Falmouth Planning Board  
Hermann Meeting Room Falmouth Public Library. – January 30, 2020  
Joint Meeting with Zoning Board of Appeals - 6:30PM

Citizen Planner Training Collaborative  
Roles and Responsibilities of Planning and Zoning Boards

MINUTES

Present (Falmouth PB): Patricia Kerfoot, Chairman; Paul Dreyer, Clerk/Secretary; Robert Leary, Member; John Druley, Member; Pamela Harting-Barrat, Member; Jim Fox, Member; Thomas Bott, Town Planner; Corey Pacheco, Assistant Town Planner

Present (Falmouth ZBA): Terrence Hurrie, Chairman; Robert Dugan, Clerk; Edward Van Keuran, Member; Gerald Potamis, Member; James Morse, Associate; Mary Barry, Associate, Noreen Stockman, ZBA Administrator.

Training session began at 6:30 PM.

Judi Barrett, CTPC Trainer, led a Power Point presentation on the roles and responsibilities of planning boards and zoning boards of appeals.

All members received copies of the CPTC slide presentation and the CTPC Guidebook, “Roles and Responsibilities of Planning and Zoning Boards, Module 1”.

Following the presentation, Tom Bott, Falmouth Town Planner, handed out draft copies of the Recodification of the Falmouth Town Bylaws to both Boards.

The session ended at 8:14 pm

Respectfully Submitted,  
Paul Dreyer, Clerk/Secretary
CPTC Guidebook

ROLES AND RESPONSIBILITIES OF PLANNING AND ZONING BOARDS

Module 1
Citizen Planner Training Collaborative
Planning and Land Use Training Modules

Module 1. Roles and Responsibilities of Planning and Zoning Boards
Module 2. Introduction to the Zoning Act
Module 3. Special Permits and Variances
Module 4. Introduction to Subdivision Control and ANR
Module 5. Reading a Subdivision Plan
Module 6. Site Plan Review
Module 7. Vested Rights and Nonconforming Uses and Structures
Module 8. Zoning Exemptions
Module 9. Fair, Defensible Land Use Decisions
Module 10. Creating Master Plans
Module 11. Planning with Community Support
Module 12. Adopting and Revising Rules and Regulations
Module 13. Design Review
Module 14. Drafting Zoning Amendments
Module 15. Fair Housing Laws
Module 16. Zoning with Overlay Districts

Curriculum content last revised June 30, 2019 by the Citizen Planner Training Collaborative, the team of Barrett Planning Group LLC, Ilana Quirk, Esq. of Freeman Law Group LLC, and Horsley Witten Group, and Adam Costa, Esq., of Mead, Talerman, and Costa, LLC. The following people contributed to Module 1: Judi Barrett and Alexis Lanzillotta, Barrett Planning Group LLC.
Module 1: Roles & Responsibilities of Planning and Zoning Boards

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Introduction
Mission Statement

The Citizen Planner Training Collaborative’s mission is to:

- Empower local land use officials, particularly planning and zoning board members, to make effective and judicious decisions;
- Provide educational opportunities to such officials;
- Provide access to information, tools and resources to assist them in doing their work; and
- Encourage cooperation and collaboration among land use boards.

The CPTC provides training workshops around the state in the fall; an annual spring conference in Worcester; internet access to training modules, best practices, sample bylaws and regulations; and links to a variety of planning resources.

CTPC is itself a collaboration, combing the resources and expertise of the University of Massachusetts Extension, the Massachusetts Department of Housing & Community Development, the Massachusetts Chapter of the American Planning Association, the Massachusetts Association of Planning Directors, the Massachusetts Association of Regional Planning Agencies, and Mass Audubon.

www.mass cptc.org
Course Objective

By the end of this course, you will be able to answer the following:

- What do Planning Boards and Zoning Boards of Appeals (ZBAs) do?
- How are Planning Boards different from ZBAs?
- What sorts of rules and regulations should Planning and Zoning Boards create and adhere to?
- What is the Open Meeting Law, and how does it pertain to public hearings and public meetings of Planning and Zoning Boards?
- What is the Public Records Law, and how does it pertain to Planning and Zoning Boards?
- What is the Conflict of Interest Law, and how does it pertain to Planning and Zoning Boards?
Overview

This module discusses the roles of the Planning Board and the Zoning Board of Appeals. Because Massachusetts is a home rule state, the vast majority of land use decisions occur at the local level. However, there are state and federal exceptions to local control, and those exceptions are a primary focus of this training.

ZONING BASICS

- A zoning bylaw/ordinance regulates the use, pattern, and appearance of development through zoning districts, dimensional requirements, use requirements, and other regulations.
- Per G.L. c. 40A §4, zoning districts shall be:
  - “. . . uniform within the district for . . . structures or uses permitted,” and
  - “. . . shown on a zoning map in a manner sufficient for identification.”

BOARD MEMBERSHIP

An effective board member knows:

- The authority of the board and its duties
- How the Board operates
- Standards for decision-making
- Legal aspects of Board conduct
- Applicable state regulations, laws, and plans
- Other local relevant plans or regulations

ProTip! – Collaboration with Other Boards and Departments

To facilitate cooperation and avoid working at cross-purposes, board members should learn about the jurisdiction and responsibilities of their colleagues on other boards and commissions.
## RESPONSIBILITIES

Each topic will be discussed in the next section and in other modules as cross-referenced. The **Planning Board** is involved with:

<table>
<thead>
<tr>
<th>Role</th>
<th>Relevant Statutes/Sections</th>
<th>Module(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master Plans</td>
<td>G.L. c. 41, § 81D</td>
<td>Module 10</td>
</tr>
<tr>
<td>Zoning Amendments</td>
<td>G.L. c. 40A, § 5</td>
<td>Module 14</td>
</tr>
<tr>
<td>Special Permits</td>
<td>If authorized by local bylaw or ordinance</td>
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<tr>
<td></td>
<td>G.L. c. 40A, §1A, § 9</td>
<td>Module 3</td>
</tr>
<tr>
<td>Subdivisions</td>
<td>G.L. c. 41, §§ 81K-81GG</td>
<td>Module 4</td>
</tr>
<tr>
<td>Approval Not Required (ANR) Plans</td>
<td>G.L. c. 41, § 81P</td>
<td>Module 4</td>
</tr>
<tr>
<td>Site Plan Review</td>
<td>If authorized by local bylaw or ordinance</td>
<td>Module 6</td>
</tr>
<tr>
<td>Repetitive Petitions</td>
<td>G.L. c. 40A, § 16</td>
<td>Module 2</td>
</tr>
<tr>
<td>Scenic Roads and Shade Trees</td>
<td>G.L. c. 40, § 15C (scenic roads)</td>
<td></td>
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<td></td>
<td>G.L. c. 87 (shade trees)</td>
<td></td>
</tr>
<tr>
<td>Establishment of Historic Districts</td>
<td>G.L. c. 40C, § 3</td>
<td></td>
</tr>
<tr>
<td>Comprehensive Permits</td>
<td>Advisory role to the ZBA if requested, particularly if the comprehensive permit involves a subdivision</td>
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<td></td>
<td>G.L. c. 40B, §§ 20-23</td>
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<tr>
<td>Other</td>
<td>Serve on Community Preservation Committee (G.L. c. 44, § 5)</td>
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<tr>
<td></td>
<td>Review requests to convert tax classification of land (G.L. c. 61, § 8)</td>
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<td></td>
<td>Initiate planning projects/plans</td>
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<td></td>
<td>Work with the Town Planner/Planning Director</td>
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</table>
The **Zoning Board of Appeals (ZBA)** acts as “permit granting authority,” per G.L. c. 40A, § 1A, and hears and acts on:

<table>
<thead>
<tr>
<th>Role</th>
<th>Relevant Statute/Module</th>
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</thead>
<tbody>
<tr>
<td>Appeals</td>
<td>G.L. c. 40A, § 8, § 15</td>
</tr>
<tr>
<td></td>
<td>Module 2</td>
</tr>
<tr>
<td>Special Permits</td>
<td>If authorized by local bylaw or ordinance</td>
</tr>
<tr>
<td></td>
<td>G.L. c. 40A, § 1A, § 9</td>
</tr>
<tr>
<td></td>
<td>Module 3</td>
</tr>
<tr>
<td>Variances</td>
<td>G.L. c. 40A, § 10</td>
</tr>
<tr>
<td></td>
<td>Module 3</td>
</tr>
<tr>
<td>Appeals from Decisions of Zoning Administrator</td>
<td>G.L. c. 40A, § 13</td>
</tr>
<tr>
<td></td>
<td>Module 2</td>
</tr>
<tr>
<td>Nonconforming Uses or Structures</td>
<td>G.L. c. 40A, § 6</td>
</tr>
<tr>
<td></td>
<td>Module 7</td>
</tr>
<tr>
<td>Comprehensive Permits</td>
<td>G.L. c. 40B, §§ 20-23</td>
</tr>
</tbody>
</table>

### BOARD COMPOSITION

<table>
<thead>
<tr>
<th></th>
<th>Planning Board</th>
<th>Zoning Board of Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No. of Members</strong></td>
<td>5, 7, or 9 members</td>
<td>3 or 5 members</td>
</tr>
<tr>
<td><strong>Elected or Appointed</strong></td>
<td>Depends on municipality</td>
<td>Typically appointed</td>
</tr>
<tr>
<td><strong>Associate Members</strong></td>
<td><a href="#">Note: The local bylaw or ordinance determines how associate members are appointed. Then, it is up to the chair to designate who can sit as an associate member for a particular case.</a></td>
<td><a href="#">• Appointed by the chair</a></td>
</tr>
<tr>
<td></td>
<td><a href="#">• Act only due to absence, inability to act, conflict, or vacancy</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td><a href="#">• Designated by chair if needed for a case.</a></td>
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</tr>
<tr>
<td></td>
<td><a href="#">• Acts only due to absence, inability to act, conflict, or vacancy.</a></td>
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</tr>
</tbody>
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**Note:**
- Only allowed for special permits and possibly site plan review depending on procedure and local regulations.
- PB of 5 members can have 1 associate member; PB of more than 5 can have 2 associate members.
- Designated by chair if needed for a case.*
- Acts only due to absence, inability to act, conflict, or vacancy.
Roles and Responsibilities of Planning and Zoning Boards

Powers and Duties
Planning Boards

MASTER PLANS

G.L. c. 41, §81D assigns legal responsibility for the creation and approval of Master Plans to the Planning Board. Per this statute, master plans must include the following sections:

1. Goals & Policies
2. Land Use Plan
3. Housing
4. Economic Development
5. Natural & Cultural Resources
6. Open Space & Recreation
7. Services & Facilities
8. Circulation
9. Implementation

ProTip! – Master Plan Updates
Master Plans should be evaluated at regular, predetermined intervals and updated every 5-10 years.

As part of this process, Planning Boards work in consultation with other committees and individual members may also serve on a separate Master Plan Steering Committee.

Further reading: Module 10, “Creating a Master Plan”

ZONING AMENDMENTS

G.L. c. 40A, §5 describes the process for adopting and amending zoning ordinances or bylaws. A proposed zoning bylaw, ordinance, or amendment may be submitted to the City Council or Board of Selectmen by:

- The City Council
- The Board of Selectmen
Roles and Responsibilities of Planning and Zoning Boards

- The ZBA
- An individual owning land to be affected by change or adoption
- The request of registered voters of a town pursuant G.L. c. 39, §10
- Ten registered voters in a city
- The Planning Board
- A regional planning agency
- Other methods per local regulations

Beyond having the power to propose zoning changes themselves, Planning Boards have an authority and duty to hold a public hearing on and provide recommendations for any changes to the zoning bylaw or ordinance:

“The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review. . . . No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town . . . has . . . held a public hearing thereon. . . .” (emphasis added).

Any zoning changes require a 2/3 vote of the City Council or Town Meeting, and any changes must then be submitted to the Attorney General for review.

Further reading: Module 14, “Drafting Zoning Amendments”

SPECIAL PERMITS

Per G.L. c. 40A, §1A, a Special Permit Granting Authority (SPGA) “shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits.”

Special permits:

1. “[Provide] for specific types of uses which shall only be permitted in specified districts upon the issuance” of such a permit;
2. May be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law;
3. Shall be subject to general or specific provisions set forth therein; and
4. May also impose conditions, safeguards and limitations on time or use.

The particular types of and requirements for special permits the SPGA may issue are outlined in G.L. c. 40A, §9 and include:

- Increases in the density or intensity of use in a proposed development
- Multi-family housing in a nonresidential district
- Transfer of development rights (TDR) of land within or between districts
Roles and Responsibilities of Planning and Zoning Boards

- Cluster developments
- Planned unit developments
- Shared elderly housing
- Activities that necessary in connection with scientific research or scientific development
- Adult bookstores, adult motion picture theatres, adult paraphernalia, adult video stores, or establishments which display live nudity (§9A)
- Protection of access to direct sunlight for solar energy systems (§9B)
- Exclusion of accessory or incidental childcare facilities from maximum permissible floor area calculations (§9C)

Some key deadlines are as follows:

<table>
<thead>
<tr>
<th>Public Hearing</th>
<th>Must be held 65 days from receipt of a special permit application. Can be extended by mutual agreement.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice</td>
<td>First public hearing notice must be published at least 14 days before the public hearing.</td>
</tr>
<tr>
<td>Final Action</td>
<td>Decision and filing must occur within 90 days of the close of the public hearing. Can be extended by mutual agreement.</td>
</tr>
<tr>
<td>Voting</td>
<td>Unanimous 3 member board, 4 of 5 member board, 2/3 more than 5 members.</td>
</tr>
<tr>
<td>Lapse</td>
<td>Special permits lapse within three years.</td>
</tr>
</tbody>
</table>

Also note that **G.L. c. 40A, §3** describes exemptions from special permits.

Further Reading: Module 3, “Special Permit and Variances” and Module 8, “Zoning Exemptions”

**SUBDIVISIONS**

**G.L. c. 41, §§ 81K-81GG** is known as the Subdivision Control Law, the purpose of which is to protect “...the safety, convenience and welfare of the inhabitants of cities and towns... by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.” This law allows for Planning Board control of lot creation as well as the design and construction of roads, utilities, and drainage to serve these lots.

The Planning Board:

- Adopts subdivision rules and regulations
- Determine whether a plan requires approval
Roles and Responsibilities of Planning and Zoning Boards

- Reviews and approves or disapproves preliminary and definitive subdivision plans
- Holds public hearings for definitive plans
- Obtains performance guarantee
- Releases lots
- Advises the ZBA on comprehensive permits that are subdivisions

**WHAT IS . . . a Performance Guarantee?**

Under Section 81U of the Subdivision Control Law, the Planning Board must require that the construction of ways and the installation of municipal services be secured by a performance guarantee before endorsing a subdivision plan. The applicant may choose one or a combination of the following:

- Proper Bond
- Deposit of Money or Negotiable Securities
- Covenant (restricts sale or construction prior to completion of infrastructure & utilities)
- Tri-partite agreement whereby lender retains funds under first mortgage

<table>
<thead>
<tr>
<th>Preliminary Subdivision Plans</th>
<th>Definitive Subdivision Plans</th>
</tr>
</thead>
</table>
| • Opens negotiations between Planning Board and applicant.  
  • Required for non-residential subdivision plans.  
  • No right to appeal decision on a preliminary plan. | • Plan is submitted to Board of Health with a 45-day response period.  
  • Before endorsement, the Planning Board shall require submission of a performance guarantee. |
| No public hearing is required. | The Planning Board must hold a public hearing. |
| Preliminary plans are not recorded at the Registry of Deeds. | Definitive plans must be recorded at the Registry of Deeds within 6 months from the date of endorsement. |
| The Planning Board has **45 days** to approve, approve with modifications, or disapprove. | • The Planning Board may approve, approve with modifications, or disapprove.  
  • For a nonresidential plan or a residential subdivision with preliminary plan, **final action is required within 90 days of submission.**  
  • For a residential subdivision with no preliminary plan, **final action is required within 135 days of submission.** |

*Further Reading: Module 4, “Introduction to Subdivision Control Law and ANR”*
ANR PLANS

Within the Subdivision Control Law, G.L. c. 41, § 81P provides for plans not requiring Planning Board approval, also known as Approval Not Required (ANR) plans. In order for a plan to be considered an ANR, it must meet frontage requirement of local zoning bylaw or ordinance, and provide vital access to the lot via a:

- Public way or a way that is used and maintained as a public way;
- Way shown on an approved plan in accordance with the Subdivision Control Law; or
- Way in existence when the subdivision control law took effect in the town and is suitable for proposed use of lots.

Additionally, Section 81P specifies that for ANR plans,

- No public hearing is required.
- The Planning Board has 21 days to endorse the plan or decide subdivision approval is required. Written notice must be provided to municipal clerk and applicant during this time. Constructive approval may be granted if no action within 21 days.
- The Planning Board cannot rescind an ANR endorsement.

Further reading: Module 4, “Introduction to Subdivision Control Law and ANR”

SITE PLAN REVIEW

The Zoning Act does not specifically provide for or even mention Site Plan Review (SPR). However, municipalities may adopt SPR requirements and procedures as part of their bylaw or ordinance. SPR is:

- Typically used for by-right uses to review site and design issues.
- Sometimes a part of the Special Permit process.
- Generally (but not always) overseen by the Planning Board.

Further reading: Module 6, “Site Plan Review”
REPETITIVE PETITIONS

Under **G.L. c 40A, § 16**, no appeal, application, or petition that has been unfavorably acted upon by the SPGA or ZBA can be acted upon favorably within two years unless approved through the repetitive petition process, which starts with the applicant submitting the application, petition, or appeal to the Planning Board.

*Further reading: Module 2, “Introduction to the Zoning Act”*

SCENIC ROADS AND SHADE TREES

Per **G.L. c. 40, § 15C**, “Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road. . . .” Such a designation results in the prohibition of removal or alteration of stone walls or mature trees from the road without public hearing of the Planning Board.

**G.L. c. 87, § 3** pertains to trimming or removal of public shade trees and primarily addresses the powers and responsibilities of tree wardens. However, Section 3 specifically addresses overlap with the Planning Board if the shade tree is on a scenic road. If this occurs, the public hearings “shall be consolidated into a single public hearing before the tree warden and the planning board.”

ESTABLISHMENT OF HISTORIC DISTRICTS

Prior to the establishment of a Historic District, a historic district study committee or historic district commission shall investigate and write a report on the proposed district and transmit copies of their findings to planning board. (See **G.L. c. 40C, § 3** for details on what is required in the report.)

COMPREHENSIVE PERMITS

While the Zoning Board of Appeals has exclusive jurisdiction over comprehensive permits, the Planning Board may serve in an advisory role, particularly if a subdivision is part of the comprehensive permit application.
Planning Boards may also:

- Serve on a Community Preservation Committee (G.L. c. 44, § 5).
- Initiate or be involved with other planning projects/plans, such as downtown plans, economic development plans, neighborhood/area plans, corridor plans, and housing plans.
- Work closely with the Town Planner or Planning Director (and some Planning Board also hire and supervise the Town Planner/Planning Director as well).
Zoning Boards

- A Zoning Board of Appeals interprets and applies the zoning bylaw or ordinance to matters that come before it.
- If another board, the building inspector, or other official determines that a use is not permitted, the applicant may appeal to the ZBA. These powers and duties are described further below.

APPEALS

Appeals to the ZBA are provided for under G.L. c. 40A, § 8 and § 15. While Module 2, “Introduction to the Zoning Act” addresses the appeal process further, essentially appeals are made when an individual or entity believes:

- They have wrongfully been denied a permit.
- Someone else has wrongfully been granted a permit.
- Someone is violating a bylaw or ordinance and the Zoning Officer has not addressed the violation.

SPECIAL PERMITS

Per G.L. c. 40A, §1A, a Special Permit Granting Authority (SPGA) “shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits” (emphasis added). The types of special permits are detailed above in the “Planning Board” section, as both the Planning Board and Board of Appeals may be part of the Special Permit Granting Authority.

Further reading: Module 3, “Special Permits and Variances”

VARIANCES

A variance (G.L. c. 40A, § 10) is a reduction of or change to a zoning requirement that is otherwise prohibited under the zoning bylaw or ordinance but may be granted by the ZBA. Most variances relate to dimensional requirements; less common are use variances, which the ZBA can only grant if the local bylaw or ordinance allows. The ZBA may only grant petitions for variances if the Board finds that:
• due to circumstances (beyond the norm for the zoning district) related to the soil conditions, shape or topography of the land or structures . . .
• literal enforcement of the provisions of the bylaw would involve substantial hardship to the applicant, and
• the requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the ordinance or bylaw.

Further reading: Module 3, “Special Permits and Variances”

APPEALS FROM DECISIONS OF ZONING ADMINISTRATOR

If authorized by local bylaw or ordinance, G.L. c. 40A, § 13 allows Boards of Appeal to appoint a Zoning Administrator. The Board “may delegate to said zoning administrator some of its powers and duties by a concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of all except one member of a board consisting of five members.” Any person, municipal office, or board may appeal a decision or order of the Zoning Administrator to the Board of Appeals.

NONCONFORMING USES OR STRUCTURES

Under G.L. c. 40A, § 6, the Board of Appeals is tasked with determining whether any proposed changes to a nonconforming use or structure are:

1. significant, and
2. if significant, whether they are “substantially more detrimental to the neighborhood.”

If a change is not significant, the ZBA must issue a building permit as of right.
If a change is significant but not harmful, the applicant is entitled to approval.
If a change is significant and harmful, the relief will be denied.

Further reading: Module 7, “Vested Rights and Nonconforming Uses or Structures”
COMPREHENSIVE PERMITS

Under **G.L. c. 40B, §§ 20-23**, Comprehensive Permits allow any “public agency or limited dividend or nonprofit organization proposing to build low or moderate housing” to consolidate local approvals with a single application to the Board of Appeals. The ZBA’s duties with regard to comprehensive permits are to:

<table>
<thead>
<tr>
<th>Rules and Regulations</th>
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<tbody>
<tr>
<td>Adopt rules specifically relating to the comprehensive permitting process.</td>
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</table>

<table>
<thead>
<tr>
<th>Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receive and review comprehensive permit applications.</td>
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</table>

<table>
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<tr>
<th>Local Boards</th>
</tr>
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<tbody>
<tr>
<td>Notify applicable local boards and request their appearance at the public hearing for a comprehensive permit application.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Hearing</th>
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</thead>
<tbody>
<tr>
<td>Hold a properly noticed public hearing within 30 days of receipt of the application and act within 40 days of the close of the hearing.</td>
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</table>

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<tr>
<th>Final Decision</th>
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<tr>
<td>Decide by majority vote, make findings, and write the decision. If favorable to the applicant, the ZBA shall issue a comprehensive permit or approval.</td>
</tr>
</tbody>
</table>

Further reading: see “Additional Resources” section at end of module.

**ProTip! – Reaching a Fair and Reasonable Decision**

The Board’s record for any decision should include the following:

- The application
- Correspondence between applicant and city/town staff
- Written comments submitted by members of the public
- Oral evidence presented at hearing
- Plans, drawings, photographs, deeds, surveys, and consultant/expert reports
- Written testimony
- Public hearing notice
- Municipal records and other documents submitted during proceeding
- The Board’s findings, which should:
  - Include a statement of the reasoning that progresses from evidence to decision.
  - Be supported by facts that relate to the required conditions or standards; if no such evidence was provided to meet these standards, the Board’s findings should state this.

Further reading: Module 9, “Fair, Defensible Land Use Decisions”
Rules and Regulations
Statutory Requirements

Every board should have a set of Rules & Regulations that governs the board’s operation, administration, and procedures. There are a number of sections within Chapters 40A and 41 that refer to rules and regulations, including:

- G.L. c. 40A, § 12 states: “The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance/by-law for the conduct of its business and for purposes of this chapter and shall file a copy of said rules with the city or town clerk.”

- G.L. c. 40A. §9 requires the Special Permit Granting Authority (SPGA) to adopt rules relative to the issuance of special permits. The rules shall be filed with the municipal clerk and “shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.”

- G.L. c. 41, §81Q requires the planning board to adopt subdivision rules & regulations.

Many city and town boards go beyond these minimum requirements and adopt a more comprehensive set of Rules & Regulations, the typical contents of which are enumerated in the next section.
Components of Rules and Regulations

PROCEDURES AND ORGANIZATION

The rules and regulations should explain the following:

Board Organization

- Procedures for electing officers (e.g., chair, vice-chair, clerk)
- Officer duties
- Appointment of board to other bodies (e.g., the regional planning commission)
- Designation of liaisons to other boards and staff
- Appointment and roles of associate members

Meetings

- Time, days of week, location, agendas, and postings for both regular and special meetings
- Guidelines for the preparation and conduct of meetings (typical agenda, sequence of speaking during public hearings, procedural differences between open meetings versus public hearings, quorum requirements, provisions for extension of a public hearing, etc.)
- Procedures for public hearing notices — as outlined in G.L. c. 40A, §§ 11 and 15 — and any additional means of outreach the board employs beyond statutory requirements (e.g., publishing the notice with greater frequency and in more locations than is required, using social media to share the notice, etc.)
- The roles of officers during meetings
- If applicable, an explanation of the Mullin Rule and how it applies to the board

WHAT IS . . . the Mullin Rule?

Municipalities can adopt the so-called Mullin Rule, as provided for under G.L. c. 39, § 23D. This allows board members who missed one substantive public hearing session to still participate in the decision, but only if the they provide the necessary written certificate and enters it into the record of proceedings that the member reviewed all materials submitted to the board during the missed session and reviewed either:

1) a videotape (with audio) of the missed session;
2) an audio tape of the missed session; or
3) a transcript for the missed session (minutes are not sufficient).
Roles and Responsibilities of Planning and Zoning Boards

### Quorum and Voting Requirements

- Quorum requirements (Generally, the majority of a board is a quorum and the majority of a quorum may act.)
- Special voting requirements (e.g., Special Permits require a 2/3 vote for a 7-9 member board, a 4/5 vote for a 5-member board, and a unanimous vote for a 3-member board.)
- Whether the municipality allows for remote participation of board members.

### WHAT IS . . . Remote Participation?

- The allowance for remote participation of Board members must be adopted by City Council or Board of Selectmen.
- The “remote” member is part of the quorum and can vote, but there must be a “quorum number” present at the meeting.
- The Chair must determine that one of the following factors makes it difficult to attend:
  - Personal illness
  - Emergency
  - Geographic distance
  - Personal disability
  - Military service

### Adoption of Rules and Regulations

- List of dates when rules and regulations were adopted and amended by the board

### THE PERMITTING PROCESS

Boards should clearly outline the procedures and required materials for seeking Board approval.

<table>
<thead>
<tr>
<th>Board</th>
<th>Type of Application/Petition</th>
<th>Statute Requiring Adoption of Regulations (If Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZBA</td>
<td>Appeals</td>
<td>G.L. c. 40A, § 12</td>
</tr>
<tr>
<td></td>
<td>Variances</td>
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<td>Changes to nonconforming uses or structures</td>
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<td></td>
<td>Comprehensive Permits</td>
<td>G.L. c. 40B, § 21</td>
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<tr>
<td>SPGA</td>
<td>Special Permits</td>
<td>G.L. c. 40A, § 9</td>
</tr>
<tr>
<td>Planning Board</td>
<td>Subdivisions</td>
<td>G.L. c. 41, § 81Q</td>
</tr>
<tr>
<td></td>
<td>ANR Plans</td>
<td></td>
</tr>
</tbody>
</table>
This is important not only for the public, but also for board members, as failure to follow procedural requirements may result in a constructive grant or may render the decision indefensible should the applicant appeal.

What is a Constructive Grant?
Where a statute provides for the failure to act or to act within a stated period of time, either for holding a hearing or making & filing a decision, a constructive grant or approval of an application may result.

Examples of this include: special permits, variances, ANR plans, definitive subdivision plans, and Chapter 40B permits.

The following requirements relating to the permitting process are frequently outlined in Board rules and regulations:
- Form of application required
- Required materials
- Requisite number of copies of the application, plan(s), etc.
- Filing procedures
- Fees
- Responsibility for and manner of payment of the newspaper for publication of notice
- Timing of submittal of specific items (e.g. certified list of abutters, assessor’s map(s), studies or reports, etc.)
- Delivery or referral to other public bodies for review and recommendations.

Further reading: Module 12, “Adopting and Revising Rules and Regulations”

Code of Conduct

A number of communities employ a Code of Conduct that is either universally adopted by the chief elected officials of all boards and committees, or selectively by individual boards. While such codes often include provisions already found in state laws related to conflict of interest, taking of bribes, and other ethical considerations, many of these codes go beyond those prohibitions. They often include language related to the conduct of board members both during and outside of meetings, as well as parameters dictating when they can or cannot speak on behalf of the board. The codes may contain language on the responsibilities of board members to the board, to the town or city they represent, and to the public at large. Some codes are one page documents while others are quite lengthy. Boards may benefit from reviewing the ethical codes of other municipalities for guidance.
General Laws to Consider
Open Meeting Law

The following represents an overview of content from the Attorney General’s “Open Meeting Law Guide and Educational Materials” (2018), available at: www.mass.gov/the-open-meeting-law

PURPOSE OF THE LAW

The Open Meeting Law (G.L. c. 30A, §§ 18-25) ensures transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public’s interest in witnessing the deliberations of public officials with the government’s need to manage its operations efficiently.

CERTIFICATION

Within two weeks of a member’s election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General’s regulations, and Open Meeting Law determinations issued to the member’s public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.
MEETINGS OF A PUBLIC BODY

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.”

NOTIFYING THE PUBLIC

Public bodies must, except in cases of emergency, provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

Meeting notices must:

- be posted in a legible, easily understandable format;
- contain the date, time, and place of the meeting;
- list the date and time that the notice was posted (either on the notice itself or in a document or website accompanying the notice), as well as the date and time of any revisions, if applicable
- list all topics that the chair reasonably anticipates will be discussed at the meeting, with sufficient specificity to reasonably inform the public of the issues to be discussed. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list “open session” as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

ProTip!

(1) Update the meeting notice as needed.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting.

(2) Postpone the meeting if necessary.

Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.
## EXECUTIVE SESSION

### WHEN CAN A PUBLIC BODY MEET IN EXECUTIVE SESSION?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session.

### HOW DOES A PUBLIC BODY GO INTO EXECUTIVE SESSION?

Before going into an executive session, the chair of the public body must:

- **✓** convene in open session;
- **✓** state the reason for going into executive session, stating all subjects that may be revealed without compromising the purpose for which executive session was called;
- **✓** state whether the public body will reconvene in open session at the close of the executive session; and

### WHAT IS REQUIRED ONCE IN EXECUTIVE SESSION?

While in executive session, the board must:

- **✓** keep accurate records;
- **✓** take a roll call of all votes taken; and
- **✓** only discuss the matters for which the executive session was called.
Public Records Law

The following frequently asked questions are taken with occasional modification from the Massachusetts Secretary of State and the Division of Public Record’s “Guide to the Massachusetts Public Records Law” (2017), available at:

www.sec.state.ma.us/pre/prepdf/guide.pdf

PUBLIC RECORDS LAW: G.L. c. 4, §7(26)

WHAT IS A PUBLIC RECORD?
Every document, paper, record, map, photograph, etc., as defined by law, that is made or received by a government entity or employee is presumed to be a public record. Specific statutory exemptions to this rule have been created by the Legislature. These exemptions, which are discretionary to the records custodian, allow the records custodian to withhold a record from the general public. If a records custodian claims an exemption and withholds a record, the records custodian has the burden of showing how the exemption applies to the record and why it should be withheld.

WHAT IS A RECORDS CUSTODIAN AND WHAT IS THEIR RESPONSIBILITY?
A records custodian must respond to any requests for a copy of a public record within ten calendar days in writing. The Public Records Law only applies to records that are in existence and created or maintained in the usual course of business. A records custodian is not required to answer questions or to create a record in response to a request, but may do so at his or her discretion.

WHAT CAN A RECORDS CUSTODIAN CHARGE FOR PROVIDING PUBLIC RECORDS?
Unless specifically addressed by statute, a custodian may charge twenty cents ($0.20) per page for photocopies, twenty-five cents ($0.25) per page for microfilm copies, and fifty cents ($0.50) per page for computer printouts. A records custodian may charge and recover a fee for the time he or she spends searching, redacting, photocopying and refiling a record. The per hour charge for this process may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task.
WHEN MUST OPEN MEETING MINUTES BE MADE AVAILABLE TO THE PUBLIC?
Minutes of open meetings, regardless of form, are public and must be made available at the close of the meeting. There is no requirement that the minutes be transcribed or approved before they are made public. A records custodian should clearly mark all such minutes “unofficial.”

WHAT SHOULD A CUSTODIAN DO IF THEY DO NOT POSSESS RECORDS ARE NOT IN THEIR POSSESSION?
Records custodians should forward any such requests to the appropriate party. A large public records request may include items for which the custodian is not responsible. It is in the public interest for the custodian to forward such requests to the appropriate parties in responding to a public records request.

WHERE CAN RECORDS CUSTODIANS AND REQUESTERS LEARN MORE?
Records custodians and requesters seeking more information may telephone the Division and speak with the Attorney of the Day. The Attorney of the Day is a staff member of the Division, reporting to the Supervisor, and is available to answer “general questions” concerning the Public Records Law between the hours of 9:00 a.m. and 4:00 p.m. Oral and written legal advisories are not generally provided by the Division. The phone number for the Division is (617) 727-2832.
Conflict of Interest Law

The following excerpts are taken with occasional modification from the State Ethics Commission’s “Summary of the Conflict of Interest Law for Municipal Employees,” available at:

www.mass.gov/orgs/state-ethics-commission

OVERVIEW

- All city and town employees must be provided with a Summary of the Conflict of Interest Law for Municipal Employees within 30 days of hire or election, and then annually thereafter.
- All city and town employees are then required to acknowledge in writing that they received the summary.
- The summary of the Conflict of Interest Law (G.L. c. 268A) is intended to help municipal employees understand how that law applies to them. It is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation.
- Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission’s Legal Division through the website referenced above.
- When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to $10,000 ($25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.
- Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law.

ON-THE-JOB RESTRICTIONS

- **Bribes.** Asking for and taking bribes is prohibited. (See § 2.)
- **Gifts and gratuities.** Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See §§ 3, 23[b][2], and 26.)
• **Misuse of position.** Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited; causing someone else to do these things is also prohibited. (See § 23(b)(2) and § 26.)

• **Self-Dealing and Nepotism.** Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See § 19.)

• **False Claims.** Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See § 23(b)(4) and 26.)

• **Appearance of Conflict.** Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See § 23(b)(3).)

• **Mishandling of Confidential Information.** Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See § 23(c).)

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**AFTER-HOURS RESTRICTIONS**

• **Second Job.** Taking a second job that conflicts with duties of municipal job

• **Divided Loyalties.** Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See § 17.)

• **Inside Track.** Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See § 20.)

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**AFTER LEAVING MUNICIPAL EMPLOYMENT**

• **Forever Ban.** After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

• **One-Year Cooling Off Period.** For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

• **Partners.** Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.
List of Statutes

The following statutes were addressed in this module:

- Zoning Act: G.L. c.40A
- Subdivision Control: G.L. c. §§81K-81GG
- Comprehensive Permits: G.L. c. 40B, §§ 20-23
- Master Plans: G.L. c. 41, §81D
- Mullin Rule: G.L. c.39, §23D
- Scenic Roads: G.L. c. 40, § 15C
- Shade Trees: G.L. c. 87
- Open Meeting Law: G.L. c.30A, §§18-25; 940 CMR 29.00 et seq.
- Public Records Law: G.L. c. 4, §7(26)
- Conflict of Interest Law: G.L. c. 268A
Further Reading

OML/PRL/COI GUIDES

Open Meeting Law Guide and Training: www.mass.gov/the-open-meeting-law
Conflict of Interest Law Guide and Training: www.mass.gov/orgs/state-ethics-commission

SOURCES OF SUPPORT

American Planning Association: www.planning.org
American Planning Association-Massachusetts Chapter: www.APA-MA.org
Citizen Planner Training Collaborative: www.masscptc.org
Department of Housing and Community Development: www.mass.gov/hed/economic/ehed/dhcd/
Massachusetts Association of Planning Directors: www.massplanning.org
Massachusetts Housing Partnership: www.mhp.net
Planetizen: www.planetizen.com
Massachusetts Regional Planning Agencies:
  Berkshire Regional Planning Commission: www.berkshireplanning.org
  Boston Region Metropolitan Planning Organization: www.bostonmpo.org
  Cape Cod Commission: www.capecodcommission.org
  Central Massachusetts Regional Planning Commission: www.cmrpc.org
  Franklin Regional Council of Governments: www.frcog.org
  Martha’s Vineyard Commission: www.mvcommission.org
  Merrimack Valley Planning Commission: www.mvpc.org
  Metropolitan Area Planning Council: www.mapc.org
  Montachusett Regional Planning Commission: www.mrpc.org
  Northern Middlesex Council of Governments: www.nmccog.org
  Pioneer Valley Planning Commission: www.pvpc.org
  Old Colony Planning Council: www.ocpcrpa.org
  Southeastern Regional Planning and Economic Development District: www.srpedd.org
Roles and Responsibilities of Planning and Zoning Boards

Introduction

By the end of this course, you will be able to answer the following:

• What do planning boards and zoning boards (ZBAs) do?
• How are planning boards different from zoning boards?
• What sorts of rules and regulations should planning and zoning boards create and adhere to?

What should you be leaving the room with today?
Introduction

COURSE OBJECTIVE

What should you be leaving the room with today?

- What is the Open Meeting Law, and how does it pertain to public hearings and public meetings of planning and zoning boards?
- What is the Public Records Law, and how does it pertain to planning and zoning boards?
- What is the Conflict of Interest Law, and how does it pertain to planning and zoning boards?

OVERVIEW

- This module discusses the roles of the Planning Board and the Zoning Board of Appeals.
- The vast majority of land use decisions occur at the local level.
- However, there are state and federal exceptions to local control, and those exceptions are a primary focus of this training.

How does Massachusetts' status as a "home rule" state affect land use decisions?

OVERVIEW

Zoning Basics

- A zoning bylaw/ordinance regulates the use, pattern, and appearance of development through zoning districts, dimensional requirements, use requirements, and other regulations.
- Districts must be:
  - "...uniform within the district for ... structures or uses permitted," and
  - "...shown on a zoning map in a manner sufficient for identification."
- Uses are permitted within zoning districts:
  - by right (may be subject to site plan review)
  - by special permit, or
  - by variance
An effective board member knows:

- The authority of the board and its duties
- How the Board operates
- Standards for decision-making
- Legal aspects of Board conduct
- Applicable state regulations, laws, and plans
- Other local relevant plans or regulations
- The authority of other boards

Board Membership

<table>
<thead>
<tr>
<th>No. of Members</th>
<th>Planning Board</th>
<th>Zoning Board of Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>5, 7, or 9 members</td>
<td>3 or 5 members</td>
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</tr>
</tbody>
</table>

Elected or Appointed
- Depends on municipality
- Typically appointed

Associate Members
- Only allowed for special permits and possibly site plan review depending on procedure and local regulations.
- PB of 5 members can have 1 associate member; PB of more than 5 can have 2 associate members.
- Designated by chair if needed for a case.
- Acts only due to absence, inability to act, conflict, or vacancy.

Responsibilities of Planning Boards

<table>
<thead>
<tr>
<th>Area</th>
<th>Statute (If Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master Plans</td>
<td>G.L. c. 41, § B1D</td>
</tr>
<tr>
<td>Zoning Amendments</td>
<td>G.L. c. 40A, § 5</td>
</tr>
<tr>
<td>Special Permits (if authorized by local bylaw or ordinance)</td>
<td>G.L. c. 40A, § 1A, § 9</td>
</tr>
<tr>
<td>Subdivisions</td>
<td>G.L. c. 41, §§ B1K-B1GG</td>
</tr>
<tr>
<td>Approval Not Required (ANR) Plans</td>
<td>G.L. c. 43, § BLP</td>
</tr>
</tbody>
</table>
### Introduction

#### OVERVIEW

#### Responsibilities of Planning Boards

<table>
<thead>
<tr>
<th>Area</th>
<th>Statute (if Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan Review (if authorized by local bylaw or ordinance)</td>
<td>N/A</td>
</tr>
<tr>
<td>Repetitive Petitions</td>
<td>G.L. c. 40A, § 16</td>
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<tr>
<td>Scenic Roads and Shade Trees</td>
<td>G.L. c. 40, § 25C, G.L. c. 87</td>
</tr>
<tr>
<td>Establishment of Historic Districts</td>
<td>G.L. c. 40C, § 3</td>
</tr>
<tr>
<td>Comprehensive Permits (if requested)</td>
<td>G.L. c. 40B, §§ 20-23</td>
</tr>
</tbody>
</table>

And more!

### Responsibilities of Zoning Boards

<table>
<thead>
<tr>
<th>Area</th>
<th>Statute (if Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeals</td>
<td>G.L. c. 40A, § 6, § 15</td>
</tr>
<tr>
<td>Special Permits (if authorized by local bylaw or ordinance)</td>
<td>G.L. c. 40A, § 1A, § 9</td>
</tr>
<tr>
<td>Variances</td>
<td>G.L. c. 40A, § 10</td>
</tr>
<tr>
<td>Appeals from Decisions of Zoning Administrator</td>
<td>G.L. c. 40A, § 13</td>
</tr>
<tr>
<td>Nonconforming Uses/Structures</td>
<td>G.L. c. 40A, § 6</td>
</tr>
<tr>
<td>Comprehensive Permits</td>
<td>G.L. c. 40B, §§ 20-23</td>
</tr>
</tbody>
</table>

#### The Planning Board is involved with:

#### The Zoning Board of Appeals (ZBA) is the “permit granting authority” and hears and acts on:

### Roles and Responsibilities of Planning and Zoning Boards

#### Powers and Duties
Powers and Duties
PLANNING BOARDS

Master Plans: G.L. c. 41, § 81D

• Assigns legal responsibility for the creation and approval of Master Plans to the Planning Board
• Required sections:
  1. Goals & Policies
  2. Land Use Plan
  3. Housing
  4. Economic Development
  5. Natural & Cultural Resources
  6. Open Space & Recreation
  7. Services & Facilities
  8. Circulation
  9. Implementation

A Master Plan is . . .

- a blueprint for guiding decisions on land use and growth issues.
- tailored to the individual municipality.
- a statement of policies, goals, and standards.
- a policy framework.
- a visionary document anticipating future events and needs.

Zoning Amendments: G.L. c. 40A, § 5

• The Planning Board is one of several entities able to put forth proposed zoning amendments or additions.
• Planning Boards have authority and duty to hold a public hearing on and provide recommendations for any changes to the zoning bylaw or ordinance. (Can be jointly held with City Council.)
• Changes then require a 2/3 Town Meeting or City Council vote.
Special Permits: G.L. c. 40A, § 1A

- Special Permit Granting Authority (SPGA) may include:
  - Board of Selectmen
  - City Council
  - Board of Appeals
  - Planning Board
  - Zoning Administrators
- Municipalities determine which entity will act as the SPGA.

Special Permits: G.L. c. 40A, § 9

- Special permits allow for specific types of uses that are only permitted upon the issuance of such a permit.
- G.L. c. 40A, § 3 describes use exemptions from special permits.
- G.L. c. 40A, § 9 "Special Permits" describes uses, rules and regulations, timelines, public hearing requirements, reasonable conditions etc. regarding special permits.

**Public Hearing**
Must be held 65 days from receipt of a special permit application. Can be extended by mutual agreement.

**Notice**
First public hearing notice must be published at least 14 days before the public hearing.

**Final Action**
Decision and filing with municipal clerk must occur within 90 days of the close of the public hearing. Can be extended by mutual agreement.

**Voting**
Unanimous for 3-member board; 4 of 5-member board; 2/3 more than 5 members.

**Lapse**
Special permits lapse within three years.
Subdivisions: G.L. c. 41, §§ 81K-81GG

Powers and Duties
PLANNING BOARDS

Subdivisions

Purpose of Subdivision Control Law:
To protect “. . . the safety, convenience and welfare of the inhabitants of cities and towns . . . by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.”

Subdivisions: G.L. c. 41, §§ 81K-81GG

• A subdivision is the division of a tract of land into two or more lots.
• A division of a tract of land into two or more lots will not constitute a subdivision if every lot has adequate frontage on an adequate way (to be discussed shortly).

The Planning Board:
• adopts subdivision rules and regulations.
• determines whether a plan requires approval.
• reviews and approves or disapproves preliminary and definitive subdivision plans.
• holds public hearings for definitive plans.
• obtains performance guarantee (G.L. c. 41, §81U).
• releases lots.
• advises the ZBA on comprehensive permits that are subdivisions.
Powers and Duties
PLANNING BOARDS
Subdivisions

Performance Guarantee: G.L. c. 41, § 81U

- Proper Bond
- Deposit of Money or Negotiable Securities
- Covenant (restricts sale or construction prior to completion of infrastructure & utilities)
- Tri-party agreement whereby lender retains funds under first mortgage
- Can use one or combination of guarantees
- Applicant selects type of guarantee

Preliminary Subdivision Plans

- Opens negotiations between Planning Board and applicant
- Required for non-residential subdivision plans
- Not recorded at the Registry of Deeds
- No right to appeal decision on a preliminary plan
- No public hearing required
- 45 days to approve, approve with modifications, or disapprove

Definitive Subdivision Plans

- The Planning Board may approve, modify and approve, or deny the plan.
- Before endorsement, the Planning Board shall require submission of a performance guarantee.
- Definitive plans are recorded at the Registry of Deeds.
- Definitive plans must be recorded within 6 months from the date of endorsement.
Definitive Subdivision Plans

- Plan is submitted to Board of Health with a 45-day response period.
- The Planning Board must hold a public hearing.
- For a nonresidential plan or a residential subdivision with preliminary plan, final action is required within 90 days of submission.
- For a residential subdivision with no preliminary plan, final action is required within 135 days of submission.

ANR Plans: G.L. c. 41, § 81P

A plan dividing land into two or more lots does not require Planning Board approval if:
- all lots on the plan meet frontage requirements, and
- the plan provides adequate access to all lots via:
  - public way or way used and maintained as a public way;
  - way shown on an approved plan; or
  - way in existence when the subdivision control law took effect in the town and which is suitable for proposed use of lots.

ANR Plans: G.L. c. 41, § 81P

- No public hearing is required.
- The Planning Board has 21 days to endorse the plan or decide subdivision approval is required. Written notice of the Planning Board’s decision must be provided to municipal clerk and applicant.
- Constructive approval may be granted if no action within 21 days.
- The Planning Board cannot rescind an ANR endorsement.
Powers and Duties
PLANNING BOARDS

Site Plan Review

While Zoning Act does not mention Site Plan Review (SPR), municipalities may adopt SPR requirements and procedures as part of their bylaw or ordinance. Site Plan review is:
- typically used for by-right uses to review site and design issues.
- sometimes a part of the Special Permit process.
- generally (but not always) overseen by the Planning Board.

Repetitive Petitions

Repetitive Petitions: G.L. c. 40A, § 16
- No appeal, application, or petition that has been unfavorably acted upon by the SPGA or ZBA can be acted upon favorably within two years unless approved through the repetitive petition process.
- To begin this process, the applicant must submit the application, petition, or appeal to the Planning Board for review.
- All but one member of the full Planning Board must approve a repetitive petition.
- There must be a finding of “specific and material” changes to the original application.

Scenic Roads

Scenic Roads: G.L. c. 40, § 15C
- The Planning Board, Conservation Commission, or Historical Commission may recommend or request that any road (except numbered routes or state highways) be designated as a scenic road.
- Stone walls and mature trees cannot be altered or removed from scenic roads without public hearing of the Planning Board.
Powers and Duties
PLANNING BOARDS
Scenic Roads and Shade Trees

Shade Trees: G.L. c. 87, § 3

- The trimming and removal of shade trees is under the jurisdiction of the Tree Warden and requires a public hearing.
- However, if a shade tree is on a scenic road, the required public hearings "shall be consolidated into a single public hearing before the tree warden and the planning board."

Other Roles
PLANNING BOARDS

Other Planning Board Roles

- Planning Boards also:
  - are involved with the creation of Historic Districts.
    G.L. c. 40C, § 3
  - may provide recommendations to the Zoning Board of Appeals when they review comprehensive permits, particularly when a subdivision is involved.
    G.L. c. 40B, § 21
  - may serve on a Community Preservation Committee.
    G.L. c. 44, § 5

Other Roles
PLANNING BOARDS

Other Planning Board Roles

- Initiate or are involved with other planning projects/plans, such as:
  - Downtown plans
  - Economic development plans
  - Neighborhood/area plans
  - Corridor plans
  - Housing plans
- Work closely with the Town Planner or Planning Director (and some Planning Boards also hire and supervise the Town Planner/Planning Director as well).
Powers and Duties
ZONING BOARDS

Zoning Board of Appeals: G.L. c. 40A, § 1A
- The Zoning Act designates the Board of Appeals as the "permit granting authority."
- The Zoning Board of Appeals, or ZBA, interprets and applies the zoning bylaw or ordinance to matters that come before it.

Appeals: G.L. c. 40A, § 8 and § 15
- Appeals to the ZBA are provided for under G.L. c. 40A, § 8 and are made when an individual or entity believes:
  - They have wrongfully been denied a permit
  - Someone else has wrongfully been granted a permit
  - Someone is violating a bylaw or ordinance and the Zoning Officer has not addressed the violation.
- G.L. c. 40A, § 15 lays out the appeals process in detail.

Special Permits: G.L. c. 40A, § 1A and § 9
- Special Permit Granting Authority (SPGA) may include:
  - Board of Selectmen
  - City Council
  - Board of Appeals
  - Planning Board
  - Zoning Administrators
- Section 9 of the Zoning Act outlines the procedural requirements for special permits.
Variances: G.L. c. 40A, § 10

- Under certain circumstances, the ZBA may permit a variance of a zoning requirement.
- Types:
  - Dimensional variances
  - Use variances (less common and only if local bylaw or ordinance allows)

The ZBA may only grant petitions for variances if:

1. due to circumstances (beyond the norm for the zoning district) related to the soil conditions, shape or topography of the land or structures...
2. literal enforcement of the provisions of the bylaw would involve substantial hardship to the applicant, and
3. the requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the ordinance or bylaw.

Zoning Administrators: G.L. c. 40A, § 13

- If authorized by local bylaw or ordinance, ZBAs may appoint a Zoning Administrator to whom the board “may delegate ... some of its powers and duties by a concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of all except one member of a board consisting of five members.”
- Any person, municipal office, or board may appeal a decision or order of the Zoning Administrator to the Board of Appeals.
Nonconforming Uses or Structures: G.L. c. 40A, § 6

The ZBA shall determine whether any proposed changes to a nonconforming use or structure:

1. Would significantly increase the nonconforming nature of the structure or use, and
2. if significant, whether they are "substantially more detrimental to the neighborhood."

If a change is not significant, the ZBA must issue a building permit as of right.

If a change is significant but not harmful, the applicant is entitled to approval.

If a change is significant and harmful, the relief will be denied.

Comprehensive Permits: G.L. c. 40B, §§ 20-23

Comprehensive Permits allow applicants proposing to build low- or moderate-income housing to consolidate local approvals with a single application to the Board of Appeals.

The Zoning Board of Appeals must . . .

- adopt rules relating to the comprehensive permitting process.
- receive and review comprehensive permit applications.
- notify applicable local boards of comprehensive permit applications and request their appearance at public hearings.
- hold a properly noticed public hearing within 90 days of receipt of the comprehensive permit application.
- make a decision within 40 days of the close of the hearing. If favorable to the applicant, the ZBA shall issue a comprehensive permit or approval.
### Decision Making Process

The Board’s record for any decision should include:

- The application
- Correspondence between applicant and city/town staff
- Written comments submitted by members of the public
- Oral evidence presented at hearing
- Plans, drawings, photographs, deeds, surveys, and consultant/expert reports
- Written testimony
- Public hearing notice
- Municipal records and other documents submitted during proceeding
- The Board’s findings, which should:
  - include reasoning, and
  - be supported by facts that relate to the required conditions or standards; if no such evidence was provided to meet these standards, the Board’s findings should state this.

### Roles and Responsibilities of Planning and Zoning Boards

**Rules and Regulations**

- Every board should have a set of Rules and Regulations that governs the board’s operation, administration, and procedures.
- Many city and town boards go beyond minimum statutory requirements and adopt a more comprehensive set of Rules & Regulations.
### Statutory Requirements

- **Zoning Board of Appeals**
  - G.L. c. 40A, § 12
  - ZBAAs must adopt procedural rules & regulations.

- **Special Permit Granting Authority**
  - G.L. c. 40A §§
  - SPGAs must adopt special permit rules & regulations.

- **Planning Board**
  - G.L. c. 41, §8Q
  - PBs must adopt subdivision rules & regulations.

### Procedures and Organization

- Procedures for electing officers (e.g., chair, vice-chair, clerk)
- Officer duties
- Appointment of board to other bodies (e.g., the regional planning commission)
- Designation of liaisons to other boards and staff
- Appointment and roles of associate members

### Meetings

- Time, days of week, location, agendas, and postings for both regular and special meetings
- Guidelines for the preparation and conduct of meetings
- Procedures for public hearing notices
- Additional means of outreach the board employs beyond statutory requirements
- The roles of officers during meetings
- If applicable, an explanation of the Mullin Rule
Rules and Regulations COMPONENTS

Procedures and Organization

The Mullin Rule: G.L. c. 39, § 23D

- Board members who missed one public hearing session may participate and vote if the municipality has adopted G.L. c. 39, § 23D.
- Board member must certify in writing (and file with municipal clerk) that they reviewed all evidence of missed session including:
  1) videotape or audio recording of the missed session;
  2) audio tape of the missed session; or
  3) transcript for the missed session (minutes are not sufficient).

Quorum and Voting Requirements

- Generally, the majority of a board is a quorum and the majority of a quorum may act.
- However, Rules and Regulations should include special voting requirements (e.g., Special Permits require a 2/3 vote for a 7-to-9-member board, a 4/5 vote for a 5-member board, and a unanimous vote for a 3-member board.)

Remote Participation - 940 CMR 29.10

- Must be adopted by City Council or Board of Selectmen.
- The “remote” member is part of the quorum and can vote, but there must be a “quorum number” present at meeting.
- Chair must determine that one of the following factors makes it difficult to attend:
  - Personal illness
  - Emergency
  - Geographic distance
  - Personal disability
  - Military service
Remote Participation - 940 CMR 29.10

- Chair must announce for the record use of remote technology, member using it, and reason for use.
- The remote participants must be visible/audible to all persons present at meeting location.
- If connection lost at any time, deliberations are halted and must be reflected in the minutes.

Permitting

- Boards should clearly outline the procedures and required materials for seeking Board approval.
- Failure to follow procedural requirements may result in a constructive grant in favor of the applicant or may render the decision indefensible should the applicant appeal.

Permitting

Board regulations should outline the following permitting guidelines:

- Form of application required
- Required materials
- Requisite number of copies of the application, plan(s), etc.
- Filing procedures
- Fees
- Responsibility for and manner of payment of the newspaper for publication of notice
- Timing of submittal of specific items (e.g., certified list of abutters, assessor’s map(s), studies or reports, etc.)
- Delivery or referral to other public bodies for review and recommendations
The Permitting Process

<table>
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<th>Board</th>
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<th>Statute Requiring Rules and Regulations</th>
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<td>Changes to nonconforming uses/structures</td>
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<tr>
<td>SPGA</td>
<td>Special Permits</td>
<td>G.L. c. 40A, § 9</td>
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<tr>
<td>Planning Board</td>
<td>Subdivisions</td>
<td>G.L. c. 41, § 81Q</td>
</tr>
</tbody>
</table>

Code of Conduct

- A number of communities employ a Code of Conduct that goes beyond the standard provisions of state laws relating to ethical considerations.
- Codes may vary greatly in length depending on the preferences of the municipality.
- Boards may benefit from reviewing the ethical codes of other municipalities for guidance.

Open Meeting Law

Roles and Responsibilities of Planning and Zoning Boards
Purpose and Certification

- The Open Meeting Law ensures transparency in the deliberations on which public policy is based.
- Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the Certificate of Receipt of Open Meeting Law Materials.

Meeting Notices

Meeting notices must:
- be posted 48 hours in advance except in the case of an emergency, excluding Saturdays, Sundays, and legal holidays;
- be posted in a legible, easily understandable format;
- contain the date, time, and place of the meeting;
- list the date and time that the notice was posted, as well as the date and time of any revisions, if applicable;
- list all topics that the chair reasonably anticipates will be discussed at the meeting, with enough specificity to reasonably inform the public of the issues to be discussed.

Executive Session

- While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session.
- Before going into an executive session, the chair of the public body must:
  1. convene in open session;
  2. state the reason for going into executive session, stating all subjects that may be revealed without compromising the purpose for which executive session was called;
  3. state whether the public body will reconvene in open session at the close of the executive session; and
  4. take a roll call vote of the body to enter executive session.
Public Records Law

Roles and Responsibilities of Planning and Zoning Boards

- Every document, paper, record, map, photograph, etc., as defined by law, that is made or received by a government entity or employee is presumed to be a public record.
- Specific statutory exemptions to this rule have been created by the Legislature.
- The Records Custodian is responsible for providing copies of existing public records in their possession upon request for a determined fee.

Public Meeting Minutes

- Minutes of open meetings, regardless of form, are public and must be made available at the close of the meeting.
- There is no requirement that the minutes be transcribed or approved before they are made public.
- A records custodian should clearly mark all unapproved minutes "unofficial."
Conflict of Interest Law

Roles and Responsibilities of Planning and Zoning Boards

Any person performing services for a city or town or holding a municipal position, whether paid or unpaid, is considered a municipal employee.

All city and town employees must:

- be provided with a Summary of the Conflict of Interest Law for Municipal Employees within 30 days of hire or election, and then annually thereafter; and
- acknowledge in writing that they received the summary.

Applicability and Requirements

- The Commission can impose a civil penalty of up to $10,000 ($25,000 for bribery cases) for each violation.
- The Commission can order the violator to repay any economic advantage gained by the violation, and to make restitution to injured third parties.
- Violations of the conflict of interest law can also be prosecuted criminally.
## Types of Restrictions

(See Conflict of Interest Summary in handout for detail.)

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<thead>
<tr>
<th>Restriction</th>
<th>Types</th>
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<td>• Misuse of position</td>
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<td>• Self-dealing and nepotism</td>
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<td>After Leaving Municipal Employment:</td>
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<td>• One-year cooling off period</td>
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<td></td>
<td>• Restrictions for partners</td>
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</tbody>
</table>

## Roles and Responsibilities of Planning and Zoning Boards

## Wrap-Up

## Questions?
Additional Resources
STATUTES

- **Zoning Act**: G.L. c. 40A
- **Subdivision Control**: G.L. c. §§81K-81GG
- **Comprehensive Permits**: G.L. c. 40B, §§ 20-23
- **Master Plans**: G.L. c. 41, §§ 1D
- **Mullin Rule**: G.L. c. 39, §3D
- **Scenic Roads**: G.L. c. 40, § 15C
- **Shade Trees**: G.L. c. 87
- **Open Meeting Law**: G.L. c. 30A, §§18-25; 940 CMR 29.00 et seq.
- **Public Records Law**: G.L. c. 6, §§236
- **Conflict of Interest Law**: G.L. c. 268A

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Additional Resources
FURTHER READING

- **Massachusetts Housing Partnership**: www.mhp.net
- **DHCD**: www.mass.gov/zhed/economic/zhed/dhcd/
- **Open Meeting Law Guide and Training**: www.mass.gov/the-open-meeting-law
- **Public Records Law Guide**: www.sec.state.ma.us/pre/pdfguide.pdf
- **Conflict of Interest Law Guide and Training**: www.mass.gov/orgs/state-affairs-ethics-commission
- **Citizen Planner Training Collaborative**: www.masscptc.org
- **Mass. Association of Planning Directors**: www.massplanning.org

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Thank you!