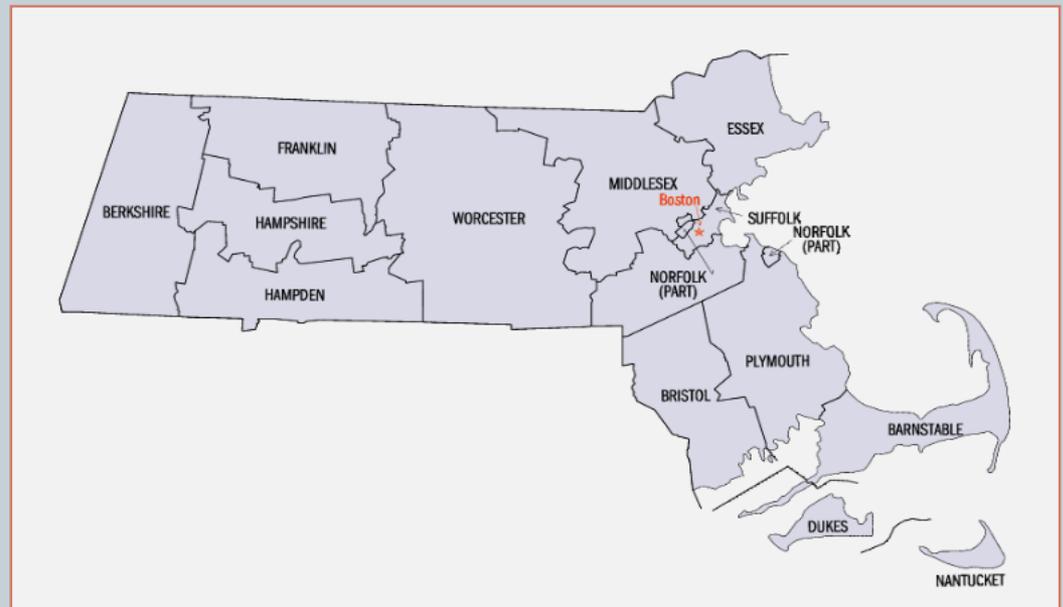


PART I

- Roles of planning and zoning boards – Administration, Duties & Management
- Public Hearings, Voting
- Zoning
- Planning
- Subdivision
- Other planning topics
- Sources of support

PART II (If part of this presentation.)

- Open Meeting
- Public Records
- Conflict of Interest
- Sources of support



Welcome to the Board



An Effective Board Member Knows:

- Authority of the Board and its duties
- How a the Board operates (and how it should operate)
- Standards for decision-making by the Board
- Legal aspects of Board conduct
- Regulations, Laws and Plans applicable to your Board:
The Master Plan; the Zoning Bylaw/Ordinance; the Subdivision Regulations; your Board's own Rules & Regulations; Chapters 40A, 41 and other M.G.L. chapters
- Other local relevant plans or regulations

The Town/City Hall Team



These can include:

- Town Clerk: Filing, posting
- Building Inspector: Zoning enforcement
- Planner/Planning Department: staff support
- Conservation Commission: Wetlands protection
- Board of Health: Title 5; subdivision review
- Historic Commission: Historic districts
- Municipal Counsel: legal support
- Chief Administrator & Executive Officer
(Select Board, Mayor, Town/City Manager)
- Finance/Advisory Committee: Budgets
- Town Engineer: plan/subdivision review & inspection
- Other boards and staff

The Town/City Hall Team



Cooperate, don't litigate

Ways to Cooperate:

- All-boards meetings
- Joint reviews/hearings
- Shared computer database/permit tracking
- Circulation list for all applications
- Development review process manual
- Understanding each board's responsibilities
- Staff sharing

Planning and Zoning Boards



Planning Board Composition



- 5, 7, or 9 members
- 3-5 years staggered terms
- Elected or appointed
- Associate members allowed for special permits (may be allowed for Site Plan Review depending on SPR procedure & city/town local law.)

Designated by chair.

- 5 member board = 1 associate
- 7 or 9 member board = 2 associates
- use associate members for absence, inability to act, conflict, or vacancy

Zoning Board of Appeals Composition



- 3 or 5 members
- Typically appointed
- Associate members allowed
 - Designated by chair
 - Can act in case of:
 - absence
 - inability to act
 - conflict
 - vacancy

Planning Board Powers & Duties



- Prepare a comprehensive/master plan (MGL c 41 §81D)
- Propose, review, hold hearings and make recommendations on zoning bylaw/ordinance changes (text & map)
- Review and act on subdivisions - preliminary & definitive plans (MGL c. 41, § 81K-81GG)
- Review and sign Approval Not Required (ANR) plans
- May be a Special Permit Granting Authority (SPGA)
- Review & act on Site Plan Reviews/Approvals

Planning Board Powers & Duties (continued)



- May hire & supervise planner
- Review & make recommendations to the ZBA
(Special permits, comprehensive permits.)
- Review & act on Scenic Road changes
- Review & act on Repetitive Petitions
- Initiate planning projects/plans
- Review requests to remove property from MGL c. 61
- May review & recommend capital improvements
- Other duties as authorized by bylaw, charter

ZBA Powers & Duties



A board of appeals has the following powers:

- (1) To be the “permit granting authority” – MGL c.40A §1.
- (2) To hear & decide appeals in accordance with MGL c. 40A §8.
- (3) To hear and decide applications for special permits upon which the board is empowered to act under said ordinance or by-laws. (SPGA)
- (4) To hear and decide petitions for variances as set forth in MGL c. 40A, § 10.

ZBA Powers & Duties (continued)



- (5) To hear and decide appeals from decisions of a zoning administrator, if any, in accordance with MGL c. 40A, § 13.
- (6) To make findings on nonconforming uses & structures - MGL c. 40A, § 6 finding.
- (7) To hear & act on Comprehensive Permits - MGL c. 40B.
- (8) It may review & make recommendations to other SPGAs on special permits.
- (9) It may serve on a Master Plan committee.

Board Rules & Regulations



Boards should have an adopted set of Rules & Regulations governing, at a minimum, their operation, administration and procedures.

- “The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance/by-law for the conduct of its business and for purposes of this chapter and shall file a copy of said rules with the city or town clerk.” (MGL c. 40A, § 12)
- There is no equivalent in c. 40A for the planning board. MGL c. 41, §81Q does require the board to adopt subdivision rules & regulations.
- MGL c. 40A. §9 also requires the SPGA to adopt rules relative to the issuance of special permits. The rules shall be filed with the city/town clerk and shall proscribe the application procedure and forms etc.

Board Rules and Regulations –components



- Organization and standing procedures
- Election and function of officers
- Role of Chair
- Meeting schedules, agendas, and rules of order
- Appointments
- Writing decisions
- SPR procedures
- Liaison with other boards and staff
- Recording of meetings, Cable TV policies
- Fee schedules
- Other

Public Hearings



The Public Hearing Process Should Provide:

- A clear purpose
- Legal notice, at a minimum, in accordance with state statutes
- Convenient time and location
- Clear agenda
- Clear and stated process for holding the hearing
- Chairperson who can guide the hearings
- Information available to all
- Adequate time allotted for public comments
- Permanent record of actions taken

Public Hearings

Important considerations:

- Notices and publicity
- Location and functionality of the room
- Format of the hearing itself
- Availability of information
- Hearing procedure
- The option of continuance
- The timing for making and recording decisions



The Board's Relationship with Planning Staff



Planning staff play a role in the planning process and effectiveness of the planning board and sometimes the zoning board.

- May administer land use regulations
- Prepares staff reports
- Researches planning and land use issues
- Works on long range plans & special projects
- Advises the boards
- Reviews and coordinates reviews of applications
- Knows and interprets laws and bylaws/ordinances
- Meets with developers, property owners and citizens
- Maintains the office records
- Provides continuity
- Educates and assists the public
- Can be the voice of planning in town/city hall

Your Board as Supervisor



- Subject to authority & appropriations, may hire clerks, planners, and consultants.
- Professional staff-volunteer board relationship.
 - Scope of authority & responsibility
 - Technical know-how versus decision making
 - Overall policy versus specific projects, actions
- Create clear job descriptions and systems of accountability.
- There should be mutual support between the board and staff.

Voting Considerations



- Must take place at meetings - No call-ins, e-mails, faxes, etc.
- Quorum - The number of board members required to meet and to make a decision.
- General Rule - The majority of a board is a quorum and a majority of a quorum may act.
- Abstention counts toward a quorum.
- Majority - The number of votes needed from the quorum.
- Extraordinary voting requirements.
 - Special permits require 2/3 vote for a 7 or 9 member board, 4/5 vote for 5 member board & unanimous vote for 3 member board.
 - All but one member of a Planning Board must approve a repetitive petition.

Mullin Rule



MGL c. 39, §23D – board members may participate and vote after missing 1 public hearing

- Town/City must adopt MGL c. 39, §23D
- Board member must certify in writing his/her review of evidence of missed session of public hearing
- Board member's certification must be filed with Town/City Clerk

Constructive Grant Process



- Where a statute provides for the failure to act or to act within a stated period of time, either for holding hearing or making & filing a decision, a constructive grant or approval of an application may result.
- Examples of this include: special permits, variances, ANR plans, definitive subdivision plans, and Chapter 40B permits.

Public Outreach & Participation



Public Participation Procedures

- Meetings
- Public Opinion Surveying
- Visioning techniques/charettes
- Social media (Facebook, Twitter, blogs etc.)
- Media Releases
- Image Analyses (Visual Preferences)
- Community Indicators
- Web sites
- Other

OML – PRL - COI

- Open Meeting Law:

MGL c. 30A, § 18-25

AG's Open Meeting Law Website:

www.mass.gov/ago/openmeeting

- Public Records Law:

MGL c.4 § 7(26)

Secretary of State - Public Records Division

www.sec.state.ma.us/pre/preidx.htm

- Conflict of Interest:

MGL c. 268A

www.mass.gov/ethics



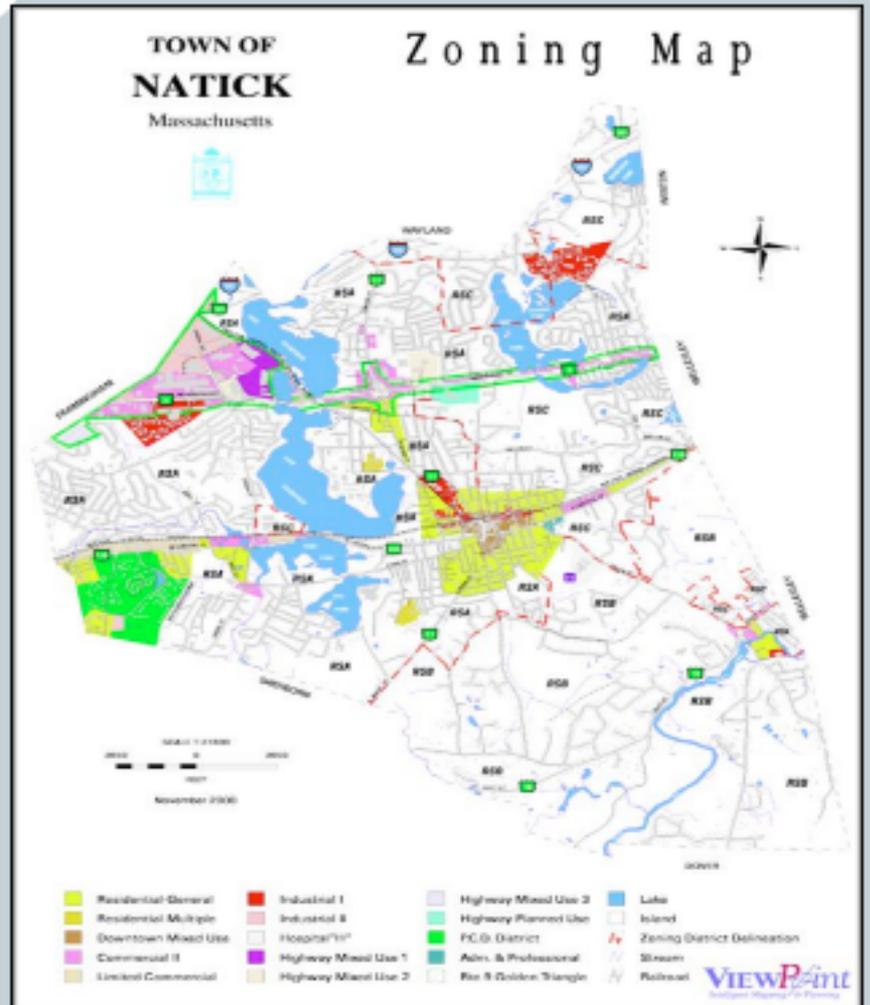
Zoning



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**
David L. Harlow, Governor • Timothy P. Murray, Lt. Governor • The Honorable, Chief Executive

THE ZONING ACT

08-10
Massachusetts General Laws
Chapter 40A



Massachusetts Zoning Laws



- 1933 – Mass. adopts U.S. Dept. of Commerce Standard State Zoning Enabling Act
- 1954 – Statute was rewritten and codified (Chapter 40A)
- 1975 – Chapter 808 of the Acts of 1975 adopted (Major revision of Chapter 40A)

The Purpose of Zoning



- Promotes public safety, health, and general welfare.
- Implement Comprehensive Plan
- Protect the Environment
- Protect Property Rights
- Protects property values.
- Regulates property use in accordance with community standards and values.
- Sets standards for development
- Prevents or reduces nuisances.
- Conserves land for appropriate uses.

Zoning



- A zoning ordinance/bylaw regulates the use, pattern, and appearance of development through zoning districts, dimensional regulations, use requirements and other regulations
- When a community has a zoning ordinance/bylaw, a zoning map is also required
- Uses may be permitted by:

By-right

Site Plan
Review

Special
Permit

Variance

- Uses may be prohibited

Site Plan Review/Approval



- SPR/SPA is a creation of local government.
- No language in MGL c. 40A about SPR/SPA.
- Mass. Courts have long upheld the validity of SPR.
- Process, timeline, decision maker, etc. determined by local bylaw/ordinance or rules & regulations.
- Traditionally used for by-right uses to review site and design issues.
- Sometimes used as part of a special permit process
- City/town should have well written and comprehensive standards for site & design issues.

Special Permits



- Issued by Special Permit Granting Authority (SPGA– ZBA, PB, Council, Select Board, Zoning Administrator)
- MGL c. 40A, § 3 – Use exemptions from special permits.
- MGL c. 40A, § 9 – “Special Permits” - Uses, rules & regulations, timelines, public hearing requirements, reasonable conditions etc. regarding special permits.
- Public hearing with 65 days of filing. Decision within 90 days of close of hearing. Times may be mutually extended.
- Voting required – unanimous 3 member board, 4 of 5 member board, 2/3 more than 5 members.
- Permits lapse within 2 years if construction not substantially started.

ZBA -Variances (MGL c. 40A, § 10)



A variance may be granted only if the ZBA finds:

- That circumstances related to the soil conditions, shape or topography of the land or structures would involve a substantial hardship without the variance. Such circumstances cannot affect the district generally.
 - That literal enforcement of the provisions of the bylaw would involve substantial hardship.
 - That desirable relief may be granted without substantial detriment to the public good.
 - That desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of the ordinance or bylaw.
-
- Use variances are not allowed unless expressly permitted by the local ordinance/bylaw.
 - A ZBA must act within 100 days of the filing of the application or constructive approval will result.

Comprehensive Permits



Comprehensive permits are a method of consolidating local approvals with a single application to the ZBA (MGL c. 40B)

ZBA Duties:

- Adopts rules and regulations.
- Receives, reviews and rules on comp. permit applications.
- Notifies applicable local boards for their recommendations.
- Holds public hearing with notice and posting.
- Opens public hearing within 30 days of receipt of application. Acts within 40 days of close of hearing.
- Decides by majority vote.
- Makes findings and writes decisions.

Comprehensive Permits - Resources



- Massachusetts Housing Partnership
www.mhp.net/community_initiatives/resources.php
(guidelines, design issues, regulations, technical assistance...)
- DHCD
www.mass.gov/dhcd
(design guidelines, guidebooks, information, LIP program information...)

Decisions -The Record



- The Record is a collection of all the evidence presented to the board during proceedings.
- Is the foundation upon which the board's decision rests.
- Has the board made findings? Is there substantial evidence in the record to support the board's findings?
- Findings and the record protect the board from legal challenges and explain board decisions - even unpopular ones.

Decisions - The Record



Does your record include?

- The application
- Correspondence between applicant and city/town staff
- Written comments submitted by members of the public
- Oral evidence presented at hearing
- Plans, drawings, photographs, deeds, surveys, and consultant/expert reports
- Written testimony
- Public hearing notice
- Municipal records and other documents submitted during proceeding
- Board's findings.

Findings



- Are a statement of the evidence and reasoning used by the board to progress from evidence to decision.
- Must be supported by facts.
- Must relate these facts to the conditions that must be proved, or the standards that must be met.
- If there was no evidence given to meet the necessary standards, this lack of necessary evidence should be shown.

Zoning Issues

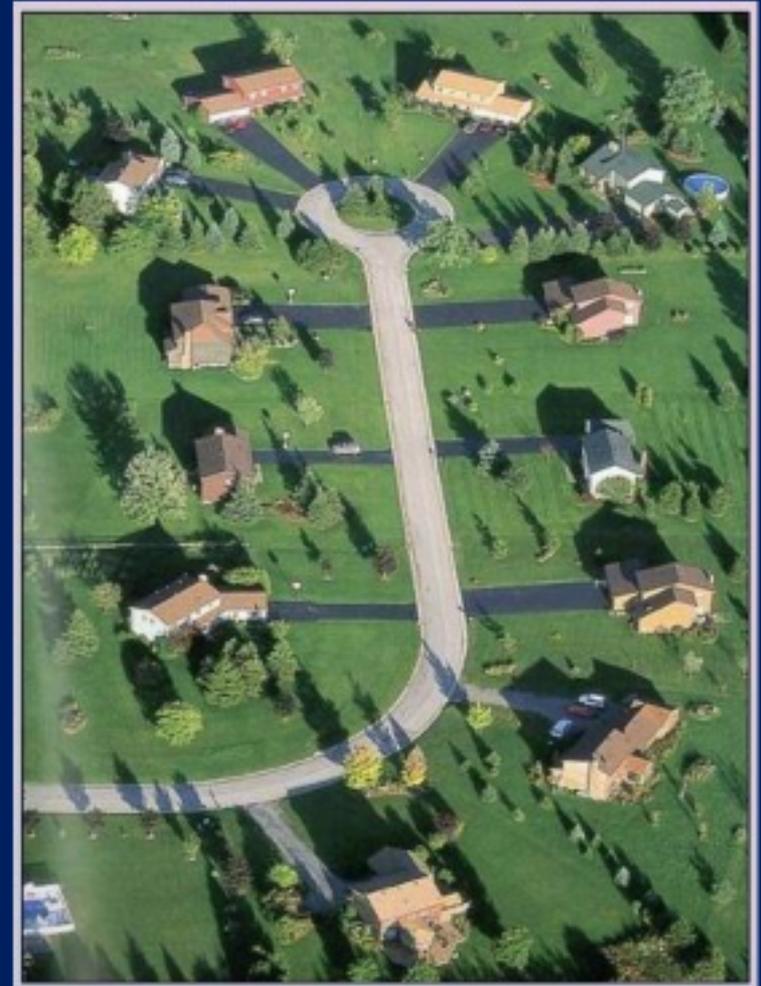
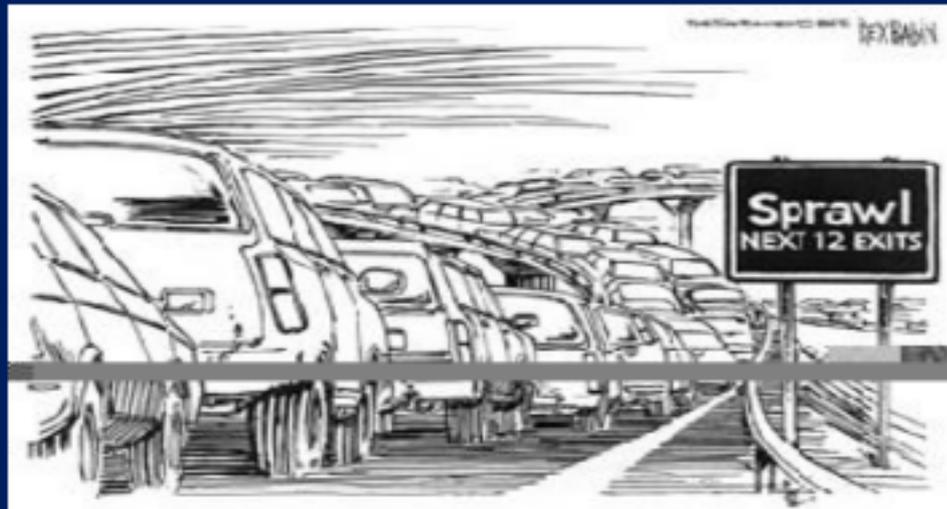


- Aesthetic Standards
- Historic Preservation
- Nonconformities
- Family and Group Care Homes
- Manufactured Housing
- Alcohol Sales
- MGL c. 40A exceptions (§ 6 list)

- Vested Rights
- Amortization
- Spot Zoning
- Contract Zoning
- RLUIPA (Federal)
- Cell Towers (Federal)
- Signs
- Adult-Oriented Businesses

Criticisms of Conventional Zoning

- Separation of land uses.
- Focus on lot size & setbacks.
- Function over form.
- Promotes low density, auto-dependant suburban sprawl.
- Focus on use with little attention to design



Zoning Tools & Techniques

Some more modern zoning tools & techniques include:

- Overlay Zones
- Design Review
- Form Based Codes
- Traditional Neighborhood Design
- Performance Standards
- Low Impact Development
- Transit Oriented Development
- Solar/wind bylaws
- Smart parking
- Transfer of Development Rights
- Open Space Residential Design

Zoning Adoption



- Can be initiated by city council, board of selectmen, PB, ZBA, land owner, petition, or regional planning agency.
- Planning Board must hold a public hearing within 65 days of submittal of request to PB by council/select board.
- Notice of hearing to be published in 2 successive weeks & mailed to regional planning agency, state (DHCD) & abutting cities & towns.
- PB must make a “report” with recommendations to council or town meeting
- 2/3 vote required to approve proposed zoning change
- Towns must submit approved amendment to Attorney General’s office

Planning



Planning



- Develops visions for the future growth and preservation of the community
- Creates opportunities for diverse housing, economic development, open space, and other land uses
- Anticipates future required public services and infrastructure
- Protects natural, historic, and cultural resources
- Seeks to minimize costs and impacts of land use changes

Master & Other Plans



- MGL c. 41, § 81D – Master Plans, assigns legal responsibility to the **Planning Board** for the creation and approval of Master Plan
- Other plans a board might be involved with include:
 - Downtown
 - Economic Development
 - Neighborhood/Area
 - Corridor
 - Housing



Elements of a Master Plan

● From MGL c. 41, §81D

- Goals & Policies
- Land Use Plan
- Housing
- Economic Development
- Natural & Cultural Resources
- Open Space & Recreation
- Services & Facilities
- Circulation
- Implementation

Other Topics

- Historic Preservation
- Energy
- Social Services
- Neighborhoods/villages
- Arts
- Community design
- Sustainability
- Environmental programs
- Other

Master Plan



Role of the Planning Board

- Makes, adopts and amends
- Spearheads broad based public process
- Seeks local legislative approval (town meeting, council), if appropriate
- Advocates use as guide for decisions
- May serve on a separate Master Plan Steering Committee

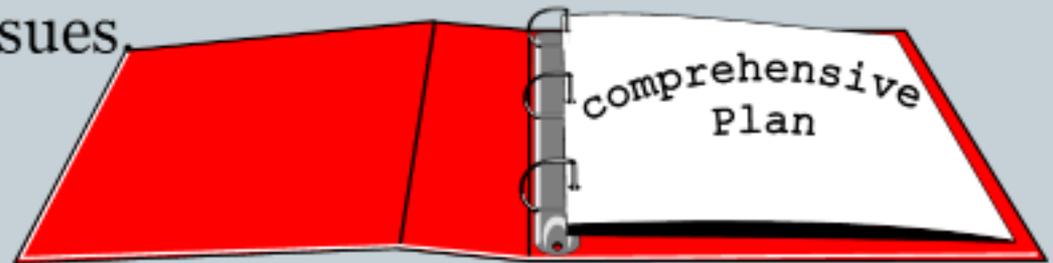
Role of Zoning Board of Appeals

- Has representative on Master Plan Committee
- Participates in public process

The Comprehensive Plan



- A blueprint for guiding decisions on land use and growth issues.
- A policy framework.
- A flexible document, not a uniform template.
- A visionary document attempting to anticipate future events and needs.
- A statement of policies, goals, and standards.



It reflects the visions & goals of the citizens.

Getting Started

Three simple questions a Community should ask.

- What do we have or not have?
- What do we want our community to be in the future?
- What are we willing to do to achieve that?



One Example of Planning Process



1. Identification of issues, problems
 2. Inventory and assessment of community
 3. Formulation of community goals and objectives
 4. Formulation of policies, strategies and recommendations
 5. Development of an implementation schedule
(short, medium, long term by responsible entity)
 6. Adoption of Plan (Planning Board requirement
and possibly by others – council, town meeting)
 6. Implementation of the plan
 7. Regular plan review
- (Public outreach strategy used throughout the process.)*

Plan Follow-up



Care and Feeding of Your Plan

- Formally adopt the Plan
- Implement the Plan through zoning, financing and other tools
- Be an advocate for the Plan
- Undertake evaluation on a regular schedule
- Adjust the plan as necessary
- Revise & update the plan every 5-10 years



Subdivision Control



MGL c. 41, § 81K-GG

Purpose



“The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of cities and towns in which it is, or may be, put into effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.”

MGL c. 41, § 81-M

Massachusetts Subdivision Control Law



- 1907 and 1916 – enact legislation for boards of survey to regulate the construction of ways (no power to regulate the division of land abutting such ways)
- 1936 – a municipality which accepted specific provisions for an approved method of municipal planning could regulate subdivisions
- 1953 – The Subdivision Control Law, MGL c. 41, § 81K-81GG was enacted

Subdivisions – Definition (MGL c.41, §81L)



“Subdivision” - shall mean the division of a tract of land into two or more lots ... except if every lot has frontage on:

- A public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or
- A way shown on a plan therefore approved and endorsed in accordance with the Subdivision Control Law, or
- A way in existence when the Subdivision Control Law became effective in the city or town in which the land lies, having in the opinion of the Planning Board sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land...and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon

Subdivision Control



Role of the Planning Board includes:

- Adopts subdivision rules and regulations
- Determines whether a plan is ANR
- Reviews and approves or disapproves preliminary and definitive subdivision plans
- Holds public hearings for definitive plans
- Obtains performance guarantee
- Releases lots
- Advises ZBA on Comp. permits that are subdivisions

Types of Subdivisions & Plans

Types of Subdivisions

- Conventional Subdivision
- Cluster/Open Space Residential Development
- Approval Not Required (ANR)



Types of Plans

- Preliminary plans
- Definitive plans
- ANR plans



Subdivision Design Issues

- Road and lot layouts
- Critical resource areas
- Storm water management – Low Impact Development
- Curbing
- Open space
- Boundaries
- Public or Private Streets
- Fire protection
- “Public realm” amenities – sidewalks, bike paths, street trees, landscaping
- R.O.W & Street Design Standards – street classifications, widths, grades, intersections, access to adjacent streets and/or lands
- Utilities
- Street lights
- Public sewer, septic or other waste treatments
- Cul-de-sacs vs. street connections
- Curbing – y/n, type

Preliminary Subdivision Plans



- Designed primarily to open negotiations between the Planning Board and the applicant
- An applicant proposing a non-residential subdivision must submit a preliminary plan
- A preliminary plan is not recorded at the Registry of Deeds
- An applicant or interested party has no right to appeal a decision on a preliminary plan

Definitive Subdivision Plans



- PB may approve, modify and approve, or deny the plan.
- Before endorsement, the PB shall require submission of a performance guarantee
- The definitive plan is recorded at the Registry of Deeds
- A definitive plan must be recorded within 6 months from the date of endorsement.

Subdivision Plans - Timelines

Preliminary Plan

- No public hearing required
- 45 days to approve, approve with modifications or disapprove



Definitive Plan

- Plan to be submitted to Board of Health – 45 day response period
- PB public hearing required
- For **nonresidential plan**, or **residential subdivision with preliminary plan**, **final action required within 90 days of submission**
- For **residential subdivision with no preliminary plan**, **final action required within 135 days of submission**

Subdivision Performance Guarantee



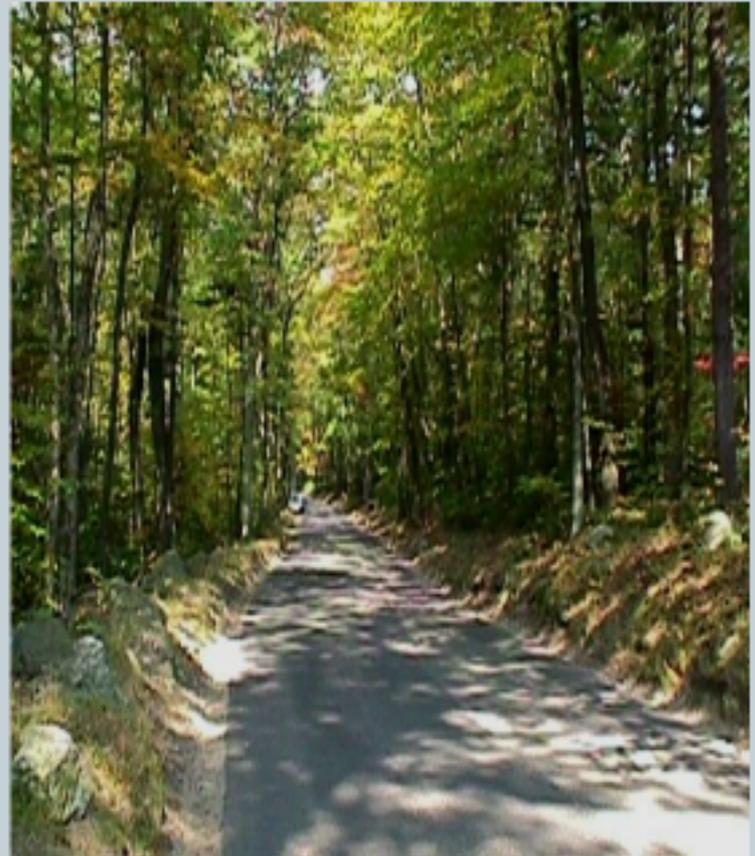
- Types of Guarantee (Chapter 41, §81U)
 - Proper Bond
 - Deposit of Money or Negotiable Securities
 - Covenant (restricts sale or construction prior to completion of infrastructure & utilities)
 - Tri-partite agreement whereby lender retains funds under first mortgage
- Can use one or combination of guarantees
- Applicant selects type of guarantee



Approval Not Required (ANR)



- **Frontage**
 - Must meet frontage requirement of local bylaw or ordinance.
- **Access** – Must provide vital access to the lot thru one of these ways:
 - Public way or a way that is used and maintained as a public way or;
 - A way shown on an approved plan in accordance with the Subdivision Control Law or:
 - A way in existence when the subdivision control law took effect in the town and is, in the opinion of the PB, suitable for proposed use of lots.



ANR Plans



- No public hearing required.
- PB has 21 days to endorse the plan or decide subdivision approval is required, which includes giving written notice to the municipal clerk & applicant.
- Constructive approval issue if no action within 21 days.
- Planning Board cannot rescind an ANR endorsement.



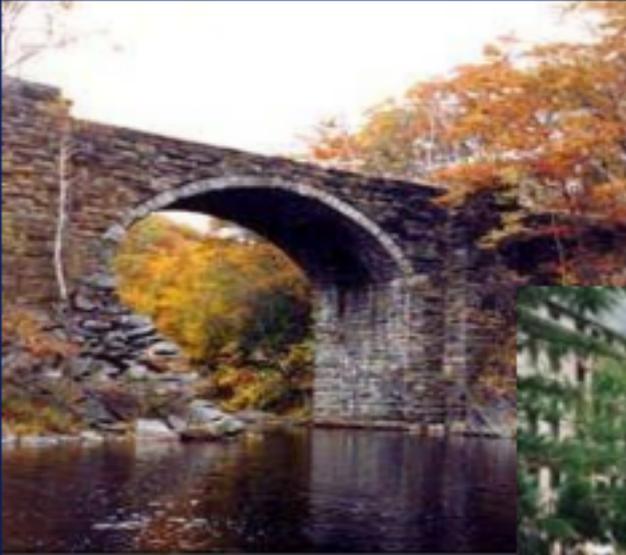
Role of the ZBA in Subdivision Approval



- The ZBA may rest.
(Except for
Comprehensive Permit
applications.)



Other items



Other Permits-Approvals-Licenses



- Applicants may need other federal, state and/or local review such as:

Council/Select Board – licenses

Conservation Commission – wetlands

Board of Health – Title V

Historical Commission – COA

State – MEPA, 21E, Highway access permits

Federal – NEPA, Army Corps

Fees



- Application Fees – adopt a fee schedule
- Subdivision fees – application, inspection, amendment, lot release fees etc.
- Consultant Review Fees
(MGL c. 44, § 53G –
Requires municipal adoption)



Practical Advice for Board Members

- Attend meetings & be on time
- Read packet before meeting
- Seek staff assistance before meeting
- Know comprehensive plan and zoning/subdivision codes
- Be familiar with sites and projects
- Share information
- Focus on facts, not opinions
- Be a problem-solver, not a problem-maker
- Be probing, but not argumentative
- Participate in discussion
- Be practical
- Respect your associates
- Treat everyone equally
- Summarize what you have heard
- Be conscious of body language

Words of Wisdom



- Have Passion
- Be Patient
- Be a “Planner”
- Be Persistent
- Don’t make it personal
- Be Transparent
- Know the Law
- Have Fun

Sources of Support

- Locally

City/town Staff

Previous board members

Collection of MGLs

Plans/Reports

Maps/Bylaws/ordinances

Consultants

- Regionally

Regional Planning Agency

Regional Non-profits –
(ex. Highland
Communities Initiative)

Colleges and Universities

Sources of Support



- **State:** www.mass.gov

Dept. of Housing & Community Development

Executive Office of Housing & Economic Development

Executive Office of Energy & Environmental Affairs

Coastal Zone Management

State Ethics Commission

Office of the Attorney General (www.ago.state.ma.us)

Department of Revenue

Bureau of Municipal Law

- **Citizen Planner Training Collaborative:**

www.umass.edu/masscptc

- **Mass Planners List Serve:**

<http://mailman.cs.umb.edu/mailman/listinfo/massplanners>