



A Best Practices Model for Streamlined Local Permitting



Produced by:
The Massachusetts Association
of Regional Planning Agencies



November 30, 2007

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Online at www.mass.gov/mpro

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“Streamlined permitting is meant to get to a yes or no answer as quickly as possible without lowering any environmental or other review standards. This landmark MARPA work will help us to achieve that goal.”

Representative Michael J. Rodrigues (D – Westport)

This Guide and all appendices can be found online at www.mass.gov/mpro

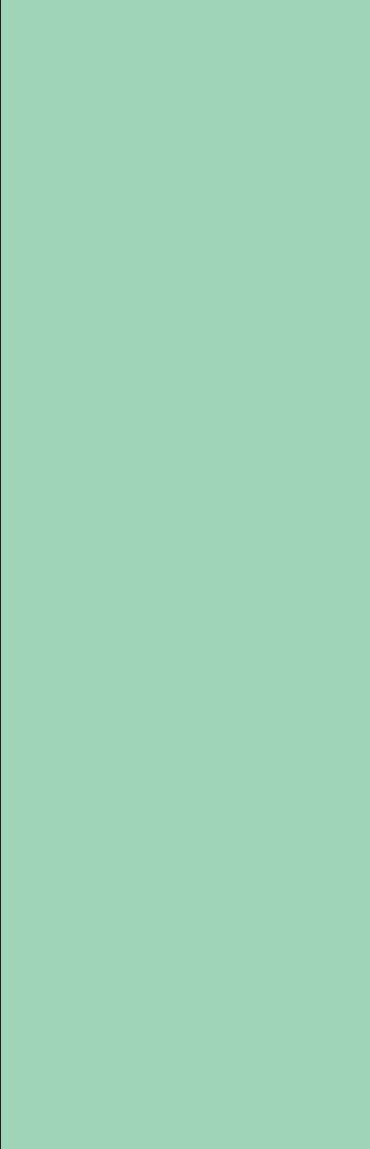


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SUMMARY

In Massachusetts, 351 cities and towns currently regulate development through numerous boards and departments with permit granting authority. Permitting processes differ markedly from one municipality to another. **This Guide strives to assist municipal officials and permit applicants through the permit process by offering ways in which applications may be analyzed and considered more efficiently and effectively.** By standardizing the permitting process, permit applicants are afforded a reasonable degree of comfort and certainty that, while variations exist, the timing and expenses associated with the local permitting processes will be more predictable.

Massachusetts has a long tradition of honoring and respecting the institutions of local government. The Best Practices described in the Guide are not intended to erode that tradition, but rather to demonstrate ways in which local government can serve their residents better while advancing statewide economic development objectives and improving the governance of land use in their communities.

Pursuant to Chapter 205 of the Acts of 2006, the 13 Regional Planning Agencies serving the Commonwealth collaborated to evaluate local permitting processes involving zoning, wetlands protection, transportation, and water supply and wastewater treatment. The purpose was to inform state, regional and local policymakers on ways to make better decisions about permitting. To develop a Best Practices Guide to local permitting, the Massachusetts Association of Regional Planning Agencies (MARPA) has relied on information from a combination of sources, including the results of a statewide local permitting survey, information from over a dozen focus groups involving diverse stakeholders, a literature review of prior permit streamlining initiatives, and additional research contained in this report.

The 26 Best Practices in the Guide are organized around four themes: Improving Communication with Permit Applicants; Standardizing the Permitting Process; Resources for Improving Local Permitting Performance and Planning. The Implementation Section provides a summary of who is responsible for putting the Practices into action. These practices seek to improve predictability, efficiency, timeliness, and equality in local land use regulation.

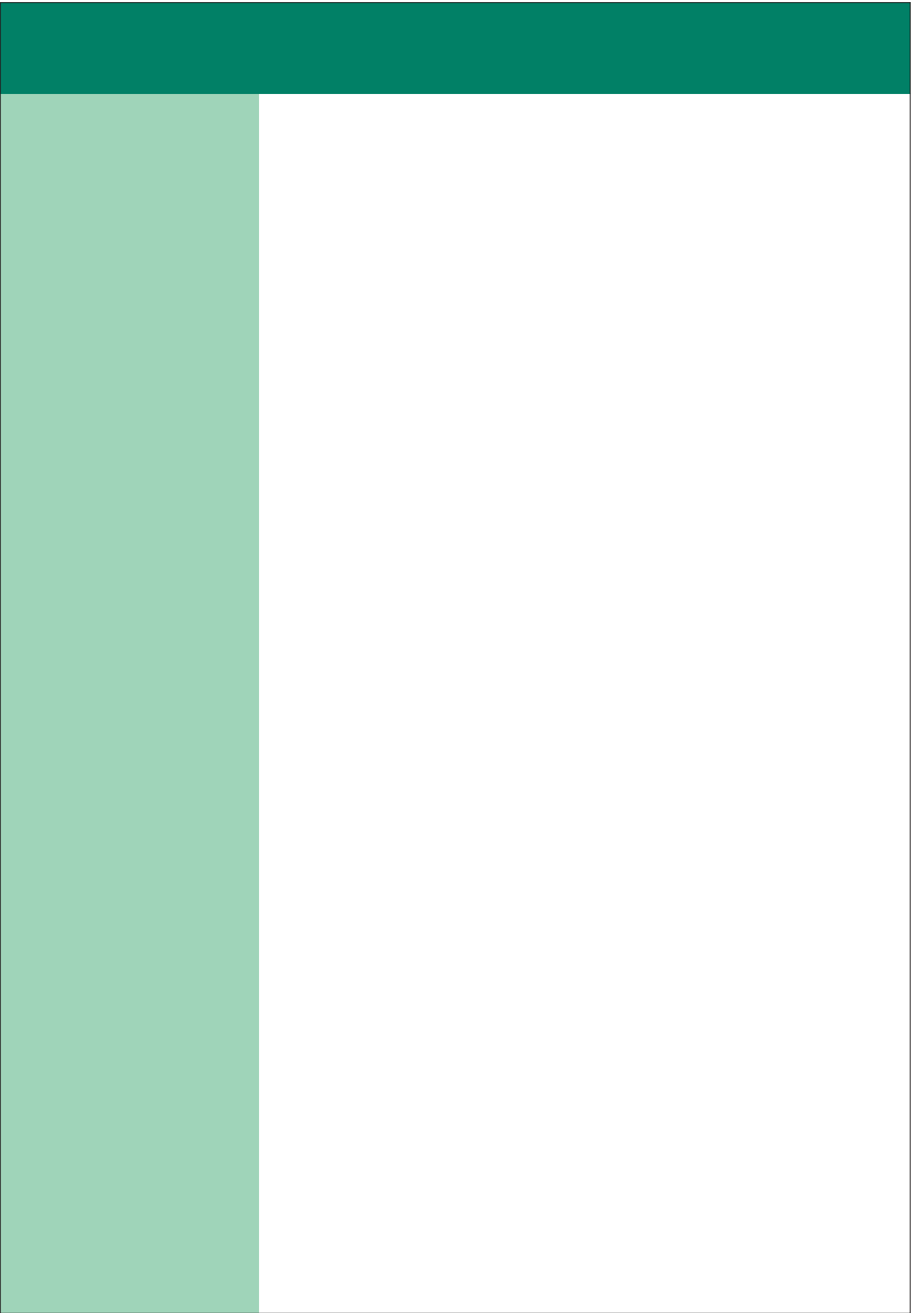
Upon receiving the Best Practices Guide, municipal leaders will have at their disposal an assortment of tools, all aimed at making permitting more predictable, consistent, and efficient without compromising local jurisdiction, encouraging imprudent projects, jeopardizing local resources or endangering the standard of review. The text of the Best Practices Guide, including the appendices and references for further information, is available on the websites of each Regional Planning Agency.

The Regional Planning Agencies look forward to continuing to work with the various governing bodies on the state and local level, to implement practices recommended in this report.



“Whether the goal is economic development or environmental protection, fundamentally sound permitting processes will help us get there. This guide makes a tremendous contribution to that effort.”

Gregory Bialecki, State
Permit Ombudsman &
Assistant Secretary



I.

INTRODUCTION

Continued economic prosperity and opportunity in Massachusetts require development of jobs, housing, and infrastructure. The diverse landscapes, natural resources, and community character of cities, towns, and neighborhoods across the Commonwealth contribute to both the quality of life and to the state's attractiveness to growing businesses. The task of moderating development and other land use changes falls to a broad array of local regulations, managed largely by elected and appointed volunteers serving their community.

These "citizen regulators" universally feel over-burdened and under-equipped to face development pressures. Similarly, applicants before local regulatory boards face a maze of permits, standards and procedures, which they frequently conclude is arrayed primarily to stop change or to exact tribute. A more transparent, timely, efficient and predictable process would assist the public objectives of having good development placed in good locations and promoting economic opportunity while protecting local resources.

Pursuant to Chapter 205 of the Acts of 2006, the Commonwealth's thirteen Regional Planning Agencies (RPAs) have assembled this compendium of Best Practices (the "Guide") by which the local land use process may be improved for both applicants and regulators. This Guide was prepared with the benefit of a) a state wide survey responded to by 61% of the municipalities in Massachusetts; b) fourteen expedited permitting focus groups (also referred to as "focus groups") of local development stakeholders held across the state, representing regulators, developers, land owners, officials, engineers, contractors and community activists; and c) the long experience of each RPA in promoting economic development and in providing technical assistance to the municipalities which are in their regions.

The Best Practices described in this Guide fall into four broad categories:

- 1) **Fostering better communication** among municipal regulatory boards and between those boards and applicants;
- 2) **Standardizing forms and procedures** to provide efficiency and predictability;
- 3) **Providing sufficient resources** to enable swift and competent regulatory consideration; and
- 4) **Encouraging proactive planning**, site selection and pre-permitting to expedite regulatory oversights before specific, time-constrained projects are proposed.

Topics beyond the scope of this Guide included reducing substantive regulatory powers, limiting procedural rights, and other proposals designed to alter the substantive regulatory process more dramatically.

Many different municipal permit granting agencies are empowered to regulate aspects of local development, including: Board of Health, Board of Selectmen, Building Inspector, Conservation Commission, Historic District Commissions,



"MMA is proud to have played a lead role in successfully advocating for passage of Chapter 205 of the Acts of 2006. Now, municipalities across the Commonwealth can benefit from streamlined practices, such as those highlighted in this Guide, which can save money and time for local officials and staff without any reduction in local control or participatory government"

Matthew Feher,
Senior Legislative Analyst
Massachusetts Municipal
Association (MMA)



“At a time when many in the Commonwealth are considering changes to planning and zoning regulations and statutes, the Best Practices Guide provides a useful model to help community clearly and effectively express their visions to development stake-holders, and to provide economic development opportunities without the delays, expense, and conflict that too often afflicts local regulatory proceedings.”

Peter Lowitt, AICP, former President of the Massachusetts Chapter of the American Planning Association



INTRODUCTION

I.

Department of Public Works, Planning Board, Water and Sewer Commission, municipal utilities, Zoning Board of Appeals, and Public Safety Department. By coordinating their planning and procedures, these agencies can simultaneously and cost effectively use their resources more efficiently to achieve both their regulatory mandates and broader municipal goals, while providing more clarity and predictability to the projects that come before them.

Having consistent and integrated forms and procedures can similarly save municipal costs, promote understanding for neighbors and advocates, and allow applicants to focus on substantive matters rather than deciphering disparate procedures. Equally significant, municipalities in which diverse agencies and the general public participate in planning *before* specific projects are proposed will inevitably provide greater clarity about municipal desires and should yield swifter and less acrimonious permitting processes. While RPAs have a long history of providing technical assistance to municipalities for both planning and regulatory activities, sufficient local resources need to be provided as well.

Implementing many of the recommendations in this Guide may be accomplished through administrative action led by town administrators and each regulatory board. Other Best Practices may require local legislative changes through Town Meetings, City Councils, or the Boards of Alderman. Still other recommendations may require changes through the Legislature. While many of the practices described in the Guide will save money for municipalities and applicants, some will also cost money, especially for the start-up of new processes. State assistance may be necessary to educate regulators and other stakeholders, to implement new practices, to provide technical assistance to those communities without sufficient resources, and to cover the costs of continuing training and evaluation.

While this Guide was coordinated through the Massachusetts Association of Regional Planning Agencies, each Regional Planning Agency in the Commonwealth contributed to this effort. In addition, Greg Bialecki and April Anderson Lamoureux of the Executive Office of Housing and Economic Development, Undersecretary Tina Brooks and Marilyn Contreas of the Department of Housing and Community Development, contributed to this Guide. William (Buzz) Constable, President of MARPA coordinated the effort on behalf of MARPA. In addition, Representative Michael J. Rodrigues (D-Westport) provided both guidance and inspiration for this effort. The text of the Best Practices, including the appendices with the sample representative bylaws, is available on the websites of each Regional Planning Agency.

The Regional Planning Agencies of Massachusetts look forward to continuing to provide technical assistance to municipalities and to work with all stakeholders toward a more efficient, effective, and well planned achievement of local and state land-use goals.

II.

BEST PRACTICES for Streamlining the Local Permitting Process

IMPROVING COMMUNICATION WITH PERMIT APPLICANTS

With so many boards and staff members involved in the permitting process, active collaboration and communication among municipal officials, permit applicants, consultants, and other stakeholders is vital to efficient permitting that maintains the goals and aspirations of the community. By adopting well-crafted institutional mechanisms, cities and towns can help to bolster efficient communication and to establish a culture of collaboration that will serve communities, developers, and neighbors.

The following Best Practices, described in more detail on the following pages, can be used to improve communication between stakeholders about the local permitting process:

- #1 Single Point of Contact
- #2 User's Guide to Local Permitting
- #3 Permitting Flow Charts & Checklists
- #4 Clear Submittal Requirements
- #5 Concurrent Applications
- #6 Combined Public Hearings
- #7 Pre-Application Process
- #8 Project Technical Review Team
- #9 Regularly Scheduled Inter-Departmental Meetings
- #10 Physical Proximity of Professional Staff
- #11 Development Agreements
- #12 Encourage Use of Third-Party Consultants



“Our community has always understood and respected the need to review and act on local development permits in a responsible and timely manner. The policies, tools and practices that are outlined in this new report will certainly enhance our community's ability and hundreds of other communities throughout the Commonwealth to do exactly that—to plan intelligently thereby enabling the permitting process at the local level to move more swiftly.”

Richard L. Fitzgerald
Town Manager
Town of Palmer, MA



Single Point of Contact

#1

REFERENCES

The Town of Salisbury has appointed a single point of contact. For details, see Chris Reilly, Economic Development Director, Town of Salisbury or <http://www.salisburyma.gov/planning.html>

Municipalities may appoint a single point of contact to work with applicants. The point of contact is responsible for coordinating the applicant's efforts to apply for the necessary permits in a city or town. The community development director or the city/town planner could serve as the contact, participating on the Technical Review team and/or coordinating the sequencing of agency and board reviews. The individual has no authority to negotiate any commitments which would bind any regulatory agency. Occasionally, a staff member from one Board or Commission is designated to serve as the point of contact.

BENEFITS

- A single point of contact improves clarity and productivity for both the applicant and the regulators, and guides the applicant toward appropriate boards.
- A municipality experiences efficient permitting when this person is charged with important administrative tasks, such as reviewing applications for completeness when they are received, tracking applications through the process, and ensuring that municipal staff is aware of activities by other boards.

CHALLENGES

- Staffing shortages and budgetary limitations.
- Time constraints.
- Overcoming resistance to procedural change.

IMPLEMENTATION

This Best Practice would not require a bylaw or ordinance; it is something that can be implemented by the municipal executive.





A User's Guide to Local Permitting is a “quick reference” guide to which applicants may refer as they navigate through the permitting process. It should contain practical information such as contact information for relevant boards, a step-by-step process for each permit, fee schedules, and anticipated timeframes for each permit. A User's Guide also helps new municipal staff, board, and commission members to understand how permitting works and what their responsibilities are in the overall process.

A User's Guide to Local Permitting can help to communicate clearly and efficiently with the permit applicant. It can also ensure that developers, residents, and permit granting authorities all have the same information about the permitting process from the beginning.

BENEFITS

- Clearly explains what activities require permits and lists the permits issued by each municipal permit granting authority.
- Describes each municipal department, board, commission, and committee involved in permitting.
- Gives contact information for each permitting authority.
- Lists meeting schedules and timeframes so permit applicants can plan ahead.
- Presents the information in different formats (narrative, matrix, and flow chart) to meet the needs of a variety of potential users.

CHALLENGES

- Review the User's Guide for updates at least once a year.
- Resources need to be allocated to such updates and to distributing paper and digital copies to users. Most importantly, a specific individual should be vested with the responsibility of making sure the update happens.

Sample Permitting Guide

This is an outline of information that could be included in a comprehensive permitting guide. The references included with this Best Practice can be tailored to the specific needs a municipality.

I. Introduction

- a) Purpose of guide/handbook
- b) List of what activities require permits/approvals

II. The People

For each department and board involved in permitting, such as Planning Board, Board of Health, Conservation Commission, Building Department, Historic Commission, Board of Appeals, etc., the following information can be provided:

- a) Staff liaison and contact information
- b) Meeting schedule

REFERENCES

See *Sample Permitting Guidebook* for a template that can be used to create a User's Guide for your community at www.mass.gov/mpro

See *Matrix of Statewide Permitting Guides by Municipality* for example Guides from communities like your own at www.mass.gov/mpro

See Best Practice #3, *Permitting Flow Charts & Checklists* for examples of how to create these for your User's Guide.



User's Guide to Local Permitting

#2

REFERENCES

For specific examples see:

The Town of Lincoln *Land Use Permitting Guide* at <http://www.lincolntown.org/depts/planning.htm>

The City of Salem *Doing Business in Salem Guide* at <http://www.salem.com/Pages/index>



- c) Members
- d) Description of board/commission/committee
- e) List of permits issued
- f) Process for obtaining permits
- g) Timeframe for public hearing
- h) Timeframe for decision
- i) Appeals procedure
- j) Fee schedule
- k) Applicable local, state and federal statutes

Contact list for staff liaisons: List job titles, phone numbers, and address for each staff liaison for the permitting authorities in a chart format for quick reference. Pictures of staff and board members are also helpful.

III. The Permits

Create a matrix for all the types of permits and licenses issued by the municipality and which board or body is authorized to issue them in a chart format for quick reference.

IV. The Process

Whenever possible, generate or adopt flow charts like the ones provided (see Best Practice #3, *Permitting Flow Charts & Checklists*) to plot the procedural steps necessary and to demonstrate the sequence of permits that must be obtained by the applicant/petitioner to achieve the desired outcomes, such as:

- Subdivision approval
- Special permits
- Variances

IMPLEMENTATION

- A local agency, such as the Community Development Department or Planning Board, may produce the User's Guide.
- Communities with very limited staff may want to hire a consultant or regional planning agency to assist with composing the Guide.
- Steps must be taken to ensure the Guide is updated annually.

Flow charts and checklists to guide applicants through the permitting process are valuable resources. A flow chart illustrates the steps of the permit process. A checklist describes the mandatory steps and can be an integral part of the permit process itself, giving clear guidance to both the applicant and the permitting agency. Flow charts may prove even more valuable when coupled with a Users' Guide as described in Best Practice #2. As with any document that will provide guidance to project proponents, the municipality should consult legal counsel to ensure compliance with state and local regulations, and to limit local liability.

Flow charts should begin with the submittal of a plan or application, proceed through review by all necessary boards and agencies, outline public participation requirements, and describe the decision process. The lengths of time provided for each step of the process should also be shown. Constructive approval, which may occur as a consequence of a permit granting agency failing to adhere to a mandated timeframe, should also be indicated.

BENEFITS

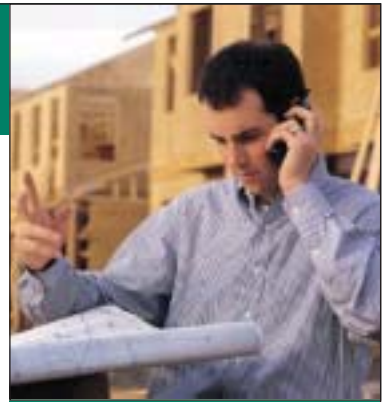
- Checklists and flow charts make the process transparent and demonstrate its uniformity.
- They are a valuable primer for applicants and new board or commission members with a limited knowledge of the permitting procedures and processes.

CHALLENGES

- Flow charts are merely illustrative of the process. Legally, they are not definitive, and a disclaimer is appropriate.
- Permit granting authorities have opportunities to exercise discretion at times, including waivers of requirements. This may be difficult to include in a flow chart.
- Flow charts are limited in their ability to describe the complexity of a multiple-permit approval process.

IMPLEMENTATION

Local permit granting authorities can elect to adopt and distribute permitting checklists and flow charts to applicants administratively, without state or local legislative action. Ideally, a set of flow charts for each local approval would be developed so that they link to one another, allowing developers to see the appropriate order they should follow. Checklists and flow charts would also be helpful if created by state agencies involved in the land development process, e.g., curb cuts or wastewater systems. Many communities have devised local flow charts that also illustrate state approval processes.



REFERENCES

The Town of Bourne, as part of their Permitting Guide has a variety of flow charts. Link: <http://www.townofbourne.com/> Click on "Departments," then click on *Permitting Guide*.

The Town of Ipswich has user-friendly timelines in its Development Guidebook. Link: <http://www.town.ipswich.ma.us/plandev/pdf>.

The Town of Charlemont has developed a local Special Permit Process Flow Chart which is easy to follow. Link: <http://www.charlemont-ma.us/Town/TownPlanningBoard.shtml#SpecialPermits>

Each of the flow charts on the following pages, although neither authoritative nor all-inclusive, was developed with attention to the relevant sections of Massachusetts General Law and Code of Massachusetts Regulations. They provide an outline of the permitting process, and also show the maximum time allowed for each action to occur. Flow charts should be tailored to correspond to local bylaws, ordinances, and procedures.

Permitting Flow Charts & Checklists

#3

This checklist was developed by the MA Department of Conservation and Recreation, Division of Water Supply Protection as an informal guide to assist local agencies (with information current as of October, 2007). This checklist, however, should not be construed or relied upon as legal advice; local agencies need to consult with town counsel to obtain any legal advice and to confirm the accuracy and suitability of use of this checklist by that local agency.

SPECIAL PERMIT CHECKLIST

Applicant: _____ Application No. _____

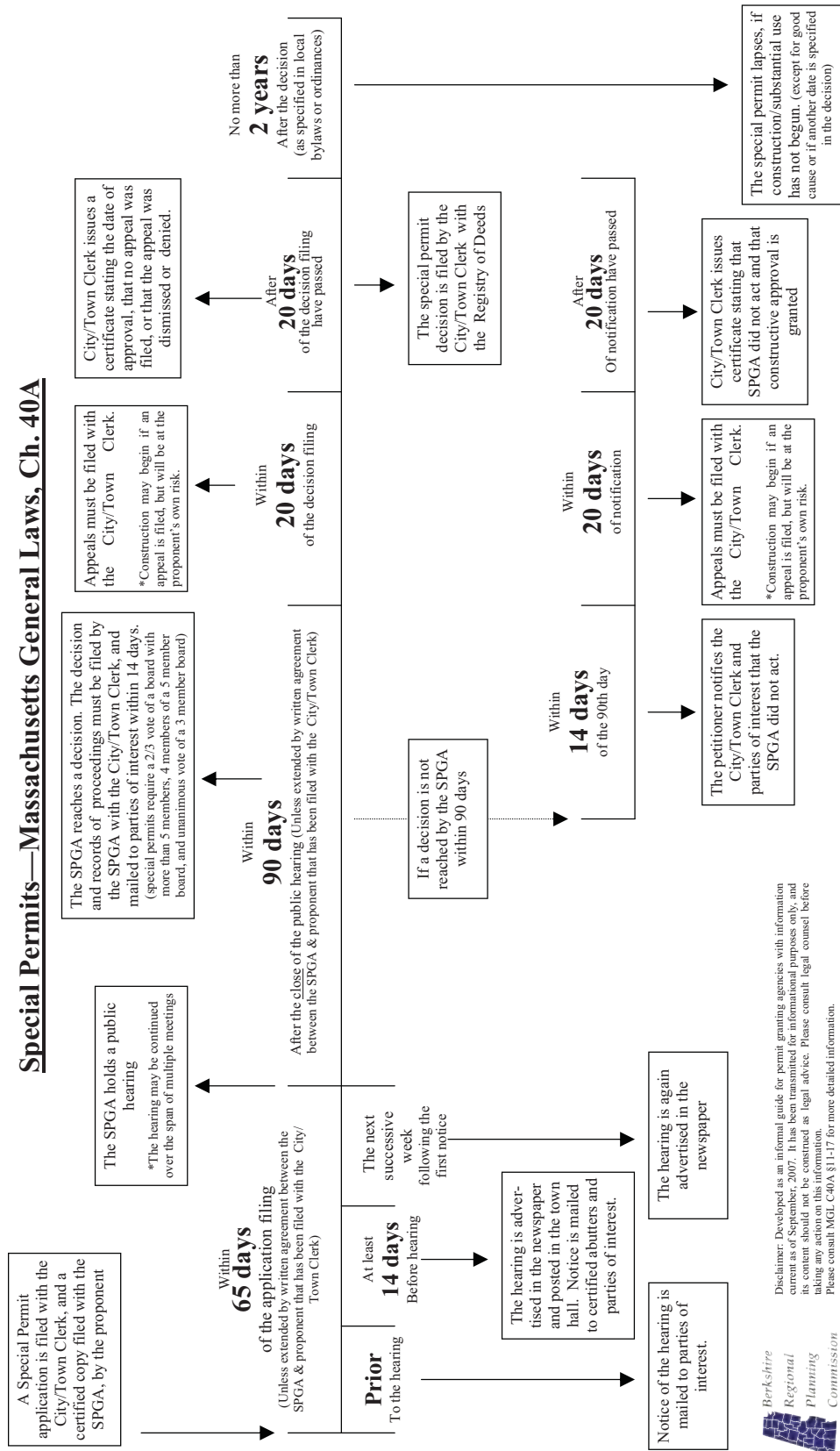
	Action	Who	Date(s)	Notes
A P P L I C A T I O N	1. Application Filed with City/Town Clerk (date/time certified by clerk)	A, C		
	2. Application Filed with SPGA (forthwith, must have date/time certification from clerk)	A		
	3. Copies Sent to Other Boards (recommendations due back in 35 days after receipt by reviewing board)	B		
P U B L I C H E A R I N G	4. Hearing Date Set (must be within 65 days of filing with clerk in #1)	B		
	5. Hearing Date Extensions (written agreements must be filed with clerk)	A, B, C		
	6. First Notice of Hearing Published (at least 14 days prior to hearing)	B		
	7. Hearing Notice is Posted (at least 14 days prior to hearing)	B or C		
	8. Hearing Notice is Mailed (see c. 40A, § 11 for recipients)	B		
	9. Second Notice of Hearing Published (week following 1st notice in #6)	B		
	10. Hearing is Opened	B		
	11. Hearing Extensions (written extension agreements must be filed with clerk)	A, B, C		
	12. Hearing is Closed (starts 90-day clock on decision and final action in #13 & 15)	B		
D E C I S I O N	13. Decision (must be made within 90 days of close of hearing in #12)	B		
	14. Decision Date Extensions (written agreements must be filed with clerk)	A, B, C		
	15. Final Action! (written decision and detailed record of proceedings filed with clerk within 14 days of decision, and no longer than 90 days from close of hearing in #12)	B, C		
	16. Written Decision is Mailed (forth-with, see c. 40A, § 9 for recipients)	B		
	17. Appeals (must be within 20 days after written decision filed with clerk in #15)	A, O, C		
	18. Certification by Clerk (after 20 days has elapsed since #15 with or w/out an appeal)	C		
	19. Recordation (certified written must be recorded at registry)	A, B, or C		
	20. Substantial Use or Construction (must be started within 2 years or permit lapses)	A, Z		

A = Applicant
O = Other party

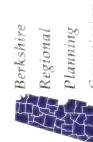
B = Special Permit Granting Authority
Z = Zoning Officer

C = City/Town Clerk

Special Permits—Massachusetts General Laws, Ch. 40A

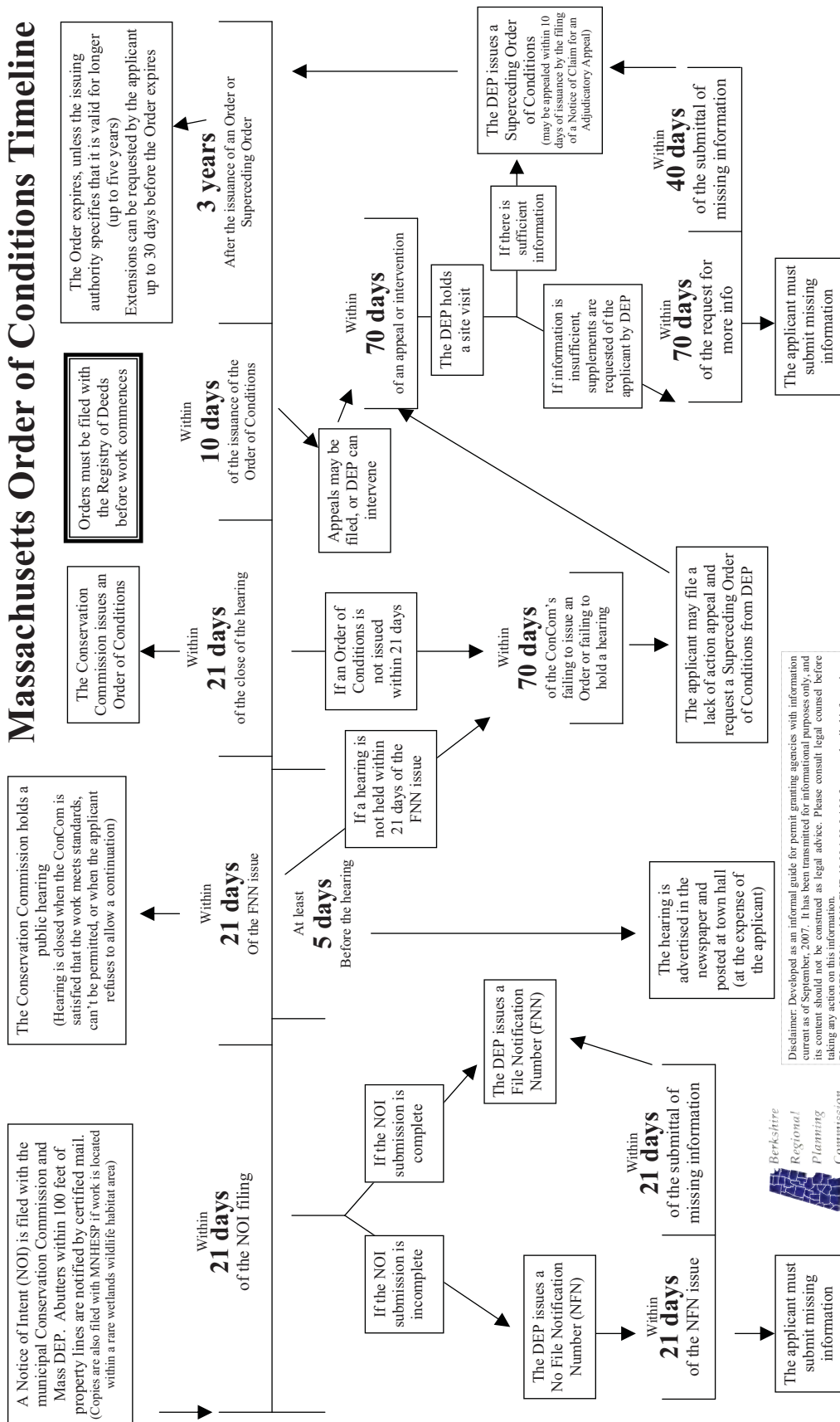


Disclaimer: Developed as an informal guide for permit granting agencies with information current as of September, 2007. It has been transmitted for informational purposes only, and its content should not be construed as legal advice. Please consult legal counsel before taking any action on this information. Please consult MGL C40A §11-17 for more detailed information.



Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, local zoning ordinances or bylaws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a Special Permit. Special Permit Granting Authority is often delegated to the Planning Board, Zoning Board of Appeals, or Board of Selectmen, depending on the type of use and local legislative preference.

Massachusetts Order of Conditions Timeline



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Well-drafted permit submittal requirements from permit granting boards and commissions help to encourage uniformity in the review process. Such requirements let project proponents know exactly what they must submit, when, and to whom, and make it easier for the permit granting authority to evaluate the completeness and correctness of the application. They also give local boards solid ground to stand on when they claim that adequate materials or information have not been submitted. Local rules and regulations should include a general description of submittal requirements for each permit granting authority with a reference to more detailed requirements outlined in, for instance, the specific regulations for the Planning Board or Zoning Board of Appeals.

Clear Submittal Requirements should include a comprehensive list of items an applicant must submit to a board or commission in order for the application to be considered complete, including format, number of copies, filing fees, notice procedures, and whether digital copies of submittals are allowed or required.

The following are useful materials to accompany agency submittal requirements:

- *Timeframe for action:* This provides all parties with a schedule and deadlines for action.
- *Process for proposed project review:* This outlines how the board or commission conducts its reviews, including required public meetings or hearings.
- *Process for review of the application by other municipal boards:* Other municipal boards may have the opportunity to review and comment on an application.
- *Guidelines for development:* This aids a developer in planning a project for a level of impacts.
- *Design standards:* Provides clear, enforceable standards for such design elements as landscaping, architecture, parking, pedestrian amenities, vehicular access, and building layout.
- *Process for modification after approval:* This outlines the steps necessary for amendments to an approved plan. Many times situations arise that require adjustments to a plan after approval.

BENEFITS

- Allows for uniformity of materials to be analyzed during the project review process.
- Minimizes conflicts and delays in application review due to misunderstanding about what materials and information must be provided.
- The applicant may better plan for the expected length of time for project review and action by the reviewing board on the application.
- Plan submittals are likely to be more complete upon application submittal, minimizing delays during review caused by requesting and waiting for additional information.



REFERENCES

The Devens Regional Enterprise Zone Zoning Bylaw coordinates rules and regulations and clearly identifies application submittals, guidelines for development, design standards and the process for project review. See: www.devenscommunity.com



REFERENCES

The Town of Brookline Planning Board Rules and Regulations: See: <http://www.townofbrooklinemass.com/Planning/pdfs/PBRulesAndRegs.pdf>



Clear Submittal Requirements

#4

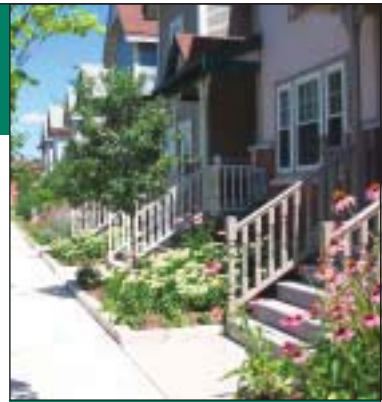
- Neighbors and community leaders as well as the permit granting authorities have a clear sense of what developers must provide, and what is not required.

CHALLENGES

- Creating and adopting clear submittal requirements, and amending them as needed, require staff and board commitment and time.
- Formalizing submission requirements may require revisions to relevant bylaws, which can involve a lengthy process and may take several months to accomplish.

IMPLEMENTATION

To adopt clear submittal requirements that are administratively enforceable, municipal officials must draft and submit at town meeting a local bylaw for approval that includes a general description of submittal requirements with a reference to the more detailed requirements in the rules and regulations of the applicable board or commission.



For development projects requiring permits from more than one board, the option to submit concurrent applications can save review time and encourage greater collaboration among municipal officials.

The application should contain a front section requiring general project information that will be used by all boards. Follow-on sections should require information specific to the review of individual boards.

The sequence of public hearings and review by various boards should be clearly indicated.

The municipality should be clear about whether the application itself is the only part of the review process being consolidated, or whether additional aspects such as public hearings, staff reviews, or approval votes are also being coordinated.

A consolidated permitting timetable, available on the community website or in a User's Guide to Local Permitting, should provide scheduling and sequencing details.

BENEFITS

- May reduce the length of the permitting process.
- Allows the municipality to coordinate reviews, particularly of large or complex projects.
- Maximizes the benefits of other recommendation, such as Best Practice #6, *Combined Public Hearings* and Best Practice #8, *Project Technical Review Teams*.

CHALLENGES

- Some projects may not qualify for concurrent applications, such as those that require a denial from one board in order to apply for a variance before the Zoning Board of Appeals.
- Boards need to be aware of projects with concurrent applications since the conditions of approval from one board may need to be incorporated into another board's decision. For example, the order of conditions of a Conservation Commission that might be incorporated into a Site Plan Review decision by the Planning Board.

IMPLEMENTATION

Implementation by inclusion in the rules and regulations can be accomplished by the applicable board or commission, while bylaw changes require a vote of the municipal legislative body.

REFERENCES

The Town of Sandwich's Zoning Bylaws includes a Growth Center Technology District and provides for concurrent applications for site plan approval and approval under the town's subdivision control bylaw.

Sandwich also has a Protective Zoning Bylaw, Article VI Growth Center Technology District. See www.sandwichmass.org and follow links to Town Hall/planning and development.



Combined Public Hearings

#6

REFERENCES

The City of Northampton Central Business Architecture Committee (CBAC) and Planning Board jointly reviewed a reconstruction of the historic Elks Lodge on Masonic Street. See <http://www.northamptonma.gov/> or contact the Northampton Office of Planning and Development at (413) 587-1266.

A joint hearing of the land use boards and commissions was held for permitting of the Forbes Industrial Park in the City of Chelsea. Link: http://www.ci.chelsea.ma.us/Public_Documents/index

The Town of Wilbraham held a joint hearing on a three-lot flexible residential development requiring a special permit from the Planning Board and an order of conditions for a stream crossing from the Conservation Commission. See <http://www.wilbraham-ma.gov/> or call the Office of Planning and Community Development at (413) 596-2806.

Projects requiring multiple permits can result in an applicant appearing before the Board of Health, then the Planning Board, followed by the Conservation Commission and any other applicable permit granting entity. This can greatly lengthen the time needed to complete the permitting process, especially in municipalities where the boards only meet once per month. **Combined Public Hearings speed up this process by reducing significantly the number of meetings that an applicant needs to attend.** The practice also allows a municipality to manage the sequence of its reviews, and consolidate reviews, without having to infringe on the regulatory authority of each board.

BENEFITS

- Shortens the timeline of the permitting process of a project.
- Allows board and commission to coordinate reviews and conditions of approval.
- Fewer meetings/hearings for the applicant, abutters, and regulators.
- Decreased paperwork.
- Positive feedback from applicants and public.
- Combined Public Hearings benefits can be maximized by also using Best Practices #5 *Concurrent Applications* and #8, *Project Technical Review Team*.

CHALLENGES

- Municipal offices may face difficulty in scheduling combined hearings.
- Combined hearings may last longer than single board hearings.
- The community must determine which projects, if any, would be eligible for joint hearings.
- Appropriate staff would need to coordinate legal notices, abutters' notices, and dates for joint public hearings to ensure compliance with the requirements for each board or commission.
- Hearing rooms would need to accommodate all board or commission members and members of the public.
- Joint hearings would have to be coordinated to ensure equal opportunity for each board or commission to identify issues and get clarification to questions.

IMPLEMENTATION

Cooperating boards or commissions might implement by inclusion in applicable board and commission rules and regulations, or in some cases by administrative agreement among participating boards.

The purpose of pre-application meetings is for representatives from the municipality's permitting boards, the property owners, developers and their consultants to meet prior to the submittal of a formal application to discuss the development concept, potential issues and concerns. **These consultation meetings promote better communication between the municipal boards and the applicant** without determining any substantive issue to be determined by the regulatory board.

Some municipalities invite the public to be involved at this stage either by holding these conferences as public meetings or by advertising and holding public hearings with due notice to abutters. Some municipalities recommend that an applicant meet with the staff rather than decision-makers, while others have committees consisting of representatives from various boards, and some invite the developer to meet with the regulatory board prior to submitting an application.

The pre-application meetings are an opportunity to explain the permit process, requirements, timetables (the sequence of board approvals) and to discuss additional information, reports, and/or studies that may be required for project review. Where applicable, such discussions must comply with the open meeting law.

BENEFITS

- Allows for an informal review of a development in concept design stage.
- Permits identification of potential issues, both for the municipality and the developer.
- Establishes relationships early in the process.
- Alerts developer to potential need to meet with affected community.
- Reviews all permits and permissions required.
- Reviews time schedules for permitting.
- Reviews applications for completeness before filing.
- Allows a community to coordinate its response to a development proposal.
- Helps departments to find solutions which meet the needs of multiple boards and commissions without conflict.

CHALLENGES

- May be difficult to coordinate schedules.
- Participants must avoid tendency to make comments that may be construed to legally bind the community.
- Community perception of permissions granted without benefit of public hearings.
- Communities must follow all appropriate procedures if a quorum of any board or commission is present at these meetings.

IMPLEMENTATION

Administrative action by the municipal chief executive or the applicable board or commission, is usually sufficient to implement this Best Practice. Alternately, a board or commission could choose to include this option in its rules and regulations.



REFERENCES

Town of Rochester provides for informal meetings between a project and town staff to submitting a site plan. See Rochester's Zoning Bylaw on Site Plan Review. Please contact Town Hall at (508) 763-3871 or email at info@townofchester.com for more information.

The City of Cambridge allows for pre-application conferences with the Planning Board as part of a "Planned Unit Development." See <http://www.cambridgema.gov/cdd/cp/zng/zord/index.html>.

The Martha's Vineyard Commission utilizes pre-application staff/applicant meetings, or scoping sessions. See link: www.mvcommission.org.



Project Technical Review Team

#8

REFERENCES

The Town of Ashland has a Technical Review Committee which reviews Definitive Subdivision Plans and makes recommendations to the Planning Board. www.ashlandmass.com/planning/public_documents/pln_rulesregulations.pdf

The Town of Hingham Zoning Bylaws, Section I-I Site Plan Review includes language that requires a board to solicit and incorporate reviews on applications from another board into their decision can be found at <http://www.hingham-ma.com/document/ZoningBylaw.pdf>



Coordinating permit application review is an efficient use of staff, board and proponents' time and effort. Project Technical Review Teams should be formed to review applications which have been submitted before multiple boards. The review teams can include staff of each relevant board and the municipal manager, or one member from each board and staff members when available. Some communities include developers at the meetings.

The purpose is to review specific projects after applications have been filed to ensure applications are complete, to address issues raised by all relevant community departments and boards, and to provide a coordinated municipal response, including the order of Board review and specifics on follow-up. This is distinct from interdepartmental meetings which discuss other administrative matters.

A Project Technical Review Team would include representatives of the boards and commissions involved in land use permitting of a specific project. Frequently, this includes any economic development offices, the Planning Board and Zoning Board of Appeals, Board of Health and Conservation Commission. The team could include departments which do not grant permits, but which may have an interest in the proposed development, such as the police, fire and public works departments. The Building Inspector may also be included, as may municipal utilities. Occasionally, the municipal chief executive participates as well. A Project Technical Review Team might also invite technical assistance from a regional planning agency.

Project Technical Review Teams may also be formed to review a project which requires only one permit, but the review would benefit if other municipal boards/staff had the opportunity to examine and comment on the application after it has been submitted to a board or commission.

Where applicable, such discussions must comply with the Open Meeting Law.

BENEFITS

- A Technical Review Team increases the communication and cooperation between departments and boards with permit granting and approval responsibilities.
- Such teams allow a community to coordinate a response to projects, including timing of separate reviews.
- Teams decrease "turf issues."
- Staff and board time and energy is saved.
- Confusion is reduced for the applicant.
- Provides for review and comment that offers protection for the applicant and the issuing authority from complaint after a decision is rendered about issues or concerns not addressed due to lack of opportunity for input by other municipal boards.



- Identifies critical issues and/or problems early in the application process.
- Allows sharing of a site's history and/or anecdotal information about the site.
- Enables creative solutions to design issues, perceived impacts, and municipal benefits.

CHALLENGES

- May be difficult to coordinate schedules.
- Requires political leadership and/or municipal executive to support/require setting up the meetings.
- May require additional copies of applications submitted by the applicant for forwarding to other departments for review.
- Some municipal boards may not offer comments on applications.

IMPLEMENTATION

Municipal executive may establish a policy of project technical review team meetings. Providing the opportunity for other boards or commissions to review and comment on project applications is an administrative decision. Requiring such review by others requires language in the bylaws of the municipality.

REFERENCES

The Town of Canton has a Permit Advisory Committee that meets to review project proposals on an as-needed basis. Link: <http://www.town.canton.ma.us/>



Regularly Scheduled Inter-Departmental Meetings

#9

REFERENCES

Town of Lincoln has inter-departmental meetings. See <http://www.lincolntown.org/>

The Town of Hingham has initiated such meetings under the leadership of its Town Administrator <http://www.hingham-ma.gov/selectmen/townadministrator.html>

Inter-departmental meetings provide an opportunity for all regulatory agencies to coordinate on matters affecting each of them beyond specific projects. They are often convened by the municipal executive, the community development director or the town planner, and could include information on new regulations, policy issues, planning initiatives, state incentive programs, staff/board educational opportunities, etc. The meetings are not designed for review of specific development projects. These meetings expedite permitting because they provide a forum to develop efficiencies and coordinate processes.

BENEFITS

- Designed to foster a collegial working environment among agencies charged with land use regulation in a community.
- Simple, direct and effective communication tool.
- Decreases “turf issues.”

CHALLENGES

- Difficult to coordinate schedules.
- Requires political leadership and/or municipal executive to support/require setting up the meetings. The leadership must also promote and maintain a supportive and collegial atmosphere in order to obtain the most benefit from these meetings.

IMPLEMENTATION

The municipal executive may establish Regularly Scheduled Inter-Departmental Meetings.



The proximity of staff offices to one another leads to increased communication and efficiency. In this Best Practice, department and board staff responsible for land use permitting are located in the same building, and ideally, on the same floor. This might include offices for the Building/Inspectional Services Department, Planning Board and Zoning Board of Appeal, Conservation Commission and Board of Health.

The City of Newton planning and building inspection services share the same office space. They also share a “counter” for walk-ins with the Zoning Board of Appeals, historical preservation, and conservation staffers. The permit-related personnel work together in the same area (second floor) on a daily basis. The boards and commissions also share at least three administrative staffers between them that perform the same tasks for each group. There is a constant exchange of information between building inspectors and planners, for instance. The organization of the offices was implemented within the last two years and is a very effective and efficient arrangement, according to a local Planning Board staff member.

BENEFITS

- Increases opportunities for interdepartmental staff communication.
- Facilitates developer communications with staff.
- Allows staff and developers to get questions answered quickly.
- Allows for informal discussions as well as project specific reviews.

CHALLENGES

- Space constraints in municipal buildings.
- Staff/board reluctance to relocate.

IMPLEMENTATION

The municipal executive would implement, with department head concurrence.



REFERENCES

The City of Newton, planning and building inspection services share the same office space. Link: <http://www.ci.newton.ma.us/>

The Town of Franklin, the town planner and the conservation director both report to a planning director. Link: <http://www.franklin.ma.us/>

Local permitting focus groups noted that locating permitting offices in close proximity to each other increased efficiencies.



Development Agreements

#11

REFERENCES

Cape Cod Healthcare, Hyannis, MA: This is a tightly crafted agreement between the Cape Cod Commission and Cape Cod Healthcare that will govern the development of an ambulatory care facility in the Town of Barnstable.

Downtown Hyannis Growth Incentive Zone, Hyannis, MA.

See the Town of Sharon Developer's Agreement for Sharon Commons, received and recorded at the Norfolk County Registry of Deeds Book 24610 P338 dated March 12, 2007.



A development agreement is a contract between a municipality and a property owner/developer, executed as part of the development approval process. A development agreement is a means by which developers can protect their investment in return for affirmative promises contained in the agreement. The municipality promises that existing restrictions on the property will remain in effect in exchange for the developer's agreement on a defined set of conditions regarding the use of the property, and the developer's affirmative covenants with respect to land, mitigation, other public benefits or payments. Frequently, development agreements are used for larger projects which use publicly held land or for which construction may take several years.

BENEFITS

For the Applicant/Developer

- Development rights are vested at the time the agreement is signed.
- Development agreements are readily enforceable by either party.
- The developer's investment is protected from a subsequent local regulatory change that may jeopardize a long-term development project.
- Developers can bargain for assurances that reviewing agencies will generally grant permit approvals in the shortest period of time possible if they concede certain public benefits.
- The mitigation of impacts is timed with the phases of development.
- Development agreements may contain a provision for Transferable Development Rights.

For the Municipality

- Public benefits are given in exchange for regulatory predictability.
- Development agreements provide certainty that public facilities and infrastructure necessary to support new growth will be built without delay.
- Development agreements help municipalities to achieve comprehensive planning goals (e.g., open space conservation, water and air quality protection, environmental mitigation, and affordable housing).
- Development agreements avoid or reduce costly litigation and administrative proceedings.
- Combined with District Improvement Financing (DIF) and similar programs, municipal infrastructure investment may be undertaken without using local credit.

CHALLENGES

- Agreements must be well-crafted with clear benchmarks and agreed upon management procedures to ensure compliance over time.
- Development agreements should take care to incorporate public opinion and local concerns.

- To the extent that a development agreement may incorporate provisions which exceed existing regulatory authority, town meeting or city council approval may be required.
- Except in conjunction with a disposition of public land or a publicly bid contract, there exists debate as to the authority of municipalities to use this Best Practice without express state legislation authorizing it.

IMPLEMENTATION

- State legislative authorization would provide clarity about local authority and development agreement conditions.
- Local legislative action is needed to authorize the sale or long term lease of public land.
- Public bidding and prevailing wage laws may be applicable to certain actions.
- The ordinance authorizing development agreements needs to ensure that exactions negotiated through development agreements are not arbitrary and capricious or contrary to local regulatory power.

**REFERENCES**

Cape Cod Commission
Model Development
Agreement Bylaw (Chapter
716 of the Acts of 1989 and
Chapter 2 of the Acts of
1990 of the Massachusetts
General Laws).

Encourage the Use of Third-Party Consultants

#12



REFERENCES

See Section 53G of Chapter 44 of the Massachusetts General Laws.

Town of West Tisbury provides for applicant-funded consultants to review wireless communications. <http://www.town.westtisbury.ma.us/Documents/WT%20Zoning%20Bylaws%20April%2006.pdf>



Contracting with a consultant to review development projects can provide needed expertise to the community, identify significant impacts, and create a more efficient process. Under Section 53G of Chapter 44 of the Massachusetts General Laws, under specific conditions, boards or commissions may assess “reasonable fees” to applicants in order to fund consultant studies to review projects. Several participants in the expedited permitting focus groups (See the Appendix for more information) reported that communities utilizing consultants pursuant to section 53G were able to undertake appropriate reviews more efficiently, ultimately leading to a shorter project approval process. This is especially important for those communities with limited or no professional staff. Please note that in cases where several municipal boards will be undertaking review of a proposal using a third-party consultant, efficiencies and cost savings can be obtained if all boards use the same consulting firm.

BENEFITS

- Expands staff capacity and board expertise.
- Allows for specialized review of complex issues, such as storm water drainage and traffic mitigation.
- Provides for timely review and alerts the developer if additional information is needed.

CHALLENGES

- Communities must provide for the assessment of fees for consultants in their duly adopted rules and regulations.
- Communities must utilize a Chapter 30B procurement process.
- The board or commission should establish a clear scope of work for the consultant for each application. Consultants’ focus is on identifying problems and providing solutions, rather than project redesign.
- Consultants must be held accountable for quality, timeliness, and efficiency of their work.
- The municipal accountant, city or town treasurer must be involved if this Best Practice is utilized, since s/he is required to submit an annual report on the funds.

IMPLEMENTATION

Municipalities that adopt Section 53G of Chapter 44 of the Massachusetts General Laws must amend the local rules and regulations to include a provision enabling municipalities to contract with outside consultants for planning services and other technical assistance.

The Commonwealth could assist this by re-establishing the Master Services Agreement (MSA) list developed pursuant to Executive Order 418 Community Development Planning to assist communities in identifying potential service

providers from a list of private consultants with expertise in transportation, open space, housing and economic development. See <http://commpres.env.state.ma.us/content/cdplans.asp#>. Some Regional Planning Agencies were also included on the listing of over 100 consultants. Originally intended to be valid for 10 years, and then updated regularly, the MSA List has been discontinued. Re-activating the list is a priority of local and regional planners and regulators. The benefits of the MSA are that it would a) eliminate the need to use MGL Chapter 30B procurement procedures; and b) provides for efficient identification of potential planning consultants, by geographic area and specialty; and c) this list of capable, available consultants was easily available on the web.





STANDARDIZING THE PERMITTING PROCESS

Predictability and consistency of the permitting process within a municipality advances the goal of more efficient local permitting. Permit applicants ought to have a good idea of what to expect from the municipal boards they encounter through the process, substantively as well as procedurally.

One of the most common frustrations voiced by private-sector participants at MARPA's focus group discussions was the dramatic differences in the attitudes, values, general level of cooperation and commitment, and even the forms used and information required by the permit granting boards among the various municipalities. For example, the Department of Environmental Protection (DEP) stipulates application forms, bringing standardization to the process of issuing wetlands protection certificates (See Section 40 of Chapter 131 of the Massachusetts General Laws). This stipulation promotes efficient permitting because it is standard across municipal lines. While acknowledging that municipalities have a great deal of autonomy and boards exercise varying degrees of discretion, many stakeholders felt that infusing the entire permitting system with more consistent forms, processes and standards of care would improve predictability and efficiency, while also significantly reducing appeals that are inevitably costly for both municipalities and applicants.

The following Best Practices, described in more detail on the following pages, can be used to standardize the local permitting process:

- #13 **Predictable Impact Fees**
- #14 **Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans**
- #15 **Effective Use of Site Plan Approval**
- #16 **Two-Tier Assessment Process**
- #17 **Delegating Minor Decisions to Staff**
- #18 **Uniform Timelines, Notifications, and Appeals**

Impact fees are one-time payments made by an applicant to a government entity as a condition of approval on a proposed development. The premise is that the impact fees offset the municipal capital costs of infrastructure necessary to service the proposed development. These funds must be used for governmental services or infrastructure improvements that are affected by the proposed development.

Impact fees have been employed in some Massachusetts communities as part of the development approval process, but there is not specific authorization in the Massachusetts General Laws. It is important to note that federal and state courts have placed substantial constraints on the scope of the costs that municipalities are able to recover through impact fees. The Massachusetts courts have established a three-pronged test to distinguish an impact fee from a tax. In order to meet this test, impact fees must be:

1. charged in exchange for a particular governmental service which benefits the party paying the fee in a manner “not shared by other members of society;”
2. paid by choice in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and
3. collected not to raise revenues, but to compensate the governmental entity providing the services or shouldering the impact. See *Emerson College v. City of Boston*, 471 N.E. 2d 336 (1984).

In considering the establishment of impact fees, communities should ensure that their bylaws/ordinances meet the above-noted tests and that such fees are established in a standardized format and applied in an equitable manner to new projects.

BENEFITS

- Standardized and equitable impact fees can improve equity and promote impartiality in the mitigation of development-related impacts.
- Municipalities will have less risk than exists where payments are negotiated in return for discretionary permits, and applicants will have more clear and objective exactions.
- Municipalities can use funds generated by impact fees to pay for costs of sewer, water, transportation, parks, schools or other governmental services necessitated by the development.
- Pre-set mitigation and impact fees would bring certainty to applicants earlier in the regulatory process while meeting community needs, but only to the extent that they preclude negotiated off site exactions or other public payments.

CHALLENGES

- Under the currently widespread practice of a community requesting exactions in exchange for approval of a discretionary permit, many developers experience frustration stemming from the timing and the lack of predictability of the



REFERENCES

Under the Cape Cod Commission Act, towns within Barnstable County may impose impact fees upon certification of their local comprehensive plans by the Cape Cod Commission. See Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990. The municipality in which the development would occur would hold and allocate the impact fees collected. Impact fees could be waived or offset for affordable housing developments. Impact fees imposed shall have a rational nexus to the impact created by the development; must reasonably benefit the proposed development; must be used for the development/improvement of capital facilities in accordance with the Commission or municipalities' capital facilities planning element; and be expended within a reasonable period of time.



Predictable Impact Fees

#13

demands, rather than the amount of the exactions themselves. Impact fees need to supersede the use of exactions (See Appendix E: Summary of Statewide Focus Group Sessions on Expedited Permitting).

- Management and accounting protections must be developed to ensure impact fees are properly imposed and expended.
- In order to be applied equitably within a community, the community would need to undertake an analysis of the true capital costs of development within a zone, including roadway, water, sewer, public safety, etc., and then allocate these costs on a pro rata basis to all future developments within the zone. It may be necessary and appropriate to collect, save and pool impact fees from several nearby projects to complete a necessary infrastructure project.
- State legislative clarity would allow communities to establish a defined schedule of mandatory impact fees within constraints established by the statute.
- Inter-community impacts should be taken into account and fees disbursed accordingly.
- See also Best Practice #11 *Development Agreements*, describing another way in which developers and communities try to bring certainty to the development process while meeting community needs for mitigation payments.

IMPLEMENTATION

Community advocates and developers participating in the focus groups Summary generally agreed that Chapter 40A of the Massachusetts General Laws should more clearly define a process for determining and applying impact fees and exactions that is transparent, consistent, and effectively addresses municipal, as well as regional, needs. Provisions in the pending Community Planning Act would allow impact fees.



In a “by-right” development approval process, the applicant submits plans to the permit granting authority for approval (e.g., zoning enforcement officer, Planning Board). The proposal must meet all of the parameters of the applicable bylaw. Some communities use such a by right site plan approval process by which members of a board or boards review the proposal to ensure that it meets the design criteria established within the bylaw or design guidelines provided as a non-regulatory aid to applicants. If the proposal meets all of the parameters of the bylaw, it must be granted a permit. Site plans issued by special permits differ from this process, in that there is more discretion on the part of the special permit granting authority (SPGA) to either grant or deny a permit. This creates a subjective and less predictable process of longer duration for the applicant, frequently accompanied by negotiated exactions which may have little correlation to impacts. (See Best Practice #13 *Predictable Impact Fees*)

Both developers and municipal officials participating in the focus groups acknowledged that the approval process for special permit applications is inefficient. However, municipal officials expressed concern that reducing the number of special permits in favor of by-right zoning would threaten the community’s ability to preserve “community character” because the objective empirical standards in by-right zoning often result in projects which undermine community priorities and character.

The development of a master plan or a community development plan would help to address this concern by permitting the municipality to enumerate its standards, expectations, and aspirations for developments of various types, in various locations. If a project were submitted that follows the specific development criteria outlined in the plan, the discretionary review could be limited to discrepancies between the plan and the proposal, reducing the permitting timeline.

BENEFITS

- In order for a community to allow for by-right approval of developments, the community should have undertaken a planning process by which the community determines the uses, scale and other parameters of development that would be allowed within a specific zone. Undertaking such a process will help to ensure that developments proposed (under either a by-right or a special permit process) will meet the community’s goals for the development of the zone.
- Use of such by-right development in conjunction with Site Plan Review versus special permit processes can bring more certainty to the approval process for the applicant. This in turn may make the community more desirable for investment, bringing in more property tax revenues for the municipality.
- The approval by-right can be subject to Site Plan Review in order to determine that the developer is abiding by all local regulations as well as any approved plan or design guidelines for the district.



REFERENCES

A community that has adopted a Chapter 40R or 43D district constitutes an example of the broader group of communities that have approved bylaws/ordinances that authorize by-right approvals or an explicitly expedited approval process. Contact DHCD for the most up-to-date listing of communities that have adopted 40R bylaws and in which design guidelines are combined with site plan approval processes instead of special permit processes to provide certainty to developers while addressing concerns of the municipalities (<http://www.mass.gov/dhcd/components/SCP/ch40r/default.htm>). Similarly, the list of communities involved in 43D planning is available through EOHEd (www.mass.gov/mpro).



CHALLENGES

- Municipalities need to determine parameters of development that is desired. This can require additional planning and a potentially difficult political process.
- By shifting to by-right development, the community must identify in advance desirable mitigation for impacts of the development (see Best Practice #13 *Predictable Impact Fees*).

IMPLEMENTATION

To balance community concerns regarding protection of community character with the goal of expediting the permitting process, municipalities should consider the following:

1. Create a current community development plan or master plan, as provided in Section 81D of Chapter 41 of the Massachusetts General Laws.
2. Following the land use recommendations in the master plan, re-zone areas to permit more as-of-right development subject to design guidelines,
3. Require all by-right zoning to conform to the master plan,
4. Utilize Site Plan Review with objective design standards whenever possible to ensure that the design of projects fits the plan for growth in that community.

State funds are often needed for technical assistance to assist communities in preparing plans that meet community and marketplace needs.



#15 Effective Use of Site Plan Approval

Site Plan Review allows for a detailed evaluation and mitigation of development project impacts by the municipal Planning Boards or other reviewing authority. The Citizen Planner Training Collaborative describes Site Plan Review as establishing criteria for the layout, scale, appearance, safety, and environmental impacts of commercial or industrial development, in an attempt to 'fit' larger projects into the community. Site Plan Review usually focuses on parking, traffic, drainage, roadway construction, signage, utilities, screening, lighting, and other aspects of the proposal to arrive at the best possible design for the location.

In Massachusetts, municipalities have generally adopted zoning provisions allowing the review of site plans in one of two forms:

1. **Site Plan Approval:** This is generally adopted as a Special Permit process, or follows the same procedures as a Special Permit, including the requirement for a public hearing. In this case, the reviewing authority has the ability to approve, approve with conditions, or deny the application.
2. **Site Plan Review:** This is an administrative review process only, not a Special Permit process, and applies to uses permitted as a matter of right. The reviewing authority has the ability to impose reasonable conditions to further the purposes established in the bylaw/ordinance, but cannot deny the application. This process is most effective when a community has objective design guidelines under which a proposal can be reviewed.

Site Plan Review increases the municipality's ability to define the character and layout of new development and to work with the applicant to meet local needs as well as project needs. Project scoping discussions prior to an application submittal can help to identify application requirements and information needed for the Planning Board or other reviewing authority to make a decision.

BENEFITS

- Site Plan Approval/Review can be used to shape a project according to a plan for growth and change within a municipality.
- Site Plan Approval/Review gives a municipality the ability to define the character and scope of a project on a specific site.
- Site Plan Review brings a degree of certainty to a project which makes it more attractive to owners/applicants.

CHALLENGES

- Unless design guidelines are approved before an application is filed, site plan approval provides insufficient surety that a proposed project will meet community objectives.
- 40R, 43D, and development agreements are not yet sufficiently widespread to serve as a model for limiting project based discretion.

IMPLEMENTATION

Site Plan Review may be adopted as an amendment to a municipal zoning bylaw or ordinance with a two-thirds majority vote of Town Meeting or City Council.



REFERENCES

The Town of Rochester's Site Plan Review bylaw combines language that incorporates items helpful to streamlining a permit process (where appropriate).

The Town of Raynham Site Plan Review Rules and Regulations can be found at http://www.town.raynham.ma.us/Public_Documents/RaynhamMA_ZoningRegs/Article13

The Town of Danvers Site Plan Review bylaw can be found at <http://www.danvers.govoffice.com/>

See also the Citizen Planner Training Collaborative at www.umass.edu/masscptc; click Training Programs; then click Training Modules.



REFERENCES

See also Best Practice #17
*Delegating Minor Decisions
to Staff.*

The Town of Franklin Site Plan Review incorporates three levels of review for various types of applications. For an example see the Citizen Planner Training Collaborative website, Example Bylaw Collection, Site Plan Review 3 (Town of Franklin Site Plan Review) at www.umass.edu/masscptc



Two-Tier Assessment Process

#16

This Best Practice allows any regulatory agency to provide for different levels of review depending on clear thresholds of scale or impacts of a project. Specific criteria are identified by the regulatory agency, usually relating to project size or impact and applications are evaluated based on established criteria. Those below the threshold size or impact would receive a less intensive review than those above the threshold. Variations of this include a) the use of performance criteria whereby a project meeting the criteria receives expedited consideration for project approval, and b) a “conformance-to-approved plans” criterion where a project that conforms to an approved development or master plan is reviewed only for factors that diverge from the approved plan.

An assessment process can be used for site plan approval, with projects meeting specified criteria “fast tracked” through the review.

BENEFITS

- Provides predictability in the review process.
- The level of review more closely aligns with level of project impact.
- Staff resources are concentrated on projects with greater community impact or which do not conform to community expectations.
- Different tiers of review may be particularly appropriate for Site Plan Review.

CHALLENGES

- Staff/board members have to determine the criteria to be used for the review tiers. Appropriate criteria for determining major or minor impacts can be difficult to develop.
- The Two-Tier Assessment Process must be fully described and easily available so developers can decide how to design their projects and so residents of the community will have confidence that there is no favoritism in the review process.
- Resources must be identified to create the appropriate criteria and to design the two different levels of review.

IMPLEMENTATION

Develop review criteria and include in subdivision rules and regulations, wetlands regulations, etc. and in a *User’s Guide to Local Permitting* as described in Best Practice #2.

Within approval-granting boards and departments, there are opportunities to delegate minor decisions to the staff. This allows staff and board to focus on projects, or aspects of projects, with greater complexity and potential community impacts.

To adopt this Best Practice, each permit-granting body in the municipality would review its operations and determine which procedures and/or decisions could be routinely delegated to staff without negative outcomes. Similar to Two-Tier Assessments, criteria could be developed to ensure consistency and uniformity in the delegation of decisions. In addition, in its permit for a project, a municipal agency might delegate subsequent responsibility (such as review of preconstruction grading plans or final landscape plans) to its staff.

As an example, Section 13 of Chapter 40A of the Massachusetts General Laws allows a community to appoint a Zoning Administrator and delegate to the Administrator some of the powers and duties of the Zoning Board of Appeals. Persons aggrieved by a decision of the Zoning Administrator may appeal to the full board.

Planning Boards and Conservation Commissions could also vote to delegate non-discretionary decisions or determinations to staff, such as granting of some special permits or approving work in a buffer zone. Developing criteria for staff to utilize in making these decisions is an important part of this Best Practice.

BENEFITS

- Expedites the review and permitting of specific aspects of a project, or possibly entire projects which meet criteria allowing for staff sign offs.
- Facilitates board and commission public hearings and meetings because the focus is on actions requiring the members' subjective skills.

CHALLENGES

- Board members may be reluctant to delegate even minor decisions.
- The applicable board must develop an unambiguous list of decisions and duties to be delegated.

IMPLEMENTATION

Massachusetts General Laws, in the Administrative Procedures Act, permits delegation of determinations and duties to staff but additional clarity would be helpful. See Section 13 of Chapter 40A of the Massachusetts General Laws. <http://www.mass.gov/legis/laws/mgl/40a-13.htm>

Some delegation is permissible by local regulatory agencies through their rules and regulations; other delegation may require local legislative action.



REFERENCES

The Town of Hingham Zoning Board of Appeals has appointed a Zoning Administrator who is empowered to hold public hearings, grant some dimensional variances, and extensions for variances. Link: http://www.hingham-ma.com/zba/documents/Rules_and_Regulations.pdf

The City of Northampton delegates certain cases to a Zoning Administrator, who is a member of the Zoning Board of Appeals. The ZBA members take turns serving as the Zoning Administrator. See: <http://www.northamptonma.gov/gsuniverse/httpRoot/zba/>



REFERENCES

See Best Practice #3
Permitting Flow Charts & Checklists



Uniform Timelines, Notifications, and Appeals

#18

This Best Practice demonstrates how other Best Practices, when implemented simultaneously, interact to create very efficient permitting at the local level without compromising the ability of the permit granting authorities to protect the interests of the community. Mayors, Town Administrators, Boards of Selectmen, Aldermen and City Councils could take steps to standardize the application process for applicants. The benefits of doing so are many. Not only are the applicants afforded a “road map” sequencing the order of approvals, expected timeframes, and points of coordination, but the community as a whole also benefits from directed planning efforts enabling projects to be executed in a rational, consistent, and transparent manner. The following steps can be taken to increase uniformity:

1. Develop and then utilize a “Master Permit Application” and any supplemental forms.
2. Make the Application and forms readily available to prospective permit applicants on the municipal website and at the municipal offices (see Best Practice #21 *Maximize the Municipal Website*).
3. Also make readily available and actively publicize to the general public the location of all municipal ordinances, regulations, rules, and procedures.
4. Convene a pre-application meeting (Best Practice #7 *Pre-Application Process*) with the prospective permit applicant, their consultants, and the members of the technical review team if the community has one (Best Practice #8 *Project Technical Review Team*), or representatives from the permit granting boards. Pre-application meetings are more effective where local government actively uses inter-departmental conferencing, including non-permit granting authorities with relevant expertise.
5. Internally, municipal leaders should coordinate and prioritize an effort to develop and adhere to uniform time-frames for permit processing and decisions as a means of improving service delivery to its residents (See Best Practice #3 *Permitting Flow Charts & Checklists*).

BENEFITS

- Improved communication among municipal offices and with the permit applicant increases the level of knowledge and overall familiarity with the permitting process across the board.
- An added benefit of the increased level of knowledge and familiarity is more consistent and thorough permitting.
- Community interests are more likely to be reflected in permitting decisions.

CHALLENGES

- Adoption of this Best Practice should be done in correlation with adopting other Best Practices included in this report.
- Adoption requires a high degree of internal coordination between municipal officials to lay out the so-called “road map” for applicants.

IMPLEMENTATION

Some of the elements in this Best Practice can be enacted administratively. Most require the approval of one or more permit granting boards. Some will require local legislative approval.

RESOURCES FOR IMPROVING LOCAL PERMITTING PERFORMANCE

Adequate staffing and resources are integral to efficient planning and permitting. Unfortunately, communities across the Commonwealth are experiencing budgetary constraints that affect many public services, and planning and regulatory agencies are often most dramatically affected. These shortages are even more apparent in the lack of training for board members and staff. Many expedited permitting focus group participants expressed the opinion that municipal officials may have insufficient knowledge and lack the necessary qualifications to perform their public offices fully. Local officials must have the resources to capably and efficiently discharge their duties, with a sufficient understanding of their regulatory job functions to ensure that local permitting protects the public interest while encouraging the needed development of both homes and jobs.

Advancements in technology available today are neither too expensive nor too sophisticated to be useful in municipal offices. A municipal website is an effective communication tool that is relatively inexpensive to maintain and projects a positive image of the community. Municipalities are rapidly improving quality of websites as a portal to municipal bylaws, regulations, schedules, and application forms. Although they are not yet widely used, a variety of both commercial and locally developed electronic permit tracking systems are available for municipal officials to adopt. Adopting electronic filing of permit applications would benefit communities by reducing the risk of filing and administrative error or oversight, as well as facilitating electronic transmission of permit applications with more transparency, accuracy, and efficiency among municipal boards and commissions, as well as interested citizens.

The following Best Practices, described in more detail on the following pages, can be used to improve the local permitting process:

- #19 Adequate Staffing**
- #20 Create a Culture of Training**
- #21 Maximize the Municipal Website**
- #22 Electronic Permit Tracking Systems**
- #23 Create an Electronic Filing Process for Permit Applicants**





Adequate Staffing

#19

REFERENCES

Consult your regional planning agency for available technical assistance.

Pioneer Valley Planning Commission (PVPC) for example, offers a Planning Board Assistance Program where PVPC staff provide professional planning services on a part-time, cost effective basis.



Inadequate staffing at the municipal level can debilitate the permitting process, especially in small communities. During the expedited permitting focus group discussions, applicants voiced in unison that communities with volunteer boards without adequate staff were the hardest with which to work. A community ideally would appoint a community development director or planner as a point-person for applicants to guide them through the permitting process. This is most effective when the point person is empowered by the municipality to work with the relevant public officials and to usher developers through the permitting process. In addition, the development director or planner must be familiar with the community's master plan, and use the plan as a roadmap for assessing development permitting decisions. The following suggestions came out of the focus group discussions and are particularly useful when increased spending is not the most viable option given budgetary considerations:

BENEFITS

- A point-person for applicants increases applicant satisfaction with the process and can effectively speed up the permitting process.
- Standardizing criteria for appointments to boards was another suggestion. An objective set of criteria ought to include relevant experience and education, expertise and knowledge of the community.
- When available, utilizing peer review funds - as provided for under Section 53G, Chapter 44 of the Massachusetts General Laws or by other means – alleviates demands placed on already burdened staff to resolve technical issues in a timely fashion. (See Best Practice #12 *Encourage the Use of Third Party Consultants*.)

CHALLENGES

- Budgetary constraints prevent some municipalities from offering competitive salaries that would attract and retain desirable candidates for staff positions.
- Budgetary constraints can also prevent municipalities from hiring adequate staff to provide administrative and professional coverage to each regulatory board.

IMPLEMENTATION

Generally speaking, Town Meeting or City Council approval is necessary to establish and fund staff positions, while the appointing authority is left to the mayor or municipal manager. State financial assistance through municipal aid, conditional grants or technical assistance can materially improve local permitting by providing at least partial support for adequate staffing.

Educational and training for regulatory board members and staff would pay immediate benefits in clarity, timeliness, competence, and defensible decisions. Although Boards of Health, Assessors and Water Commissions and their staffs are expected to be trained regularly and well, other land use regulatory boards have neither a requirement nor a culture of training. For example, the Citizen Planner Training Collaborative currently provides high quality trainings for zoning officials, as does the Massachusetts Association of Conservation Commissions for conservation commissioners; however, insufficient numbers of board members take advantage of such courses.

Provided adequate resources, professional associations, municipalities and Regional Planning Agencies could offer additional training on a more flexible basis, closer to where people live and on evenings during the week. Web casts and other computer based programs could aid this effort. This investment would likely pay dividends in expediting permits, reducing staff expenses per project, as well as reducing litigation fees. Whenever possible, municipalities should reimburse board members that voluntarily elect to participate in training, which may reduce litigation and insurance costs.

BENEFITS

- Training will increase the consistency and objectivity of rulings by municipal boards. It will also increase their legal knowledge of the relevant zoning bylaws, ordinances, and land use laws, and the extent of board authority.
- Procedural knowledge of running a public meeting and administering a regulatory program is likely to improve, as will institutional knowledge of the regulatory role, jurisdiction, and enforcement mechanisms of the local boards.

CHALLENGES

- The community benefits are lost when there is a higher-than-average turnover rate for public officials.
- Training expenses further stretch already strained municipal budgets, although they are substantially less than litigation costs that may be saved due to knowledgeable officials.
- Mandatory training for board members may be considered too onerous a requirement for volunteers, and might deter volunteers from serving in the future.

IMPLEMENTATION

Local government may implement this Best Practice without amending their local codes, although it might be preferable to do so to ensure that a training requirement is enforceable.



REFERENCES

Citizen Planner Training Collaborative. Link: www.umass.edu/masscptc

For information on Massachusetts Association of Conservation Commissions (MACC) see <http://www.maccweb.org/>

For information on Massachusetts Association of Health Boards (MAHB) see <http://www.mahb.org/>





Maximize the Municipal Website

#21

REFERENCES

Communities use their websites as “one-stop” permitting and development centers in an effort to direct and streamline the permitting process. See <http://www.cambridgema.gov/pdf/> for an example.

The three most common types of on-line permitting are:

1. Development center with all information and departmental links included on one page;
2. A complete listing of all forms and documents either town-wide or specific to construction and permitting; and
3. Forms and guides posted with each board or department.



The use of the internet is increasingly becoming the preferred mode of communication for towns and cities across the Commonwealth.

Municipalities are using the internet to conduct business and to communicate with residents, owners/applicants and non-profits via a “virtual town hall” website. While limited resources and inertia have slowed adoption of municipal web based regulatory education, administrative forms, information, and even filings, commentators agree that more universal web information would help regulators, administrators, owners, professionals, and applicants.

BENEFITS

- Hosting a municipal website is an extension of town/city hall operations that can either be static (listing office hours and department contacts) or interactive (downloadable forms and documents, email alerts, bylaws, regulations, etc).
- Websites provide access to town/city hall information outside regular business hours and reduces staff time devoted to interacting with “walk ins” during business hours.
- A website may act as a “one-stop shop” where a user may gain access to a multitude of documents and forms from many departments without having to physically walk from one department to another.
- Municipal staff may use the website as a tool to post agendas, announcements, and decisions, as well as to direct users to guides, regulations, forms or documents for instant access. Often documents and forms are downloadable at no cost to the user.
- Information on a website can act as a guide in and of itself to explain the permitting process and allow the user to conduct research prior to engaging planning staff and initiating a permit process.

CHALLENGES

- Municipalities may have insufficient access to technical assistance to create, update, and post information on the internet. Regular updating can be particularly challenging when staffing is limited.
- Some municipalities have not yet chosen to have internet access. A few are unable to gain access. While the majority of the state is served by high speed internet companies, there are still pockets of rural communities operating with dial-up connections.
- Forms and procedures are frequently not in a digital format to upload to the Internet. Many communities are using forms and procedures created decades ago which are only in a paper format, and images of applications are all that can currently be posted.

IMPLEMENTATION

Website development is a technical endeavor and should be discussed with chief elected officials, and contracted with an internet development service provider. Staff and financial considerations must be taken into account when

#21

Maximize the Municipal Website

contemplating the creation, format and updating of a website. A community may wish to begin by establishing a site that includes basic information that is less subject to change. A commitment to provide current information (meeting minutes, lists of current board members or staff, application forms, etc.) requires increased staff or consultant time to maintain.

State financed assistance and a Master Service Agreement (see Best Practice #12, *Encourage the Use of Third Party Consultants*) would permit municipalities to receive technical assistance which would bring web-based regulatory assistance to every municipality.

State regulatory agencies having oversight of local regulatory programs including Department of Environmental Protection, Department of Public Health, could provide standardized forms and web based availability, such as those used to administer the Wetlands Protection Act.



REFERENCES

The City of Lowell hosts a Development Services page dedicated to permitting information for residents, businesses, developers, and non-profits. A developer's guide is included. Building permit information is linked. Link: <http://www.lowellma.gov/depts/dpd>

The Town of Spencer has a dedicated page for town-wide forms and documents. See <http://www.spencerma.gov/tie.ez?pageId=459&actionName=display>

The City of Westfield posts forms and permits on the Building Department page with links to planning and zoning. See <http://www.cityofwestfield.org/detpages/departments166.html>



Electronic Permit Tracking Systems #22

REFERENCES

See Appendix C: *Permit Tracking Software Guide for Massachusetts Municipalities* on-line at www.mass.gov/mpro.

Contact your local Regional Planning Agency for information on available state grant funding to purchase commercial permit tracking software.

A few communities, including Adams, Franklin, Grafton, Lincoln, Mansfield, and Peabody have crafted Access databases designed to provide some of the features of the software reviewed in the *Permit Tracking Software Guide* (Appendix C).



Electronic permit tracking systems have the potential to streamline permitting from application intake through project completion. Along the way, the software should be able to produce status reports, and highlight any problems that should or would hold up the permitting process such as unpaid property taxes or other violations. Many communities use Microsoft Excel or Access to track activities for pending applications within individual departments, and most use Microsoft Word to create templates for applications, notices and decisions. Coupled with a geographic information system (GIS), some of these systems can create abutters' lists and facilitate review of geophysical characteristics that may not be readily discernable in an application. While local systems reviewed to date do not have the depth of tools needed for a complete permit tracking program, a broad array of commercially available permit tracking systems are available. A description of these is included in Appendix C: *The Permit Tracking Software Guide* which can be found at www.mass.gov/mpro.

BENEFITS

- Reduces staff time spent on administrative functions such as copying and filing.
- Cuts back on waste and administrative overhead costs long-term.
- Can provide more transparency and accuracy to the permitting process.
- Less room exists for administrative error given automatic fields and assigned numerical values.
- Allows electronic files to be readily disseminated to multiple parties at once, including other permit granting authorities, and pulled up remotely.
- May permit forms and applications to be automatically generated, sorted by parcel, applicant name, date, and history.

CHALLENGES

- Given the current fiscal climate in many communities, commercially available electronic permit tracking systems and maintenance contracts are frequently prohibitively expensive.
- Electronic permit tracking systems must be managed. That means they must be updated regularly and consistently, and used uniformly even when staff changes occur. Technical assistance may assist in maintaining such programs; trained local staff is indispensable.
- Like any software package, it is corruptible and only as reliable as the network it is on. A maintenance contract with automatic back-up is recommended for all local computer services.
- Locally developed Microsoft Access based programs might be an inefficient choice for mid-size and larger municipalities, because it may become overloaded with data from multiple and simultaneous users.

IMPLEMENTATION

The leadership of municipal executives, both appointed and elected, along with the cooperation of local regulatory boards, is a prerequisite for examining and adopting electronic permitting software. Regional Planning Agencies should consider bringing communities together to see if the cost of purchasing, maintaining, and training users of such systems can be reduced through the power of bulk purchase. Fees by permit applicants could help to cover the costs, especially since they will benefit from increased consistency, transparency, and speed.

Adopting electronic filing of permit applications would benefit communities by reducing risk of filing and administrative error or oversight, as well as facilitate electronic transmission of permit applications from board to board.

BENEFITS

- Electronic system would afford the process more transparency and accuracy.
- Less room for administrative error given automatic fields and assigned numerical values.
- Electronic files may be readily disseminated to multiple parties at once, to other permit granting authorities, and pulled up remotely.

CHALLENGES

- All of the challenges related to Best Practices #21 *Maximize the Municipal Website*.
- Electronic filing systems must be managed. That means they must be updated regularly and consistently, and used uniformly.
- Like any software packages, it is corruptible and only as reliable as the network it is on. A maintenance contract with automatic back-up is recommended.

IMPLEMENTATION

Contact your local Regional Planning Agency for information on available state grant funding to purchase commercial permit tracking software.

The Implementation Section of Best Practice #21 *Maximize the Municipal Website* applies to this practice also.

Effective electronic filing will require acceptance by each municipal regulatory board and commission, and also acceptance by associated state agencies, landowners, and applicants.



REFERENCES

The Town of Grafton is in the process of developing an electronic filing system, developed locally by the building inspector. The program is based on Microsoft Access, but utilizes BlueTooth technology to permit staff to upload building inspector reports daily. Efforts are underway to broaden the permit filing electronic application to the other permit granting authorities in the town, such as the Conservation Commission and the Historical Commission. Link: http://www.town.grafton.ma.us/public_documents/index

See The MARPA Literature Review on Streamlining Permitting in the Appendix and on-line.



PLANNING

REFERENCES

The Massachusetts Housing Partnership has produced “Local 40B Review and Decision Guidelines” (http://www.mph.net/vision/chapter_40B.php) and the Department of Housing and Community Development has produced “Guidelines for the Planned Production Regulation under MGL Chapter 40B” to help municipalities select priority sites for housing production (<http://www.mass.gov/dhcd/components/SCP/PProd/gdlines.htm>).



Planning can help a community to guide future growth. It can answer questions like, “Where should additional housing be constructed? What are the best locations for a new school or park? What uses would we like to see in the old industrial park?” A community that identifies or plans appropriate areas for commercial, residential and industrial growth is much better prepared to encourage desirable private development and to review specific development applications once they are filed. This could be accomplished through adoption of a municipal master plan and amending the zoning and related bylaws to be consistent with that plan. This section summarizes steps a local government can take to proactively locate appropriate development sites. It is a condensed outline of the steps a community would go through to select sites or areas for particular uses as a key part of a master planning process.

While the Best Practices in this section can be implemented individually, underlying all of them is the importance of creating a master plan for the community.

Setting priorities for the development or preservation of parcels throughout a municipality is accomplished through the creation of a land use plan generally, or the master planning process that a community may prepare pursuant to Massachusetts General Law Chapter 41 Section 81D. Executive Order 418, for example, encouraged communities to set priorities for key parcels. Chapters 40R and 43D of the Massachusetts General Laws encourage municipalities to zone land for housing or commercial/industrial development in appropriate locations. They also provide guidelines for communities to expedite the approval process for permit applicants. Under Chapter 43D, municipalities may access grant funds to implement changes to local bylaws/ordinances or procedures and for planning for additional expedited permitting sites; 43D acceptance by a community also improves access to other sources of funds for implementation (MassDevelopment, Mass. Office of Business Development, PWED etc.). Chapter 40R designation provides funds for municipalities to use for any purpose, including infrastructure improvements; the related Chapter 40S assists in covering school costs for 40R Districts.

Once a master plan is completed, the process of changing and adopting municipal land use bylaws or ordinances to reflect the goals of the master plan is vital to implementing the plan. Currently, Massachusetts law does not mandate consistency between a community’s plans and its bylaws, notwithstanding the obvious benefits such consistency would produce for the community and the applicants.

The following Best Practices, described in more detail on the following pages, can be used to identify appropriate areas for commercial, residential and industrial growth and plan accordingly:

- #24 **Selecting Preferred Sites for Commercial or Industrial Development**
- #25 **Designating Priority Development Sites Under Chapter 43D**
- #26 **Pre-Permitting for Selected Sites**

Focus group participants identified the process of site selection for commercial, industrial, and mixed uses as the most difficult part of the development process. The adoption of Chapter 43D to expedite local permitting is in large part a response to that general frustration. How can a community confidently select commercial and/or industrial sites suitable for expedited permits? Site selection is a planning process used to determine appropriate locations for proposed development through a thorough evaluation that includes review of the physical, biologic, historic, marketplace and economic attributes of prospective parcels as well as potential limiting factors such as infrastructure, adjacent land uses and impacts on neighboring communities.

BENEFITS

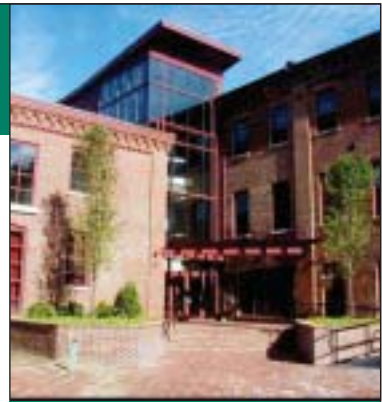
- The community is able to proactively select sites for particular types of development, rather than reacting to development proposals.
- Notice of the availability of such sites for development may be rapidly conveyed to investors/developers.
- Planning work already completed by the municipality and/or the Regional Planning Agency for the preferred site may be utilized by prospective developers.
- The community may respond quickly to appropriate development proposals.

CHALLENGES

- Staff planning expertise may not be readily available for development site selection, although other resources may be available to assist, such as local technical assistance funds available through the regional planning agency.
- Marketplace conditions change rapidly, so sites selected and appropriate uses designated for such sites should be flexible enough to remain viable for development despite marketplace fluctuations.

The following is an outline of a process a municipality may use to select sites for expedited permitting, especially if the community does not have an existing master plan that identifies specific sites for development. This outline may be used by communities seeking to participate in Chapter 43D for commercial or industrial development, Chapter 40R for housing and mixed use development, or to create a local process to expedite permitting. There are six basic steps in this process:

1. Review existing planning reports and studies; collect new data as needed.
2. Propose appropriate sites and gather stakeholder input/buy in.
3. Analyze the physical, demographic and market attributes of the sites.
4. Evaluate the sites with existing zoning and other controlling land use rules and regulations.
5. Review market criteria and potential uses.
6. Finalize the list of sites and proposed changes to the zoning ordinances or bylaws.



REFERENCES

The Executive Office of Housing and Economic Development web site contains additional information relating to the Chapter 43D Expedited Permitting Program. Go to <http://www.mass.gov/mpro> and follow the Chapter 43D links.



Selecting Preferred Sites for Commercial or Industrial Development

#24

REFERENCES

For information on Executive Order 418, see the official Community Development Plans website with a list of participating communities at: <http://commpres.env.state.ma.us/content/cdplans.asp#>

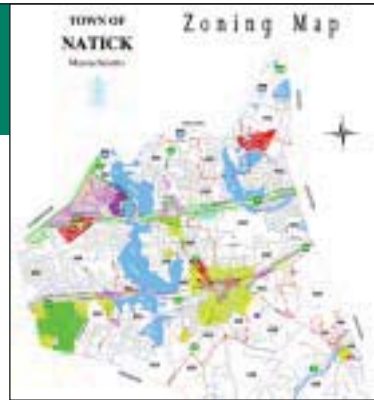
The Commonwealth's Ten Sustainable Development Principles are available at http://www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf



Key elements of each step are summarized:

1. **Review existing planning reports and studies; collect new data as needed.**
 - Did the community participate in Executive Order 418 Community Development Planning? If so, much of the work may have been done, and is likely to be current and timely. Gather all materials produced by the EO 418 Planning effort such as maps, narratives, information.
 - The official website for Community Development Plans with a list of participating communities is found at: <http://commpres.env.state.ma.us/content/cdplans.asp#>.
 - If the community did not participate in EO 418 Planning, collect all studies and reports, particularly those about land use. Contact the regional planning agency for resources.
 - The Massachusetts Office of Geographical Information Systems is a resource for maps and data: <http://www.mass.gov/mgis/massgis.htm>. Regional planning agencies are also a good source for these materials.
2. **Propose appropriate sites for commercial, industrial, and mixed uses.**
 - Study existing maps, reports, plans, and zoning for sites already identified as appropriate or being used for commercial or industrial uses (but perhaps not yet for expedited permitting). Include brownfields and state or federal surplus lands in the lands being reviewed.
 - Consult with elected and appointed municipal officials, particularly members of any economic development committee as well as other relevant boards (e.g., Planning Board, Zoning Board of Appeals, the Board of Health, and Conservation Commission) and departments (e.g., planning, economic development, housing, community development, water and sewer, transportation). The Regional Planning Agency and state economic development agencies may also be consulted.
 - Review available market information to determine feasibility of specific sites for proposed uses.
 - Seek private sector expertise, such as the chamber of commerce, local realtors, and developers with a history of beneficial and desirable economic activity within the municipality.
3. **Analyze the sites.**
 - Preferred sites should be evaluated based on:
 - a) Physical attributes, including topography, geology, soils, and hydrology.
 - b) Biological attributes, including wildlife and vegetation.
 - c) The Commonwealth's Ten Sustainable Development Principles (see www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf).
 - d) Cultural attributes, such as nearby historic sites, recreational resources, or tourist attractions. Such facilities may hinder or enhance the suitability of the site for commercial or industrial development.

- Existing infrastructure including transit services, bicycle and pedestrian access, water and sewer infrastructure, and proximity to town or city centers. Generally speaking, sites with existing or planned infrastructure are more suitable for commercial or industrial development than sites that would require entirely new infrastructure or the expenditure of substantial public dollars for expansion.
 - Widespread stakeholder input is important. The site selection process is far more likely to result in successful permitting process and ultimate development if neighbors (both residential and commercial), as well as other key organizations and individuals in the municipality, support efforts to attract commercial and/or industrial development. Stakeholders are more likely to support the outcome if they have been involved in the deliberative process from the beginning.
 - Town staff and board members, such as the Planning Board and Conservation Commission, might assist in evaluating sites.
4. **Compare the sites against existing zoning.**
 - Are the sites identified for industrial and commercial use actually zoned “Industry (or Manufacturing)” or “Commercial”?
 - Do the uses permitted in the zoning bylaw or ordinance match contemporary industrial or commercial uses? For example, is medical device manufacturing allowed as-of-right in an area zoned for industrial uses?
 5. **Review market criteria and potential uses.**
 - Consult with local real estate professionals and development officials to determine which types of development have the greatest market demand both currently and in the near future, and assemble the siting criteria and potential impacts of these development types.
 - Apply market criteria to the prospective sites, focusing on those sites which have the greatest potential for specific types of uses.
 - Note that market conditions tend to change more rapidly than plans or land use regulations, and that significant flexibility should be built into the site selection and any proposed zoning or regulatory changes.
 6. **Finalize the list of sites.**
 - Eliminate sites that did not pass analysis under Step 3 with particular regard for the Ten Sustainable Development Principles.
 - Consult Best Practice #25 *Designating Priority Development Sites Under Chapter 43D*, to determine if any preferred sites for development identified also qualify for funding through the 43D expedited permitting program.
 - Eliminate sites that are not appropriately zoned and cannot be re-zoned for future economic development.
 - Propose new zoning regulations, such as site plan approval, a “pre-permit” process, or other methods to expedite permit approvals for the properties on the list of preferred sites.



REFERENCES

The Massachusetts Office of Geographical Information Systems is a resource for new data: <http://www.mass.gov/mgis/massgis.htm>



Selecting Preferred Sites for Commercial or Industrial Development

#24

IMPLEMENTATION

- The municipal executive must approve the resources and time commitment of town staff/boards/agencies to undertake the preferred site selection process.
- A committee that includes other stakeholders such as landowners, developers, active community residents, as well as relevant municipal officials may productively be formed.
- A work plan should be developed and reviewed by capable stakeholders.
- Financial and professional resources for planning and mapping should be sought through the relevant public agencies such as a Regional Planning Agency, MassDevelopment, and the Executive Office of Housing and Economic Development (EOHED), among others.



The designation of Priority Development Sites (PDS) closely relates to Best Practice #24, *Selecting Preferred Sites for Commercial or Industrial Development*. The techniques and criteria for site selection are also applicable here. PDS designation specifically refers to participation in the Chapter 43D expedited permitting program guarantees that conforming development proposals for approved sites will receive municipal permitting decisions within 180 days of the date of application. To implement this Best Practice, please see Appendix A: *Chapter 43D: A Step-by-Step Guide to Adoption*.

To be approved for state funding under Chapter 43D, the site must first be zoned or rezoned for commercial, industrial, or mixed use development and allow for development or redevelopment of a building of at least 50,000 gross square feet. In addition, there is a preference that locations meet one or more of the following criteria:

1. located adjacent to areas of existing development
2. include underutilized buildings or facilities
3. located close to appropriate transit services

For assistance in choosing appropriate sites, communities should consult the outline for selecting preferred sites contained in Best Practice #24 *Selecting Preferred Sites for Commercial or Industrial Development*.

Communities that approve Priority Development Sites are eligible to apply for state grants to assist the municipality in implementing the expedited permitting, and are also eligible for technical assistance from other agencies (Massachusetts Office of Business Development, MassDevelopment) to prepare and promote the site for development.

BENEFITS

- Provides grants up to \$100,000 to a community for professional staffing assistance, local government reorganization and consulting services, once the Priority Development Site is designated.
- Provides priority consideration for Public Works Economic Development (PWED) grants, Community Development Action Grants (CDAG), brownfields remediation assistance, Massachusetts Opportunity Relocation and Expansion (MORE) jobs program and other infrastructure funds and financing mechanisms.
- Allows collection of special fees for permit applications.
- Highlights each participating community's economic development efforts through aggressive online marketing and publicity for the designated sites.
- Communities guarantee that municipal permits will be granted within 180 days after development application in Priority Development Sites.
- Participating communities enjoy the favorable opinion of the development community, thereby expanding opportunity for future investment.

REFERENCES

Refer to 400 CMR 2.00 Expedited Permitting for a detailed program overview, definitions, statutory requirements, instructions on the designation process and grant application instructions, etc. See <http://www.mass.gov/Eoed/docs/Chp.43D400CMR200.pdf>

Also see Appendix A "Chapter 43D: A Step-by-Step Guide to Adoption".

Designating Priority Development Sites Under Chapter 43D

#25



REFERENCES

Massachusetts SiteFinder is a searchable, online inventory of building and land sites developed by the Commonwealth and the Massachusetts Alliance for Economic Development. The useful tool provides project details, maps, graphics, and technical information on every PDS designation thus far. For an example, see the site's report on the Town of Canton's Priority Development Site at 275 Dan Road: <http://www.massachusettsitefinder.comed.asp?cmd=select&selid=11980&bhiw=1060&bhih=631>

For more information in the Chapter 43D Program, contact:
April Anderson Lamoureux,
Deputy Director
Massachusetts Permit
Regulatory Office
(617) 788-3667
april.a.anderson@state.ma.us

CHALLENGES

- All 43D statutory criteria must be met in order to receive benefits associated with designation of a Priority Development Site, including rezoning if necessary.
- Permission of the property owner(s) must be secured.
- The local governing body (selectmen, city manager, etc.) must approve the designation of Priority Development Sites under Chapter 43D.
- The Commonwealth's Interagency Permitting Board must approve the designation.

IMPLEMENTATION

- It is the municipality that applies for 43D designation and assistance, not the developer. Therefore, municipalities ought to first consider whether or not existing sites zoned for commercial or industrial uses may meet the statutory criteria under 43D. If not, necessary rezoning must take place prior to submitting an application for 43D designation of a site.
- Refer to Best Practice #24 *Selecting Preferred Sites for Commercial or Industrial Development* for detailed guidance on site selection and utilizing the local master plan, if the community has one.
- The decision to seek Chapter 43D designation for selected sites that meet the statutory criteria must be approved by a two-thirds vote at Town Meeting or by a majority vote of the City Council. For sample town meeting warrant language, see <http://www.mass.gov/Eoed/docs/PermittingSampleWarrantLanguage.pdf>
- Upon local acceptance, the governing body must submit to the Commonwealth's Interagency Permitting Board an application for PDS designation that includes 1) a detailed description of the property, 2) a good faith commitment by the municipality to comply with the requirements of Chapter 43D, 3) written authorization of the property owner(s), 4) a request for technical assistance from the governing body, if it chooses to make one, and 5) disclose if the site is located adjacent to any areas of existing development or underutilized sites, or in proximity to transit services.

As of November 1, 2007, the Interagency Permitting Board has approved Chapter 43D sites in the following municipalities Worcester, Uxbridge, Medway, Attleboro, Leominster, Pittsfield, North Reading, Burlington, Canton, Douglas, Lowell, Marlborough, Walpole, Shrewsbury, Athol, Grafton, Amesbury, Haverhill, and Palmer. The following municipalities have approved Chapter 43D sites locally but have not yet submitted applications to the Board: Revere, Bridgewater, Billerica, North Andover, Dalton, and Adams. An updated list can be found at www.mass.gov/mpro (follow the Chapter 43D links to the list of communities).

Pre-permitting is one possible outcome of the planning and site selection process described above, in Best Practices #24 and #25. After sites have been zoned or rezoned for commercial or industrial development, municipalities may elect to “pre-permit” the site in conformity with the community’s zoning and site design guidelines or master plan, if the community has one. The process would take place prior to receiving an application for development or redevelopment of the parcel, making the property a very attractive investment for potential developers interested in avoiding a prolonged permitting process. First, a municipality must formulate and adopt a pre-permitting process or a pre-permitting bylaw to incorporate community interests and concerns. The goal is to work with the owners of the land to identify:

What uses, consistent with zoning, will be pre-permitted;

What infrastructure needs to be in place (and who will pay for it, when will it happen, and how); and

What additional mitigation may be necessary.

For example, the owner of a privately-owned property identified through the site selection process (Best Practice #24, *Selecting Preferred Sites for Commercial or Industrial Development*) as appropriate for industrial park development can be encouraged to work with the municipality to file permit applications for the entire area, in advance of actual development plans. In the applications for permits, total build-out costs, uses, infrastructure needs and impacts may be identified and included. After identifying mitigation and infrastructure improvements, going through the MEPA process, and obtaining local environmental reviews, the city or town may grant the property “pre-permitted” status through the local Planning Board (the option of Site Plan Review might be retained for approval of the detailed plan). As a result of this process, development of the individual lots on the property can move quickly and efficiently, as prospective investors have the benefit of decisions made during the pre-permitting process, such as the build-out costs, the outcomes of environmental reviews, acceptable uses, etc.

When a prospective developer of a pre-permitted site brings a detailed proposal to the local boards or commissions, the final review by these boards should be limited to a Site Plan Review process that ensures that the proposal meets the parameters of the bylaws and of the previously-obtained permit approvals (including mitigation commitments).

BENEFITS

- Provides the opportunity for swift approval of pre-approved sites.
- Gives the municipality clarity regarding the likely use of the site.
- Enhances the marketing advantage of a site.
- Creates a business friendly climate.
- Provides advantage to a community when competing for economic development.



REFERENCES

The Devens Regional Enterprise Zone pre-permitted the former U.S. Army base for civilian re-use. See the official website at: www.devenscommunity.com

See Mass Development's website for information regarding its assistance to Devens in establishing the pre-permitting process at www.massdevelopment.com





Pre-Permitting for Selected Sites

#26

REFERENCES

Taunton has adopted a streamlined permitting process for expedited construction projects, which includes several planning and mixed use zoning ordinances for office districts, business districts, highway business districts, industrial districts, urban residential, suburban residential, and special flood plain and aquifer protection. This process allowed the 809 acre Myles Standish Industrial Park in Taunton to be pre-permitted for manufacturing, warehousing, office and service uses. See www.ci.taunton.ma.us

Also see www.massdevelopment.com for more information on adopting pre-permitting framework and for other examples of communities that have achieved economic benefits attributable to more efficient permitting at the local level.

- Reduces potential risks of development including permitting and mitigation risks.
- Provides predictability and identifies mitigation costs up front, reducing prolonged negotiations and variables for municipality, developer and neighbors.

CHALLENGES

- Concise criteria for determining which sites are appropriate for pre-permitting should be agreed upon during the planning process.
- Once criteria for pre-permitted sites have been settled, the site identification phase can be difficult, especially for communities lacking technical support or adequate staffing. Technical assistance may be available through the Regional Planning Agency to assist in this regard.

IMPLEMENTATION

Local bylaws, ordinances, or rules and regulations may need to be adopted or amended to include a pre-permitting process that balances community interests and concerns with the municipality's interest in promoting itself as an attractive candidate for economic investment to developers.

The single most important prerequisite for implementing any of the Best Practices contained in this Guide is the initiative of municipal leadership to create a spirit of cooperation that will expedite permitting of desired development in selected locations with pre-determined infrastructure and mitigation, as necessary. Municipal executives and both members and staff of regulatory agencies must provide the impetus for action. Other stakeholders, including owners, real estate and economic development interests, Regional Planning Agencies and state agencies all play important roles providing encouragement, technical assistance, and resources to plan for and implement Best Practices such as these, and to consider others.

WHAT LOCAL GOVERNMENT LEADERS CAN DO NOW

Many of the Best Practices recommended in this Guide do not require legislative action at the local or state level and can be implemented immediately by municipal executives or the relevant boards and commissions. These are organizational and management practices geared toward improving communication and fostering collaboration on an ongoing basis between key offices and individuals. The importance of these seemingly minor changes cannot be overstated, as evidenced by the focus group discussions. The permit process is expedited where communities make the effort to engage potential permit applicants in conversations about development proposals, and continue to engage the applicants in meaningful dialogue from the date of filing through project review completion.

The Best Practices listed below can be accomplished by modifications to staffing or organizational structure within municipal government. Any department or board affected by proposed changes would be involved in implementing the Best Practice. Some other Best Practices can be accomplished through a directive from the mayor, municipal administrator or selectmen, and most can be achieved at minimum expense.

- #1 Single Point of Contact
- #2 User's Guide to Local Permitting
- #3 Permitting Flow Charts & Checklists
- #4 Clear Submittal Requirements
- #5 Concurrent Applications
- #7 Pre-Application Process
- #8 Project Technical Review Team
- #9 Regularly Scheduled Inter-Departmental Meetings
- #10 Physical Proximity of Professional Staff
- #19 Adequate Staffing



“Many of the Best Practices in this Guide provide common sense recommendations on how local officials can better work with developers to create a predictable and efficient permitting process.”

David Begelfer, CEO, National Association of Industrial & Office Properties (NAIOP) Massachusetts Chapter

This Guide and all
appendices can be found
online at
www.mass.gov/mpro



IMPLEMENTATION

REFERENCES

The Executive Office of Energy and Environmental Affairs hosts a website on Smart Growth and Urban Environments that includes a useful list of applicable resources, materials, and guides for local leaders at <http://commpres.env.state.ma.us/content/publications.asp#sgresources>.

- #20 Create a Culture of Training
- #21 Maximize the Municipal Website
- #22 Electronic Permit Tracking Systems
- #23 Create an Electronic Filing Process for Permit Applicants
- #24 Selecting Preferred Sites for Commercial or Industrial Development

WHERE LOCAL ORDINANCE OR BYLAW CHANGES MAY BE NEEDED

The Best Practices listed below may require an ordinance or bylaw change. Where local ordinance or bylaws changes are needed, approval must be sought at Town Meeting or from the City Council (with a two-thirds majority needed for zoning changes). When appropriate, authority should be given to the local boards and commissions to promulgate rules and regulations that are precise in nature, yet sufficiently flexible to meet the anticipated as well as unanticipated development needs of the community.

- #4 Clear Submittal Requirements
- #6 Combined Public Hearings
- #7 Pre-Application Process
- #11 Development Agreements
- #12 Encourage the Use of Third-Party Consultants
- #14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans
- #15 Effective Use of Site Plan Approval
- #16 Two-Tier Assessment Process
- #17 Delegating Minor Decisions to Staff
- #18 Uniform Timelines, Notifications, and Appeals
- #25 Designating Priority Development Sites Under Chapter 43D
- #26 Pre-Permitting for Selected Sites



IMPLEMENTATION

WHERE STATE LEGISLATIVE ACTION MAY BE NEEDED

The Massachusetts General Court could send a powerful message that these Best Practices should be implemented by clarifying the statutory framework, and providing resources with which these Best Practices may be implemented. The municipal practice of charging impact fees (discussed in Best Practice #13, *Predictable Impact Fees*) to permit applicants is widely used to finance improvements and infrastructure expenses related to the development project. However, since the process lacks clear legislative authority, it operates under the authority of a tangled web of court decisions. At best, the process suffers from inconsistent application and unpredictability. At worst, it causes lengthy delays and unreasonable exactions. This can be an understandable source of frustration for property owners and permit applicants, as well as an obstacle to appropriate development.

Massachusetts General Law Chapter 40A should be revised. One of the most important changes should be to create a link between master plans and zoning. Additionally, the chapter should more clearly define a process of determining and applying impact fees that is transparent, consistent, and effectively addresses municipal, as well as regional, needs. Proposed Senate Bill 1196 (commonly referred to as the “Community Planning Act”) is one piece of legislation that would, among other things, allow impact fees while regulating them, thereby institutionalizing and bringing a greater degree of transparency to the common practice. The Community Planning Act would also clarify Site Plan Review (see Best Practice #15 *Effective Use of Site Plan Approval*) for local governments that want commercial, industrial, and mixed use development that is in accordance with community interests, the local land use rules and regulations, and the master plan if applicable.

The goal of expedited permitting is best achieved through the designation of Priority Development Sites under 43D specifically; selection of preferred sites for development generally; and the availability of the option to “pre-permit,” a designated or preferred site. The best way to ensure these practices are used to achieve the greatest results is for the Commonwealth to appropriate a dedicated stream of funding for two related purposes: a) to support municipal planning efforts related to expedited permitting and b) to enable Regional Planning Agencies and other technical assistance providers to assist municipalities in this work. These resources would help to ensure that municipalities will take full advantage of the Best Practices contained in this Guide. The following Best Practices may require legislative action as described here:

- #13 Predictable Impact Fees
- #14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans
- # 15 Effective Use of Site Plan Approval
- #20 Create a Culture of Training





IMPLEMENTATION

STATE ASSISTANCE

As noted in this Guide, many local regulatory boards and commissions conclude that they have insufficient staff and other resources to determine the best development opportunities for their communities, to regulate the proposals which they receive, and to provide a structured regulatory process that supports sound determinations. Several recently-passed laws have attempted to expand the resources available to municipalities to assess opportunities. Programs like Chapter 40R and 43D provide funds that can be used, at least in part, to bolster local planning resources. Chapter 205 of the Acts of 2006 (the “Expedited Permitting Law”) appropriated \$1.8 million that has enabled Regional Planning Agencies to provide a limited amount of support to municipalities in need of assistance, within funding constraints. Additional pending bills also seek to expand local resources.

These initiatives are a form of state encouragement for municipal leaders to foster a civic culture that encourages economic development and housing growth in locations which can best accommodate them with adequate infrastructure and within local and state guidelines. While programs like 40R and 43D provide new resources, focus group participants agree that additional steps are needed to provide systemic change in the regulatory process. Such changes include providing legislative authorization for improving the tools for community planning, including the infrastructure and fiscal impacts of development, and providing sufficient resources to enable state agencies, Regional Planning Agencies, and municipalities to implement a balanced, efficient program for encouraging and accommodating land use changes.

Despite its value for determining community objectives outside of a regulatory process, planning for development, housing, community character, and natural resource protection is made more difficult due to the tenuous connection between planning and regulation under Massachusetts law. The Legislature could send a powerful message by mandating that local planning and zoning must be consistent with each other, and with regional objectives if Massachusetts is to reform its irrational, sprawl-inducing permitting scheme. Expedited permitting provides another connection by creating an incentive not only for regulations to correspond to plans, but also for development proposals to match plans in order to be approved more rapidly and with less risk. While this is an important tool, it will only succeed if sufficient funds are invested to encourage its success. Resources for technical assistance need to be available for communities to create master plans, other relevant plans, and the changes in bylaws and procedures to implement these plans—not only to reflect community desires, but also to recognize infrastructure, natural resource, and market place conditions.

For many municipalities, technical assistance grants are a valuable tool to streamline the permitting process of local government. Due to budgetary limitations, communities are constrained from adequately addressing staffing and resource needs on their own. Regional Planning Agencies are often able to



IMPLEMENTATION

fill that gap. In other cases, private consultants may be appropriate. In either case, funding for the assistance is needed. During the past several years, the state has provided these funds through three major sources:

- Smart Growth Technical Assistance from the Executive Office of Energy and Environmental Affairs;
- Priority Development Funds (PDF) from the Massachusetts Housing Finance Agency and the Department of Housing and Community Development; and
- District Local Technical Assistance (DLTA), funded by the Expedited Permitting Law Chapter 205 of the Acts of 2006, and distributed by the Department of Housing and Community Development.

Taken together, these programs have provided Regional Planning Agencies and others with the resources necessary to help communities to revise their zoning, evaluate sites for development, complete applications under chapters 40R and 43D, conduct spatial/graphical modeling of development impacts, and – perhaps most importantly – to conduct public outreach that is essential to achieving approval for change at Town Meeting or City Council Meeting.

Sufficient resources would help ensure that a unified, comprehensive, and long-term system of technical assistance is adopted and available to cities and towns across the Commonwealth.





CONCLUSION

IV.

Where the permitting process brings satisfactory results, the applicants, the public, and the economy stand to benefit. The Best Practices contained in this report are designed to make permitting more predictable, equitable, cost effective and efficient while reinforcing local jurisdiction, encouraging community supported projects, preserving local resources and maintaining the standard of review. Productive relationships between municipalities and the development community attract economic investment and the opportunity for meaningful growth to the Commonwealth. These relationships should be encouraged. Long-term prosperity depends on it.

“This guide provides a clear and effective way for communities to decide their future, providing tools and mechanisms to create the partnerships with the development community which are necessary to realize any community vision.”

David Wluka, Immediate Past
President, Massachusetts
Association of Realtors

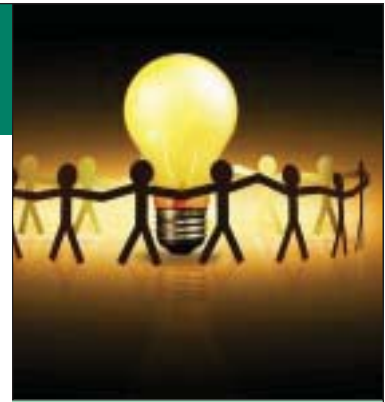
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ACKNOWLEDGEMENTS

This Guide was developed by the Massachusetts Association of Regional Planning Agencies. Each Regional Planning Agency in the Commonwealth contributed to this effort. Particular acknowledgement is due to Jessica Atwood, Jocelyn Ayer, Tim Brennan, Sean Caron, Sandy Conaty, Chris Curtis, Dennis DiZoglio, Jay Donovan, Marc Draisen, Bruce Hughes, Suzanne LePage, Mark London, Leslie Richardson, Mark Racicot, Rosemary Scrivens, Steve Smith, Lisa Sullivan, Cynthia Wall, Joellyn Warren, James Watson, and Beverly Woods.

In addition, Undersecretary Tina Brooks and Marilyn Contreas of the Department of Housing and Community Development and Gregory Bialecki and April Anderson Lamoureux of the Executive Office of Housing and Economic Development, contributed to this Guide. Buzz Constable, President of MARPA, coordinated this effort and contributed heavily to the document itself. Also, Representative Michael Rodrigues (D-Westport) provided both guidance and inspiration for this effort.

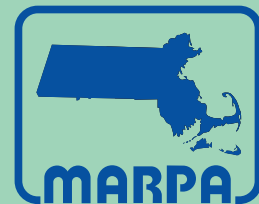
The text of the Best Practices, including the appendices with the sample representative bylaws, is available on the official website of the Massachusetts Permit Regulatory Office at www.mass.gov/mpro.



“The Town of Littleton is committed to encouraging economic development which is consistent with community character.

In implementing Chapter 43D expediting permitting, we look forward to utilizing the Best Practices Guide”

Keith A. Bergman
Town Administrator
Town of Littleton, MA





“Town employees and volunteer officials will save countless staff resources and many late night hours by adopting some of the excellent practices recommended in the guide. This can help to achieve development desired by the community without sacrificing their local authority,”

Michelle Ciccolo
Assistant Administrator /
Director of Community
Development
Town of Hudson

This Guide and all
appendices can be found
online at
www.mass.gov/mpro

APPENDICIES

VI.

- A. Chapter 43D: A Step-by-Step Guide to Adoption
(see page 57)
- B. Literature Review on Streamlining Permitting
The Review provides background information and summarizes the efforts of previous Administrations to analyze permitting practices in the Commonwealth and includes their recommendations to improve the system. (Appendix B can be found online at www.mass.gov/mpro)
- C. Permit Tracking Software Guide
The Software Guide reviews and provides comparisons of commercially available products that a municipality may choose to invest in to track permits electronically. (Appendix C can be found online at www.mass.gov/mpro)
- D. Summary of Municipal Permitting Statewide Survey
The report summarizes the survey results on the local permitting practices of 215 municipalities, representing 61% of the Commonwealth. The basic categories of the questions were: the objective local permitting characteristics; the level of interest in state incentive programs; and the local opinion of the development and permitting process. (Appendix D can be found online at www.mass.gov/mpro)
- E. Summary of Statewide Focus Group Sessions on Expedited Permitting
The report summarizes the common themes and major topics addressed at 14 focus groups, with participation of over 160 people from private and public sector permitting professions including business representatives, attorneys, selectmen, local board and commission members, developers, planners, and engineers, to name a few. (Appendix E can be found online at www.mass.gov/mpro)
- F. References and Links
(see page 62)

APPENDIX A:

Chapter 43D: A Step-by-Step Guide to Adoption

Step 1: Identify areas within your municipality that you would like to see developed for commercial/industrial or mixed uses.

Ch. 43D expedited permitting is specific to sites designated as Priority Development Sites (PDS). The PDS may include an individual parcel or several contiguous parcels. The locations must be:

- (1) zoned for commercial, industrial or mixed uses;
- (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
- (3) approved by the landowner(s) as a priority development site.

In addition, there is a preference that locations meet one or more of the following criteria:

- (1) located adjacent to areas of existing development;
- (2) include underutilized buildings or facilities; or
- (3) located close to appropriate transit services.

In pursuing the Ch. 43D designation, the municipality is making a statement that these are the specific locations within the municipality where development should occur. The decision to prioritize these areas is very important.

In selecting a site, the municipality should consider: 1) the master plan for the community, 2) the regional plan for growth and development, 3) the availability of infrastructure, and 4) any community impacts that may be problematic in the permitting stage. The municipality will have 180 days to review permit applications within the PDS. To accomplish this task effectively, these factors must be assessed prior to designating a PDS.

Step 2: Consult your Regional Planning Agency (RPA)

RPAs have been selected by the Legislature as a partner in the Ch. 43D process. They have expertise in selecting appropriate sites, and navigating the steps in the Ch. 43D process, including the application and technical assistance request. In addition, they have partnerships with Mass Development and other agencies, and can assist with soliciting additional technical assistance from other sources.

Step 3: Approach the relevant landowners

Ch. 43D requires that every landowner within a PDS approves that the site receive that designation. While the majority of landowners appreciate this opportunity, it is important to engage them early in the process to receive support for moving forward. The landowner will ultimately be required to endorse the Ch. 43D application before it is submitted to the Interagency Permitting Board; other forms of consent letters will not be accepted during the application phase in lieu of landowner signatures on the application.

Step 4: Review Zoning Bylaws and Ordinances

Ch. 43D requires the municipality to issue decisions on all permits for a PDS project (see Step 5 for specific list) within 180 days of the application being deemed complete. In most cases, city or town ordinances and bylaws allow for a decision within this timeframe, but the administrative policies and scheduling needs to be adjusted. However, in some cases where bylaws spell out an order of review for

APPENDIX A:

Chapter 43D: A Step-by-Step Guide to Adoption

the various boards sequentially, it may be practically impossible to review the project within 180 days. With town counsel assistance, towns should assess the local bylaws and ordinances to assure that the 180 day review period is possible, and if not, propose amendments prior to designating a PDS (i.e. simultaneous review of a permit application by multiple boards, joint board hearing).

The ordinance/bylaw review should take these requirements into account to assess whether an amendment is necessary to accomplish Ch. 43D. These steps will help determine the specific procedures that the municipality will utilize to meet the requirements of Ch. 43D.

Step 5: Consult with relevant boards and commissions

Orders of conditions and wetlands decisions issued by the Conservation Commission, Special Permits issued by the ZBA and/or Planning Board, Site Plan Review issued by the Planning Board, Flammable Materials License issued by the Fire Chief, historic district decisions, and Title V and septic decisions issued by the Board of Health are all subject to the 43D requirement that all permit reviews be completed within 180 days for projects on a PDS. Building permits issued by the building inspector, ANR plan approval and subdivisions under the subdivision control law are not affected by this statute.

In order to gather support at town meeting and effectively implement the expedited permitting statute, it is important to meet and discuss the Ch. 43D proposal with these boards to gather feedback and fully understand their particular review processes.

Furthermore, the relevant boards and commissions are a great resource to discuss technical assistance needs and procedural improvements.

Step 6: Finalize Location

Upon receiving feedback from the various boards and commission and landowners, the municipality is ready to finalize the location to propose to the legislative body for PDS determination.)

Step 7: Bring the Priority Development Site Proposal to the appropriate legislative body for approval

The town meeting, town council, or city council must approve the creation of a PDS by a simple majority vote. While this requirement seems onerous, the process has been smooth to date because the landowner(s), town leadership and relevant boards have been consulted and have supported the proposals. Among other things, those presenting at town meeting should consider highlighting the specifics of the Ch. 43D program including the prospective uses for the parcel, potential uses for the technical assistance grant, and the tax benefits of development on the proposed parcel.

Each Priority Development Site requires a separate vote of the Town Meeting, Town Council or City Council. Sample warrant text was prepared in conjunction with the Attorney General's Office and is available online at www.mass.gov/mpro under "Chapter 43D Expedited Permitting."

The vote of Town Meeting, Town Council or City Council does not constitute "opting in" to the program. The community does not accept the provisions of Ch. 43D on the PDS until after the Ch. 43D application is been approved by the Interagency Permitting Board (see Step 11).

APPENDIX A:

Chapter 43D: A Step-by-Step Guide to Adoption

Step 8: Amend Zoning Bylaws and Ordinances (if necessary)

When the town meeting considers the PDS application, it may also consider any zoning bylaw/ ordinance amendments necessary to implement the requirements of Ch. 43D. Rather than wait until the application is approved, the town/city could consider any necessary changes at the time of PDS municipal approval.

This step requires time and resources that many municipalities may want to request in the technical assistance grant (see Step 10). This step may come later in the process, however the community should be aware that there is no “opt out” provision if the community accepts Ch. 43D and subsequent zoning changes fail to meet the required local vote. Therefore, it is strongly advised that communities make any zoning changes that would otherwise prohibit a 180-day review before opting in to Ch 43D.

Step 9: Identify a Single Point of Contact

Chapter 43D requires that a single person be designated to serve as the municipal point of contact on Priority Development Sites. The individual must be a municipal employee or an employee of a quasi-municipal agency who will be charged with responding to inquiries the site, providing and accepting permit applications, communicating decisions to applicants, etc. It is recommended that the designated Point of Contact be a staff member and not an elected official.

Step 10: Submit Application to Interagency Permitting Board

Upon completing the previous steps, the municipality must submit an application to the Interagency Permitting Board for approval. There is no particular timeline for this step. For instance, a community may pass a Chapter 43D article at Fall Town Meeting and submit applications six months later.

The Ch. 43D application must include details on the PDS and requests for a technical assistance grant (if being requested). The one-time grant is available to assist municipalities to meet the statutory requirements of Ch. 43D and to take actions that facilitate growth. In order to be considered for a technical assistance grant, the grant application must be submitted in conjunction with the first PDS application offered by a single municipality. The grant can be used to hire municipal staff, or engage consultants to provide technical assistance, or invest in technology improvements related to increased permitting efficiency. In formulating the grant request, the municipality must define the various tasks for which it needs technical assistance, determine a budget, and identify a timeline to accomplish these tasks.

The Interagency Permitting Board meets regularly and makes all decisions with 60 days of receiving an application. For more details on the Board, please visit www.mass.gov/mpro and click Interagency Permitting Board.

Applications are due 14 days prior to the next regularly scheduled Board meeting, and applicants should appear in front of the Board to present their case and answer questions. For complete instructions on the applications process and eligible grant requests, please view the Guidance Tool at www.mass.gov/mpro under Chapter 43D Expedited Permitting.

APPENDIX A:

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Step 11: Opting in

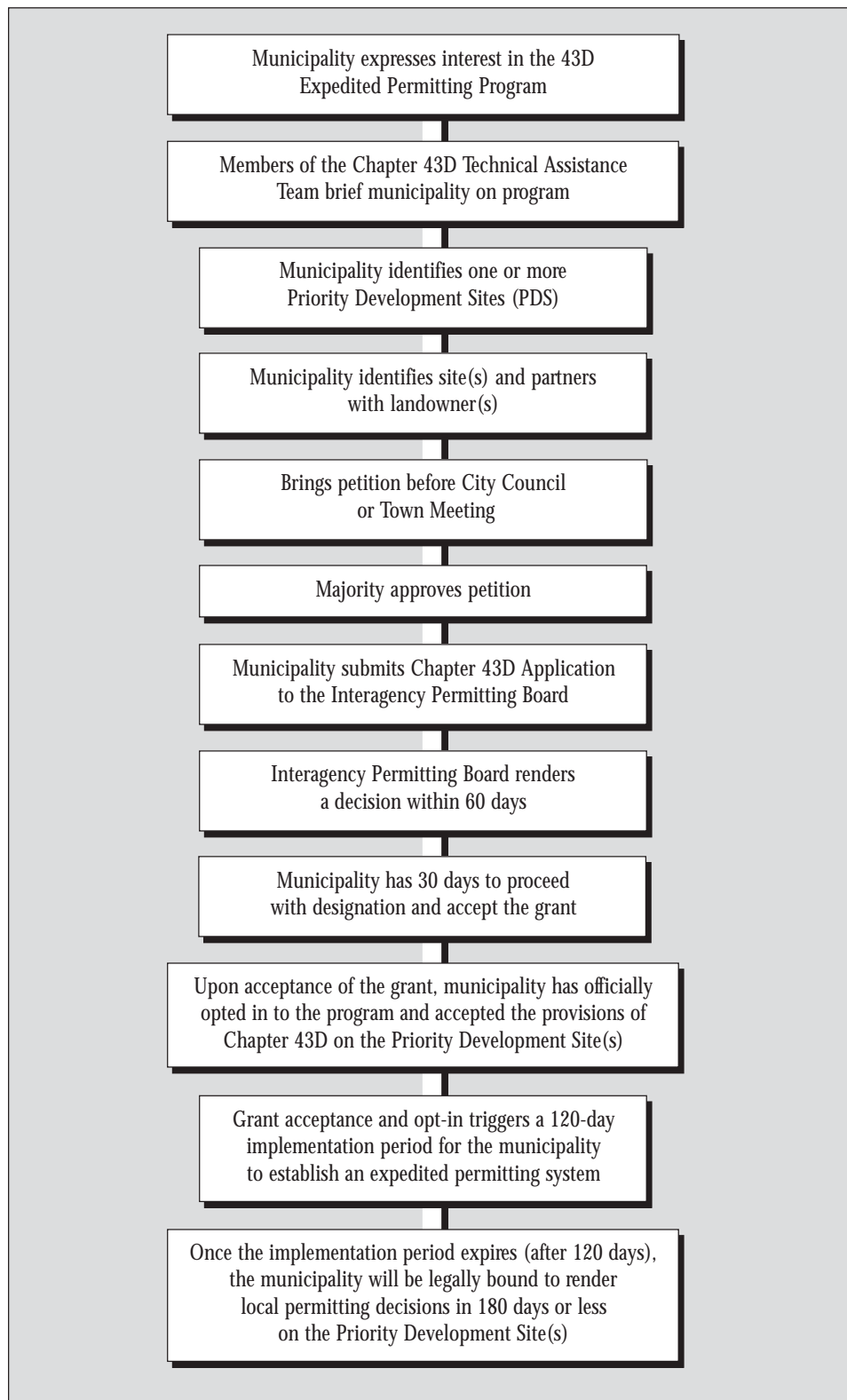
Once the Interagency Permitting Board renders decisions on an application for PDS designation and a technical assistance grant, the municipality will be noticed and required to enter into a contract for that grant. Once the contract has been executed, the municipality will receive a check or electronic fund transfer from the Commonwealth for the technical assistance grant, if approved. Once the municipality cashes that check, accepts the electronic transfer, or endorses an opt-in form in the absence of a technical assistance grant, the municipality has officially “opted in” to the Ch. 43D program and a 120-day implementation period begins. During that 4-month period, the municipality must reform all the necessary procedures, bylaws and rules in order to issue all permitting decisions for a project within the PDS within 180 days. Once the 120-day period expires, the community is legally obligated for a period no less than five years to render permitting decisions on a PDS within 180 days or less. There is no “opt out” provision during these five years.

Please note that this step-by-step guide is a resource to steer a municipality through the various steps necessary to adopt and implement Ch. 43D. This is not intended to substitute the regulations, 400 CMR 2.00, or proper legal counsel. In addition, there are several helpful documents available through the Mass Permit Regulatory Office at www.mass.gov/mpro.

APPENDIX A:

Chapter 43D: A Step-by-Step Guide to Adoption

Massachusetts Permit Regulatory Office CHAPTER 43D FLOW CHART



APPENDIX F: References and Links

All documents shown in RED can be found online at www.mass.gov/mpro.

For websites shown here in BLUE, please go directly to the website address listed.

This Guide and all appendices (including B, C, D, and E) can be found online at www.mass.gov/mpro

#1 Single Point of Contact

- Chris Reilly, Economic Development Director, Town of Salisbury. See <http://www.salisburyma.gov/planning.html>

#2 User's Guide to Local Permitting

- Matrix of Statewide Permitting Guides by Municipality*
- Sample Permitting Guidebook*
- Town of Canton Development Handbook.*
- Town of Lincoln Land Use Permitting Guide at <http://www.lincolntown.org/depts/planning.htm>
- City of Salem Doing Business in Salem Guide at <http://www.salem.com/Pages/index>

#3 Permitting Flow Charts & Checklists

- See *Special Permit Checklist and Flowchart; Conservation Commission Order of Conditions Timeline; Wetlands Checklist; Variance Flowchart; Preliminary and Definitive Residential Subdivision Flowcharts*
- Town of Bourne special permit and site plan review guides at <http://www.townofbourne.com/>
- Town of Ipswich Development Guidebook at <http://www.town.ipswich.ma.us/plandev/pdf>
- Town of Charlemont Special Permit Process Flow Chart at <http://www.charlemont-ma.us/Town/TownPlanningBoard.shtml#SpecialPermits>

#4 Clear Submittal Requirements

- Devens Regional Enterprise Zone at www.devenscommunity.com
- Town of Brookline Planning Board Rules and Regulations at <http://www.townofbrooklinemass.com/Planning/pdfs/PBRulesAndRegs.pdf>

#5 Concurrent Applications

- See www.sandwichmass.org and follow links to "Town Hall/planning and development."

#6 Combined Public Hearings

- See <http://www.northamptonma.gov> or contact the Northampton Office of Planning and Development at (413) 587-1266.
- See http://www.ci.chelsea.ma.us/Public_Documents/index on combined hearings for permitting of Forbes Industrial Park in Chelsea.
- See <http://www.wilbraham-ma.gov/> or call the Office of Planning and Community Development at (413) 596-2806.

#7 Pre-Application Process

- Town of Rochester informal meetings contact Town Hall at 508-763-3871 or email at info@townofrochester.com for more information.
- City of Cambridge pre-application conferences for "planned unit development" at <http://www.cambridgema.gov/cdd/cp/zng/zord/index.html>

- Martha's Vineyard Commission pre-application staff/applicant meetings (or scoping sessions) at www.mvcommission.org
- #8 Project Technical Review Team**
 - www.ashlandmass.com/planning/public_documents/pln_rulesregulations.pdf
 - <http://www.hingham-ma.com/document/ZoningBylaw.pdf>
 - See <http://www.town.canton.ma.us/> for information on Canton's Permit Advisory Committee.
- #9 Regularly Scheduled Inter-Departmental Meetings**
 - Lincoln and Hingham have initiated inter-departmental meetings. See <http://www.lincolntown.org/>; <http://www.hingham-ma.gov/selectmen/townadministrator.html>
- #10 Physical Proximity of Professional Staff**
 - Newton and Franklin share office space. See <http://www.ci.newton.ma.us/>; <http://www.franklin.ma.us/>
- #11 Development Agreements**
 - Contact the Cape Cod Commission at (508) 362-3828 for more information on development agreements regarding a) the Downtown Hyannis Growth Incentive Zone, Hyannis, MA; b) The Town of Barnstable and Cape Cod Health Care.
 - For the Cape Cod Commission Model Development Agreement Bylaw, see Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990 of the Massachusetts General Laws.
 - See the **Town of Sharon Developer's Agreement for Sharon Commons**, received and recorded at the Norfolk County Registry of Deeds Book 24610 P338 dated March 12, 2007.
- #12 Encourage the Use of Third-Party Consultants**
 - See Section 53G of Chapter 44 of the Massachusetts General Laws.
 - Town of West Tisbury provides for applicant-funded consultants to review wireless communications at <http://www.town.westtisbury.ma.us/Documents/WT%20Zoning%20Bylaws%20April%2006.pdf>
- #13 Predictable Impact Fees**
 - Towns within Barnstable County may impose impact fees upon certification of their local comprehensive plans by the Cape Cod Commission. See Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990 of the Massachusetts General Laws.
- #14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans**
 - Contact DHCD for the most up-to-date listing of communities that have adopted 40R; and EOHEd Permit Regulatory Office for complete list of communities that have adopted Chapter 43D of the Massachusetts General Laws.
- #15 Effective Use of Site Plan Approval**
 - Raynham and Danvers are two municipalities with site plan bylaws or ordinances. See http://www.town.raynham.ma.us/Public_Documents/RaynhamMA_ZoningRegs/Article13 and <http://www.danvers.govoffice.com/>
 - See the Citizen Planner Training Collaborative at www.umass.edu/masscptc; Click training programs, then click training modules.
- #16 Two-Tier Assessment Process**
 - See the Town of Franklin Site Plan Review at the Citizen Training Collaborative www.umass.edu/masscptc

#17 Delegating Minor Decisions to Staff

- See the Administrative Procedures Act at <http://www.mass.gov/legis/laws/mgl/40a-13.htm>
- On the authority of Hingham's Zoning Administrator, see http://www.hingham-ma.com/zba/documents/Rules_and_Regulations.pdf; also see Northampton at <http://www.northamptonma.gov/gsuniverse/httpRoot/zba/>

#19 Adequate Staffing

- Contact a regional planning agency for more information on available technical assistance

#20 Create a Culture of Training

- Citizen Planner Training Collaborative at www.umass.edu/masscptc
For information on MACC (Massachusetts Association of Conservation Commissions) see <http://www.maccweb.org/>
- For information on MAHB (Massachusetts Association of Health Boards) see <http://www.mahb.org/>

#21 Maximize the Municipal Website

- For an example of a "one-stop" permitting and development center, see <http://www.cambridgema.gov/pdf/>
- Lowell hosts a Development Services page with, among other things, a developer's guide and permit information at <http://www.lowellma.gov/depts/dpd>
- Spencer posts town-wide forms and documents on the website at <http://www.spencerma.gov/tie.ez?pageId=459&actionName=display>
- See also Westfield's site, at <http://www.cityofwestfield.org/detpages/departments166.html>

#22 Electronic Permit Tracking Systems

- See the MARPA Report, *Automated Permit Tracking Software Systems: A Guide for Massachusetts Municipalities*.
- A few communities, including Adams, Franklin, Grafton, Lincoln, Mansfield and Peabody have crafted Access databases designed to provide some of the features of the software reviewed in this report.

#23 Create an Electronic Filing Process for Permit Applicants

- See the MARPA Report, *Literature Review on Streamlining Permitting*.
- For information about Access-based online filing systems, contact Grafton's Inspector of Buildings and Zoning Enforcement Officer, Robert Berger at (508) 839-5335 or go to http://www.town.grafton.ma.us/public_documents/index

#24 Selecting Preferred Sites for Commercial or Industrial Development

- For information on Executive Order 418, see the official Community Development Plans website with a list of participating communities at: <http://commpres.env.state.ma.us/content/cdplans.asp#>
- See the Commonwealth's Ten Sustainable Development Principles at http://www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf
- The Massachusetts Office of Geographical Information Systems <http://www.mass.gov/mgis/massgis.htm>
- "Expedited Permitting Program Project Information" found at <http://www.mass.gov/?pageID=eoedhomepage&L=1&L0=Home&sid=Eoed>

#25 Designating Priority Development Sites Under Chapter 43D

- See <http://www.mass.gov/Eoed/docs/Chp.43D400CMR200.pdf>
- Also see “Chapter 43D: A Step-by-Step Guide to Adoption.”
- See Massachusetts SiteFinder; a searchable, online inventory of building and land sites at <http://www.massachusettsitefinder.com>

#26 Pre-Permitting for Selected Sites

- The Devens Regional Enterprise Zone pre-permitted the former U.S. Army base for civilian re-use. www.devenscommunity.com
- See www.massdevelopment.com for information regarding its assistance in establishing pre-permitting process.

