



Truro Planning Board Agenda

Remote Public Meeting – Work Session

Wednesday, July 14, 2021 – 5:00 pm

www.truro-ma.gov

Open Meeting

Remote Meeting Access Instructions: Citizens can join the meeting to listen by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at 1-866-899-4679 and entering the access code 124-995-197# when prompted. Citizens will be muted upon entering the meeting.

Meeting link: <https://global.gotomeeting.com/join/124995197>

Work Session

1. SETTING UP FOR SUCCESS
 - Role of Board Members/Role of Town Planner
 - Process/Timeline for reviewing applications

2. GOALS FOR 2021-22
 - Revising Planning Board Handbook
 - Planning & Water
 - Potential Bylaw Revisions

Adjourn



An Educational Resource Developed by the



for Berkshires Tomorrow



PLANNING BOARD RESOURCE BOOK

2015

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

ACKNOWLEDGMENTS



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

ABOUT BERKSHIRES TOMORROW

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

Berkshires Tomorrow is focused on:

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

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Introduction

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

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

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

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

PARTICIPANTS IN THE LAND USE PROCESS

Participants in the Land Use Process

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

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

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

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

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

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

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

Board of Selectmen/City Council:

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

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

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

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

Permitting/Approvals Overview

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

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

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

Special Permits

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

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

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

Step 1. Submitting a Special Permit Application

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

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

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

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

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

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

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

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

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

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

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Step 3. Reviewing Relevant Project Information

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

Step 4. Voting on the Special Permit Application

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

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

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

Step 6. Sending Notice of the Special Permit Decision

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

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

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

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

Additional Resources:

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

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

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

Examples of Special Permit Rules & Regulations

- Town of Auburn, MA – *Rules & Regulations for Applications for Special Permits and Site Plan Approvals*, available at:
http://www.auburnguide.com/Pages/AuburnMA_planning/RulesRegs.pdf
- Town of Stow, MA – *Town of Stow Planning Board Rules & Regulations for Special Permits*, available at: http://www.stow-ma.gov/pages/StowMA_Planning/Rules%20and%20Regulations/SpecialPermitRegs.pdf

Site Plan Approval (As-Of-Right)

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

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

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

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

- ⊕ The Zoning Act (M.G.L. c. 40A) makes no mention of site plan approval used in conjunction with the as-of-right building permit process. The site plan approval (as-of-right) process has been accepted by the courts as a legitimate exercise of municipal authority.
- ⊕ Site plan approval (as-of-right) cannot be used to deny¹ a project that complies with your local zoning bylaw or ordinance. The site plan approval board has the authority to approve a site plan or approve a site plan with conditions.

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

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

Step 1. Submitting a Site Plan Approval Application

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

Step 2. Reviewing the Site Plan Approval Application

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

Step 3. Voting on the Site Plan Approval Application

The site plan approval board votes to approve, approve with conditions or deny² the site plan approval application. A site plan approval is typically approved by a majority vote of the site plan approval board, unless the zoning bylaw or ordinance requires a greater majority. The reasons for the decision of the site plan approval board need not be in writing. The decision of the site plan approval board is then communicated to the applicant.

² See Footnote # 1.

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Step 4. Applying for a Building Permit

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

Additional Resources:

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

http://masscptc.org/documents/core-documents/Site%20Plan%20Review%20Module2%20_1_.pdf

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

Subdivisions & Approval Not Required (ANR) Discussion

For the sake of simplicity, Massachusetts General Law includes two separate review processes for the division of a single tract of land into two or more lots. The circumstances of the tract of land will dictate what approval process is required to legally establish the additional lots³. A summary of the two processes and a more detailed discussion are provided below.

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

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

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

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

Approval Not Required (ANR) Process

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

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

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

Step 1. Submitting ANR Plan to Planning Board

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

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

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

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

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

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

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

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

Additional Resources:

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

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

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

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

Subdivision Review Process

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

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

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

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

Step 1. Submitting a Preliminary Plan

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

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

Step 2. Decision on Preliminary Plan

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

Step 3. Submitting a Definitive Plan

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

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

Step 4. Decision by Board of Health on Definitive Plan

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

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

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

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

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

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

Step 6. Deciding on the Definitive Subdivision Plan

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

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

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

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Additional Resources:

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

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

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

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

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

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

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

Handbook of Massachusetts Land Use & Planning Law, Mark Bobrowski, 2011, 3rd edition, Wolters Kluwer Law & Business.

Examples of Subdivision Rules & Regulations

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

Other Permitting/Approval Responsibilities of the Planning Board

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

Additional Resources:

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

Planning Overview

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

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

Master Plans

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

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

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

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

Additional Resources:

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

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

Examples of Adopted Master Plans - Massachusetts

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

Zoning Amendments

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

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

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

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

Step 1. Development of the Zoning Amendment Proposal

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

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

Step 2. Initiate the Zoning Amendment Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Resources:

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

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

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

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

Other Planning Considerations for Planning Boards

- ⊕ **Scenic Road Designations:** The planning board is one of three municipal boards that can initiate the process to designate a local road as a “scenic road” within the meaning of M.G.L. c. 40 § 15C. The effect of a scenic road designation is that any work in the public right-of-way that involves the cutting of trees or alteration of stonewalls along the scenic road can only be done after obtaining a permit from the planning board. The purpose of the designation is to protect the scenic, aesthetic and historic aspect of the designated roads. A vote of the legislative body is required to designate a local road as a scenic road. For more information please see M.G.L. c. 40 § 15C.

- ⊕ **Official Map:** A planning board may adopt an official map that shows the public ways and parks therein as laid out and established by law and the private ways then existing and used in common by more than two owners. For more information please see M.G.L. c. 41 § 81E.

Additional Resources:

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

PLANNING BOARD ORGANIZATION & OPERATIONS

Organizational and Operational Considerations

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

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

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

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

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

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

PLANNING BOARD ORGANIZATION & OPERATIONS

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

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

Additional Resources:

Handbook of Massachusetts Land Use & Planning Law, Mark Bobrowski, 2011, 3rd edition, Wolters Kluwer Law & Business.

FREQUENTLY REFERENCED STATE LAND USE LAWS

Frequently Referenced State Land Use Laws

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

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

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

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

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

FREQUENTLY REFERENCED STATE LAND USE LAWS

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

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

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

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

Also see:

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

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

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

CONTACT INFORMATION

For questions or comments about this resource book please contact:

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bdomina@berkshireplanning.org



EXHIBIT "A"

Timeline for the Special Permit Process

Special Permits—Massachusetts General Laws, Ch. 40A

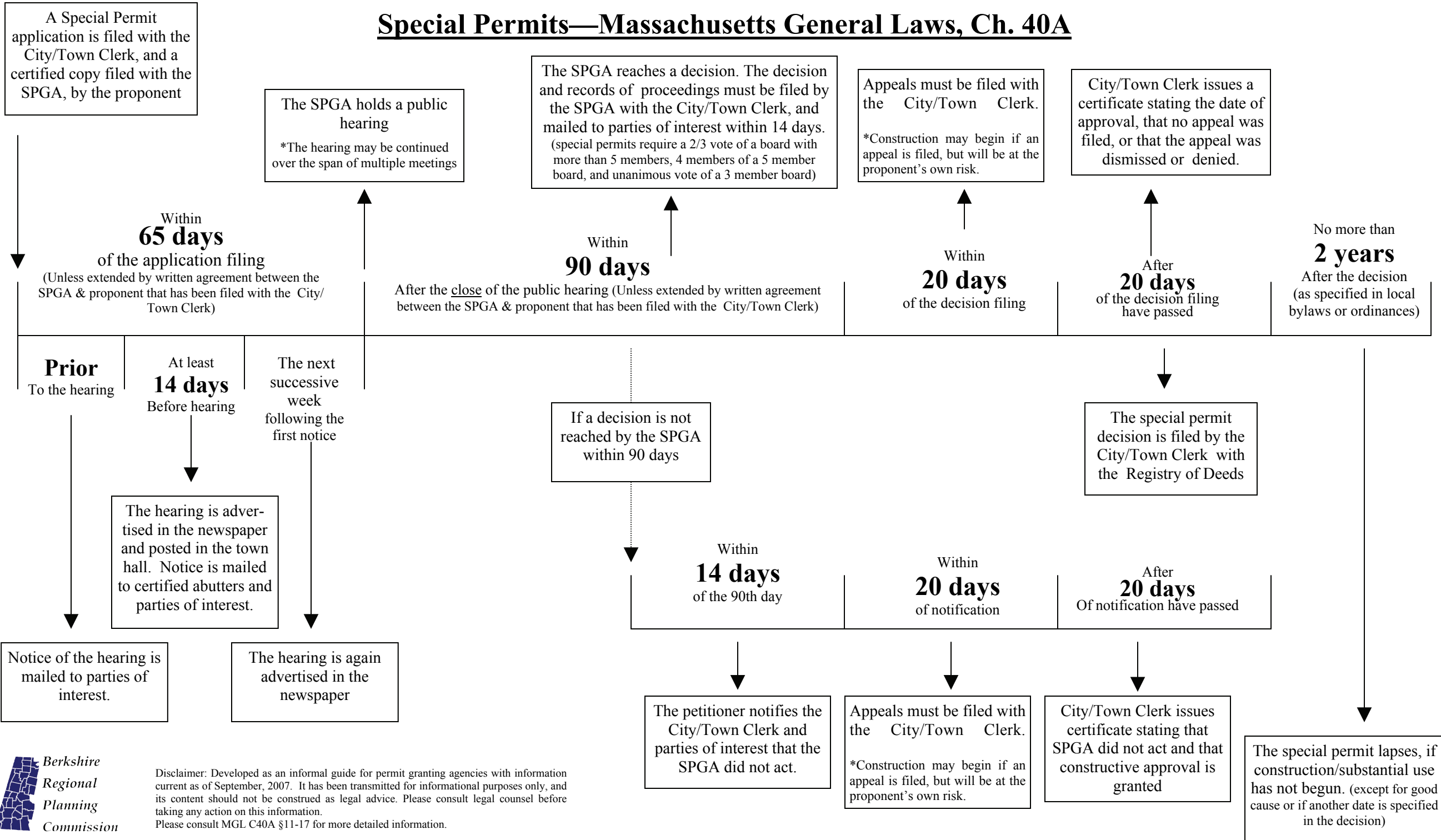
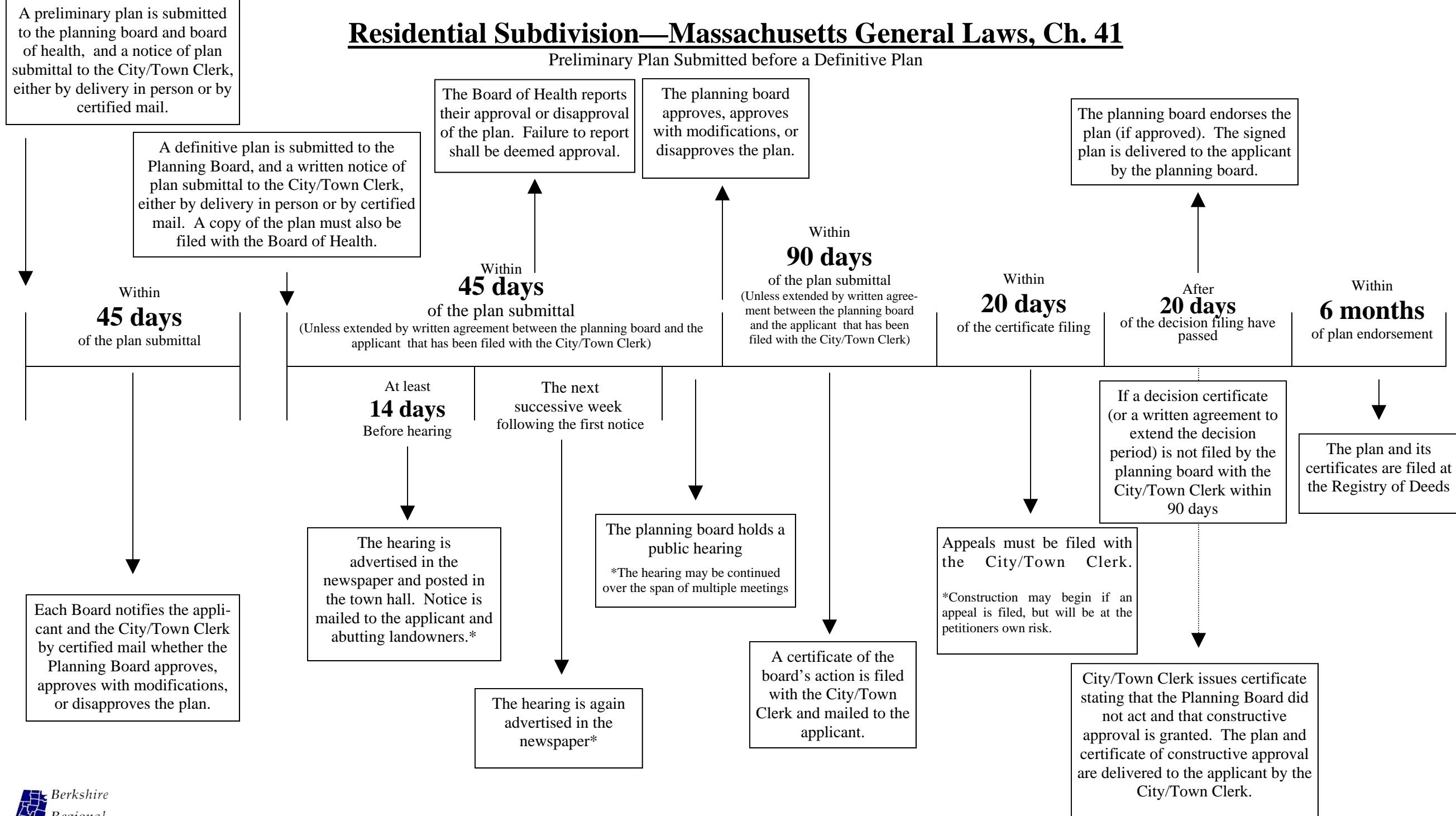


EXHIBIT "B"

Timeline for the Subdivision Process

Residential Subdivision—Massachusetts General Laws, Ch. 41

Preliminary Plan Submitted before a Definitive Plan



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

* = at the expense of the applicant.



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

PROCEDURE FOR SUBMITTING APPLICATION FOR APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT

A completed application consisting of each of the requirements of §2.2 of the Subdivision of Land Regulations will be filed as follows:

- twelve (12) packets to be filed with the Town Clerk; AND
- a complete copy, including all plans and attachments, submitted electronically to the Town Planner at planner1@truro-ma.gov.

Additional material, *electronic and paper*, for a hearing shall be received no later than **Tuesday 4:00 pm** of the **prior** week.

The following information and requirements must be filed with all applications for an Approval not Required (ANR) Plan Endorsement consistent with the Rules, Regulations and Fee Schedule of the Truro Planning Board.

1 – Official Application Form – Original and Eleven (12) Copies

Every application for action by the Board shall be made on an official form. Any communications purporting to be an application shall be treated as mere notice of intention until such time as it is made on an official application form accompanied by all requisite supporting data.

2 – Required Plan(s) and Other Information including Checklist (Twelve (12) Copies)

Every application and petition to the Board shall be accompanied by all the plans and other information required in the Subdivision of Land Regulations. The application shall include each of the requirements of §2.2 as listed in the attached Checklist which is to be submitted as part of the official application.

3 – Filing Fee

All applications shall be filed with the Town Clerk and shall be accompanied by a check payable to the Town of Truro in the amount of **\$275.00**. The filing fee is non-refundable.

Note: Please familiarize yourself with Truro Zoning Bylaws including bylaws specifically addressing property in your Truro Zoning District. It may also be helpful to review other potentially applicable Town regulations such as Board of Health and Conservation Commission regulations and regulations of other jurisdictions as applicable such as The Cape Cod National Seashore or a homeowner's association.

ONCE A COMPLETED APPLICATION HAS BEEN RECEIVED

- Town Planner will determine if an Application is complete. Upon determination an Application is complete, the Town Planner will notify the applicant of the next Planning Board meeting date.
- Either you or your agent/representative shall appear before the Board at the scheduled meeting. If you need to reschedule, you must submit a request in writing for a continuance, using Town of Truro Continuance Request Form.
- Additional material, *electronic and paper*, for a hearing shall be received no later than **Tuesday 4:00 pm** of the **prior** week. Late submittals will not be reviewed at that meeting and may result in a continuance of the hearing. Additional information for a scheduled public hearing may be submitted provided it is received within the timeframe above so that it can be included in the packet for Board Members to read and review. Submit fifteen (15) paper copies, including full-size plans, to the Town Clerk for filing **AND** an electronic copy to the Town Planner (at planner1@truro-ma.gov).

Please do not include a copy of these instructions with the application



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

FORM A

APPLICATION FOR DETERMINATION THAT PLAN DOES NOT REQUIRE APPROVAL (ANR)

To the Planning Board of the Town of Truro, MA

Date _____

The undersigned owners of all the land described herein submitted the accompanying plan entitled: _____ and dated _____, requests a determination and endorsement by said Board that approval by it under the Subdivision Control Law is not required.

Property Location: _____ Map(s) and Parcel(s): _____

Number of Lots Created: _____ Total Land Area: _____

The owner's title to said land is derived under deed from _____, dated _____, and recorded in the Barnstable Registry of Deeds Book and Page _____ or Land Court Certificate of Title No. _____ registered in Barnstable County.

The undersigned believes that such approval is not required for the following reasons: *(check as appropriate)*

- The accompanying plan is not a subdivision because the plan does not show a division of land.
- The division of the tract of land shown on the accompanying plan is not a subdivision because every lot shown on the plan has frontage of at least such distance as is presently required by the Truro Zoning Bylaw under Section 50.1(A) which requires 150 feet for erection of a building on such lot; and every lot shown on the plan has such frontage on:
 - a public way or way which the Town Clerk certifies is maintained and used as a public way, namely _____, or
 - a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, namely _____ on _____ and subject to the following conditions _____; or
 - a private way in existence on December 8, 1955, the date when the subdivision control law became effective in the Town of Truro having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon, namely _____.
- The division of the tract of land shown on the accompanying plan is not a "subdivision" because it shows a proposed conveyance/other instrument, namely _____ which adds to/takes away from/changes the size and shape of, lots in such a manner that no lot affected is left without frontage as required by the Truro Zoning Bylaw under Section 50.1(A), which requires 150 feet.

2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: _____		Applicant Name: _____		Date: _____	
No.	Requirement	Included	Not Included	Explanation, if needed	
<u>2.2.2 Submission Requirements</u>					
Any person may submit a plan seeking endorsement that the plan does not require approval under the Subdivision Control Law by providing the Board with the following:					
a.	A properly executed application for Approval Not Required Endorsement (Form A).				
b.	Twelve (12) paper prints of the plan. Said plan shall be prepared in such a manner as to meet the Registry of Deeds and/or Land Court requirements for recording and shall contain the following information:				
b.1	The boundaries, area, frontage and dimensions of the lot or lots for which ANR endorsement is sought.				
b.2	The date of the plan, scale, north arrow and assessor's map and parcel number of all land shown on the plan and directly abutting the land shown on the plan.				
b.3	The name(s) of the owner(s) of record of the lots shown on the plan and of the applicant, together with the name, address seal and signature of the land surveyor who prepared the plan.				
b.4	Relevant zoning classification data.				
b.5	A locus plan containing sufficient information to locate the land and showing streets bounding or providing access to the property.				
b.6	The name(s) of the way(s) on which the lots front, information as to ownership of the way(s) and the physical condition of the way(s) including actual width, surface type and condition.				
b.7	The location and dimension of any natural features which might affect the use of the frontage for access.				
b.8	The location, including setbacks to all lot lines, of all buildings and other structures on the proposed ANR lots shown on the plan.				
b.9	The location of any wetland on the land shown on the plan or within one hundred (100) feet of its boundaries.				
b.10	The location of all bounds and easements on the proposed ANR lots shown on the plan.				

2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: _____		Applicant Name: _____		Date: _____	
No.	Requirement	Included	Not Included	Explanation, if needed	
b.11	The statement "Approval under the Subdivision Control Law Not Required", and sufficient space for the date of the application submittal and the date of endorsement, docket number and the signatures of all Board members.				
b.12	The statement "Planning Board endorsement of this plan indicates only that the plan is not a subdivision under MGL, Chapter 41, Section 81-L and does not indicate that a lot is buildable or that it meets Zoning, Health or General Bylaw requirements."				



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

PROCEDURE FOR SUBMITTING APPLICATION FOR RESIDENTIAL SITE PLAN REVIEW

A completed application consisting of each of the requirements of §70 will be filed as follows:

- fifteen (15) packets to be filed with the Town Clerk; AND
- a complete copy, including all plans and attachments, submitted electronically to the Town Planner at planner1@truro-ma.gov.

Additional material, *electronic and paper*, for a hearing shall be received no later than **Tuesday 4:00 pm** of the **prior** week.

The following information and requirements must be filed with all applications for Residential Site Plan Review consistent with the Rules, Regulations and Fee Schedule of the Truro Planning Board.

- 1 – Official Application Form – Original and Fourteen (14) Copies**
Every application for action by the Board shall be made on an official form. Any communications purporting to be an application shall be treated as mere notice of intention until such time as it is made on an official application form accompanied by all requisite supporting data.
- 2 – Required Plan(s) and Other Information including Checklist (Fifteen (15) Copies)**
Every application and petition to the Board shall be accompanied by all the plans and other information required in the Zoning Bylaw. The application shall include each of the requirements of §70 as listed in the attached Checklist which is to be submitted as part of the official application.
- 3 – Criteria Review**
Applicant will briefly state how they meet each of the review criteria in §70 using the format provided in this packet.
- 4 – Certified Abutters List – Original and Fourteen (14) Copies**
A Certified Abutters List shall be obtained by the Applicant from the Truro Assessors Office and filed as part of the complete application. A copy of the “Certified Abutters List Request Form” is included in this packet.
- 5 – Filing Fee**
All applications shall be filed with the Town Clerk and shall be accompanied by a check payable to the Town of Truro in the amount of **\$250.00** for Site Plan Review and **\$125.00** for Waiver of Site Plan Review. The filing fee is non-refundable.

Note: Please familiarize yourself with Truro Zoning Bylaws including bylaws specifically addressing property in your Truro Zoning District. It may also be helpful to review other potentially applicable Town regulations such as Board of Health and Conservation Commission regulations and regulations of other jurisdictions as applicable such as The Cape Cod National Seashore or a homeowner's association.

ONCE A COMPLETED APPLICATION HAS BEEN RECEIVED

- Town Planner will determine if an Application is complete. Upon determination an Application is complete, the Planning Board will then proceed to post notice of a public hearing in accordance with Section 11 of Chapter 40A of the General Laws of Massachusetts.
- Either you or your agent/representative shall appear before the Board at the scheduled hearing. If you need to reschedule, you must submit a request in writing for a continuance, using Town of Truro Continuance Request Form.
- Additional material, *electronic and paper*, for a hearing shall be received no later than **Tuesday 4:00 pm** of the **prior** week. Late submittals will not be reviewed at that meeting and may result in a continuance of the hearing. Additional information for a scheduled public hearing may be submitted provided it is received within the timeframe above so that it can be included in the packet for Board Members to read and review. Submit fifteen (15) paper copies, including full-size plans, to the Town Clerk for filing **AND** an electronic copy to the Town Planner (at planner1@truro-ma.gov).

Please do not include a copy of these instructions with the application



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

APPLICATION FOR RESIDENTIAL SITE PLAN REVIEW

To the Town Clerk and the Planning Board of the Town of Truro, MA Date _____

The undersigned hereby files an application with the Truro Planning Board for the following:

- Site Plan Review** pursuant to §70 of the Truro Zoning Bylaw
- Waiver of Site Plan Review** pursuant to §70.9 of the Truro Zoning Bylaw
(*Note: Site Plan Review shall not be waived in the Seashore District*)

1. General Information

Description of Property and Proposed Project _____

Property Address _____ Map(s) and Parcel(s) _____

Registry of Deeds title reference: Book _____, Page _____, or Certificate of Title
Number _____ and Land Ct. Lot # _____ and Plan # _____

Applicant's Name _____

Applicant's Legal Mailing Address _____

Applicant's Phone(s), Fax and Email _____

Applicant is one of the following: (*please check appropriate box*)

*Written Permission of the owner is required for submittal of this application.

- Owner
- Prospective Buyer*
- Other*

Owner's Name and Address _____

Representative's Name and Address _____

Representative's Phone(s), Fax and Email _____

2. Waiver(s) Request – The Planning Board may, upon the request of the applicant, pursuant to §70.4.F, waive requirements of §70.4.C, provided that in the opinion of the Planning Board such a waiver would not be detrimental to the public interest, cause the Town any expense, or be inconsistent with the intent and purpose of this Bylaw. A request for a waiver by the applicant shall be accompanied by a reasonable explanation as to why the waiver is being requested. If multiple waivers are requested, the applicant shall explain why each waiver is requested.

- The applicant is **advised** to consult with the Building Commissioner, Planning Department, Conservation Department, and/or Health Department prior to submitting this application.

Signature(s)

Applicant(s)/Representative *Printed* Name(s) _____ Owner(s) *Printed* Name(s) or written permission _____

Applicant(s)/Representative *Signature(s)* _____ Owner(s) *Signature(s)* or written permission _____

Your signature on this application authorizes the Members of the Planning Board and town staff to visit and enter upon the subject property.

70.4 - RESIDENTIAL SITE PLAN REVIEW CHECKLIST - Applicant

Address: _____		Applicant Name: _____		Date: _____	
No.	Requirement	Included	Not Included	Explanation, if needed	
C. Procedures and Plan Requirements					
1a.	An original and 14 copies of the Application for Site Plan Review				
1b.	15 copies of the required plans and other required information including this Checklist				
1c.	Completed Criteria Review				
1d.	Certified copy of the abutters list obtained from the Truro Assessors Office				
1e.	Applicable filing fee				
	Site Plans				
2a.	Site Plans shall be prepared, stamped and signed by a Registered Land Surveyor and Professional Engineer				
2b.	Site Plans shall be prepared at a scale of one inch equals forty feet (1"=40') or larger				
3	Site Plan shall include the following:				
3a. 1	North Arrow and a locus plan containing sufficient information to locate the subject property, such as streets bounding or providing access to the property.				
3a. 2	Zoning Information: All applicable Zoning Bylaw information regarding the site's development, both existing and proposed conditions. This information shall be placed in a table format which must list all setbacks; percent of lot coverage, broken out between building, pavement, landscape coverage, etc.; number of buildings; total amount of square feet; and any other applicable zoning information necessary for the proper review of the site plan.				
	<u>Existing:</u>				
	All setbacks				
	Percent (%) of lot coverage broken out between building, pavement, landscape coverage, etc.;				
	Number of buildings				
	Total number of square feet				
	Any other applicable zoning information necessary for the proper review of the site plan				

70.4 - RESIDENTIAL SITE PLAN REVIEW CHECKLIST - Applicant

Address: _____ Applicant Name: _____ Date: _____		Requirement	Included	Not Included	Explanation, if needed
No.					
	Proposed:				
	All setbacks				
	Percent (%) of lot coverage broken out between building, pavement, landscape coverage, etc.;				
	Number of buildings				
	Total number of square feet				
	Any other applicable zoning information necessary for the proper review of the site plan				
3a. 3	Assessor and Deed Information: The Truro Assessors Atlas Map(s) and Parcel(s) numbers and all plan and deed references.				
3a. 4	Graphic Scale				
3a. 5	Title Block - Including: name and description of the project; address of the property; names of the record owner(s) and the applicant(s); and date of the preparation of the plan(s) and subsequent revision dates				
3a. 6	Legend of All Symbols				
3a. 7	Property boundaries, dimensions and lot area				
3a. 8	Topography and grading plan				
3a. 9	Location, including setbacks of all existing and proposed buildings and additions				
3a. 10	Septic system location				
3a. 11	Location of (as applicable): wetlands				
	the National Flood Insurance Program flood hazard elevation, and				
	Massachusetts Natural Heritage Endangered Species Act jurisdiction				
3a. 12	Driveway(s) and driveway opening(s)				
3a. 13	Existing and proposed lighting				
3a. 14	Existing landscape features both vegetative and structural				
3a. 15	Limit of work area (area to be disturbed during construction, including parking and storage of vehicles and equipment) and work staging area(s)				

70.4 - RESIDENTIAL SITE PLAN REVIEW CHECKLIST - Applicant

Address: _____		Applicant Name: _____		Date: _____	
No.	Requirement	Included	Not Included	Explanation, if needed	
	Architectural Plans				
3b.	Architectural plans with all dimensions at a scale of no less than 1/8" = 1'-0", including: elevations floor plans				
3c.	Lighting specification, including style and wattage(s)				
	Neighborhood Context:				
3d.	Photographs or other readily available data concerning the location and size of buildings on lots adjacent to or visible from the lot under consideration in order to provide a neighborhood context for the property under consideration				
3e.	Re-vegetation/Landscaping plan , including both vegetative and structural features				

ADDRESSING THE REVIEW CRITERIA

§ 70.1 PURPOSE

The purpose of Site Plan Review for Commercial Development and for Residential Development is to protect the health, safety, convenience and general welfare of the inhabitants of the Town. It provides for a review of plans for uses and structures which may have significant impacts, both within the site and in relation to adjacent properties and streets; including the potential impact on public services and infrastructure; pedestrian and vehicular traffic; significant environmental and historic resources; abutting properties; and community character and ambiance.

Instructions: Please provide the Planning Board with a short explanation of how your application meets each of the review criteria of §70.4D of the Truro Zoning Bylaw. If you require extra space for your answers, please attach the additional information to your application in no more than two pages. This is to provide the Planning Board with an overview of your rationale prior to the meeting.

§70.4D – REVIEW CRITERIA

The Planning Board shall review Residential Site Plans and their supporting information. It is the intent of Residential Site Plan Review that all new construction shall be sited and implemented in a manner that is in keeping with the scale of other buildings and structures in its immediate vicinity in order to preserve the characteristics of existing neighborhoods. Such an evaluation shall be based on the following standards and criteria:

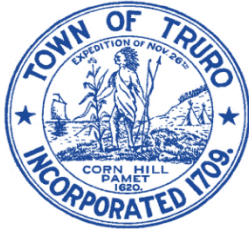
1. Relation of Buildings and Structures to the Environment. Proposed development relates to the existing terrain and lot and provides for solar and wind orientation which encourages energy conservation because:

2. Building Design and Landscaping. Proposed development is consistent with the prevailing character and scale of the buildings and structures in the neighborhood through the use of appropriate scale, massing, building materials, screening, lighting and other architectural techniques because:

- 3. Preservation of Landscape. The landscape will be preserved in its natural state insofar as practicable by minimizing any grade changes and removal of vegetation and soil because:

- 4. Circulation. Curb cuts and driveways will be safe and convenient and will be consistent with Chapter I, Section 9 of the General Bylaws of the Town of Truro because:

- 5. Lighting. Lighting will be consistent with Chapter IV, Section 6 of the General Bylaws of the Town of Truro. There will be protection of adjacent properties and the night sky from intrusive lighting because:



TOWN OF TRURO

Assessors Office Certified Abutters List Request Form

DATE: _____

NAME OF APPLICANT: _____

NAME OF AGENT (if any): _____

MAILING ADDRESS: _____

CONTACT: HOME/CELL _____ EMAIL _____

PROPERTY LOCATION: _____

(street address)

PROPERTY IDENTIFICATION NUMBER: MAP _____ PARCEL _____ EXT. _____

(if condominium)

ABUTTERS LIST NEEDED FOR:

(please check all applicable)

FEE: \$15.00 per checked item

(Fee must accompany the application unless other arrangements are made)

- | | | |
|---|---|--|
| <input type="checkbox"/> Board of Health ⁵ | Planning Board (PB) | Zoning Board of Appeals (ZBA) |
| <input type="checkbox"/> Cape Cod Commission | <input type="checkbox"/> Special Permit ¹ | <input type="checkbox"/> Special Permit ¹ |
| <input type="checkbox"/> Conservation Commission ⁴ | <input type="checkbox"/> Site Plan ² | <input type="checkbox"/> Variance ¹ |
| <input type="checkbox"/> Licensing | <input type="checkbox"/> Preliminary Subdivision ³ | |
| Type: _____ | <input type="checkbox"/> Definitive Subdivision ³ | |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Accessory Dwelling Unit (ADU) ² | |

(Fee: Inquire with Assessors)

(Please Specify)

Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.

THIS SECTION FOR ASSESSORS OFFICE USE ONLY

Date request received by Assessors: _____ Date completed: _____

List completed by: _____ Date paid: _____ Cash/Check _____

¹Abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line.

²Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.

³Landowners immediately bordering the proposed subdivision, landowners immediately bordering the immediate abutters, and landowners located across the streets and ways bordering the proposed subdivision. Note: For Definitive Subdivision only, responsibility of applicant to notify abutters and produce evidence as required.

⁴All abutters within 300 feet of parcel, except Beach Point between Knowles Heights Road and Provincetown border, in which case it is all abutters within 100 feet. Note: Responsibility of applicant to notify abutters and produce evidence as required.

⁵Abutters sharing any boundary or corner in any direction – including land across a street, river or stream. Note: Responsibility of applicant to notify abutters and produce evidence as required.

**TRURO
PLANNING BOARD
HANDBOOK
& POLICIES**

ADOPTED JUNE 29, 2011

THE TRURO PLANNING BOARD HANDBOOK

Approved June 29, 2011

REFERENCE MATERIAL

Chapter 40A – Massachusetts General Laws. This document of legislated laws deals with concepts, procedures, requirements, and restrictions of zoning.

Chapter 41 – Massachusetts General Laws. Municipal Planning and Subdivision Legislation. This document of legislated law deals with procedures, requirements, and restrictions of municipal planning and the subdivision of land.

Open Meeting Law Massachusetts General Laws Chapter 39, Section 23B. This law mandates with certain exceptions, that all governmental meetings and records be open to and available for inspection by the public.

Town of Truro Rules and Regulations. Town of Truro, Rules and Regulations Governing the Subdivision of Land. This document sets forth with the guidelines of Chapter 41 the requirements and standard for subdividing land within the Town of Truro.

Town of Truro Zoning By-Law, Sign Code. This document set forth the by-laws and ordinances which regulate the use of land, buildings, structures and signs within the town.

PURPOSE

This booklet is an accumulation of material on Planning Board (Board) duties, requirements, and procedures. The intention is to provide guidance and reference for Board members and not to supersede any existing laws or regulations. This booklet also contains the Board's Policies.

DUTIES OF PLANNING BOARD

The Planning Board is:

- responsible for administration of the Subdivision Control Laws as set forth in Massachusetts General laws Chapter 41.
- responsible pursuant to MGL c. 41, §81C for making careful studies; for preparing, when necessary, plans of the resources, possibilities, and needs of the Town; and, for reporting annually to the town regarding the condition of the Town (report appears in the Annual Town Reports).
- responsible for making a Master or Study Plan from time to time (MGL c. 41, §81D).
- responsible for establishing an official map (MGL c. 41, §81E-H).

REORGANIZATION OF PLANNING BOARD

Election of Officers

At the first meeting of the Planning Board after the annual Town Election, as the first order of business, the Board shall elect from its members by majority vote of all sitting members the following officers to serve through the following year's annual Town Election:

- Chair
- Vice-Chair
- Clerk

Procedure and Vote

The current ranking officer, the Acting Chair, will call for nominations from the board members. A successful nomination will require a second recommendation from another member. More than one nomination can be accepted for each position. When all nominations have been accepted the Acting Chair will call the vote.

If the nominations result in a single person for each position, a simple showing of hands shall constitute a vote. However, if there is a duplicate nomination for the same position a secret ballot may be used at the option of the board.

JOB DESCRIPTION OF OFFICERS AND MEMBERS OF THE PLANNING BOARD

DUTIES

CHAIR SHALL:

- Preside at all meetings of the Board and Public Hearings.
- Set the agenda for each meeting of the Board, with the assistance of the Assistant Town Administrator.
- Appoint subcommittees or appoint individual members of the Board to investigate subjects of interest to the Board.
- Shall respond to requests from interested parties for information about zoning and subdivision control.
- In no case shall the Chair speak for the Board unless duly authorized to do so by a majority vote of the Board.
- Only the Chair shall speak with the press after initially discussing the matter with the Board.

VICE CHAIR SHALL:

- Take over duties of Chair when the Chair is unable to perform his/her duties.

CLERK SHALL:

- Take over duties of Chair when the Chair and Vice Chair are unable to perform his/her duties.

PLANNING BOARD MEMBERS SHALL:

- Attend as many meetings as possible, including site visits, alerting the Chair and the Assistant Town Administrator when they are unable to attend a meeting.
- Be prepared to do some work outside of regular meetings.

AGENDA, MEETINGS & MINUTES

AGENDA:

- The agenda shall follow the requirements established within the *Planning Board Agenda Policy*. See Appendix 1
- The agenda items shall be clearly identified.

MEETINGS:

- The Board shall meet per the *Truro Planning Board Hearing/Meeting Schedule*, approved by the Board annually in the month of October for the coming calendar year. The Board may, at its discretion, meet more or less frequently.
- Each meeting shall be held at a location as duly posted in the meeting notice in compliance with the Open Meeting Law.

MINUTES:

- The draft minutes shall be approved by a majority of the sitting members who were present at the meeting for which the minutes are prepared.

MEETING PROCEDURES:

- I. Regular Meeting
- II. Site Plan Review
- III. Subdivision Hearing
- IV. Special Permit Hearing
- V. Zoning Change Hearing
- VI. P.B. Rules & Regulations & Special Permit Change

Note: this is a guide for each of the items listed.

I. REGULAR MEETING

This includes, but is not limited to Preliminary Subdivisions, ANR's, informal discussions, covenant releases, Waiver of Site Plan, etc.

1. Chair calls meeting to order. Stating the date and time and calls meeting to order.
2. Chair brings each agenda item before the Board.
3. Chair asks for a presentation from the applicant or the applicant's representative.
4. After an item is presented, the Chair requests discussion or action from the Board. At this time, discussion shall be informal with the following criteria - only one speaker at a time. Board attention should be give to the speaker, and the speaker should address the subject at hand. When necessary the Chair can enforce these criteria.
5. Chair will ask for staff input.
6. Chair states any members of the Board or interested party must direct questions through the Chairman.
7. Chair may ask for public input.
8. Chair will ask for further comments from the applicant or the applicant's representative.
9. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion on the matter and a second. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.

10. Chair requests corrections, omissions, or additions to meeting minutes.
11. Chair requests motion to accept minutes.
12. After completion of all the agenda items, the Chair will ask for a motion and second to adjourn the meeting. The Chair will entertain discussion and then ask for a vote on the motion.

Time Lines:

- **Preliminary Subdivision** – The Board has 45-days from the date of submission with the Town Clerk to file its decision with the Town Clerk.
- **Approval Not Required (ANR) Plan** – The Board has 21-days from the date of submission with the Town Clerk to file its decision with the Town Clerk.
- **Covenant or other Performance Guarantee Release** – The Board has 45-days from the date the release request is received to render a decision. Failure to act results in a constructive release.
- In the event that a continuance is requested that goes beyond the time limits, the applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

II. SITE PLAN REVIEW HEARING

Procedure

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.
4. Chair introduces members of Board, if necessary.
5. Chair states any members of the Board or interested party must direct questions through the Chairman.
6. Chair recognizes applicants to be heard.
7. Chair recognizes staff to be heard.
8. Chair recognizes proponents and opponents to present their views.
9. Clerk reads any letters pro or con.

10. Chair asks if there are any questions from Board. At this time, any Board member may call for any pertinent information with regard to the plan being presented.
11. Chair asks for final comments from proponents or opponents. Chair may limit the time or order the discontinuance of the rebuttal.
12. Chair asks for final comments from applicant.
13. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the Policy Regarding the Continuation of Hearings. See Appendix 2.
14. If the Board is ready to take a final vote on the matter the Chair closes the hearing and calls a meeting of the Board.
15. Action by Planning Board

If a vote is taken, 4 of 7 members must vote in the affirmative to approve, per the Zoning Bylaw.

Time Line: The Planning Board shall render a decision within ninety (90) days of the public hearing, and shall file its written decision with the Town Clerk's office and other appropriate parties in accordance with the provisions of M.G.L. Chapter 40A.

In the event that a continuance is requested that goes beyond the time limits. The applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

III. SUBDIVISION HEARING

Procedure

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.

4. Chair introduces members of Board, if necessary.
5. Chair recognizes applicants to be heard.
6. Chair states any members of the Board or interested party must direct questions through the Chairman.
7. Applicant/Representative present the green cards and receipts, to determine that abutters were notified via certified mail.
8. Chair recognizes staff to be heard.
9. Chair recognizes proponents and opponents to present their views.
10. Clerk reads any letters pro or con.
11. Chair asks if there are any questions from Board.

At this time the Chair or any Board member may call for any pertinent information in regard to the plan being presented.

12. Chair asks for final comments from proponents or opponents. Chair may limit the time or order the discontinuance of the rebuttal.
13. Chair asks for final comments from applicant.
14. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.
15. Chair closes the hearing and calls a meeting of the Board.
16. Action by Planning Board

If a vote is taken, a simple majority of the full Board, 4 out of 7, is require for an affirmative vote, per Subdivision Control Law, MGL c.41

Time Line: The Board need not take action at this time, but must take final action under the following timetable:

- **Definitive Plan preceded by a Preliminary Plan** – 90 days from date of submission of the Definitive Plan.
- **Definitive Plan not preceded by a Preliminary Plan** – 135 from date of submission of Definitive Plan.
- **Non-Residential Subdivision (Preliminary Plan required)** – 90 days from date of submission of Definitive Plan.

In the event that a continuance is requested that goes beyond the time limits. The applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

Failure to act may result in constructive approval.

IV. SPECIAL PERMIT HEARING

Procedure

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.
4. Chair introduces Board members, if necessary.
5. Chair states any members of the Board or interested party must direct questions through the Chairman.
6. Staff will confirm that notice to abutters were mailed.
7. Chair recognizes applicant to be heard.
8. Chair recognizes staff to be heard.
9. Chair recognizes proponents and opponents to present their views.
10. Clerk reads letters pro or con.
11. Chair at his discretion may call upon any attending official or members of other committees for pertinent information.
12. Chair asks for final comments by proponents and opponents. Chair may limit the time or order the discontinuance of the rebuttal.

13. Chair asks for final comments from applicant.
14. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.
15. Chair closes the hearing and calls a meeting of the Board. - Asks what action Board wishes to take.

A 2/3 vote of the full Board is required for an affirmative vote (5 members minimum must be present to vote.)

Time Line: Decision must be made within 90 days of the close of the public hearing (MGL c. 40A, §9).

Failure to act may result in constructive approval.

V. ZONING AMENDMENT HEARING

Procedure

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony and to allow the Board to vote to recommend, or not, the article to the Town Meeting.
3. Clerk reads notice, at request of Chair.

Reading of entire notice may be waived if there is no objection, and an explanation of the by-law, may be given at this time.

4. Chair states current status of zoning by-law change.

i.e., whether the proposed by-law is by petition or by the Planning Board. What, if any, action the Board has made to date. Point out that any final action by the Planning Board will not be made until after the hearing, and should this by-law go before Town Meeting, the final decision will rest with the people.
5. Chair introduces members, if necessary.

6. Clerk reads letters pro and con, by request of Chair.
7. Chair instructs everyone on meeting procedure.

Any Board member or member of the audience must direct their questions through the Chair. There is no time limit, but comments should be brief and to the point. Each speaker must identify himself and may speak more than once, but only after all others have spoken. The Board may require documentation from any individual who presents himself as representing groups or other individuals.

8. Chair recognizes speakers.

If the zoning change is by petition, recognize the petitioner first.

9. Chair closes discussion after all testimony.
10. Chair closes hearing and calls meeting of the Board.

Asks Board what action they wish to take.

11. Action by Planning Board - Board may vote whether to recommend the article to the Town Meeting at this time or postpone to a later date . Board must act and report within 21 days of hearing. (Chapter 40A, Section 5)
12. Town Meeting Action - Town must act within six months of hearing. (Chapter 40A, Section 5)
13. Please refer to Appendix 3 for the *Outline for Zoning By-Law Amendments* and Appendix 4 for *Effective Date of New Amendment* and Appendix 5 for *Exemptions From Zoning Amendments (c. 40A, §6)*.

VI. CHANGES TO PLANNING BOARD SUBDIVISION OF LAND RULES & REGULATIONS

The Board may adopt and amend the rules and regulations from time to time not inconsistent with the subdivision control law or any other provision of applicable statutes or any town by-law. (MGL c.41, §81Q)

No change can be adopted until after a public hearing. Notice of said hearing shall be published in a local paper fourteen (14) days before the day of the hearing.

Procedure

1. Chair calls hearing to order.

2. Chair states purpose of meeting, which is to inform the public and take testimony. Any final action by the Planning Board will be after the hearing.
3. Clerk reads notice, by request of Chair.
4. Chair introduces members of Board, if necessary.
5. Chair may give or call upon a Board member to give a brief explanation of the requested change.
6. Clerk reads any letters pro or con, by request of Chair.
7. Chair opens the discussion to those attending the meeting and instructs those wishing to speak to do so through the Chair.
8. Chair calls for any final comments.
9. Chair closes the hearing and calls a meeting of the Planning Board.
10. Action by Planning Board

Need not take action at this time and no time limit is required for action by Board.

PROCEDURE AFTER ADOPTION - A copy of the amendment must be certified by the Town Clerk. The Planning Board then sends by registered mail the certified copy to the Registry of Deeds and Land Court. (MGL c.41, §81Q)

EFFECTIVE DATE OF AMENDMENT

The amendment becomes effective the day it is received by the Registry and Land Court. (Chapter 41 81-Q)

QUESTIONS AND ANSWERS

FRONTAGE AND AREA

- Q. Can the Planning Board waive lot and area requirements:
 A. No. The petitioner's recourse is relief from the Zoning Board of Appeals.

RULES AND REGULATIONS

- Q. Can the Planning Board waive its own subdivision rules and regulations?
 A. Yes, under Section 1.5 of the Rules and Regulations.

ZONING AND PLANS

- Q. Can the Planning Board waive zoning by-laws?

A. No. The petitioner's recourse is relief from the Zoning Board of Appeals.

Q. In considering subdivision plans, should the Planning Board be concerned with zoning?

A. Yes. Chapter 41, §81-M states that the powers of the Planning Board under the subdivision control law shall be exercised with due regard for insuring compliance with zoning.

Q. Can the Planning Board sign plans which show zoning violations?

A. Yes, but only if the Zoning Board of Appeals has granted the necessary relief from the zoning. A variance has the legal effect of bringing a violation into compliance.

APPROVAL NOT REQUIRED

It is possible that an ANR plan could meet all criteria as written in the statute and still create a zoning violation, Chapter 41, §81L. The Planning Board is required to sign this plan; however, this does not mean the lot is buildable or that the use is conforming. Because of future legal problems, it is suggested that the petitioner go to the Board of Appeals for a variance or variances for his own benefit. (*Ann Smalley v. Town of Truro*).

Q. Can the Planning Board sign a plan which makes a lot more non-conforming?

A. Generally speaking - No. Petitioner recourse is Zoning Board of Appeals.

ZONING CHANGE – SPOT ZONING

Q. Does the Planning Board have to consider spot zoning when proposing the rezoning of districts?

A. Yes. The case of *James Farina Corp. v. City of Newton* restated the rule of law used prior to the adoption of St. 1975, c. 808, s. 3. Spot zoning is still not viable, and the Planning Board should consider this question whenever a zoning ordinance is proposed.

SUBDIVISION

Q. Can the Zoning Board of Appeals subdivide land?

A. No. But it can grant variances to zoning, front, side and rear setbacks, as well as frontage and area.

COVENANT

Q. What happens when a plan is approved but not signed because there is no covenant.

A. The Board should not sign the plan until such time as there is also a covenant to sign, if applicable. Not all subdivisions will require a covenant.

MEETINGS

Q. Can a public hearing be held if a quorum of the Board is not present?

A. No. There must be a voting quorum present and only those who were present to hear testimony may vote if vote is taken at another meeting.

APPENDIX 1

Planning Board Agenda Policy

Applications requiring public hearings (Definitive Subdivisions, Special Permits, and Site Plan) shall be filed in accordance with the Truro Planning Board Hearing/Meeting Schedule established for the calendar year and the agenda date shall be as shown on the Schedule.

All other applications (ANR, Preliminary Subdivision and Waivers from Site Plan) will be scheduled accordingly and in compliance with the Subdivision Control Laws and/or other applicable local requirements.

All other requests (informal discussion, lot/covenant release, consultations, etc.) must be received by the Planning Office no less than one week before a scheduled meeting date as established by the Truro Planning Board Hearing/Meeting Schedule established for the calendar year. Submittal deadline is at noontime. (For example for a Tuesday meeting on March 13, the request and applicable information for the Planning Board's review must be received by noontime on Tuesday, March 6). In some cases, depending upon the length of the agenda and at the discretion of the Planning Board Chair, an item may be put off to a future meeting date, if time allows.

Requests from Planning Board members must be made to the Planning Board Chair, with a copy or notice to the Assistant Town Administrator, no later than noontime the week before the scheduled meeting as established by the Truro Planning Board Hearing/Meeting Schedule established for the calendar year. (For example for a Tuesday meeting on March 13, the request and applicable information for the Planning Board's review must be received by noontime on Tuesday, March 6). In some cases, depending upon the length of the agenda and at the discretion of the Planning Board Chair, an item may be put off to a future meeting date, if time allows.

For the purposes of the Planning Board Agenda, the term “**Any other business which may legally come before the Board**”, shall include, but is not limited to: applications for ANR plans which may come in after the agenda closes, but the next meeting date is beyond the 21-days in which the Planning Board has to act; emergency discussion which may arise after the close of the agenda, such as a request from the Board of Selectmen or Town Counsel, which may require action before the next regularly scheduled meeting and any other emergency situations which may arise.

APPENDIX 2

Policy Regarding the Continuation of Hearings Adopted by the Truro Planning Board effective June 29, 2011

Once a public hearing has been advertised and the notices to abutters have been mailed, the public hearing must be opened on the date and time advertised. Only then, once the hearing has been opened, can the Planning Board entertain an applicant's request for a continuation of the hearing to a date and time certain.

Thereafter, if the applicant requests that the public hearing be further continued, the Planning Board shall only grant the continuance for good cause shown. The Board may deny the application for procedural reasons or the Board may consider a request for a withdrawal without prejudice, in the event that the applicant fails to comply with this requirement.

Appendix 3

OUTLINE FOR ZONING BY-LAW AMENDMENTS

MGL c.40A, §6

1. Zoning proposal submitted to Board of Selectmen.
2. Within 14 days receipt, Board of Selectmen must submit proposal to Planning Board for review.
3. Within 65 days after submittal, Planning Board must hold public hearing.
4. Notice of Hearing.
 - a. published in newspaper of general circulation once in each of 2 successive weeks; 1st publication not less than 14 days before day of hearing. Case law states that “successive” weeks means calendar weeks.
 - b. posted in conspicuous place in Town Hall for 14 days before day of hearing.
 - c. mailed to all of the following:
 1. Department of Housing and Community Development (DHCD).
 2. Regional Planning Agency.
 3. Planning Boards of all abutting cities and towns.
 - d. mailed, if zoning by-law or ordinance so requires, to all non-resident property owners who file proper request for such notice with municipal clerk.
5. Content of notice must include:
 - a. date and place of hearing.
 - b. subject matter of hearing “sufficient for identification”
 - c. place where maps and texts of proposal may be inspected.

NOTE: All of these notice requirements must be carefully followed.
6. Town Meeting may not vote on proposal until either
 - a. Planning Board submits written or oral report with recommendations, or
 - b. 21 days have elapsed between Planning Board hearing and Town Meeting or City/Town Council vote.
7. Proposal must be voted by Town Meeting, within 6 months of Planning Board hearing.
8. Quantum of Vote: 2/3 vote by Town Meeting
9. Zoning bylaw unfavorably acted upon by Town Meeting or City/Town Council may not be reconsidered within 2 years unless Planning Board makes recommendation to do so.
10. Zoning (and general) bylaws must be submitted to the Attorney General for approval:

- a. within 30 days after final adjournment of Town Meeting, town clerk must submit:
 1. certified copy of bylaws
 2. request for approval
 3. statement explaining bylaw
 4. maps and plan, if any
 5. proof of procedural

11. Bylaws approved by Attorney General (including those made effective by Attorney General's failure to act in within 90 days of Town's submittal) must be:
 - a. published in a town bulletin/pamphlet copies of which must be posted in at least 5 public places, including 1 or more public places in each precinct, if applicable.
 - or b. published at least twice one week apart in newspaper generally circulated in town.
 - or c. delivered to every occupied dwelling or apartment in town (affidavits or persons delivering said copies must be filed with town clerk).

12. A true copy of a zoning ordinance or bylaw with all amendment must be kept on file in the City/Town or town clerk's office.

APPENDIX 4

EFFECTIVE DATE OF NEW ORDINANCE OR AMENDMENT

The effective date is the date it was voted by Town Meeting, conditional on following certain procedures after town meeting.

If the change is disapproved by the Attorney General, the previous zoning by-law shall be deemed to have been in effect from the date of such vote.

PROCEDURE AFTER TOWN MEETING:

(Chapter 40A, Sec. 5, Para. 7)
(Chapter 40, Sec. 32, Para. 1)
(Chapter 40, Sec. 32A, Para. 1)

1. The adopted zoning change shall be submitted by the Town Clerk to the Attorney General.
2. The Attorney General approves or fails to act upon the zoning change within 90 days after receipt. If the Attorney General fails to act within 90 days, the Town Clerk shall enter into the records a statement that the by-law has become effective by reason of such failure of the Attorney General to act within the time limit.
3. After the Attorney General approves the zoning change or fails to act within the 90 days, it shall be either
 - A. published in a town bulletin or pamphlet and posted in one or more public places in each precinct of the town with the total posting being in at least five public places, or
 - B. published in a newspaper of general circulation in the town. Such publication shall take place twice at least one week apart.
4. The publication of a zoning change shall include a statement similar to the following:

“Any Claims of Invalidity by reason of any defect in the procedure of adoption/amendment of this by-law/amendment may only be made within 90 days of this posting/the second publication (or if the time works out to be longer, within one hundred and twenty (120) days after the adoption of the by-law amendment. Copies of this by-law amendment may be examined and obtained at Truro Town Office.”

A copy of the effective zoning change must be sent by the Town Clerk to the Department of Community Affairs, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202. (Chapter 40A, Section 5, Para. 8)

APPENDIX 5

EXEMPTIONS FROM ZONING AMENDMENTS (40A.6)

AS OF 1-01-1981

PLANS IN PROGRESS AT TIME OF ZONING CHANGE – exempt during processing (including time to await and settle appeals). Applies to Preliminary Plans followed within 7 months by Definitive Plans and to Definitive Plans if either was submitted before vote to change zoning.

ENDORSED SUBDIVISION PLANS – exempt for 8 years from date endorsed (7 years if endorsed before 1-01-76). Exemption applies to both use and dimensional changes.

ENDORSED APPROVAL-NOT-REQUIRED PLANS –exempt for 3 years from date endorsed, from changes in use but NOT from dimensional changes.

AMENDED OR EXPANDED PLAN—exemption unaffected except insofar as waived by applicant.

ADJOINING ONE- OR TWO-FAMILY LOTS—exempt for 5 years from effective date of zoning change, from greater area, frontage, width, yard and depth requirements if, as of 1-01-76:

- lot WAS held in common ownership with adjoining land;
- lot conformed to zoning in effect on 1-01-76;
- lot had at least 7,500 sq. ft. area and 75 ft. frontage (unless current zoning does not require that much);
- lot is one of not more than three adjoining lots in common ownership granted such exemption; and
- current zoning permits the proposed one- or two-family use.

BUILDING PERMITS AND SPECIAL PERMITS ISSUED BEFORE FIRST NOTICE OF HEARING ON PROPOSED ZONING CHANGE—exempt 6 months from date permit issued, provided construction or operation is begun within said period and carried forward expeditiously to completion.

SUBDIVISION PLANS SUBMITTED BEFORE EFFECTIVE DATE OF R & R CHANGE –exempt indefinitely. Applies also to Preliminary Plans, provided these are followed within 7 months by the Definitive Plan. (BUT NOTE: If a new subdivision plan is submitted voluntarily, or as a result of expiration of zoning exemptions, or of a rescission, the new plan is bound by the Rules in effect at the time of re-submittal, EXCEPT for those lots already sold).

WORKING LIST – POTENTIAL BYLAW CHANGES FOR 2022 ATM
Planning Board Meeting July 14, 2021

IMPROVING PROCESSES

- Continue to look at ways to simplify application/hearing process

ADMINISTRATIVE CORRECTIONS

- Put definitions of apartment back – when did it get missed?
- ?

ENVIRONMENT/CLIMATE CHANGE –

- Responding to impact of climate change on coastal areas – begin with work session with Bob Higgins-Steele
 - New buildings
 - Need to move buildings because of coastal erosion
 - Get info on impact of on pilings, slab, full basement
- Current work with Climate Committee
 - Carbon sequestration
 - Lot coverage

HOUSING – Zoning Bylaws impacting housing density &/or open space/environment

- Special attention to possible bylaws that could both support greater housing diversity and protect open space/environment
- Starting point is document prepared by Barbara looking at existing bylaws and potential changes
- Issue of house size bylaw not solving issue on small lots – may be addressed through implementing lot size coverage
- Do we need bylaw to make changes in order to include LAU in Subsidized Housing Inventory

Issues to be considered in assessing possibilities

- Impact on wastewater, cost of building/maintaining wastewater treatment plant
- Impact on natural resources; water

MISC

- Temporary sign permit –
 - size?
 - Limit on # in specific locations