ACCEPTANCE BY SELECT BOARD

On this _____ day of _____, 2010, the Town of Amherst, acting by and through its Select Board pursuant to the vote taken under Article 20 of the May 4, 2009 Annual Town Meeting, as continued, a certified copy of which is attached hereto, hereby accepts the foregoing Deed from Andrew Olendzki and Kathryn Fanelli to property located on Station Road, Amherst, which property is to be administered, managed and controlled by the Amherst Conservation Commission under the provisions of G.L. c. 40, § 8C.

TOWN OF AMHERST,
By its Select Board

_____

_____

_____

_____

_____

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this ____ day of _____, 2010, before me, the undersigned Notary Public, personally appeared _____, member of the Amherst Select Board, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Amherst.

_____
Notary Public
My Commission Expires

394769/AMHR/0055

Affected Premises:
Station Road
Amherst, MA

_____[Space Above This Line for Recording Data]_____

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that **ANDREW R. OLENDZKI** and **KATHRYN A. FANELLI** of 99 Station Road, Amherst, MA 01002

For consideration paid and in consideration of

-----TWO HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS ($280,000.00)-----

grants to the **TOWN OF AMHERST**, a Massachusetts municipal corporation, pursuant to the vote taken under Article 20 of the May 4, 2009 Annual Town Meeting, as continued, to be administered, managed and controlled by its Conservation Commission under the provisions of G.L. c. 40, § 8C, with a mailing address of 4 Boltwood Avenue, Amherst, Massachusetts

with **QUITCLAIM COVENANTS**

The land described on **EXHIBIT "A"** attached hereto and made a part hereof.

No deed stamps are due under G.L. c. 64D, § 1. The undersigned certifies compliance with G.L. c. 7, § 40J.

The Town of Amherst's Acceptance of this deed is attached hereto and incorporated herein.

Signed as a sealed instrument this ____ day of March, 2010.

_____	_____
Witness	Andrew R. Olendzki
_____	_____
Witness	Kathryn A. Fanelli

THE COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of November, 2009, before me, the undersigned notary public, personally appeared Andrew R. Olendzki and Kathryn A. Fanelli proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.

_____
, Notary Public
My Commission Expires: _____

EXHIBIT "A"

PARCEL A as shown on a plan of land entitled "'SUBDIVISION APPROVAL NOT REQUIRED' Plan of Land in AMHERST, MASSACHUSETTS Prepared For Andrew R. Olendzki and Kathryn A. Fanelli, Scale 1" = 100', dated January 12, 2010, Harold L. Eaton and Associates, Inc., Registered Land Surveyors, 235 Russell Street, Hadley, Massachusetts recorded in the Hampshire County Registry of Deeds in Plan Book _____, Page _____.

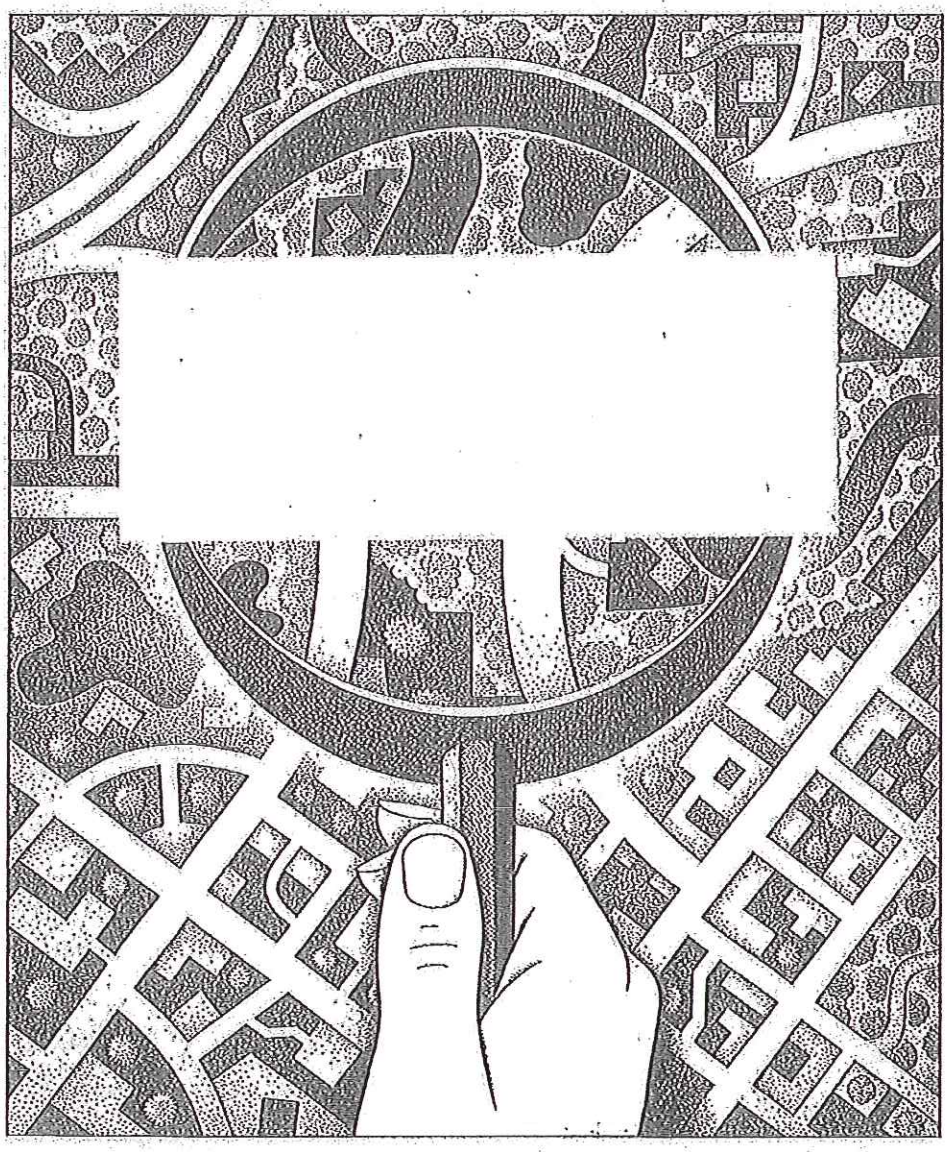
Said PARCEL A is more particularly bounded and described as follows:

Beginning at an iron pin set in the Southerly sideline of Station Road, said iron pin marking the northeasterly corner of PARCEL A, the herein described premises and the Northwesterly corner of land now or formerly of the Inhabitants of the Town of Amherst; thence S 13° 29' 38" W along land now or formerly of the Inhabitants of the Town of Amherst a distance of 718.45 feet to a found iron pin; thence N 78° 20' 05" W along land now or formerly of the Inhabitants of the Town of Amherst a distance of 430 feet to an iron pin set at remaining land of Andrew R. Olendski and Kathryn A. Fanelli; thence N 00° 23' 37" W along land now or formerly of Andrew R. Olendski and Kathryn A. Fanelli a distance of 727.76 feet to an iron pin set in the Southerly sideline of Station Road; thence S 78° 56' 22" E along the Southerly sideline of said Station Road a distance of 605 feet to the iron pin marking the point of beginning. Containing 8.4975 acres of land, more or less.

Being a portion of the premises conveyed by Kenneth J. Carr and Diane E. Carr, Co-Trustees of the Kenneth J. Carr Revocable Trust to Andrew R. Olendzki and Kathryn A. Fanelli, dated January 10, 2005 and recorded in the Hampshire County Registry of Deeds in Book 8129, Page 115.

PLANNING COMMISSIONERS
Journal
REPRINTS

Taking a Closer Look



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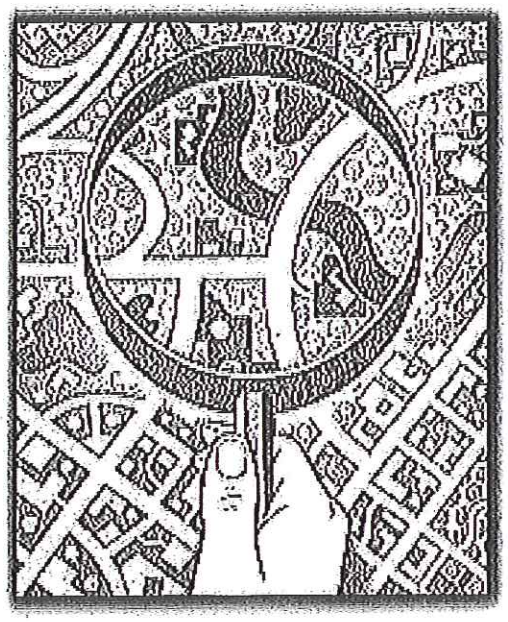

A Closer Look At:

Come To Order!

Getting Organized for Business

The failure to adopt and follow formal, fair, and coherent procedures erodes public confidence in planning.
-- David J. Allor, from "The Commission Will Come to Order"

Always be fair. This is perhaps the most important responsibility of the Chairperson.
-- Carol J. Whitlock, from "Chairing the Planning Commission"

Don't assume the role of a fairy godfather to those who have become involved in bad business deals or other self-imposed difficulties.
-- Fred Riggins, from "The Riggins Rules"

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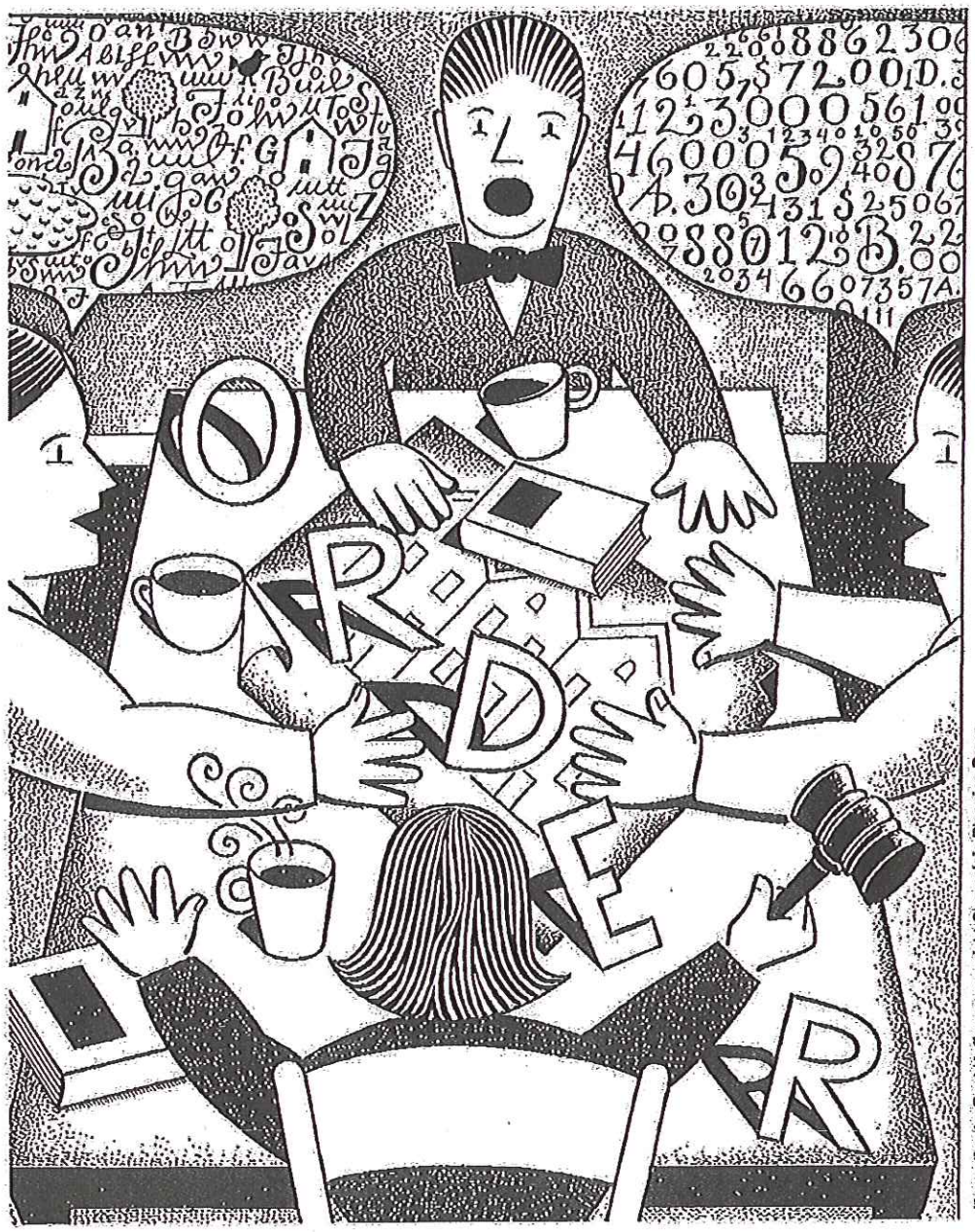

Illustration by Paul Hoffman; copyright Champlain Planning Press

Getting – and staying – organized is essential for the proper conduct of the public's business. This collection of articles provides helpful tips for keeping your commission meetings running smoothly.

Come to Order!

Getting Organized for Business

THE PLANNING COMMISSION AT WORK	
1	**Getting the Job Done** *by Michael Chandler*
2	**The Planning Commission As Independent Advisor** *by Michael Chandler*
3	**Commission and Staff: Expectations of Each Other** *by Michael Chandler*
4	**Being a Planning Commissioner** *by Steven R. Burt*
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ARE YOU ORGANIZED FOR BUSINESS?	
9	**Keeping Things in Order: Planning Commission By-Laws** *by David J. Allor*
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27	**Decision Making** *by Michael Chandler*
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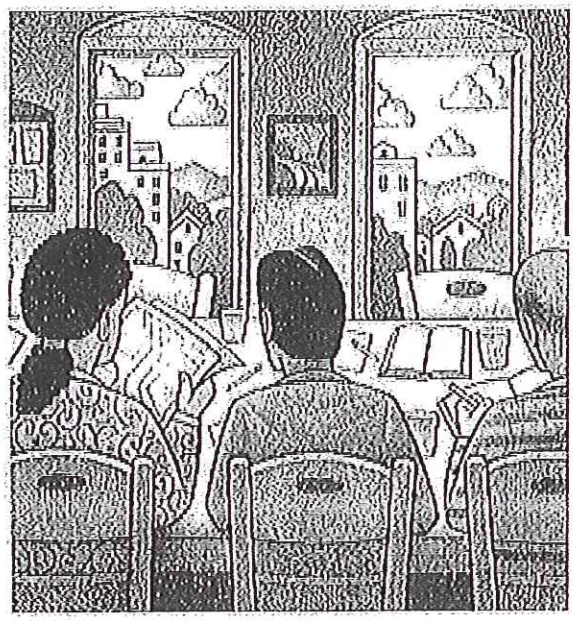
31	**Is It Glitz? Is It Real?** *by Elaine Cogan*
32	**A Nose for NIMBYs** *by Chris Robbins*
35	**Late Nights with the Commission** *by Ric Stephens*
36	**Dealing With Contentious Public Hearings** *by Wayne Senville, Editor*
45	**Another Meeting?** *by Elaine Cogan*

THE PLANNING COMMISSION AT WORK



Knowing what you need to do – and having a structure that allows you to get it done – will make your job easier, and more rewarding.

Getting the Job Done

by Michael Chandler

I recall the scene to this day. I had just been appointed to the Blacksburg Planning Commission. After a few congratulatory comments, the commission chairman told me that I would encounter few problems if I viewed my time on the commission as a job — something that requires an unqualified commitment of time and energy in order to get something done. That was among the best advice I received about serving on a planning commission.

Being a planning commissioner does indeed require time and energy. And in this regard it is akin to having a job. For some commissioners the time commitment is minimal; no more than an hour or two a week. For others, the time commitment is much greater. In fact, for some planning commissioners time is counted in days rather than hours.

The balance of this article will highlight strategies planning boards can employ to help commissioners get the job done.

Before the Meeting

Instinct, as well as experience, tell us that most events — such as a trip or a fine meal — are the result of proper planning and preparation. Successful planning commissions are no different. Minus preparation, the work produced by a planning commission will likely be second rate. When this happens the community suffers.

There are some relatively simple steps that can help ensure that planning commissioners are prepared for their job. The first involves making sure each commission member receives a copy of the meeting agenda, as well as any and all background reports, maps, and studies, several days in advance of the scheduled commission meeting.

The next step is related to the first. Have a member of the planning staff (or the planning commission chairman) call around to every member of the commission to make sure they received the information packet. This call can serve several purposes in addition to the obvious one of ensuring that the packet was, in fact, received. For one, the phone call acts as a gentle reminder to commission members to do their homework in advance of the scheduled commission meeting.

Even more importantly, the call allows individual commissioners to ask questions they may have about the information. This can give staff the chance to research answers to commissioners' questions in advance of the meeting. While this will not (and should not) eliminate the need for commissioners to actively question items during the meeting, it will enable the commission to act more expeditiously on agenda items, and reduce the need to delay action.

Another important aspect of pre-meeting preparation involves visiting the sites or properties that will be on the agenda. For important or controversial projects formal site visits, with staff, applicants, and neighbors participating, can be quite valuable. While formal site visits may not be necessary for more "routine" projects it makes sense for commissioners to try to be as familiar with the site — in advance of the meeting — as possible, even if it just means driving by the site and taking a quick look around.

During the Meeting

Serving on a planning commission means having to attend meetings. Just as you would do with your employer, you should call the planning staff or the planning commission chairman if you know you will be unable to attend a commission meeting or be arriving late.

The work of the commission will be made easier if rules of procedure are utilized. The rules perform a vital function in that they outline how the commission will handle its business. Time limits for speakers, managing the agenda, and procedures for deferring business are some of the issues covered in rules of procedure. Many commissions will include a statement of rules in their by-laws.

After the Meeting

Before the commission chairman gavels the meeting to a close, it is important to determine whether any actions taken by the commission will require attention before the next regularly scheduled commission meeting. If so, assignments of responsibility should be made.

As I suggested in a previous column, it is also quite valuable to allocate time periodically to "debrief" your meetings. This allows all commissioners the chance to discuss whether meetings are being conducted as effectively as possible. *[See "Making the Most of Your Meeting Time: Part II" in PCJ #16].*

Also, be sure that draft copies of the meeting minutes are prepared promptly and distributed before the next regular commission meeting. Don't let a backlog of minutes accumulate.

Finally, remember that getting the job done means working together. Businesses have increasingly realized the importance of a team approach to effective performance. Planning commissions whose members respect and help each other stand the best chance of getting the job done, and serving their community most effectively. ◆

Michael Chandler is an Associate Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, Virginia. Mike also regularly conducts planning commissioner training programs. His column appears in each issue of the Planning Commissioners Journal.

The Planning Commission As Independent Advisor

by Michael Chandler

A planning commission does not exist or function in isolation. In this column, I want to focus on the relationship or "linkage" between the commission and local governing body.

Ever since the nation's first planning commission was appointed by the Hartford, Connecticut, City Council in 1907, planning commissions have served as independent *advisors* to their local governing body on planning and land use matters. A key word in the preceding sentence is advisors. *The Standard Planning Enabling Act.* Keeping this in mind is important when considering a planning commission's relationship to the governing body.

The planning commission's principal function is to prepare and update the comprehensive plan (also called the general or master plan). The planning commission is also typically responsible for recommending amendments to zoning and subdivision ordinances. Finally, planning commissions often make recommendations to the governing body on development proposals, though in many states commissions take final action subject only to court appeal.

Not having the final word can be a difficult thing — especially when the commission expends great amounts of time and energy only to have its advice rejected by the governing body (though, hopefully, this will not happen too often). Don't let this discourage you. Instead, look for ways your commission can advance the cause of good planning, and strengthen its relationship with the governing body.

Remember that as a planning commissioner you're responsible for focusing on the long-term. Most elected officials appreciate this forward thinking role because it allows them to gauge the public's receptivity to future courses of action.

Planning commissions can also strengthen their role by involving the public as much as possible — especially in work on the municipal plan. It is amazing how receptive the governing body will be to the planning commission's recommendations when they're supported by a hundred members of the public!

Try to develop a partnership between the commission and the governing body. One way is to hold joint work sessions or public hearings on major planning issues and initiatives. While in many states it is not uncommon for the two bodies to hold joint public hearings (often required by statute or ordinance), it has been my experience that the same is not true of informal work sessions. Yet such work sessions can yield a greater appreciation and understanding of each body's role — and promote a shared planning agenda that considers the municipality's near and long-term needs.

Monitoring the consistency of planning commission recommendations and governing body action with your local land use plan represents another opportunity. Some commissions prepare an annual report on the status of planning in the community. Once prepared, the report is shared with the governing body, and with the community at large. Such a report can serve as an important barometer measuring the difference planning is making in the community.

Finally, consider opening other lines of communication with your elected officials. This might involve presenting planning commission reports during governing body meetings, making sure elected officials occasionally attend commission meetings, and, if appropriate, having an elected official serve as a liaison member to the commission. ◆

Michael Chandler is an Associate Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg. Mike also conducts training programs across the country, and is a frequent speaker at workshops. He has served on the Blacksburg Planning Commission and, for the past 12 years, on the Town Council.

The Standard Planning Enabling Act

The SPEA, prepared in 1928 by the U.S. Department of Commerce under then Secretary Herbert Hoover — and subsequently adopted (with generally minor modifications) by nearly every state — envisioned: "a clearly defined permanent planning branch in the local government, in the form of a commission which formulates a comprehensive plan and keeps it up to date. The commission then *advises* the legislative and executive branches of the municipality, and the public, as to the importance of the plan and promotes conformance to it in the laying out of new streets, the construction of public works and utilities, and the private development of land." (emphasis added). *From the Hoover Advisory Committee Report.* In some states, the planning commission adopts the plan; in others, the commission recommends the plan to the governing body for adoption; while a third approach is to have the plan subject to public referendum.

Note that planning enabling acts are separate from zoning and subdivision enabling acts. The latter give municipalities the power to adopt zoning or subdivision regulations. In a number of states, planning commissions exercise final authority — subject to court appeal — over certain development applications, often as part of a site plan or subdivision review.

Commission and Staff: Expectations of Each Other

by Michael Chandler

In my last column, I looked at the relationship between the planning commission and the local governing body. In this column, I want to shift the focus to the important, but often overlooked, relationship between commission and staff.

Historically, the emergence of the planning commission as an important component of local government played a major role in the birth — and growth — of the planning profession. Accordingly, it seems fair to suggest that the commission and staff share a close relationship. As such, a challenge facing both commission and staff centers on identifying ways the relationship can be cooperative, as well as beneficial.

The Role of Expectations

Relationships involve expectations. What expectations will or should a planning commission have of the planning staff? Likewise, what expectations will or should the planning staff have of the commission? Without discussing the expectations each has of the other, misunderstandings are likely to result. This, in turn, can lead to publicly aired disagreements or squabbling that reflects poorly on both staff and commissioners.

The simplest way to overcome the guessing game is for commissioners and staff to share their expectations with one another. A work session or retreat can focus on discussing expectations.

If the planning commission and its staff can communicate with one another, the occasion for commission-staff entanglements will be minimized. This is critical because the business of planning is too important to be sidetracked as a result of differences or difficulties involving the commission and staff.

Remember, the common goal of staff and commission is to serve the public good. This requires, above all, that all actions be taken in a fair, ethical, and consistent manner. ◆

In my experience, here are ten of the most common expectations I've heard each "side" express:

Commission Expectations of Staff

- Be well organized and anticipate the type and kind of information the commission will need to perform its duties.
- Respond to requests for information in a timely and professional manner.
- Prepare accurate, well-documented, and well-written reports that, where appropriate, lay out options for the commission to consider.
- Leave personal or political bias out of reports.
- Provide exhibits, illustrations, and/or pictures to help commissioners visualize the location or layout of proposals.
- Help orient new commissioners, and provide educational opportunities for all members.
- Be accessible to all commissioners, whether in person, at meetings, or over the phone.
- Keep all commissioners equally informed; do not show favoritism.
- Make the commission decision work after it's made.
- Act in a fair, ethical, and consistent manner.

Staff Expectations of Commission

- Prepare for meetings by reading all reports and by visiting (if legal in your community) each site on the agenda.
- Whenever possible, call staff with your questions before the meeting, so answers can be researched and shared during the meeting.
- Examine all the facts on a given issue and make the best decision possible.
- Do not ridicule or make light of the staff in public; instead, provide criticism in private.
- Do not assume the staff is wrong and citizen is right when there is a disagreement.
- Compliment the staff when and where appropriate.
- Trust and respect the staff.
- If the commission disagrees with a staff recommendation, explain your reasoning.
- Do not hold a grudge if you disagree with a staff recommendation.
- Act in a fair, ethical, and consistent manner.

On-Line Comment:

"I am a planning commissioner in a small town (population 1578). Mike's article hits on the very heart of where problems begin, lack of clear expectations. We have a permanent part- time zoning administrator. That is our only staff. Perhaps the most important expectation is CONSISTENCY! While the commissioners may or may not agree with the job the zoning administrator does, we all expect him to be consistent in administering our zoning ordinance. Lack of consistency leads to public perception of favoritism or incompetence."

— Dennis Riggin, Rock Hall, Maryland

Michael Chandler is an Associate Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, Virginia. Chandler also conducts planning commissioner training programs across the country. His column appears in each issue of the Planning Commissioners Journal.

[Editor's Note: For more on the relationship between commission and staff, see Carolyn Braun's, "Planning from Different Perspectives," on page 8, and Perry Norton's, "The Role of the Professional Planner" on page 20].

FEATURE

Being a Planning Commissioner

by Steven R. Burt

They jump into the middle of their neighbors' business, staying up late at night to attend meetings, attempting to play Solomon. If they had any sense, they'd be at home playing cards. Around the neighborhood they may be considered opinionated, nosy, busybodies, or "butt-in-skis." But around City Hall they're accorded the title of "planning commissioner." Whether it's an honor or a burden depends on what you're able to make of it.

Allow me to share with you ten lessons learned from nine years' service on a local planning and zoning commission — lessons that might help make being a planning commissioner more of an honor, and less of a burden.

1. Your Obligation to Contribute. Recognize that you have an obligation to contribute to your planning and zoning meeting, even if you don't have a set of initials following your name and can't name the planner who laid out the streets of Paris. It's not a "chance" to contribute; it's an "obligation" by virtue of your appointment. Study any staff reports, maps, and the like, and come prepared to contribute. If you can't muster the interest to have an opinion, get off the commission. Planning commissions are places for people who care and want to make a difference to their communities. They're not the place for fence-straddlers who are unable to make up their mind.

2. Figure Out Why You're There. I don't mean you personally, but the commission as a whole. Are you making a recommendation to a city council? Are you making a final decision? What are the limits to your authority?

Understand your role in the planning process and who are you responsible to. The mayor or council who appointed you? Your neighbors? The general plan? It's like suddenly coming on stage in the middle of a play and being asked to act out a role: if you don't know your part, and how it fits in with everyone else's, you'll be an embarrassed failure.

> PLANNING COMMISSIONS ARE PLACES FOR PEOPLE WHO CARE AND WANT TO MAKE A DIFFERENCE TO THEIR COMMUNITIES.

Planning commissions serve a valuable function by taking land-use conflicts out of the political arena (in theory, anyway) and into that sane, level-headed sphere governed by "rules of good planning." Make no mistake, every issue that comes before you will involve some kind of land-use conflict, and in spite of the theory some will be politically supercharged. See through it.

3. Identify Interests. Learn the difference between personal interest, special interest, private interest, and public interest. Everyone with any interest in a decision has a personal interest of some type. As a planning commissioner, however, you have to be wary of also having a conflict of interest. If you stand to gain financially, or in some way apart from the manner in which the community will benefit from your decision, ask yourself some hard questions. Better that you ask them, than someone else.

Special interests are easy to identify. They're usually well-financed, well-organized, and have a narrow focus, wielding influence far out of proportion to their standing. Recognize them for what they are. Private interests will be what most people bring to the commission meeting, while public interest will be that rare quality that you'll see in yourself and almost no one else! Try to develop some perspective on this. Every issue will likely come down to competing interests; learn to recognize and balance them fairly.

4. Ask the Right Questions. Learn to ask the right questions of applicants, staff, and the public — and don't assume the unstated. If you ask the wrong kinds of questions the answers will be meaningless. For example, it may be "logical" that a developer would only propose development on safe, stable soil. It seems "logical" that he wouldn't want to risk future problems with development on soil of unknown or unstable characteristics. He may even profess to "value" safe, well-engineered projects. Everyone values safety, surely. But neither issue of "logic" or "value" has anything to do with the reality of whether the soil is stable or not. Don't take things for granted. Ask the right questions, and make sure of the fact that the soils are indeed stable.

5. Ask the Hard Questions. My favorite is, "Is this just your idea, or do you have any evidence to back it up?" No category of comment is more common at a zoning hearing than unsubstantiated "fact." Comments like, "It will decrease my property values," or "The traffic impacts will hardly be noticeable" will plague you all your days. Sift through the testimony for relevant planning information corroborated by evidence. Keep in mind that aside from expert witnesses, and without evidence, one person's opinion is just about as valid as another's. Be fair, but be discriminating in what you choose to accept as truth.

6. Have a Method for Evaluating What You Hear and See. Not everything can be reduced to a mathematical formula, or correspond to a diagram in a book. Your zoning code will only be a guideline. Its application and interpretation is your job. If evidence is in conflict or inconclusive, use the principle of "Ockham's Razor": the simplest explanation is probably the truth.

Desirable but Unnecessary	Desirable and Necessary
Undesirable and Unnecessary	Undesirable but Necessary

Clarify issues with some kind of thought organizing system. I've mentally drawn the Quadrant Diagram above in my mind hundreds of times.

Issues that end up as Desirable and Necessary for the community, or Undesirable and Unnecessary are no-brainers. The really tough decisions are found in the other two quadrants — especially the Undesirable but Necessary.

7. You Are What You Eat. Learn what not to eat prior to a meeting (do I have to say it?) and then don't eat it. Don't chew gum in the microphone. Don't apply cosmetics, lipstick, or lotion during the meeting. Remember that actions sometimes speak louder than words. Make a personal list of things not to do with your nose or other body parts during the meeting. Use discretion in determining when it's appropriate to laugh, eat, or feign sleep. Above all, keep in mind that the meetings you participate in might be the only time a good percentage of the public will ever encounter their local government. Be patient, and act professional. Then make your decisions and votes with a firm, sure sound. No whimping out.

8. Making Motions. Learn to form a coherent motion. Write it out in advance if you have to. Be aware that the motion maker has a decided advantage in influencing the outcome of a vote. Often, if there is indecision on the part of one or more commissioners, the person making a clear, strong motion will carry votes to his or her position. If there are two sides forming up in discussion, don't be caught unprepared to make a motion to support what you believe. And if you do make the motion, frame it clearly. Speak up and make the motion with conviction.

9. No Excuses, Please. Don't feel obligated to justify your votes or respond to criticism in a meeting. Nothing (with the possible exception of arguing with someone in the audience) can undermine your authority more than the appearance of making an excuse for a decision. That doesn't mean that you cannot or should not explain what is going on in the meeting; usually the public doesn't understand the process or your role in it. Take time, if necessary, to briefly explain to everyone what is occurring and what the basis of your decision will be. As a body you have the responsibility to make a decision. Then, after due consideration, make it your decision and move on. You don't need to convert anyone to agree with you. Take control of the meeting and keep it.

10. Don't Apologize for Being a Planning Commissioner. Sometimes developers or citizens may make you feel uncomfortable for even being in a position to render a decision. Don't fall into that trap! Acting properly, planning and zoning commissions perform a valuable service to the community as a whole. Since most communities make substantial investments in plans, parks, roads, sewer systems, and so on, they have every right to exert reasonable control, through planning and zoning, over how private development affects the community's built environment and whether development conforms to the adopted master plan and ordinances.

Summing Up:

So there it is — ten tips gleaned from nine years. It's not all that much, and it's not complex. Yet there is nothing easy about being a planning commissioner — not the time commitment, not the study and deliberation, and not the uncomfortable position of never being able to satisfy everyone. It's an easier place to lose friends than to make them, and for every successful moment there are hours of frustration. Honor or burden — you decide.

But once you've sat in the position, your perception of the place you live will never be the same. It will be your city, your county, or your town in a way it never was before. Hopefully, it will bear the mark of your care, your concern, and, from time to time, even your courage.

I wish I could tell you that if you follow these tips you'll make no mistakes. But I can't. And I wish I could tell you that your hard work will all pay back someday and that the issues you've helped decide will make life better for everyone. But I can't.

What I *can* tell you is this: You didn't take the job for what you could get out of it. You took it for what you felt you could give. Focus on that. Work at it. Live with it. Then you'll likely find serving as a commissioner an honor, not a burden. ◆

Steven R. Burt, AIA, served on the Planning and Zoning Commission for Sandy City, a suburb of Salt Lake City, Utah, for nine years. He was a recipient, in 1990, of the Utah Chapter APA "Outstanding Achievement Award for Urban Design." He is a licensed architect and travels extensively throughout Asia and Europe as Vice President of Field Operations for Daw Technologies, Inc., providing Design/Build cleanrooms systems to the microelectronics industry. An earlier version of this article appeared in the Utah Planner.

[Editor's Note: For other perspectives on serving as a planning commissioner or zoning board member, see: Douglas Hageman's "Lessons from Nine Years on a Zoning Board," in PCJ #3; Fred Riggins' "The 'Riggins Rules' .." in PCJ #13; "Planning Commissioners Roundtable Discussion" in PCJ #18; and Carolyn Braun's "Planning From Different Perspectives," on page 8 of this issue.]

Chairing the Planning Commission

by Carol J. Whitlock

Planning commissions come in all sizes. There are small ones and large ones and each seems to have its own set of bylaws and methods of operation. But they all have one thing in common. They all have a chairperson.

For some planning commissions the chairperson is elected by members of the commission for only a single term of one or two years; some allow additional terms; while others have a rotation system where every commissioner eventually becomes chairperson.

The first thing to remember as a planning commission member and potential chairperson is that being a wonderfully effective member does not mean you will make a wonderfully effective chairperson. This article addresses those who are less than confident about their abilities to chair meetings.

For most planning commissions the major responsibility of the chairperson is the conduct and control of each meeting. Sounds very simple until you throw into the mix that this requires working with not only your fellow planning commission members, but the general public, many of whom are there because they are: (1) totally in the dark about some project planned for their neighborhood, (2) mildly unhappy with what is being proposed, or (3) up in arms about what is going on. Then you throw into the mix the applicant and professionals – developers, lawyers, etc. – who have their own agenda as well. Conducting *and controlling* the meeting can be a challenge.

> "Always be fair. This is perhaps the most important responsibility of the chairperson."

The most important thing to remember as chairperson is that it is your goal to be fair to everyone – regardless of whether you agree or disagree with them. Here are a few simple ideas to help with meeting that goal. For the usual, routine items on the agenda these will help, but won't really come into play as life savers for the chairperson until the "hot" topics show up.

• *Always be fair.* This is perhaps the most important responsibility of the chairperson. Remember it is your job to give everyone their "day in court," not to decide who is right or wrong. (You will do that also, but outside of your job as chairman).

Many planning commissions begin hearings with staff comments and an overview of the project, followed by a

Online Comments

"It is very important to explain the process and what role the commission and the public have prior to each hearing on each item. This sets the expectation of what can be achieved ... If it is an administrative item versus legislative the public should know the scope of their ability to give input."

– Meg Ryan, Planning Consultant, Utah League of Cities and Towns

"I have been on the BZA and the Planning and Zoning Commission 28 years (at the end of this current term) with 95 percent of that time as chairman. I have experienced a lot of what Carol writes about in this article and it's a good feeling for me to know that I am on the same page with her."

– Richard L. Snyder Sr., Planning and Zoning Commission Chairman, West Jefferson, Ohio

"Carol's article certainly is a good guide for all chairpersons. ... It is essential to set the 'ground rules' up front ... Having time limits on public comment is unfortunate, but necessary, in order to properly manage meetings that sometimes go well into the wee hours. I also think that a reminder should be given for commenters not to repeat what someone else has said. Allow them to concur verbally, but not repeat. Also, for certain groups such as home associations, it is often effective if a spokesperson representing the entire group can deliver the thoughts for everyone by allowing the spokesperson an extended amount of time. One good speaker for ten minutes may be better than 20 people speaking for two hours. And, in this way, their message is more succinct and easier to follow."

– Larry Frey, AICP, Bradenton, Florida

"To keep comments germane, the chair also should remind the public (and commissioners, if needed) about standards of review for the case under discussion, for example, 'consistency and compatibility with the comprehensive plan,' 'meeting standards of zoning ordinance.' ... One other thing that isn't specifically within the scope of the article, but that affects the tone and productivity of meetings a lot, is the public's ability to access information relevant to the hearings, like staff reports and hearing notices, in advance."

– Alissa Barber Torres, AICP, Chief Planner Research and Strategic Planning Section Orange County [Florida] Planning Division

"There is more that a Chairman can do that effects the conduct of the meeting. Making sure all commissioners do their homework before the meeting is one. Unless they have studied the application beforehand ... the commissioners will either spend a lot of time at the meeting unnecessarily or miss some very significant points that should be considered. It will certainly allow them to ask more intelligent and informative questions. I am especially concerned that the commissioner representing the district in question is fully knowledgeable about the application. ... Another item affecting the meeting and even the long term outcome of the vote, is ensuring that the commissioners have a full understanding of what can and cannot be considered or voiced at the meeting."

– Allan Slovin, Chairman, Town of Braselton [Georgia] Planning Commission

presentation by the applicant. After that, it's usually the public's turn to weigh in.

If it looks like there are large numbers of people wishing to speak, or if the applicant or his or her representatives indicate they have a lot to cover, set a time limit. The important thing is to set it at the start of the meeting and then stick to it for everyone. Be reasonable. Most citizens can say what they have to say in 5-10 minutes, applicants can generally describe and discuss the most complex project in 30 minutes. Additionally, let everyone know that there will be a "one to a customer" rule. That is, say everything you have to say in your first, and only, time to speak.

Often citizens try to bypass the chairperson and ask questions directly of the applicant, his lawyer, or other representative. Don't allow this. Have the applicant or his representative respond to all questions at the end of the public input part of the meeting. This will help prevent back and forth discussions that often become arguments.

• *Do not allow the audience to break in when someone else has the floor.* If patiently telling members of the public to wait their turn doesn't work, stop the meeting and let everyone sit and stew until it comes back under control. No need to yell, pound the gavel, or demand control. Things will settle down if all business stops until peace reigns. Only one time have I ever had to threaten to get the police to clear the room and that was because of one totally irrational gentleman who settled down after the threat/promise of police intervention.

• *Patiently listen until every person who wishes to speak has had their say.* This is where the time limit comes in to help you out. But more importantly, if everyone understands that they will be heard, they are much more apt to sit patiently and not disrupt the meeting.

• *Develop a good working relationship with your planning director (or whoever is your key staff support person).* This is vital. In my years' of experience as chairperson, I have also found that meeting with our planning director before each public meeting has strengthened our relationship, while providing me with a heads up about any unique or "hot" items on the agenda.

ILLUSTRATION BY PAUL HOFFMAN

• *Discuss issues with respect.* Another important aspect of conducting and controlling a meeting is the way the planning commission handles its own discussions.

I have been lucky to have fellow planning commissioners who respect each other's opinions. Should you have a problem of lack of respect among members, remember it isn't your place to correct the planning commission member, just control the meeting. Your only recourse is to stop the meeting until everyone cools down (call a 10-minute recess) and then take up again. Should the problem persist, rectifying it is up to the mayor, city administrator, or someone else at that level.

The suggestions I have set out are basic, common sense actions for running a meeting. But if you have not been on the gavel side of the table before, maybe they will help a bit. And if you have been there, perhaps they will add to what you have already learned and help you out in the future. ◆

Carol J. Whitlock is a registered professional engineer. She currently chairs both the Merriam, Kansas, and the Johnson County, Kansas, Planning Commissions. Carol has served on the Merriam Planning Commission for over 20 years, including 17 years as chairperson, and has served on the Johnson County Planning Commission for 12 years, chairing it for 8 years.

From a Staff Perspective

by Lee Krohn, AICP

Carol's column covers interesting and helpful strategies for being an effective Board chair and for running effective meetings. One of her suggestions, to meet with your community's planning director (or appropriate staff person) before each meeting, is excellent. Let me add some thoughts on this from a staff perspective.

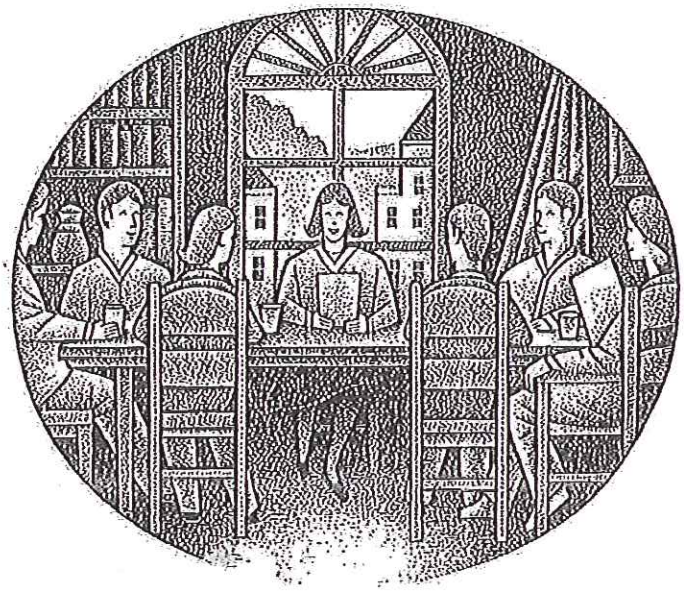
This kind of pre-meeting or pre-hearing discussion allows us to create appropriate and effective strategies as needed for each matter and for the overall meeting. Let me be clear: we do not seek predetermined outcomes on cases. What we try to do is build a shared understanding about which cases will be more complex; what key questions or issues are likely to come up; and how to deal with potential questions of law, procedure, or process.

It also helps that the chairs of our various boards (and we have several citizen boards in addition to the planning commission) have me right at their side during hearings. Everyone knows that I am not a board member, nor can I vote; however, this close proximity allow us to confer as needed on key questions or issues, while maintaining a smooth flow of discussion for each case. It also demonstrates, both literally and figuratively, that staff and board collaborate as a team on behalf of our community.

There are many more pieces of this puzzle than can be covered here. I hope this is a helpful beginning, and helps to stimulate thoughtful consideration about the dynamics of public service in the land use arena. While it may not feel this way in the heat of a contested matter, how we approach our work, and the behavior we offer by example, does make a difference. Let us all seek to do this important work together within a context of trust, care, and mutual respect.

Lee Krohn has served in many capacities (often concurrently) for the Town of Manchester, Vermont, since 1989, including Planning Director, Zoning Administrator, Tree Warden, E-911 Coordinator, and Interim Town Manager. He has also served from "the other side" as Chair of the Putney, Vermont Planning Commission.

ARE YOU ORGANIZED FOR BUSINESS?



Preparing for, running, and then evaluating your regular meetings is essential to the good conduct of your public planning process.

FEATURE

Keeping Things in Order:

PLANNING COMMISSION BY-LAWS

by David J. Allor

During my training sessions for planning commissioners, I am often asked procedural questions. Seeking to stimulate discussion, my initial response has always been "What do your by-laws say?" I reluctantly report that in many cases my inquiry has been unanswered. There are some planning commissions whose by-laws are silent on important matters. Other planning commissions simply cannot find their by-laws. A surprising number of planning commissions have never adopted by-laws.

There are three principal reasons for adopting and using by-laws:

First, they serve to guide the internal conduct of the planning commission. For instance, by-laws can specify that during a public hearing a commissioner's job is to receive and analyze information on an agenda item, but that during a deliberative meeting the job is to synthesize and share information with other commission members, and decide the item.

Second, by-laws also serve to guide the conduct of persons appearing before the commission. By-laws, for example, can spell out that during a public hearing, members of the public have the right to be present and to be given equitable opportunity to speak to the planning commission, but that during a deliberative meeting, though members of the public have the right to remain in the room, they cannot address the commission.

Third, by-laws, if properly constructed and consistently followed, serve to strengthen the commission's decisions. They can help to ensure that the planning commission conducts its affairs in a fair and reasonable manner, that due process is afforded to all parties, and that decisions are supported by relevant and sufficient findings.

I recognize that members of planning commission are reluctant to undertake so dry and tedious an activity as constructing a set of by-laws. I encourage planning commissions to consider by-laws creation in much the same way as a vaccination: trading short-term discomfort for the increased assurance of long-term security. I hope the outline of a set of planning commission by-laws which is set out on the following pages will help ease any short-term discomfort you might otherwise have.

> CONSIDER BY-LAWS CREATION IN MUCH THE SAME WAY AS A VACCINATION: TRADING SHORT-TERM DISCOMFORT FOR THE INCREASED ASSURANCE OF LONG-TERM SECURITY.

In addition to addressing the concerns I have already mentioned, the outline deals with four other important issues: (1) that by-laws be consistent with state constitutions, relevant state statutes, state planning enabling legislation, and possible municipal charter provisions; (2) that by-laws be written so as to be comprehensible to members of the planning commission and the public; (3) that gender neutral language be used; and (4) that direct reliance upon Robert's Rules of Order, Revised be reduced by tailoring procedures to the specific needs of a planning commission.

As some of the articles interlock, be sure to review the entire outline. Articles 1 through 5 focus on the construction of the planning commission and professional staff support. Articles 6 through 9 define hearings and meetings processes. Articles 10 and 11 define quorum, motions and voting procedures. Articles 12 through 14 focus on administrative procedures. Articles 15 and 16 govern the conduct of the members of the planning commission and of the public before the planning commission. The concluding Articles 17 and 18 incorporate legal-technical provisions.

I am aware that many planning commissions in smaller communities do not have full-time, professional staff, such that Article 5 would require revision. For larger communities, whose professional planning staff are employed under uniform administrative personnel procedures, Article 5 would require complete revision.

I hope that the vaccination takes effect, yet I know that we all need periodic booster shots. In like manner, planning commission by-laws require periodic amendment. Nevertheless, a properly constructed and consistently implemented set of by-laws can serve to improve the work of a planning commission and ensure fair public participation. The end result will be better decisions and an increased level of trust in the planning processes.

I wish to express my appreciation to C. Gregory Dale who reviewed the early drafts of this outline and to the members of local and regional planning commissions in Utah and Nevada, during whose respective 1993 state planning conferences, revised drafts were presented. They may take credit for the improvements. I retain responsibility for errors and omissions. ♦

The late David J. Allor was Professor, School of Planning, and Fellow, Center for the Study of Dispute Resolution, University of Cincinnati. He authored The Planning Commissioners Guide: Processes for Reasoning Together *(APA Planners Press).*

Outline of Articles of By-Laws for a Planning Commission

Editor's Note: We hope the following outline drafted by David Allor will help you in developing or improving your commission's by-laws. Please note, however, that by-laws should be reviewed by your legal counsel to ensure conformance with state enabling law and any local charter requirements. In fact, Article 18 of the outlined articles states that this kind of review should take place.

BY-LAWS OF THE PLANNING COMMISSION FOR THE (VILLAGE, CITY, OR COUNTY) IN THE STATE OF (STATE), AS AMENDED (GIVING MOST RECENT DATE)

Article 1: Authority

- specific citation of state enabling legislation or municipal charter provisions to create a planning commission.

Article 2: Jurisdiction

- specific definition of the political-geographical jurisdiction of the commission.
- specific definition of any extra-territorial jurisdiction of the commission.
- specific definition of the time limit to make recommendation or decision by the commission.

Article 3: Appointment and terms of members

- specification of appointing authority and process.
- specification of number of citizen members and residency requirements.
- specification of term (time period) of appointment, usually appointed in overlapping terms.
- appointment of "ex officio" members of the planning commission, specifying with or without right of vote.
- specification of appointment of planning commission members to other boards or commissions.
- specification for the removal of a planning commission member "for cause". See Note 1
- provision to replace a planning commission member to complete an unexpired period of appointment.

Article 4: Planning commission officers and their duties. See Note 2.

- Chairperson - presides at all hearings and meetings of the commission, assures proper order of the commission and the public in all proceedings, signs all documents of the commission, prepares the agenda of the commission, and represents the commission before legislative and administrative bodies.
- Vice-chairperson - prepares the annual report of planning commission activities, coordinates the annual meeting of the planning commission, provides orientation to new planning commission members, and, in the absence of the chairperson, performs all of the above duties.
- Secretary - prepares all official instruments of the planning commission, records the proceedings of all hearings and meetings, and prepares the minutes of the commission hearings and meetings; together with the chairperson signs all documents of the planning commission, and assures the proper indexing of all planning commission documents as public record.
- Treasurer - where a planning commission retains direct control over the budget for operations and staff, the treasurer shall maintain complete, accurate and orderly accounts in preparation for the annual audit, and together with the chairperson shall sign all authorizations and payments of funds.
- Chairperson-pro-temp - where both the chairperson and vice chairperson are absent from hearing or meeting, the remainder of the citizen members of the planning commission shall elect a chairperson-pro-temp from among their own number by majority vote.

Notes:

1. *While the great majority of planning commissioners conscientiously and capably fulfill their duties, it is nevertheless useful to spell-out in the by-laws the conditions under which a commissioner should be removed. Continuing unpreparedness, continuing absence from meetings, biased participation, and conflict of interest are all causes for removal because they impair the quality of decision making and diminish the integrity of the planning commission.*

[Editor's Note: For more on how to deal with chronic absenteeism, see Greg Dale's column, "The Ghost Commissioner," in Issue 6 of the Planning Comm'rs Journal].

Notes:

2. *It is helpful in the by-laws to specify the duties of and relations among both the officers of the commission and the staff. Contingency provisions are important so that the work of the commission can proceed in the event of unavoidable absence.*

Notes:

3. It is not unusual for planning commissioners to forget that a hearing is designed to obtain testimony from the applicant and members of the public, while a meeting of the planning commission is one where cases are deliberated and decided. By-laws must clearly establish and reinforce separate procedures for hearings and meetings.

Article 5: Staff of the commission and their duties
-- see Note 2 (previous page)

- Director of Planning - advises the planning commission, legislative body, and chief administrative officer on matters related to planning, development, and redevelopment, coordinates and supervises the work of all other staff and consultants, prepares all documents for presentation to the planning commission, and assists the chairperson and secretary in the exercise of their duties; the director of planning or designee shall have the privilege to address the planning commission during regular meetings.
- Zoning Administrator - advises the planning commission on all matters regarding the regulation of development, prepares all related documents for presentation to the planning commission, and serves as staff to the board of zoning appeals.
- Commission staff - the planning commission may appoint other staff members to carry-out appropriate functions.
- Consultants - the planning commission may hire consultants to perform planning related activities under terms of contract prepared by the director of planning and approved by the planning commission.
- Legal counsel - the county attorney or municipal director of law shall serve as legal counsel to the planning commission; prepares memoranda of law as requested by the planning commission, and reviews drafts of ordinances, resolutions, and by-laws, and their amendment.

Article 6: Hearings of the planning commission
-- see Note 3

- Public hearing - a noticed official hearing, the express and limited purpose of which is to provide an equitable opportunity for the public to speak on matters before the planning commission, for which publicly-accessible minutes must be prepared; the planning commission may neither deliberate nor take a substantive vote during a public hearing.
- Working Session - a noticed official hearing open to the public to discuss specific matters before the commission; the intent of the working session is informational; the planning commission may neither deliberate nor take a substantive vote during a working session.

Article 7: Meetings of the planning commission
-- see Note 3

- Regular meeting - a noticed official meeting, open to the public, during which the planning commission deliberates and may take substantive votes on specific items.
- Emergency meeting - in the event of a true emergency, the chairperson, with the assent of a majority of citizen planning commission members contacted by telephone, may call an emergency meeting without notice; such meeting is open to the public; publicly-accessible minutes shall carry the specific justification for such meeting. See Note 4
- Executive meeting - a noticed official meeting, closed to the public, whose topics of deliberation are truly confidential in nature; there shall be neither deliberation nor vote on agenda items before the commission.

Article 8: Order of a public hearing
-- see Note 5

- Sign-in sheets by agenda item, listing printed name, signature, address of persons wishing to testify, and indication of support or opposition to items.

2. Call to order and determination of quorum.
3. Presentation by the staff summarizing item.
4. Testimony of agencies related to the item.
5. Presentation by the applicant.
6. Testimony of the proponents.
7. Testimony of the opponents.
8. Concluding comments of the applicant.
9. Concluding comments of the staff.
10. Request of the Chairperson for a motion to close the public hearing.

Notes:

4. Provision should be made for calling emergency meetings. Such a provision reduces public suspicions and avoids contentious disputes about how to proceed when emergency action is needed.

5. It is very important to follow a prescribed order when holding a public hearing. This serves to ensure equitable and consistent treatment of all applicants. Moreover, it permits interested parties to arrange for such practical matters as time off from work, child care, and travel to the hearing.

Notes:

6. Motions should be brief, clear, and complete. A commission should not, for example, simply move approval of a project, but should move approval with specific, stated reasons.

Article 9: Order of a regular meeting

1. Call to order and determination of quorum.
2. Approval of the minutes of the previous meeting.
3. Items carried-over from a previous agenda:
   - matters regarding the comprehensive plan,
   - matters regarding capital improvements,
   - matters regarding subdivision of land,
   - matters regarding zoning of land,
   - matters regarding other regulatory action.
4. Items of the present agenda, presented in same order as above.
5. Other business.
6. Review of the planning commission calendar and announcement of future meetings.
7. Request of the chairperson for a motion to adjourn.

Article 10: Form and character of motions. See Note 6

- The form and character of motions shall conform to those offered within Robert's Rules of Order, Revised, except as specified below.
- Upon review of the full public record and due deliberation among the members of the planning commission, any of its members, except the chairperson, may make a substantive motion. The motion shall include not only direction (Approval, Approval with specified conditions, or Disapproval) but also a recitation of findings which support the motion.
- A second, citing compatible findings shall be required
- Other commission members may support the motion with other compatible findings.
- A motion shall die for lack of second.
- Where a motion to disapprove an item has been defeated, a member of the planning commission initially in the opposition may make a motion to approve or approve with conditions.

Article 11: Quorum and voting requirements. See Note 7

- A majority of the appointed citizen members of the planning commission shall constitute a quorum; ex officio members shall not be counted within a quorum.
- A majority of the citizen members of the planning commission shall be required to pass a motion.
- All votes shall be taken by the Secretary in random order, except that the chairperson shall vote last.
- Abstention from voting shall not be counted in the determination of a motion but shall be recorded.
- In the event of a tie vote, the motion shall have been defeated.

Article 12: Requirements for the submission of requests

- The planning commission shall adopt standard forms for the submission of each type of request required for its consideration; such forms shall specify the schedule of submission, form and content of complementary materials, and scale and content of drawings.
- The secretary of the planning commission shall certify the completeness of submissions.
- Certified requests shall be fully noticed under requirements of law and agendized on the planning commission calendar on the same day.
- Any request disapproved by the planning commission shall not be resubmitted for a period of six months.
- The planning commission may establish a reasonable fee schedule in order to recover costs associated with notice publication, request processing, agenda, staff report and related materials duplication and distribution; moreover, the planning commission may require the applicant to post signs on the affected property, in conformance with provisions of the ordinance, and to notify adjacent property owners, tenants, and community residents of the nature of the applicant's request.

Article 13: Instruments and documents of the planning commission

- The official instruments of the planning commission are the record of notice, the agenda, and the minutes of hearings and meetings. Where in special cases the planning commission wishes to provide advice to the legislative body or administrative agency, it may do so by resolution.

Notes:

7. A surprisingly large number of planning commissioners do not have a clear sense of their quorum and voting requirements. A question such as "What happens if there is a tie vote?" usually comes up when the case is controversial. To avoid both embarrassment and frustration, clearly specify both quorum and voting requirements in the by-laws.

Notes:

8. Given the sheer number of cases decided by many planning commissions, it makes sense to hold an annual meeting to review the previous year and to develop a work program for the coming year. If the by-laws require such a meeting, it will not be forgotten.

9. Defining the proper conduct of the members of a planning commission is of critical importance in helping to ensure that the public has confidence in the commission's integrity. For that reason, the appointment of conscientious citizens is essential. Each planning commissioner must retain objectivity in the face of prejudice, impartiality in the face of contentious interests, and reasonableness in the face of strident disputes.

10. Conflicts of interest can be extraordinarily sensitive. If a member of a planning commission has declared a conflict of interest, that member should leave the commission chambers so as not to have an indirect but undue influence upon deliberations. If a member of a planning commission wishes to have personal interests stated, the member should still leave the commission chamber, entrusting that presentation to a competent third party.

- Any and all materials submitted to the planning commission regarding and item shall be entered into the public record by a motion to "Accept for the record."
- All notices, agendas, requests, agency or consultant letters or reports, citizen petitions, staff reports, minutes of hearings and meetings, and resolutions shall constitute the documents of the planning commission and shall be indexed as a matter of public record.

Article 14: Administrative calendar

- Notice for all hearings and meetings shall conform to requirements of law.
- The planning commission shall hold an annual meeting to review both the activities of the previous year and decide the work program for the coming year. -- see Note 8.
- The election of planning commission officers for the coming year shall occur at the annual meeting of the planning commission.
- The regular meeting schedule for the coming calendar year shall also be determined at the annual meeting.
- Copies of the agenda, requests, staff reports, and related documents shall be delivered to each planning commission member no less than five working days prior to a public hearing and regular meeting.

Article 15: Conduct of the members of the planning commission. See Note 9

- Members of the planning commission shall take such time as to prepare themselves for hearings and meetings.
- Any citizen member of the planning commission absent from three consecutive regular meetings or any four regular meetings within a calendar year, without being excused by the chairperson, may be removed for cause.
- A planning commission member with a conflict of interest in an item before the commission must state that a conflict of interest exists and withdraw from participation in the public hearing, working session, emergency meeting, or regular meeting on that item. See Note 10.
- The interests of that planning commission member may be represented before the planning commission by a specifically designated representative or legal agent at the public hearing or working session, and testimony entered into the public record.
- Participation of a planning commission member under cloud of a conflict of interest is cause for removal.

Article 16: Conduct of persons before the planning commission

- During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to "disregard" the comment, which nevertheless remains in the public record. See Note 11.
- During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.
- During all proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chair-person as "out-of-order" and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to "eject" from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically re-moved the individual from the chamber for the duration of hearing or deliberation on that item. See Note 12.

Article 17: Separability

- Should any article of the planning commission by-laws be found to be illegal, the remaining articles shall remain in effect.

Article 18: Adoption and amendment of by-laws. -- see Note 13.

- By-law adoption or amendment shall be made following review by the legal counsel and public hearing.
- The by-laws shall be adopted or amended upon a vote of a majority plus one of the citizen members of the planning commission.
- Adoption or amendment of by-laws takes effect immediately following a successful vote.

♦

Notes:

11. In order for the work of the planning commission to be both impartial and efficient, members of the public should be informed of their responsibilities to each other and to the commission in all hearings and meetings. The commission must protect the integrity of its deliberations by explicitly disregarding demeaning, hateful, or vulgar language.

12. While very rare in occurrence, where the conduct of a member of the public interferes with the rights of others or impairs the orderly work of the commission, that person may be ejected from the hearing or meeting on that matter.

13. Planning commissioners need to remember that their by-laws are a public document. Consideration of any amendment to by-laws should come only after review by legal counsel and full discussion in public hearing. It is only fair that members of the public, whether future applicants, proponents, or opponents fully understand the rules which guide their conduct before the commission.

FEATURE

The Commission Will Come to Order:

Commentary on Adapting the Rules of Parliamentary Procedure for Planning Commissions, Zoning Boards & Boards of Adjustment

by David J. Allor

As part of my work, I often observe planning commission meetings. I appreciate the conscientious efforts of members to examine complex aspects of specific issues under the principles of the comprehensive plan, adopted public policy, and development regulation. This is a difficult enough task in itself; yet, under our system of government these processes of deliberation and decision must comply with established procedures.

To structure their efforts, many planning commissions have adopted, and come to rely upon, *Robert's Rules of Order*, in one or another edition. I doubt, however, that many commissions have either a clear understanding of parliamentary procedure or the ability to effectively apply *Robert's Rules*.

In this short article, I want to summarize the essential features of parliamentary procedure, and review some of the problems planning boards face in using *Robert's Rules*. The "Model Outline of Motions for Planning Commissions," which follows this article, seeks to adapt *Robert's Rules* to better meet the particular needs of today's planning and zoning boards. The Model Outline of Motions represents a simpler and, I hope, more understandable set of procedural rules to guide a planning or zoning board's deliberative processes — and, of equal importance, promote public understanding of commission deliberations.

1. Why Have Rules of Procedure?

I am aware that many planning commissioners will read this discussion and the Outline with little enthusiasm, if not with real dread. Permit me to argue three reasons for understanding and applying parliamentary procedures. First, failure to adopt and follow formal, fair, and coherent procedures erodes public confidence in planning. Where planning is an optional power of local government, such an erosion of confidence could endanger planning altogether. Even where planning is a mandated power of local government, public participation could be reduced to a paralyzing conflict over proper procedure. Second, failure to consistently apply procedures could result in a deprivation of individual rights and damage to individual interests. Third and finally, failure to consistently apply procedures would invite litigation against the local unit of government.

The failure to adopt and follow formal, fair, and coherent procedures erodes public confidence in planning.

These considerations do reflect certain basic principles of self-government. First, as Henry Roberts notes is "the right of the *deliberate* majority to decide" — which is immediately coupled to the second, the right of the minority to secure "considered judgment after a full and fair 'working through' of the issues involved." (*Robert's Rules* [1915] 1971). Moreover, such procedures assure that all members of the body are treated equally, and that all are free to participate fully in the discussion.

Parliamentary procedure seeks to provide for both efficient and effective decision-making and both open and full debate of issues. They are closely allied to constitutional requirements of due process and to common law concepts of reasonableness, non-arbitrariness, and non-capriciousness. Perhaps, the best advice on the balance between discipline and reasonableness comes from Henry Robert himself:

> *Know about parliamentary law, but do not try to show off your knowledge. Never be technical, or more strict than is absolutely necessary for the good of the meeting. Use your judgment; the assembly may be of such a nature through its ignorance of parliamentary usages and peaceful disposition, that a strict enforcement of rules, instead of assisting, would greatly hinder business; but in large assemblies, where there is much work to be done, and especially where there is liability to trouble, the only safe course is to require a strict observance to the rules.*
>
> *Robert's Rules* (1915 edition)

2. Problems With *Robert's Rules*.

The prededing quotation, while containing valuable advice, also reflects the first of three weaknesses within *Robert's Rules*. The text, now more than a century-old, is not written in a manner coherent to speakers accustomed to the contemporary use of the English language. The complexity of the language undermines the ability to understand and apply the procedure. More seriously, misunderstandings of the language of parliamentary procedure aggravate suspicion of deception or manipulation within debate. Again, dual requirements must be addressed: parliamentary procedure must be comprehensible as contemporary language but be sufficiently disciplined to fulfill the requirements of law.

The second weakness is largely historical. In the early years of its independence, the United States of America felt a strong need to give discipline to the processes of self-government. Thomas Jefferson's *Manual of Parliamentary Practice* (1801) sought to guide the conduct of the national congress. Both Luther S. Cushing's *Manual of Parliamentary Practice* (1845) and Henry M. Robert's *Rules of Order* (1876) extended procedures to non-legislative bodies and

voluntary associations. Yet, many manuals focus upon large legislative bodies, where contending interests, perhaps politically-partisan interests, reinforce a "win-lose" rather than "argument-to-consensus" conception of decision-making. The rigidity of certain procedures impairs the collaborative exploration of alternatives.

Two examples are important. First, parliamentary procedure disallows discussion of an issue in the absence of a motion; however, if a motion is made, the subsequent discussion is constrained to that motion. Many deliberative bodies employ the option of "Recessing into a Committee of the Whole" to enable broader discussion. This is impracticable on a regular basis and often confuses the public. Second, small deliberative bodies (those of three to five members) may do well to delete the requirement for a "Second" to motions. It would be unfortunate for an otherwise good motion to "die for lack of Second." In both cases, the ultimate decision should be based upon the quality of the deliberation, not technical considerations of motion-making.

The third weakness of *Robert's Rules* relates to the application of parliamentary rules to the special nature of planning and zoning boards. Unlike the large, elected or self-constituting assemblies considered by Henry Robert, the work of planning is guided by deliberative bodies which are small, appointed in staggered terms of office, and obligated to conform to provisions of state statute and/or municipal charter.

In general, the work of planning commissions and zoning boards are taken to be *quasi-legislative;* their actions are most frequently recommendations to a legislative body, rather than definitive actions (except, in those states where a planning commission makes final decision on plat approvals). Where a board of adjustment hears requests for variance or appeals of administrative interpretation, its actions are taken to be *quasi-judicial* and are final (except as they may be appealed to the court). These peculiarities were not envisioned by Robert.

Four other issues also merit discussion:

First, planning commissions, zoning boards, and boards of adjustment often must act within fixed time frames — for example, within thirty days to make recommendation or decision. As a result, motions to "Object to Consideration," "Lay on the Table," or "Postpone Indefinitely" are largely inappropriate.

Second, and similarly, a motion to "Reconsider" is very difficult to employ within limited time periods, and taking into account notice requirements.

Third, since the votes of commission and board members should always be taken by roll call, the motion for the "Division of the Assembly" is unnecessary.

Fourth, public hearings — so common to the planning commission deliberative process — are not directly addressed in *Robert's Rules.* Robert's provisions for "Occasional or Mass Meetings" offer little direction. For Robert, deliberative bodies did not directly hear the testimony of interested parties. While such information could be introduced through committee report, regular deliberative sessions permitted only commission or board members to speak. In consequence, deliberative bodies in planning need to adopt a number of procedures to facilitate the orderly participation of the public. Such motions as "Open (or Recess into) Public Hearing", "Accept (written materials) for the Public Record", "Close the Public Hearing", and "Close the Public Record" are essential features of due process for planning-related decision-making.

3. Some Final Observations.

I wish to conclude these comments on a very serious note. Each commission or board member is under an obligation to know the relevant statutes and codes, charter provisions, and by-laws. If a question of law or procedure arises, it should — if at all possible — be referred to and answered by legal counsel and settled prior to the meeting. Recurrent questions to legal counsel on matters of procedure within a meeting cast doubt upon both the dedication and preparedness of commission or board members. Formal procedures can offer little support to proper planning unless they are clearly understood, consistently applied, and broadly-accepted as both fair and effective.

I hope you will read through the "Model Outline of Motions" set out on the following pages. It is designed to make it easier for planning and zoning boards to operate in a manner that is fair and understandable, both to the members themselves and to the public.

I wish to express my appreciation to the many planning commission, zoning board, and board of adjustment members with whom I have worked to clarify decision-making procedures. Many of the comments in both the above essay and the outline on the following pages have been taken from notes made at local, state or national training sessions sponsored by the American Planning Association. I also wish to thank Professor Robert E. Manley, University of Cincinnati, and partner in the law firm of Manley, Burke, Fischer, Lipton and Cook, Cincinnati, Ohio, for his constructive criticism of the draft versions of this work. ♦

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Model Outline of Motions for Planning Commissions and Zoning Boards

by David J. Allor

The following outline modifies, withdraws, and inserts motions into the order provided within *Robert's Rules of Order* (Revised 1971 and Newly Revised 1990). However, the motions are not presented in order of precedence, but in the order in which they are most likely to appear within the meeting of a commission or board. In this outline, a single public hearing is heard within a deliberative meeting.

Borrowing from Jon L. Ericson's *Notes and Comments on Robert's Rules* (1991), each motion is coded in four categories:

requires Second (S), or not (NS),
is Debatable (D), or not (ND),
is Amendable (A), or not (NA),
and requires Vote (V), or not (NV).

A simple majority is required, unless otherwise noted. Immediately below the motion and its codes is a brief explanation of the motion's use and relevance.

1. CALL TO ORDER

NS | ND | NA | NV

Action of the chairperson to bring the members, staff, and audience into order.

2. CALL FOR QUORUM

NS | ND | NA | NV

Action of the chairperson, with confirmation by the secretary, that the commission may conduct official business.

3. CALL TO FOLLOW THE AGENDA

NS | ND | NA | NV

Action of the chairperson to proceed with the agenda as published, so that persons attending and possibly wishing to testify may know the order of issues to be heard and decided.

4. Motion to AMEND THE ORDER OF THE AGENDA

S | D | A | V

For very specific reasons, other than those of inconvenience or unpreparedness, a commission member may move to alter the order but not the content of the agenda.

5. Motion to FIX THE TIME TO ADJOURN

S | ND | A | V

Once the order of the agenda has been decided, a planning commission is under an obligation to estimate how much of its work it can reasonably and responsibly conclude within a single meeting. Where a public hearing is required, the chairperson can impose reasonable but equitable time constraints upon public testimony.

6. Motion to APPROVE THE MINUTES

NS | ND | A | V

Action to approve the minutes of a previous meeting. The minutes are amendable to improve clarity, accuracy, and completeness, but not to re-open debate on a previously decided agenda item.

7. Motion to RECONSIDER

S | D | NA | V

A procedural motion, used where a commission member in the majority on a previously decided item wishes to have the commission reconsider its vote. The motion is appropriate only where: (1) crucial information, not available at the time of the initial vote, is now available, or (2) there has been a substantial change of circumstances since the initial vote. Great care should be taken with respect to this motion so as to not violate notice requirements or time limitations on action. If the motion for RECONSIDERATION is passed, the item is re-presented in total, after which a new substantive motion may be made.

8. Motion to RECESS INTO PUBLIC HEARING

S | ND | NA | V

To this point the commission is in regular deliberative meeting, it now may RECESS INTO PUBLIC HEARING in order to take public testimony on a specific agenda item. During a public hearing, a commission member may not make substantive motions.

9. Motion to ACCEPT FOR THE RECORD

S | ND | NA | V

A procedural motion to officially incorporate an application, agency report, consultant's report, letter, petition, or other written or visual materials into the public record.

10. Motion to CLOSE THE PUBLIC RECORD

S | ND | NA | V

If the planning commission wishes to proceed with debate on the item, it must close the public record. Both the record of written and visual materials and the oral testimony form the basis of consideration and decision. Where the commission is to deliberate the case at a future meeting, it may leave the public record open for a specific period of time, usually two business days, to receive any additional written materials.

11. Motion to CLOSE THE PUBLIC HEARING

S | ND | NA | V

A procedural motion made when all public testimony has concluded; the planning commission has now returned to deliberative meeting.

12. CALL TO ENTERTAIN A MOTION

NS | ND | NA | NV

After broad discussion and deliberation among the members of the planning commission, the chairperson may invite, but may not make, a motion.

13. Motion to CLOSE DELIBERATION

S | ND | NA | V

A procedural motion to test whether the planning commission is ready to move from deliberation to decision. For smaller commissions, the CALL TO ENTERTAIN A MOTION (see #12) would be sufficient to move the commission toward substantive motion.

14. Motion to APPROVE, APPROVE WITH CONDITIONS, or converse motion to DISAPPROVE

S | D | A | V

A substantive motion (often called the MAIN motion); it may take one of two forms: (1) a definitive action, or (2) a recommendation. Requires recitation of reasons in support of the motion; both the Mover and Seconder must concur in the reasons and in the conditions, if such are attached. A tie vote constitutes defeat of the motion. When a motion to DISAPPROVE is defeated, a converse motion should be made to secure APPROVAL or APPROVAL WITH CONDITIONS.

15. Motion to AMEND the Previous Motion

S | D | A | V

Amending motions may be either procedural or substantive. When a motion has been moved and seconded and is within the period of debate, it is subject to substitution, alteration or perfection. When an amendment is seen as "friendly," that is, compatible with the previous motion by the initial mover and seconder, the amendment may be incorpo-

rated directly into the previous motion by verbal assent; where the amending motion is seen as "unfriendly," it must be debated and decided first. All motions to AMEND the previous motion must be decided prior to deliberation and vote on the MAIN motion (see #14).

16. Motion to RECESS

S | ND | A | V

A procedural motion to permit a very brief suspension of public hearing or deliberative meeting to facilitate commission operations or for the comfort of the public. Planning commission members should avoid contact with interested parties during recess.

17. Motion to DEFER TO SPECIFIC TIME

S | D | A | V

Where testimony on a public hearing or deliberation by the commission on an agenda item cannot be concluded within a single session, a motion to DEFER TO A SPECIFIC TIME, that is, the immediately next meeting, is appropriate. The deferred item becomes the first item in the succeeding agenda. Care must be taken to not violate notice or time limitation requirements (as with #7, Motion to RECONSIDER).

18. Motion to EXTEND THE TIME TO ADJOURN

S | ND | A | V

Having already fixed the time of adjournment (see #5, Motion to FIX TIME TO ADJOURN), the commission may nevertheless extend such time, but by a two-thirds vote.

19. Motion to ADJOURN

S | ND | NA | V

While a motion to ADJOURN is always appropriate, planning commissions are obligated to expedite items on the meeting agenda. A Motion to ADJOURN is best used when all agenda items have been decided or remaining items have been DEFERRED TO SPECIFIC TIME (see #17).

> An additional number of motions are necessary to facilitate the internal operations of the commission or acknowledge rights of its members. The following motions have no order of precedence.

20. Motion to ADOPT or the converse motion to REJECT

S | D | A | V

Action to incorporate, alter, or eliminate policies which guide the decision-making of the commission or board. Policy adoption requires only a voting majority; adoption of, or amendment to, by-laws requires a two-thirds vote.

[Editor's Note: For more on by-laws, see David Allor's "Keeping Things In Order: Planning Commission By-Laws, in PCJ #14].

21. Motion to REFER TO COMMITTEE

S | D | A | V

Some larger planning commissions have provision in their by-laws allowing referral of specific issues to smaller committees for deliberation and subsequent recommendation back to the full commission. This does not delegate power to the committee to decide the issue.

22. Motion to DIVIDE A MOTION

S | ND | A | V

Where a motion has been both moved and seconded and is under deliberation, but where that motion is considered as complex. Any member of the commission may seek to divide the motion, thereby permitting independent votes on specific issues. Care must be taken not to divide a motion in such a manner as to subsequently make contradictory decisions among the features of the divided motion.

23. Action to WITHDRAW A MOTION

NS | ND | NA | V

Where the Mover finds that an initial motion is flawed, inappropriate, or premature, the Mover may seek to withdraw the motion in whole. This action is not permissible if the original motion is either subject to an amending motion or has been amended.

24. Motion to SUSPEND THE RULES

S | D | A | V

Where, in extraordinary conditions, established rules would hinder rather than promote effective deliberation, specific rules may be suspended for specific time within a meeting — the reasons for such suspension should be entered into the minutes of the meeting. Any suspension of rules requires a two-thirds vote. Great care must be taken under a suspension of rules to avoid the appearance (or the fact) of unfairness. No rule may be suspended which is otherwise required by law.

25. Action to RULE OUT OF ORDER

NS | ND | NA | NV

To assure the orderly progress of a meeting or hearing, the chairperson may rule individuals — whether members of the commission, staff, or the public — out of order where: (1) comments are irrelevant to the item under discussion, (2) comments have already been made, (3) the specified period of time in which to speak has expired, or (4) comments are disruptive to the order of the meeting.

26. Instruction to DISREGARD

NS | ND | NA | NV

To assure the objectivity of the hearings and meetings, the chairperson may instruct the members to DISREGARD comments and/or written or visual materials that are inflammatory or prejudicial. Such comments, however, are retained in any recordings or transcribed minutes of the meeting, and in the public record.

27. Motion to APPEAL THE RULING OF THE CHAIR

S | D | NA | V

A right of members of a commission to challenge the action of a chairperson, so as to ensure that proper procedures are followed, not to impede deliberation and decision.

28. A POINT OF ORDER

NS | ND | NA | NV

A right of members of a commission to request that the chairperson follow proper order. The intent is to assure proper progress of deliberation, not to contest action of the chairperson (as in #27 Motion to APPEAL THE RULING OF THE CHAIR). The point of order seeks to address an immediate concern, not debate larger procedural issues. Repeated use of A POINT OF ORDER to delay or frustrate decision is inappropriate and damages the continuity of deliberation.

29. A POINT OF INFORMATION

NS | ND | NA | NV

A right of members of a commission to request the specific inclusion or clarification of matters of fact from the chairperson.

30. A POINT OF PERSONAL PRIVILEGE

NS | ND | NA | NV

A right of any member of the commission to express matters of serious concern. For example, if a member of the commission is aware of a conflict of interest in a specific case, that member should at the time that the case is brought forward on the agenda, raise A POINT OF PERSONAL PRIVILEGE, declare that a conflict of interest exists, and withdraw from all further participation on that case. As a special note: I encourage that a member, having declared a conflict of interest, leave the chamber until that case has been decided. ◆

First on the Agenda is the Agenda!

by Elaine Cogan

Who sets the agenda for your planning board meetings? How are decisions made about the order, public comment, and other important matters? Do you allot specific times or just go with the flow? In other words, does your agenda work for you as well as it should?

If your planning board uses its agenda as a tool to efficient and productive meetings, these questions may seem elementary and even foolish. But if you are one of many whose agenda is either inadequate or even an impediment to effective meetings, it may be wise to consider how it can be improved.

The agenda is the template for your meetings. It should be developed thoughtfully so that the planning board has adequate time for matters that require attention and/or decisions and less time for "housekeeping" or more routine subjects. It should delineate plainly when public comment is invited and the actions expected of each item (review only; action; referral, etc.).

Many commissions leave the agenda writing to staff and may see it for the first time when they come to the meeting. This does not serve you or the public well. The best approach is for the chair, or a committee of your board, to review the agenda before it is final and for commissioners to receive it and any backup materials several days in advance.

Upcoming meeting agendas should also be posted in public places, such as public libraries and town or city halls. A growing number of communities also are posting agendas on their Web sites.

Other helpful procedures:

• Allow ample and early time for issues which most concern the public. Too often, planners still put them last or next to last on the agenda even though they are well aware of one or more matters certain to attract a big crowd. It is no wonder that people get restless and cranky if they have to sit through several hours of deliberations that do not concern them. Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.

• Consider setting aside a general comment period where people can talk to you about any planning items that concern them. Fifteen minutes at the beginning of the agenda usually is adequate and can serve as a "safety valve" for testing the pulse of the community.

• Place together routine items that require little or no discussion on the agenda and consider them in a group. Some bodies call this the "consent agenda" and require one motion and one vote to approve them all. But be careful that they are, indeed, routine items and not anything controversial you can be accused of "sneaking through."

• Print the allotted time for each item on the agenda...7-7:05, Roll Call; 7:05-15, Correspondence; 7:15-7:45, Major item # 1, Public Comment, etc. ... and follow the schedule as much as you can.

• Do everything possible to make the public comfortable. Print sufficient agendas for all to have one, with the aforementioned time allotments. Also, make sure there are sufficient copies of any graphics or explanatory material.

• At the start of the meeting, ask people who wish to speak on specific agenda items to sign up. This allows the chair to control the agenda and perhaps ask the board to extend the time if it is obvious the stated comment period is not sufficient for all the people who wish to be heard.

• Make sure the agenda is written in words and phrases easily understood by the public. How long did it take you, as a layperson, before you finally understood planning jargon? Put yourself in the shoes of the citizen who is attending her first meeting. You probably need to use legal terminology when you are actually voting, but that should not preclude an explanation on the agenda that is in plain English.

• Are you expecting a turnout of non-English speaking people? Translate the agenda into one or more other languages beforehand and engage interpreters to be available at the meeting.

• Provide a simple explanation of the board's procedures on each agenda or on a separate handout. What is the purpose of a first reading? Second? Do you require simple majorities or unanimous votes? What general rules of procedure do you follow?

• Keep to your schedule, unless there are extenuating circumstances. The public and the board will be appreciative.

All planning boards and commissions have some form of agenda. By treating it seriously, you will find it is an important tool toward orderly and productive meetings. ◆

Elaine Cogan, partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, is a consultant to many communities undertaking strategic planning or visioning processes. Her column regularly appears in the PCJ.

Editor's Note: We received a number of thoughtful replies from our "online reviewers" concerning Elaine's article. Because we do not have the space to include this feedback here, we are posting it on our PlannersWeb site at: www.plannersweb.com/agendas.html – along with other information related to meeting agendas.

Making the Most of Your Meeting Time: Part 1

by Michael Chandler

"Lost time is never found again."
-- Benjamin Franklin, Poor Richard's Almanac

Have you ever thought about how much time you spend in meetings? A conservative estimate is that most of us who work will spend between six and twelve hours per week attending meetings. At this rate, many of us will spend one-fifth to one-third of our total work time in meetings!

Serving on a planning commission and attending meetings are synonymous. It is hard to do one without the other. Accordingly, one way to measure whether or not a planning commission is functioning well is to examine how it spends its meeting time. This column will introduce strategies a commission can follow to minimize "lost" time.

MEETING UPS AND DOWNS

During our planning commission training sessions we spend a considerable amount of time exploring the nature of meetings. One of the more interesting exercises involves having the participants complete the following question: "If our planning commission meetings could talk what might they say?" As you might suspect, this question has generated some very interesting responses. We've had meetings tell us: "I'm happy that's over. I feel good. I've got more to do. What a great meeting. I need a drink. If that happens one more time I'll do something you will regret." Who ever said meetings don't have a sense of humor!

Another exercise that generates much discussion involves determining why some planning commission meetings succeed while others fail. Commonly cited reasons for successful commission meetings include: the meeting started on time; the commission followed the agenda; the public was able to participate; the meeting accomplished a predetermined task; and, the meeting did not last too long.

Reasons for meeting failure usually include the absence of the attributes listed above. In addition, commission meetings may not be successful if commissioners fail to do their homework; if the commission chair is weak or ineffectual; or if the meeting sequence is haphazard or disjointed.

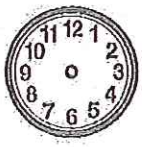
> THE ROAD TO MORE EFFECTIVE MEETINGS SHOULD BEGIN WITH AN EXAMINATION OF HOW YOU CURRENTLY MANAGE YOUR TIME.

IMPROVING COMMISSION MEETINGS

The success a planning commission achieves is a function of numerous variables, including the efficient use of meeting time.

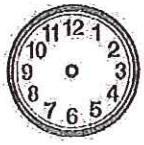
The road to more effective meetings should begin with an examination of how you currently manage your time. Two rather simple exercises can help provide you with this information. All you need to complete the exercises are drawings of two blank clock faces.

Exercise #1: Determining the Relative Proportions of Your Pre-Meeting Time. To complete the first exercise, first list the various planning commission related activities you engage in before scheduled meetings. Such activities could include time spent reading and studying reports, visiting sites that will be featured in upcoming meetings, talking to staff members or citizens, and the like.



Next, draw and label lines on the first clock face that correspond to the activities and the amount of time you devoted to each. At this point in the exercise it is important to understand that you must "condense" your activities to fit the sixty minute time frame. In other words, if you spend half your between-meeting planning related activity on reading and studying reports, you should draw a line on the clock running from twelve to the six, representing half of the total sixty minutes -- regardless of whether the actual time you spent reviewing reports was, say, one hour or three hours. The goal is to determine relative proportions.

Exercise #2: Determining the Relative Proportions of Your Meeting Time. This exercise is the same as the first one, except that you are now indicating how you spend your meeting time. Again, first list the kind of activities your commission engages in during meetings (i.e., time spent: on public hearings, discussing issues, on old business, etc). Next, determine the relative proportions you spent on each type of activity, and display this on the second clock face.



As you can see, the exercises are simple. But by calculating how you spend your time, and then seeing it starkly displayed on a clock face, you might be surprised. Do the relative amounts of time you spend on various activities -- both at your meeting and between meetings -- correspond to the relative importance of the activities? Does your time allocation correspond to your commission's priorities? In fact, for some commissions and commissioners, these exercises reveal that priorities are being "buried" by time spent on activities which are not of as much significance to accomplishing key goals and objectives.

In my next column, I'll discuss "debriefing" a meeting: an underutilized, but quite valuable, technique for improving the use of your meeting time. ◆

Michael Chandler is a planning consultant based in Richmond, Virginia. He is a former Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, and co-founder of the Virginia Institute for Planning Commissioners. Chandler conducts planning commissioner training programs across the country, and is a frequent speaker at planning workshops.

Making the Most of Your Meeting Time: Part 2

by Michael Chandler

How many times have you left a commission meeting and found yourself, usually with one or several colleagues, discussing what went right or what went wrong with the just concluded meeting? If your experience matches mine, you probably have to admit that you engage in this type of discussion fairly often. And I bet your favorite place for holding such discussions is the parking lot outside your meeting place!

The reality accompanying this "parking lot analysis" is that it does little to help improve the effectiveness of commission meetings. This is because it rarely extends beyond two or three commissioners. The full commission does not benefit from the discussion.

FORMAL DEBRIEFINGS

Taking the time to formally debrief a meeting is important because debriefing lets us know if our meetings are working -- and our meetings must work if we hope to have an effective commission. Although there are many ways to formally debrief a meeting, two styles seem to work best. The first is a "verbal" debrief. Using this method, the commission chair, at the conclusion of the regular meeting, engages the membership in a structured discussion focusing on what went well (or not so well) during the meeting. For this approach to work, the chair will need, in advance, to prepare various questions or points to be covered during the verbal debrief. The remaining members of the commission should also know what these questions will be. During the discussion, the chair should strongly encourage all commissioners to participate.

Among the more common questions asked:

Was the meeting well organized and efficiently managed? Was the agenda clear? Was the agenda followed? Did members listen to one another? Did all members have an opportunity to participate? Did the commission accomplish something as a result of meeting? Was the meeting a good use of the members' time? Was the meeting a success or not, and why?

The survey set out below has been used with success and is relatively simple in design. Commissioners are simply asked to circle the number that corresponds most closely to their response. Feel free to try it out, or modify it to better suit your own commission's needs:

Circle the appropriate number:

1-strongly agree, 2-agree, 3-undecided, 4-disagree, 5-strongly disagree

(1) I was notified of this meeting in sufficient time to prepare for it. _____ 1 2 3 4 5

(2) I understood why this meeting was being held and what specific outcomes were expected. _____ 1 2 3 4 5

(3) I understood what was expected of me as a participant and what was expected of the other participants. _____ 1 2 3 4 5

(4) I understood how the meeting was intended to flow and when it would end. _____ 1 2 3 4 5

(5) Most participants listened carefully to each other. _____ 1 2 3 4 5

(6) Most participants expressed themselves openly, honestly, and directly. _____ 1 2 3 4 5

(7) Agreements were explicit and clear, and conflicts were openly explored and constructively managed. _____ 1 2 3 4 5

(8) The meeting generally proceeded as intended and achieved its intended purpose. 1 2 3 4 5

(9) My participation contributed to the outcomes achieved by the meeting. _____ 1 2 3 4 5

(10) Overall, I was satisfied with this meeting and feel my time was well spent. _____ 1 2 3 4 5

The second debriefing style is only slightly different. Rather than verbally debriefing the meeting, commissioners are asked to complete a short survey. The primary advantage of this approach is that it takes less time to complete, and (if necessary) commissioners can take the survey home with them after the meeting and mail it in. Another advantage, in the estimation of some users, is that impressions and feelings are not expressed in public.

The results of debriefings will usually provide insights that can improve the quality of commission meetings. Sometimes the results will highlight topics the commission should discuss during a work session or special meeting.

To be most useful, formal debriefs should be done on a regular basis. This will allow you to spot trends in how well your meetings are going. Depending on how frequently you meet, I suggest doing debriefs either monthly or quarterly.

Taking time to formally debrief meetings will, for many commissions, represent a change in their way of doing business. As with most change, there will be some fear and concern. It has been my experience, however, that the benefits will outweigh any "discomfort" involved. ◆

Michael Chandler is a planning consultant based in Richmond, Virginia. He is a former Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, and co-founder of the Virginia Institute for Planning Commissioners. Chandler conducts planning commissioner training programs across the country, and is a frequent speaker at planning workshops.

Are You Organized for Business?

by Michael Chandler

This column highlights an exercise used in Virginia's "certified planning commissioners" training program. The exercise serves several functions. First, it will give your planning commission an indication of how well it is set up to ensure that newly appointed commissioners understand the commission's basic duties, responsibilities, and relationships.

[In an earlier column, I touched on the importance of providing new planning commission appointees with a solid orientation; see "Enhancing Your Commission's Productivity," PCJ, Issue 14].

The questions appearing on the exercise are as follows:

1. The role of the Commission is clearly defined. I fully understand what is expected of the Commission — what it should and should not do.
   ☐ True ☐ Less True ☐ False
2. I know exactly what is expected of me personally on the Commission. My role, responsibilities, and "job description" were fully explained to me upon appointment.
   ☐ True ☐ Less True ☐ False
3. Upon appointment, each Commissioner receives a copy of the local land use plan and related ordinances (subdivision, zoning).
   ☐ True ☐ Less True ☐ False
4. Following a reasonable length of time, the Commission's Chairman determines whether the materials noted in question three have been read.
   ☐ True ☐ Less True ☐ False
5. Upon appointment, each Commissioner receives a copy of the state's planning enabling legislation.
   ☐ True ☐ Less True ☐ False
6. Upon appointment, each Commissioner receives a copy of their jurisdiction's enabling charter.
   ☐ True ☐ Less True ☐ False
7. Following a reasonable length of time, the Commission Chairman determines whether the materials noted in questions five and six have been read.
   ☐ True ☐ Less True ☐ False
8. The Commission is appropriately organized to carry out its mission. We have and use bylaws.
   ☐ True ☐ Less True ☐ False
9. We always have good attendance by commissioners during commission meetings.
   ☐ True ☐ Less True ☐ False
10. We always have good participation by commissioners during commission meetings.
   ☐ True ☐ Less True ☐ False
11. Commission members have input in developing the meeting agenda.
   ☐ True ☐ Less True ☐ False
12. Commission/staff relationships are good.
   ☐ True ☐ Less True ☐ False
13. As a commissioner, I get adequate information from staff to help me prepare for meetings.
   ☐ True ☐ Less True ☐ False
14. The Commission has in place (and uses) a structured procedure for hearings, rezoning requests, and the like.
   ☐ True ☐ Less True ☐ False
15. As a Commission, we always critique/evaluate (debrief) our meetings before we adjourn.
   ☐ True ☐ Less True ☐ False
16. The Commission has at least one meeting a year to review Commission activities and accomplishments.
   ☐ True ☐ False
17. The Commission meets, at least annually, with the governing body (Board or Council) to discuss matters of mutual interest.
   ☐ True ☐ False
18. The Commission has at least one meeting a year to plan future (the coming year) activities.
   ☐ True ☐ False
19. The Commission prepares and distributes an annual report.
   ☐ True ☐ False
20. You answered the first 19 questions honestly!
   ☐ True ☐ False

But the exercise should also be valuable to "veteran" commissioners — and to planning directors as well — because it can quickly identify some of the basics of good commission practice which may have gotten lost in the shuffle of keeping up with the hundred and one more pressing short-term things your commission needs to get done.

The exercise — like most of those I use — is rather simple in design. There are just twenty questions. The possible responses are: true, less true, or false. The questions can be completed as "homework" for commissioners between meetings, or can be addressed by the commission during a work session or retreat, or at the end of a short meeting (assuming you occasionally have short meetings!). It should take no more than fifteen minutes to answer the questions. Once completed, it is best to engage in a focused discussion of each element featured on the exercise. Allowing an hour for the discussion period is prudent. If the questions are taken home by commissioners to complete, make sure you allocate time at your next meeting for this discussion.

I hope that your commission will use this exercise as an opportunity for thinking about how well you're organized to do business. ◆

Michael Chandler is an Associate Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, Virginia. Mike also regularly conducts planning commissioner training programs. His column appears in each issue of the Planning Commissioners Journal. [Editor's Note: Mike notes that in his planning commissioner training workshops, he often uses the exercise described in this column in conjunction with the exercise evaluating the commission's role in the community, described in "Taking the Planning Commission's Pulse," PCJ, Issue 13].

The "Riggins Rules"

by Fred Riggins

Suggested Do's & Don'ts for the Conduct of Public Hearings and the Deportment of Members of Boards, Commissions, & Other Bodies

[From Issue 13 of the PCJ, Winter 1994]

Editor's Note: The "Riggins Rules" were brought to my attention by Bev Moody. Bev spent 26 years with the City of Phoenix Planning Department before moving to his current position with the Arizona Department of Commerce. During that time he knew the late Fred Riggins, a former Chairman of the Phoenix Planning Commission and author of these "Suggested Do's & Don'ts" (since re-titled the "Riggins Rules" in his honor).

Bev Moody notes that the Riggins Rules have been left just as Fred Riggins wrote them in 1967 "because in their bluff, crusty, no-nonsense style, the man himself shines through." As Bev further explains, "you may notice that Mr. Riggins did not follow the principles of non-sexist language that prevail today, please be forgiving as he was raised in and wrote these in less sensitive times — and it doesn't detract from the good advice he offers."

1. Don't accept an appointment or nomination to a Board, Commission, or Council unless you expect to attend 99.9999 percent of the regular and special meetings, including inspection trips, briefings and public functions where your presence is expected. If your participation falls below 85 percent during any six months' period, you should tender your resignation. You aren't doing your job. Your aren't keeping well enough informed to make intelligent decisions, and you are making other people do your work for you and assume your not inconsiderable responsibility. Your effectiveness and the regard given to your opinions by other members will be in direct ratio to your attendance.

2. Do create a good impression of city government. Remember that this is the first important contact that many of the people in the audience have had with the administration of their city and for some this is the most important matter in which they have ever been involved. Many will never be back again and many will never have another such contact and experience. Your performance will create in their minds the picture which they will always carry with them of "the way the city is run." Make it as pleasant and comforting a picture as possible.

3. Do be on time. If the hearing is scheduled at 7:30, the gavel should descend at the exact hour, and the hearing begin, if there is a quorum. If you have to wait ten minutes for a quorum and there are 100 people in the room, the straggler has wasted two full working days of someone's time besides creating a very bad beginning for what is a very important occasion for most of those present.

4. Don't dress like a bum. Shave, wear a tie, and remember that a coat is never out of place. The people in the audience think you are a very important person. Don't disappoint them by your appearance, conduct, and attitude.

5. Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting or during a recess period, if it can be politely avoided. You will invariably create the impression with the uninformed that there is something crooked going on, especially when you vote favorably on the case of the applicant you were seen conversing with. When the other fellow's case comes up and you deny it, he says, "Well, it's easy enough to see that you've gotta know the right people if you ever expect to get anywhere around here." Save your socializing and fraternizing for some other time and place.

6. Don't discuss a case privately and as a single member of a body with an applicant or objector prior to the filing and prior to the hearing if it can be politely avoided. In the event that it is not avoidable, and many times it is not, be very non-committal, don't be too free with advice, and by all means explain that you are only one member of the body, that you have not had an opportunity to study the matter thoroughly, that you have not seen the staff recommendation, and that you have no way of knowing what opposition there may develop or what will occur at the public hearing.

Be certain that the person concerned understands that you cannot commit yourself in any manner, except to assure him that he may expect a fair and impartial hearing. Even if the case looks pretty good to you, it is wise to be pessimistic about his chances of securing approval. If you give him any encouragement and any advice and he is then denied, he will hate you until your dying day and tell everyone in town that he did just exactly what you told him to do and then, like a dirty dog, you voted against him.

7. Do your homework. Spend any amount of time necessary to become thoroughly familiar with each matter which is to come before you. It is grossly unfair to the applicant and to the City for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. And you will make some horrible and disturbing decisions.

8. Don't indicate by word or action how you intend to vote during the portion of the

hearing devoted to presentations by the applicant, presentations by any persons appearing in objection, and comments by members of the staff. During this period your body is the judge and the jury and it is no more appropriate for you to express an opinion as to the proper decision, prior to hearing all of the testimony, than it would be for a judge or jury member to announce his firm conviction in the middle of a court trial regarding the guilt or innocence of the defendant. This is not clearly understood by a majority of persons sitting on hearing bodies.

It is not too difficult to phrase one's questions or comments in a manner that implies that you are seeking information rather than stating an irrefutable fact and that your mind is closed to further argument. One does not say, "I happen to know that the applicant has no intention of placing an apartment building on this site. In fact, it has been sold subject to zoning and the purchaser intends to put a mobile home park here if he can get a special permit." Rather than this, one could say, "We have been furnished with some information which indicates that perhaps your plans are not too firm regarding the development you propose. In fact, there are some who are concerned about a rumor that the property is being sold and that the new owner planned to put a mobile home park at this location, if he can secure the necessary permit. Would you care to comment on this concern of the neighborhood and tell us if there is any truth in this rumor?" The same result is accomplished, the information is brought out and made part of the record and you don't look as if you are leading the attack to secure defeat of the applicant's request.

9. Don't fail to disqualify yourself if either directly or indirectly you have any financial interest in the outcome of the hearing, and let your conscience be your guide where it could be said that moral, ethical, political, or other considerations, such as personal animosity, would not permit you to make a fair and impartial decision. In disqualifying yourself, do not state your reasons inasmuch as the mere stating of your reasons can be construed as exerting undue influence on your fellow members. To avoid all accusations of undue influence, it is generally wise to leave the room and ask that the record show that you did so and that you did not indicate by word or action whether you were in favor of, or opposed to, the matter under discussion.

10. Do rotate the seating in some regular manner each successive meeting to prevent a "strong" member from gradually dominating a "weak" and indecisive member always seated next to him. This will also prevent the forming of little cliques or a not infrequent grouping of members to the left of the Chair who always oppose those to the right of the Chair, regardless of the merits of the case, to the great detriment of the applicant, the City and other interested parties.

11. Do be polite and impartial, as helpful as possible to the nervous, the frightened and the uneducated, and patient with the confused.

12. Do be attentive. Those appearing before you have probably spent hours and hours preparing and rehearsing their arguments. The least you can do is listen and make them think that you are as interested as you should be. Refrain from talking to other members, passing notes and studying unrelated papers.

13. Don't interrupt a presentation until the question period, except for very short and necessary clarifying remarks or queries. Most applicants have arranged their remarks in a logical sequence and the thing about which you are so concerned will probably be covered if you can force yourself to be quiet for a few minutes. You can wreck his whole case by a long series of unnecessary questions at the wrong time. He will be your enemy forever.

14. Don't permit more than one person at the podium and microphone at any one time.

15. Don't permit a person to directly question or interrogate other persons in the audience. All questions should be addressed to the Chair and to the hearing body. When this person has finished his discussion and stated the questions to which he would like to have answers, then the Chair will permit those who care to make an answer to come forward and do so, but only voluntarily. Do not permit anyone to demand answers to all and sundry questions, especially if it is obviously done for the purposes of harassment.

16. Don't use first names in addressing anyone at all during the course of the hearing. This includes audience, applicants, members of your particular body, even if the person concerned is your brother or your best friend. Nothing, repeat nothing creates a more unfavorable impression on the public than this practice. It is poor "hearing manners," destroys the formality of the occasion, and makes the uninformed certain that some sort of "buddy-buddy deal" is about to be consummated. If you just can't bring yourself to calling someone Mr. or Mrs., use the third person form and call him "the applicant," or "the person who is objecting," or "the gentleman (or lady)," who is appearing here in connection with this case.

17. Do show great respect for the chair, always addressing the Chairman as "Mr. Chairman," "The Chairman," or "Chairman Jones," and always wait to be recognized before continuing. This will set an example for applicants and others wishing to be heard and will contribute a great deal toward the orderliness of the proceedings.

18. Don't be critical of attorneys who sometimes feel impelled to give unnecessarily lengthy presentations on behalf of their clients. Avoid the strong temptation to make matters as difficult as possible for them. They are just trying to make a living and must convince their clients that they are really earning the rather substantial fee which they feel their service merits.

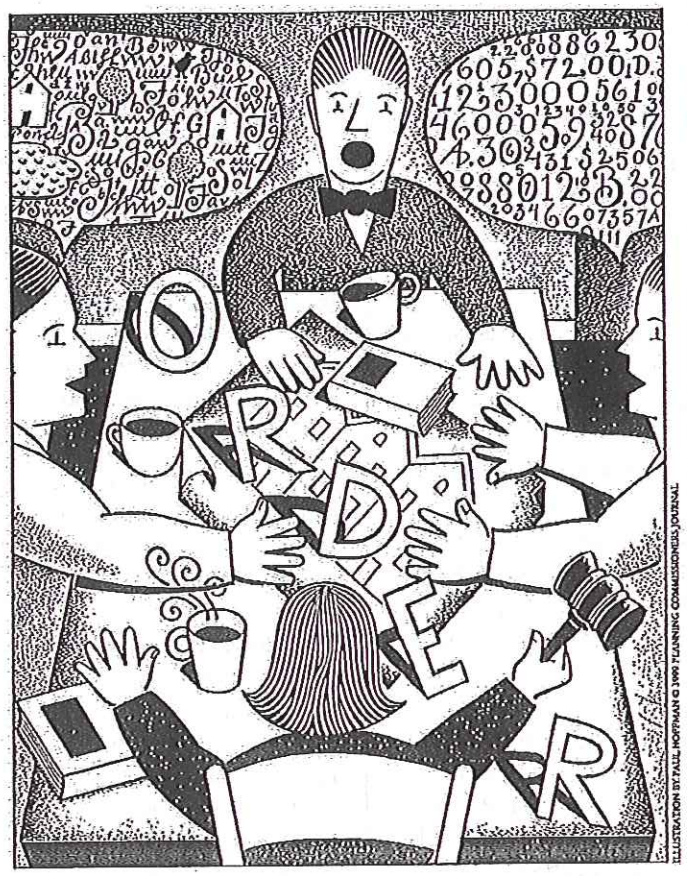
19. Don't indulge in personalities and don't permit anyone else to do so.

20. Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks. This is often a temptation, especially when it is apparent that someone is being slightly devious and less than forthright in his testimony. But don't do it. If you must "expose" someone, do it as gently and kindly as possible.

21. Don't become involved in altercations. Some persons seem to come to hearings with the express purpose of "telling them guys down there how the cow ate the cabbage." If you answer their irrelevant rantings, you are immediately involved in a fight. Don't answer or try to defend yourself. You are there to hear testimony and make decisions based thereon, not to head up a debating society. Remember, you are the judge and the jury. In most cases, it is sufficient to say, "thank you very much for coming here and giving us the benefit of your thinking. I am sure that the members of this body will give your remarks serious consideration when they are making their individual determinations on the merits of this case. Is there anyone who wishes to be heard?"

22. Do invite interested persons to come forward where they can see when an applicant is discussing or talking from a diagram, site plan, or exhibit which is not visible to the audience.

23. Do not permit people to speak from the audience. If it is important enough for them to speak at all, it is important enough for them to be recognized, come forward,



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give their name and address and say what they care to, if their remarks are pertinent.

24. Do not permit people to leave the podium and microphone and approach closer to the hearing body except in unusual circumstances, usually to show a small exhibit or to explain some detail. This ordinarily breaks down into a small mumbling session at one end of the dais with one or two members of the hearing body; the others are uncertain about what is going on. The conversation usually does not get recorded, cannot be heard by the audience, and is almost impossible to control from the Chair.

25. Don't become involved in neighborhood quarrels or wind up as the referee even if you are a veritable Solomon. No matter how fair or impartial you should be, both sides will be mad at you. Stick to the merits of the case and rule out-of-order testimony which is irrelevant, personal, hearsay, and not pertinent to the matter being heard.

26. Don't be vindictive and "punish" the applicant for some real or imagined affront to you or your Body on some previous occasion, perhaps bearing no relation to the present hearing. It must be assumed that he is there legally, he has a right to be heard, and he has a right to a fair and impartial hearing on the merits of his present case without reference to something which he might or might not have done in the past or will perhaps do in the future.

27. Don't try to be a hero to beautiful women, little old ladies, widowed mothers with tiny infants in their arms, and the financially and socially distressed. Be sympathetic, but objective, and don't get carried away with such a strong desire to help that you throw the rule book out the window. Ninety-nine times out of a hundred you will do them some questionable service at the expense of their neighbors or the City and your kind-hearted action will come back to haunt you much sooner than anyone could have imagined. Stick to the rules.

28. Don't assume the role of a fairy godfather to those who have become involved in bad business deals or other self-imposed difficulties.

29. Do not fail to give a reason when making a motion for approval or denial of an applicant's request. If you fail to do this, the applicant, any objectors, a reviewing body of higher authority, or the courts may well assume that your decision was an arbitrary one not supported by the facts and should be reversed. Always mention the staff recommendation.

30. Do not take staff recommendations lightly. These recommendations are made after much study by professional people with years of experience in their field and are based on pertinent laws, ordinances, regulations, policies, and practices developed by you and your predecessors. The recommendations of a good staff in possession of all the facts will almost always produce a technically correct recommendation. Your job is to temper this recommendation with information

developed during the hearing which was not available to the staff. It is not unusual for a staff to voluntarily reverse or change the details of its recommendation during the course of a hearing. Always announce the staff recommendation prior to hearing any testimony and always make appropriate mention of it in the final decision.

31. Don't forget that the staff is there to help you in any way possible. It is composed of very capable professional people with vast experience. Lean on them heavily. They can pull you out of many a bad spot if you give them a chance. Or they may just sit and let you stew, if you do not give them the respect which is their due. Remember that their usual practice is to remain silent unless they are specifically asked to comment. Most of them consider it presumptuous and unprofessional to inject any unsolicited comments into the hearings. Always ask them to comment prior to the final vote.

32. Don't try to answer technical questions even if you are sure that you know the answer. You probably don't and will wind up looking like a fool. Refer these matters to the staff. That is one of the things they are there for. They have intimate day-by-day working experience with all pertinent ordinances and can nearly always give a timely, up-to-the-minute, professional dissertation on any subject in their field. And besides, it makes them more important and helps create an image of competency which is most helpful in assuring the public that their case has received more than a cursory glance and an arbitrary decision.

Lay members of a hearing body who "explain" ordinances to the audience usually wind up their less than accurate remarks with the pretty lame comment, "That's the way I understand it and if I am wrong, I would appreciate it if the staff would correct me." The staff usually does correct them, and ordinarily at some length. Don't try to show how smart you are, because you're not.

33. Don't try to ease your conscience and toss the applicant a bone by granting him something less than he asked for, something he doesn't want, and something he can't use. In all cases where it is appropriate, give him what he asked for or deny it. To do otherwise will only encourage applicants to ask for the "moon and the stars" in the hope that they will, at the worst, get the minimum requirements. A reputation for approving or denying applications as filed will result in much more realistic requests and make your job much easier.

34. Do vote by roll call, except for routine administrative matters. This is wonderful character training for each member of the body and emphasizes the "moment of truth" when he must look the applicant in the eye, make his own individual decision, and say "aye" or "nay" in a loud clear voice, all alone, with no one to hide behind. The alternate voting method is difficult for the Secretary to record, doesn't mean anything on a tape recording, is many times quite confusing, and gives cowards an opportunity to change their minds and vote twice when they are caught in the minority.

35. Don't show any displeasure or elation, by word or action, over the outcome of a vote. This is very bad hearing manners and won't lead to the maintenance of a friendly cooperative spirit among members of a Body. It will lead to the creation of little cliques whose members vote in a block and become more interested in clobbering each other than in making fair and equitable decisions.

36. Do discourage any post-mortem remarks by applicant, objectors, or members after the final vote and decision is announced, especially those afterthoughts designed to reopen the case. It will invariably result in an unpleasant wrangle. Just say, "I'm sorry, but the final decision has been made. If you wish to submit additional testimony, it will be necessary for you to state your reasons by letter and the Body will decide at a subsequent meeting whether or not they wish to reopen the case. The next case on the agenda will be _____."

37. Do not hesitate to continue a case or take it under advisement if more information or greater deliberation is truly necessary, but do not use these administrative actions merely to avoid or delay making a decision before a hostile applicant or audience.

38. Do sit down and have a long soul searching session with yourself if you find that you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one. You might be theoretically right, and probably are, but give some thought to what is practical, possible, and just. Don't be "stiff-necked" in your opinions. Give a little.

39. Don't select chairmen on a seniority basis alone and don't pass the office along from member to member as a reward and honor. The nicest guy in the world, the hardest working, the most interested and your most valuable member can be indescribably horrible in the Chair. This is just one of those facts of life which is hard to explain, but, unfortunately, all too true. As occasion presents itself, give prospective chairmen a chance to preside, head up a sub-committee, report on special projects, and otherwise prepare themselves and demonstrate their abilities and leadership under pressure. ◆

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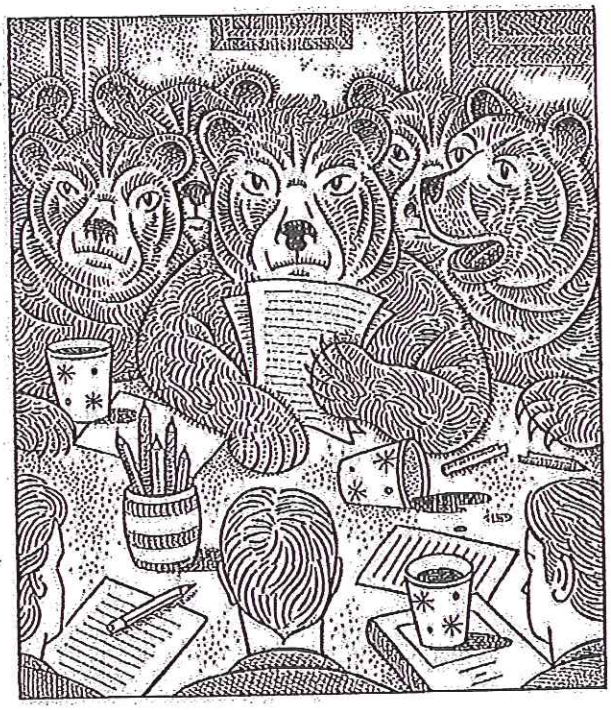
DECISION MAKING & PUBLIC MEETINGS



Commissioners carry a heavy load in the public arena. You must learn to build consensus, make defensible decisions, and foster trust with the public by displaying fairness, consistency, patience, and sound judgment.

Decision Making — Part I

by Michael Chandler

The scene will forever be etched in my mind. Four months into my term as a new planning commissioner, a controversial rezoning came before the commission.

On the night of the commission hearing, a standing room only crowd squeezed into the commission's meeting room. Following the staff presentation on the central issue before us, the planning commission chair called for public input. Over the next two hours, thirty-two persons addressed the commission. As I recall, fifteen spoke in favor of the proposed rezoning, fifteen spoke in opposition, and two expressed no opinion relative to how the commission should deal with the proposed rezoning.

After hearing from the last speaker, the commission chairman closed the public hearing and called for commission action. The request fell on deaf ears. No one said anything. Seconds seemed like minutes. The silence created a sense of discomfort as time literally stood still. Finally, a colleague made a motion to approve the rezoning, as she put it "to get the issue on the table." After another brief period of silence the motion was seconded.

Over the next hour, the commission discussed and debated the proposed rezoning. Finally, the issue was brought to a vote. Four commissioners voted in favor of the request, four were opposed, and two abstained. At the end of the commission meeting several citizens, as well as the applicant, spoke to different members of the commission regarding their stand and vote on the proposal. A couple of the comments were not particularly flattering.

Once everyone left, a group of commissioners gathered at a local watering hole. Over the next hour or so we talked about the "event" we had just experienced. In a roundabout fashion, we concluded that decision making was a difficult and demanding component associated with service on a local planning commission. We wondered why no one talked about this side of the job during the appointment process!

Over time, our commission developed a strong bond and a sense of togetherness as a result of periodically talking about the complexities associated with public sector decision making.

> THERE WILL BE TIMES EACH OF US INTERNALLY DEBATES THE WISDOM OF OUR ASSESSMENT OF AN ISSUE.

The Nature of Decision Making

To make a decision is to select a solution. If we think about it, every decision has one of two purposes: to make something happen that would not otherwise happen, or to prevent something from happening that otherwise would or could.

Making something happen or preventing something from happening sounds remarkably simple. In our certification and training programs for planning commissioners a healthy debate results when I suggest that decision making is a fundamentally straightforward concept that should rarely cause problems. Most commissioners, rookies as well as veterans, quickly take exception to my assertion. When asked why, they offer a myriad of reasons why decision making is fraught with challenges. (Of course, my goal was to provoke this reaction!).

Why Decision Making Is Sometimes Difficult

When asked to identify why decision making is sometimes difficult, a great many reasons are usually cited. For some commissioners the problem can be a function of an issue's technical nature. For example, determining the merits of one landfill location versus another may prove difficult if the decision depends on technical questions related to geology and environmental science.

Complexity is another reason decision making can be challenging. Navigating through a commercial rezoning request that features highway impact data tied to peak road capacity and traffic signalization patterns can be a challenge to those unfamiliar with the language of traffic management.

The attitudes, values, and principles that the decision maker brings to an issue can also make decision making difficult. For example, if I am convinced that all development is bad, I will likely be close-minded even when development is of obvious quality and value. Although we cannot easily separate our job as commissioners from our attitudes, public sector decision making often demands that we do.

Finally, doubts about the effectiveness of the action being contemplated can make for hard decision making. There will be times each of us internally debates the wisdom of our assessment of an issue. Our inability to clearly know whether our assessment is correct can be a draining experience. Rather than worrying about this, we need to learn from it so we can improve our decision making capacity.

In my next column, I'll discuss strategies a planning commission can employ to enhance, as well as better understand, the decision making process. ♦

Michael Chandler is an Associate Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, Virginia. Chandler also conducts planning commissioner training programs across the country, and is a frequent speaker at workshops. His column appears in each issue of the PCJ.

Decision Making – Part II

by Michael Chandler

As noted in my last column, many factors help explain why planning commissions sometimes experience difficulty when making decisions. In this column, I want to step back and look at the decision making process from a broader perspective.

Diagramming the Decision

Depending upon your age, you may recall learning how to diagram sentences. I was exposed to the concept while in eighth grade. In that year, JFK was President; the Yankees were World Champions; and somebody named John Glenn had just flown around the world in a space capsule. With all this excitement, I thought little or no value could possibly come from knowing how to diagram sentences. Of course, my decision not to pay attention came back to haunt me five years later during freshman English!

What connection, you might ask, exists between decision making and diagramming sentences? The answer can be found in the analytical framework underpinning each practice. Just as a sentence can be dissected into component parts, so can a planning commission decision. One approach I have found useful is to consider decision making according to its *substance, form,* and *function.*

1. Substance

Imagine your board has been asked to rezone a parcel of land from agricultural to commercial use. What kind of questions do you need answers to under your zoning and land use regulations before you make your decision?

Certainly you will need to know how the proposed rezoning relates to your community's long-range plan, including the goals and objectives contained in the plan. Likewise, you will likely need answers to questions regarding impacts the rezoning may have on surrounding properties, as well as on your community's transportation and public utility system. You might also want to know about the parcel's planning and zoning history.

In short, the first step in decision making involves considering what you need to know in order to decide the issue before you. We can think of this as the *substance* of the decision making process.

> By looking ahead, we can sometimes identify impacts we had not fully considered.

2. Form

But *substance* is not all there is to decision making. In order to get to the substance, we need to obtain and process information. Having a framework for identifying and organizing relevant facts, values, and opinions can be considered the *form* of decision making.

Form connotes structure. Many communities rely on rezoning request forms to ask key questions, yielding relevant information. Reliance on such forms, assuming they ask the right questions, can be useful in providing a planning commission with the information it needs to understand an issue, as well as consider possible options.

Other forms of obtaining information include site visits, public hearings, and written testimony. The key point is that in thinking about decision making, we need to bear in mind the importance of the *form* of decision making — how we can best secure and organize information to help us reach a sound decision.

3. Function

In my experience, there is one more critical component to decision making, something we can call the *function* of a decision. While you may view it as similar to what I termed the substance of decision making, I believe it is helpful to consider it separately.

Looking at the function of a decision means thinking about what impacts a decision is likely to have.

Returning to our rezoning example, let us assume you find favor with the proposal to rezone the parcel from an agricultural to a commercial use. How will your decision to rezone the property affect the parcel, the neighborhood, and the larger community? How will your decision affect the future? Will your decision produce any side effects? Will they be positive, negative, or neutral?

Function forces us to focus on the likely consequences of our decision before we actually make it. By looking ahead, we can sometimes identify impacts we had not fully considered — and which might cause us to reevaluate the issue before us.

Taking the time to consider the *substance, form,* and *function* of our decisions can be useful in ensuring we make sound decisions that: meet the requirements of our planning regulations and forward the goals and objectives of our comprehensive plan; are based on complete, well-organized information; and lead to impacts we can (as best as possible) anticipate. ◆

Michael Chandler is a Professor and Community Planning Extension Specialist at Virginia Tech in Blacksburg, Virginia. Chandler also conducts planning commissioner training programs across the country, and is a frequent speaker at workshops. His column appears in each issue of the PCJ.

And the Consensus is ...

by Elaine Cogan

"Mr. Chairperson, I move that..."
"And I second it!"

How frequently does this happen at your planning commission meetings? You are in the middle of an informal discussion and someone on the board attempts to cut everything short by making a motion. This is quickly seconded by another eager beaver, and before you know it, you are forced to follow a formal discussion process. This simple act can stifle a free and open discussion, especially if someone is zealous about following prescribed rules of order.

Another way to reach decisions is by consensus, or general agreement. Knowing when to vote and when to rely on consensus can contribute substantially to the smooth running of your planning board. First, it is important to acknowledge that most, if not all, decisions on legal matters require a recorded vote. Some issues require a simple majority; others two-thirds or more. These procedures should be spelled out clearly and followed precisely.

Many other issues, however, are best resolved without a vote. Voting can polarize people and create a winner/loser environment. Consensus implies that the group can come to general agreement without forcing individuals to take sides.

Is there a consensus-builder on your board? If you are the chair, do not assume you have to take that role if it is not a comfortable position for you. Your primary responsibility is keeping order and giving everyone a fair opportunity to speak. If you are not the chair but have that skill, do not hesitate to use it. The consensus-builder can be anyone on the board who has the patience, aptitude, and interest.

The consensus-builder relies as much on understanding body language as on listening to what people say. Board members who shake their heads vigorously without saying anything may be indicating silent disagreement. Others, who tap a pencil on the desk, may be impatient and anxious to move on. Someone leaning way back in her chair may be showing she is bored or contemplative. Interpreting non-verbal behavior signals accurately is an important aspect of consensus-building.

If you aspire to be the consensus-builder, listen carefully to the discussion, watching the participants' actions at the same time. Wait for a momentary lull in the discussion, after it seems that all the points have been raised and the conversation is becoming repetitive. Use summary language such as "It appears that we all agree on..." or "It is pretty clear that we want to..." or "We seem to have consensus on...." Most times, members will nod and be receptive to moving the conversation forward. If you have misread them and board members disagree with your summary, they will most certainly tell you. If this happens, you can continue the discussion until there appears to be general agreement.

A consensus can be reached even if you cannot agree but have exhausted the points to talk about. Then, you can say, "Since we seem far apart on this issue, why don't we move on?"

Though most people find a consensus format very comfortable and preferable to constant voting, there may be some board members who challenge this mode of decision-making. Obviously, it can be used only if most or all agree.

Voting is a clear and direct method of reaching a decision. The consensus model is more intuitive. Each has a proper place in the decision-making process of a well-functioning planning board. You may even find yourself using both techniques at suitable occasions. "We seem to generally agree on this ... but not on ..., Let's take a vote on this one matter." ◆

Online Comments:

"Consensus comes easier on non-controversial items. While this may seem blatantly obvious, you would be amazed (or maybe not) how much time is spent talking in circles on agenda items that will be passed unanimously. The chair needs to bring any circular discussions to an end. The best way I have seen this done is by calling for a motion."

– Dale R. Powers, AICP, Interim City Planner, City of Brainerd, Minnesota

"Regardless of the circumstances our Chairman will go out of his way to assure that whoever wants to be heard receives their opportunity. We seem to reach consensus, at least to a great degree, in near all of our deliberations without a specific 'consensus builder.'. .. Any of our members will take the lead as they deem necessary."

– Bob Steiskal, Jr., Member, Gulf Shores [Alabama] Planning Commission

"As Chairman of the Plan Commission in the Town of Dodgeville, Wisconsin, my conviction about the value of consensus building couldn't be stronger. Democracy is, at its heart, dependent upon good citizens with fair minds who can work their way through all of the information and arguments and come to an agreement about their decision."

– Lois Merrill, Dodgeville, Wisconsin

Elaine Cogan, partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, is a consultant to many communities undertaking strategic planning or visioning processes. Her column regularly appears in the Planning Commissioners Journal.

What's Your PMQ (Public Meeting Quotient)?

by Elaine Cogan

Have you ever held a public meeting when just a few people showed up... and you were glad? If you are on the planning commission long enough, you are sure to have a range of public involvement experiences: carefully planned and publicized meetings when very few people come, and those you thought would not be of public interest where there was standing room only.

Designing and carrying out effective public meetings is an inexact, but important component of the planning process and should be taken seriously. Here are some guidelines that can help it work.

One technique does not fit all circumstances. Before planning your public involvement process, answer one simple but vital question: what is the purpose? If you want simply to inform people about a project, a "show and tell" meeting where information is presented may be all you need. While you must always allow time for questions, the focus of the meeting is on giving information to the audience.

Do you want to inform and also receive public comments? In that case, a meeting that begins with a presentation but is followed with breakout or small workshop-type discussions can be productive. Always avoid the unlimited question and answer free-for-all where only the most bold or opinionated will have their say.

Seek out natural constituencies. Never worry that developers or landowners will be shy about voicing their opinions about planning policies or programs. Planning affects them directly and they make it their business to follow what you are doing. But there may be other less vocal constituencies in your community equally as deserving of attention. For example, nonprofit social service agencies may be very interested in zoning matters that affect affordable housing. What's more, they probably have legitimate concerns. School advocates and members of adult and youth sports leagues are likely to be interested in park or open space policies.

Before you make significant decisions, broaden the range of people you inform and involve on issues to obtain a true picture of the range of interests affected by planning decisions.

AVOID THE UNLIMITED QUESTION AND ANSWER FREE-FOR-ALL WHERE ONLY THE MOST BOLD OR OPINIONATED WILL HAVE THEIR SAY.

Do not hide behind the legal requirements. Too many planning departments stick only to the letter of the law when they notify people of proposed actions. Moreover, most notices are written in such legalese and jargon that lay people either cannot understand them or just throw them away. You may have to continue giving the required official notice to the required people, but you can accompany it by a plainly written explanation. Furthermore, you should broaden your notice list to include affected neighborhoods and interest groups. Do not use only English if you want to reach a non-English speaking population.

Get out to where the people are. Do not hold all your public meetings in City Hall or at a place or time only at your convenience. Especially for subjects that involve specific neighborhoods, hold the meeting where likely attendees are more comfortable, such as schools, libraries, or community centers. Make sure there is handicapped access and sufficient parking and access to transit.

If at all possible, have your meetings covered by local access cable TV. This is an effective way to reach people unable to attend and also to show your receptivity to the public. Be sure your cable channel shows the name and phone number of someone to call for more information or to comment on the issues you have discussed.

Listen actively... and respond appropriately. At each meeting, take notes about what people say. When appropriate, you can also distribute a short questionnaire so that those attending have an additional way to express their opinions. Mail a summary of the meeting to all attendees who have filled out a registration sheet, publicize the results in the media or community newsletters, and respond personally and promptly to anyone who has a particular request.

Make friends with the media, but do not expect the media to be your friends. Have you ever been misquoted in the newspaper or found your remarks seemingly out of context in a television interview? As a public figure, you can expect to be sought after by the media. You want to be friendly and open. But always remember that the media are businesses, and as such, report news in the way they believe will best attract and hold their customers. That may conflict with your perception of the specific situation.

Will all your public meetings run smoothly, without controversy? Probably not, but if you do it well, you can take satisfaction knowing you went more than halfway to meet the needs of the people in your community. You may even enjoy the true give-and-take of a well designed and executed public meeting.◆

Elaine Cogan, partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, is a consultant to many communities undertaking strategic planning or visioning processes. Her column appears in each issue of the PCJ.

Is it Glitz? Is it Real?

by Elaine Cogan

It is midway through a rather routine planning board meeting. Until now, you have been considering issues that seem to be of more concern to technicians than to the public. Suddenly, you perk up. Next on the agenda is a presentation from an out-of-town developer, flanked by an articulate architect and well-connected local lawyers. After a few formalities, they turn on their electronic show and urge you to approve the plans for their proposed development – today. Wow! The streets never looked as attractive, the kids never happier, the sun never brighter as in their digitally-enhanced pictures. Their spreadsheets, pro formas, and other data also seem overwhelmingly positive.

We all can be susceptible to highly polished presentations; and unless applicants are blatant liars, they and their spokespeople should be expected to present their proposals in the best light. However, planning commissioners must meet the challenge of getting to the facts behind the pretty pictures and beyond the enticing words.

Trust your instincts. The color slides look good but ... there are no trees on the property today and those shown are 20 feet tall. Adding up the square footage of all the condos they expect, this seems to be a more dense development than their figures suggest. What will the project really look like next year or the year after? If their information appears to be incomplete or contrary to your knowledge or experience, speak up, and make sure your questions are answered satisfactorily before you act on the proposal.

Get a second opinion. If the project is complex and your staff does not have the expertise to answer all your questions, considering hiring a consultant for a neutral, professional review. It is worth the expense.

Take your time. Do not be pressured into making a precipitous decision even if the applicants earnestly plead for action now. They may say that their option on the property is running out or the financing is in jeopardy. Perhaps another community is begging them to locate there and yours needs more economic development. Resist the blandishments and threats. Your sole concern should be your community's interest, not theirs. None of these are reasons to make a decision ... either to approve or deny in haste. But neither is it fair to prolong the matter unduly. Be sure to visit the site, then ask your questions, get the answers, and be willing to make a decision.

> THE STREETS NEVER LOOKED AS ATTRACTIVE, THE KIDS NEVER HAPPIER, THE SUN NEVER BRIGHTER....

Do not be intimidated by any side. Pressure to make a decision may come from the community as well as from the applicant. Opposing citizens may pack the meeting, wearing buttons or waving placards. They may disparage the applicant's claims and urge you to "just say no." They are as entitled to their say as is the applicant, but neither should force you to vote when you are not ready.

Rely on your colleagues. The most effective planning commission is comprised of people with a variety of interests and experiences. A developer may understand the real constraints an applicant may be facing versus the tall tales he may be telling; an architect can decipher plans better than most; a community activist may help you judge the depth of feeling about the proposal. Take advantage of your combined wisdom and experience by consulting with each other.

There are many ways applicants try to convince the planning board of the rightness of their proposals. Give them a polite audience, but be thorough in your evaluation. The word soon will get around that your planning board does its homework and does it well. ◆

Elaine Cogan is a partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan. Elaine recently managed her firm's work on "Clackamas County Complete Communities," an ambitious effort to develop a sense of community and common purpose among citizens in all the rural, urban, and suburban areas of this large county in the Portland metropolitan area. This project is slated to receive a national award from the American Planning Association this Spring.

On-Line Comment

"Elaine Cogan's article highlights the difference between rational and peripheral evaluation. Commissioners engaging in rational evaluation carefully consider the facts and arguments, assess the reasoning, and then reach a logical conclusion about the merits of the project. Rather than risk information overload, however, many people engage in peripheral evaluation, looking at external factors such as whether the speaker is likable or the presentation is impressive to decide whether to reject or accept the assertions being made. One of the most dangerous peripheral conclusions for a commissioner to reach: presuming that since 'everyone' seems to hate the proposed development, it must be a bad project. Reliance on 'social proof' instead of rational proof about a project's merits is a trap too many commissioners fall into, and Elaine reminds us of the importance of logical, rational evaluation of land use proposals."

– Debra H. Stein, President, GCA Strategies, San Francisco

A Nose for NIMBYs

by Chris Robbins

Don't worry if you are missing your favorite science-fiction show to conduct a public hearing at the Planning Commission. You may be lucky enough to see shape-shifters in real life. If you are considering a land use change that will affect a residential neighborhood, perfectly normal, rational people will grow fangs and acquire the ability to spit fire. Changes in the neighborhood spark a primitive reaction in defense of home and family. As a planning commissioner, you need to keep your cool when confronted by angry neighbors, and recognize the difference between legitimate concerns and irrational fears. You need a nose for NIMBYs.

Here are some points to remember:

1. *NIMBYism (Not In My Back Yard) is human nature, but sometimes you need to rise above it.* The most common neighborhood concerns are: "Don't increase traffic past my house. The children will be at risk." "Don't allow smaller lots or smaller homes in my neighborhood. My property value could decline." "I was told that this street would never go through, this land would never be developed, etc. How can you betray these promises?"

Concerned citizens are right to be alert to neighborhood threats, but NIMBYs carry it to an extreme, exaggerating the threats or refusing to accept something that's a normal part of community life. Perhaps they are beside themselves because they moved to their current location to escape development that is now inexorably following them. Perhaps they are secretly panicking at the idea of outsiders in their territory, whether it be "those people" moving in down the block, or motorists driving past their homes to get to another destination.

> AS A PLANNING COMMISSIONER, YOU NEED TO KEEP YOUR COOL WHEN CONFRONTED BY ANGRY NEIGHBORS, AND RECOGNIZE THE DIFFERENCE BETWEEN LEGITIMATE CONCERNS AND IRRATIONAL FEARS.

Your job is to look out for the whole community: townhouse and apartment dwellers as well as single family residents, and people living on through streets as well as those who want to live on dead-ends and force the traffic onto other streets. Ask questions or have staff find the information you need to evaluate the concerns. Is the traffic going to be greater than the standards for the street? Is the proposed land use so noxious that it would reduce property values, or is it simply something different from what's there? Were the "promises" made by a city representative or by a realtor? If the concerns don't hold up, don't feel guilty about voting in favor of the project.

2. *NIMBYs can have their positive side.* No one else is so highly motivated to do research into the issues and the history of the area. Sometimes in their quest to stop a project, people will uncover information that does help your decision-making, for example: a previous owner put a covenant on the land that restricts its use, or the project would damage a unique environmental resource. Sometimes there's an alternative that makes more sense. If these concerns have substance, respond to them; don't treat a project as a "done deal."

3. *Address concerns in a realistic way.* The usual outcome of contentious projects is that the objections are addressed through conditions or modifications to the project. This may not satisfy the opponents, but it shows respect for their concerns. You should insist on an enforceable way to ensure that the conditions or modifications are actually put into place. Too often a bone is tossed to the concerned citizens, only to be pulled away again as soon as the project is under way.

4. *Don't let your own emotions get the better of you.* It's easy to feel sorry for the beleaguered neighbors and do something that's not in the interest of the community as a whole. It's also easy to react the other way and dig in your heels in response to annoying and pushy people, just to show them you can't be bullied. Try to separate the personalities from the substance of what they're saying.

With a good nose, you will be able to tell when people cease making legitimate points and slide into NIMBYism. Make a note of the good points, and ignore the rest. ◆

Glossary:

NIMBY: Not in my back yard
LULU: Locally unwanted land use
NOPE: Not on planet earth
GOOMBY: Get out of my back yard
NIMEY: Not in my election year
BANANA: Build absolutely nothing anywhere near anything

Chris Robbins has been a member of the Northfield, Minnesota (population, 17,000) Planning Commission for the past four years. She is an environmental planner who has worked for consulting firms and non-profits in the past. Chris is currently an environmental planning intern for the City of Minnetonka, a suburb of Minneapolis.

Dealing With NIMBYs

Be a Leader

"The most important point in dealing with NIMBYs is to look at the big picture and what's in the best interest of the community as a whole. It all boils down to appointing and electing 'leaders.' Too often NIMBYs get their way when it wasn't in the best interest of the whole just because people without conviction are making the decision."

– Maureen France, City Commissioner, City of DeLand, Florida

Opportunities

"Sometimes NIMBYs are the citizen's first exposure to planning and zoning. While the best time to be first involved would have been back when the community plan was being developed, NIMBY situations can nevertheless be viewed as an opportunity for citizen involvement.

Quite often, interested citizens will stay involved after the issue involving the NIMBY goes away. If they are reasonable people, an attempt should be made to recruit these interested citizens into the system. Also, bear in mind that planners don't have a monopoly on common sense. We should at least make an effort to listen to those citizens who take the time to appear before us."

– Tim Anderson, AICP, Principal Planner, Region 2 Planning Commission, Jackson, Michigan

"Some of our most dedicated and educated planning commission members and activists became involved originally because of neighborhood issues. One thing about having something in your backyard is that it forces you to become well versed on all sides of the issues. You get to see how your government really operates. Einstein once stated that 'In the middle of difficulty lies opportunity.' I like to think that NIMBYs have ultimately led to improved governmental processes for citizens in my county."

– Chris Mueller, Dearborn County, Indiana

"An old timer in the ways of local politics once offered me some simple advice: 'I want my enemies right next to me and my friends in the audience.' Sometimes, when time permits, a challenge to the NIMBYs to become involved in the process can help. Once involved they sometimes are able to see things from a wider perspective. Not something that can be done every time, but occasionally it works."

– James Q. Gulnac, AICP, Planning Director, Sanford, Maine

Consistency

"As a County Commissioner I faced a lot of NIMBYism. What I've found most important is that the process for including public opinion must be fair and consistent with past policy. You'll find that people will accept a disagreement in the end, but if they feel like it was shoved down their throats, it will be a disaster."

– State Representative Bill Hinkle, Cle Elum, Washington

NIMBYs are Not Environmentalists

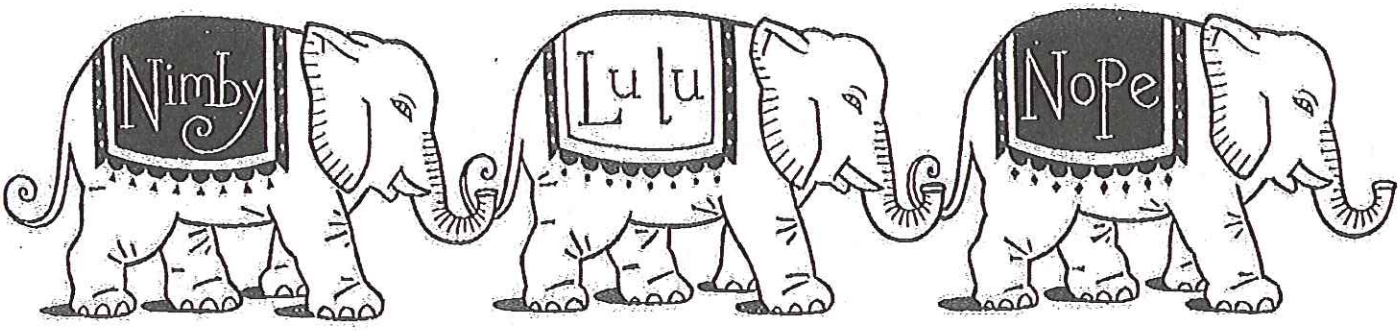
"I've been in planning for 33 years, including a few years as a planning commissioner. The media has a tendency to call all NIMBYs 'environmentalists.' My experience has been that many NIMBYs are people who do not wish to see any form of change in their immediate environment, especially if the change represents a threat to their property's value or to their personal 'quality of life.' They use environmental arguments to support their primary opposition to a particular project, but I would hardly consider them environmentalists. The real environmentalists are those citizens who appear before public bodies to debate issues related to community-wide planning policies."

– Paul Wack, AICP, San Luis Obispo, California

Legitimate Concerns v. NIMBYism

"My background is as a non-profit affordable housing project coordinator and currently as a child care facilities development consultant. In affordable housing circles there has been a move to avoid using the NIMBY phrase. It is instantly accusatory and tends to put people on the defensive rather than opening up the door to real communication.

My second thought is that there should be a distinction made between neighbors who have legitimate concerns related to traffic, parking, drainage, etc. and those who are basically objecting to 'those kinds of people' moving in next door. For people



Not in my back yard *Locally unwanted land use* *Not on planet earth*

with legitimate concerns the task then becomes a balancing act to look at both immediate local negative impacts of a project and the greater community good of providing the housing or services that will help build a stronger more sustainable community.

There is often a very strong contingent of neighborhood opposition that very transparently is simply opposed to the particular population that will be living in the proposed project. In public hearings that are addressing these kinds of projects it is important that some house rules are outlined early on that make it clear that legitimate concerns about impacts will be the focus of the meeting and that derogatory language or statements about the kind of people who will be living in the project will not be tolerated. Again this is an educational process that is challenging our often still strong belief that neighborhoods have the right to be exclusionary."

– David Foster, Planning Commissioner, Santa Cruz, California

"NIMBYism is a serious problem as communities seek to allow infill development in or near established neighborhoods. Protesters will often speak in favor of infill as a desirable planning practice but, for a host of reasons, not in their neighborhood.

A legitimate reason for opposing infill is that the neighborhood infrastructure is insufficient to handle additional growth. The proposed area may be lacking curbs, gutters and sidewalks, have drainage problems, existing traffic congestion, chopped up streets, and so on. As a trade-off for increasing the density under less than favorable conditions, the municipality should be prepared to give something back to the neighborhood such as upgraded infrastructure, additional street trees, more intense code enforcement, or the imposition of stringent design review and landscaping requirements for the new housing.

A less legitimate reason for infill NIMBYism is the assertion that the neighbors were given an express or implied promise by planners or council members that their existing zoning would not be revised and there would be no changes to their present living environment. Increasing the density in such neighborhoods is often viewed as nothing less than treason. But one council cannot tie the hands of another and local governments have neither a legal nor ethical obligation to uphold expectations of continued low density zoning.

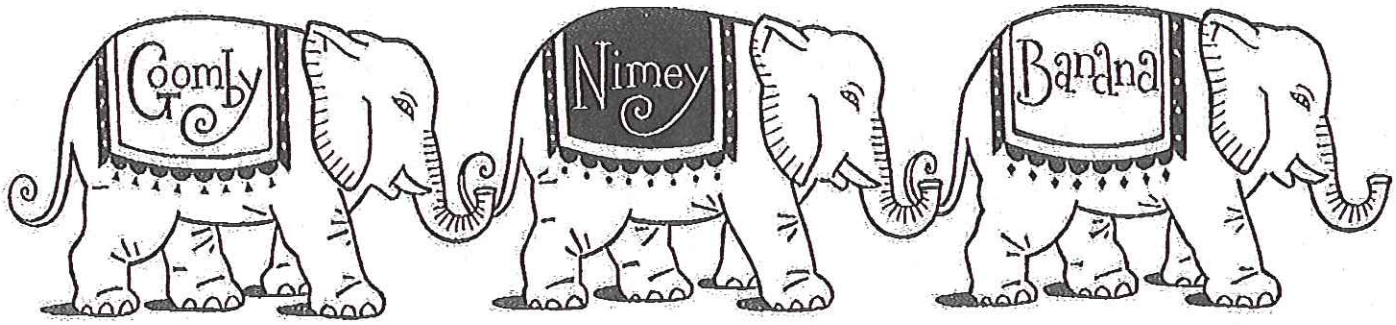
In implementing public policy, planners and council members must take into account changing demographics, values and needs. Indeed, the underlying justifications for infill development, such as the avoidance of sprawl and the provision of affordable housing, are real and, one might say, ethical concerns that override any express or implied promise that existing zoning standards will be forever maintained."

– Irv Schiffman, Professor of Political Science, California State University - Chico & Planning Commissioner, City of Chico.

... and Call Your Lawyer

"I'm sure you've all heard of the phenomenon of NIMBYism – Not In My Back Yard ism. Every time a new building is proposed absolutely anywhere in America, you can guarantee that somebody or some group, will file a lawsuit against it. Nobody wants anything new. Well, sure. Every new thing we've gotten over the last 50 years has made our lives worse: the new housing development down the road, the new strip mall, the highway improvements that turn a two-lane road into a six-laner, the corporate office that looks like the mother ship from a UFO movie. The new school that looks like an insecticide factory. The new motel that looks like a medium security prison. The new mall with a parking lot the size of Rhode Island. We don't want anymore of this. And isn't it understandable? Look at the misery these things have produced. It's perfectly reasonable – given our experience over the past half-century. You see the guys with the yellow hard-hat out in the cow-pasture and, by reflex, you reach for the phone and call your lawyer."

– James Howard Kunstler, author of The Geography of Nowhere [the above is excerpted, with permission, from an address delivered by Kunstler, available at: <www.kunstler.com/spch_FL_AIA.html>.



Get out of my back yard *Not in my election year* *Build absolutely nothing anywhere near anything*

Late Nights with the Commission

by Ric Stephens

"My great-grandfather used to say to his wife, my great-grandmother, who in turn told her daughter, my grandmother, who repeated it to her daughter, my mother, who used to remind her daughter, my own sister, that to talk well and eloquently was a very great art, but that an equally great one was to know the right moment to stop."

–Wolfgang Amadeus Mozart

The length and pace of our hearings has a direct impact on the quality of public participation and decision-making. Both excessively long and short meetings do a disservice to the public and ourselves. Each commission varies greatly in their approach to time management, but I suggest any hearing longer than *3 hours* or later than *10:00 pm* is too long; and any individual case less than *3 minutes* is too brief.

Mine Eyes Glaze Over

How many of you have sat through what seemed like interminable hearings? These "slow waltz" meetings affect public participation and the decision-making process in a variety of ways. Several years ago I attended a planning commission hearing that lasted so long, they took a fifteen minute break at 2:00 am in anticipation of going another two hours! What does this say about that process?

When I was a commissioner in another city, our hearings sometimes lasted more than ten hours! These were true "buns of steel" hearings. At a certain point in a long hearing, the time invested and the lateness of the hour begin to influence the process.

Here are some concerns about lengthy hearing:

• *Physical Considerations.* What affects do lengthy meetings have on the human body? There are measurable changes in the ability to concentrate, communicate, and deliberate after several hours seated at a hearing. Meetings that last several hours into the night restrict public participation to only the hardiest of citizens. No elderly; no youth; no citizens who have family and work responsibilities that do not allow for "all-nighters." Public participation should not be Darwinian.

> ...THE TIME INVESTED AND THE LATENESS OF THE HOUR BEGIN TO INFLUENCE THE PROCESS.

• *Emotional Considerations.* What affects do long meetings have on one's temperament? Sometimes you can see distinct changes in attitude – what would have been a difficult meeting in an hour or two becomes Dante's inferno after three hours.

• *Mental Considerations.* What affects do lengthy meetings have on mental acuity? Good decision-making under duress is severely compromised. Commissioners need to give their fullest attention to, and strongest consideration for each case and speaker.

• *Social Considerations.* How does one tell the public after hours of waiting to speak, they must come back another time only to possibly wait again?

Here are some suggestions to overcome these "hearings from hell":

1. Set hearing time limits that may be extended only if agreed to by a majority of commissioners. Four hours is a good maximum.
2. Set speaker limits. For hearings with extremely large attendance, a limit of three minutes per speaker is a common guideline. The chair can also ask each speaker to be specific and not repetitive. Discourage bloviating, hijacking, obsessing, pontificating, and showboating.
3. Announce timing limits at the outset of the hearing and advise the public of the potential items to be continued as soon as that appears likely.
4. Provide a series of breaks at appropriate times. Commissioners should get up and move about to improve circulation. Ten minutes an hour is a good average

Don't Blink

At the other end of the spectrum, have you ever been to a hearing that had the tempo and speed of a flamenco dance? The planning commission, public, and you should never wonder "What the heck just happened?" Moving through a hearing too quickly can adversely affect the process in other ways. It is especially destructive if for some reason members of the public missed their opportunity to voice their interests.

Here are some suggestions to avoid these "one-minute wonders":

1. Clearly explain the decision-making process to the public.
2. If this situation is common maybe this type of case could be delegated to staff.
3. In addition to case numbers, refer to the project by a name that is well-known when calling for public testimony.
4. Provide printed agendas that clearly note which items are for public testimony and any cases that are to be continued.
5. Place quick items first on the agenda.

Timing isn't just important – it's everything. ♦

Ric Stephens is a Principal with the Portland, Oregon, firm of Alpha Community Development, where he is responsible for community design services. He also serves on the City Planning Commission in Beaverton, Oregon. Ric will be the instructor for an online planning commissioner training course being developed by Planetizen. *See page 10 for details.*

FEATURE

Dealing With Contentious Public Hearings

by Wayne Senville

One of the toughest challenges facing planning commissioners is how to deal with contentious public hearings. Most commissioners, at some point or another, find themselves facing a crowd of angry citizens, and sometimes angry project applicants.

Since public hearings can involve controversial issues, it's not surprising when they become the focal point for strong emotions. When the temperature in the meeting room rises, it can also become more difficult for planning commissioners to consider the testimony and reach well-reasoned decisions. Planning board members may sit there wondering why some of the controversial issues couldn't have been resolved earlier. From my own experience serving on a planning commission, I can attest to the fact that I certainly felt that way on more than one occasion!

Over the past year, I asked a number of planners and planning commissioners what can be done to improve the public hearing process. The results are distilled in a dozen tips, grouped into two categories: Before the Hearing and During the Hearing. In some cases there are cautionary notes that go with the tip. But one piece of advice that applies to all of them: be sure to go over any proposed changes in your commission's procedures with your municipal attorney. What may be perfectly acceptable practice in one state or community, may be unlawful in another.

"It was a bear of a meeting."

I also want to invite you to continue the discussion on our PlannersWeb blog. Post your comments on our new Public Hearings Resources Page: www.plannersweb.com/hearings.html. Share what's worked – and what hasn't – in your own community. The aim is for all of us to learn from each other.

Before the Hearing

1. Consider Conducting Preliminary Project Reviews

One common approach to reducing the likelihood of contentious public hearings is to have preliminary project reviews. The idea is that less formal meetings before the public hearing can hone in on aspects of a project that might be problematic, giving applicants some feedback before they invest substantial time and money in preparing detailed plans and drawings.

A pre-application meeting can be especially helpful when a controversial project is about to enter the pipeline. Staff can identify to the applicant potential trouble spots with what is being proposed. Several planners I spoke with found this a very useful practice, particularly when input from various municipal departments (e.g., public works, engineering, and fire) is coordinated.

Pre-application meetings can also take the form of a meeting held before the planning commission, open to the public. In some places this is called a sketch plan or conceptual review. These names reflect the fact that the applicant is basically sketching out in broad terms what they'd like to do, without providing detailed plans. Sketch plan review can also be helpful in identifying potential concerns before the development application is finalized. *Sketch Plan Review, p. 14.*

One other approach is to have a more specialized advisory board – focusing on design review or conservation issues – conduct a preliminary review of the

The Origins of Public Hearings in Planning & Zoning

Public hearings were essential components of both the Standard State Zoning and City Planning Enabling Acts of the 1920s. These model laws served as the basis for most states' planning and zoning enabling laws, and their provisions largely remain the law today.

It's fascinating to see the reasoning behind the public hearing requirement. Here's the explanatory note from the Planning Enabling Act:

"The public hearing ... has at least two values of importance. One of these is that those who are or may be dissatisfied with the plan, for economic, sentimental, or other reasons, will have the opportunity to present their objections and thus get the satisfaction of having their objections produce amendments which they desire, or at least the feeling that their objections have been given courteous and thorough consideration. The other great value of the public hearing is as an educating force; that is, it draws the public's attention to the plan, cause some members of the public to examine it, to discuss it, to hear about it, and gets publicity upon the plan and planning. Thus the plan begins its life with some public interest in it and recognition of its importance."

project and forward its recommendations to the planning commission. Often, these citizen boards include members with special expertise or training, and can provide valuable insights on challenging aspects of a project. The downside, of course, is that they add another layer of review, lengthening the process.

• *Salem, New Hampshire* Town Planning Director Ross Moldoff, AICP, notes that preliminary meetings (called "conceptual discussions" in Salem) "can help flesh out the major issues by giving the planning board a chance for input, and letting abutters raise their concerns before the applicant is locked into a particular layout." As Moldoff further explains: "We don't have any criteria to identify such projects, but it's anything large or complex. Most applicants appreciate the opportunity for feedback before they do all the costly engineering work."

• Carolyn Baldwin, a long-time New Hampshire land use lawyer, echoes Moldoff's endorsement of these preliminary discussions. Even though, she notes, "comments at this stage are not binding on either party," the informal pre-application process "gives both the board and the applicant an opportunity to assess any public opposition and take steps to ameliorate the objections, if possible."

• "There is nothing more frustrating as a planning commissioner," says David Foster, a member of the *Santa Cruz, California*, Planning Commission, "than to have a project come for the first time to the commission with six months of design and engineering work behind it and a vested interest by both the applicant and city planning staff in the plans as prepared." As Foster observes, "this often results in the commission feeling that they are being obstructionist to request anything more than color or window placement changes." "Early review of schematic designs," he says, "can really open the door to much more creative thinking about things like building massing and possible variances that might allow for a better fit with the neighbors and dealing with site constraints."

There are potential downsides to informal, preliminary meetings. *Woodstock, Connecticut*, Town Planner Delia P. Fey, AICP, raises two red flags. First, if there are no submission standards, applicants can come in with presentations ranging from "the equivalent of a sketch on the back of a paper bag" to "professionally prepared plans." Second, the planning commission may be "worried, correctly, about predetermining their vote and may not give very clear advice to the applicant." As a result, Fey notes, "the applicant sometimes leaves seeming to be more confused than when they came in."

Connecticut land use attorney Timothy Bates also advises that these kind of meetings should only occur before a development application is filed. Once an application has been filed and the formal review process begun, Bates notes, "it is inappropriate for discussions to occur in any substantive way outside the public hearing process" since they would constitute ex-parte contacts.[1]

• *Brookline, Massachusetts*, Director of Planning & Community Development Jeff Levine, AICP, says that: "Having a 'design advisory team' of professionals who live in the community can be a good middle ground between just staff and the full planning board. The only drawback is that residents call for a design advisory team on projects that are really too small to have this additional layer of review, but that is the exception."[2]

2. Hold a Meeting in the Neighborhood

Another strategy that can reduce the likelihood of contentious hearings is to request an applicant to first meet with abutters and other neighbors. These meetings are usually organized by the applicant, though sometimes neighborhood associations sponsor them.

What's Planning Got to Do With This?

Let's not forget that perhaps the single most effective way of reducing the number of contentious hearings is by dealing with difficult issues during the long-range planning process. After all, planner Anne Krieg reminded me during a phone conversation, isn't this one of the points of putting together a comprehensive plan?

Elaine Cogan has also observed that "people with strong opinions always will find ways to be heard. But isn't it at least as valuable, or even more informative, to learn what less vocal but still concerned folk think? In an ideal world, we can engage them before the controversy erupts."

– From Now that You're on Board (Planning Commissioners Journal 2006).

Some cities and counties require neighborhood meetings on applications that have to go through a public hearing process (not applications that can be approved administratively). Most planners I spoke with saw value in neighborhood meetings, especially for larger or controversial projects – though several added cautionary notes.

• *La Paz County, Arizona*, Community Development Director Scott Bernhart, AICP, CFM, told me that he's "had success with work sessions in a community setting (in one case on site) with several planning commissioners present to observe neighborhood concerns." Bernhart adds that "these published and open meetings are normally conducted by the developer or a representative with staff attending."

• Florida planner Larry Pflueger says that one of the benefits of early neighbor-

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1 For more on the problem with ex-parte contacts, see Greg Dale's "Ex-Parte Contacts," *PCJ* #2 (Jan./Feb. 1992) and "Revisiting Ex-Parte Contacts," *PCJ* #70 (Spring 2008); available to order & download respectively at: www.plannersweb.com/wfiles/w516.html and .../w129.html.

2 Brookline's "Major Impact Project" review process, which outlines the Design Advisory Team process is set out in Sec. 5.09 of the city's zoning bylaw; available through: www.brooklinema.gov/planning.

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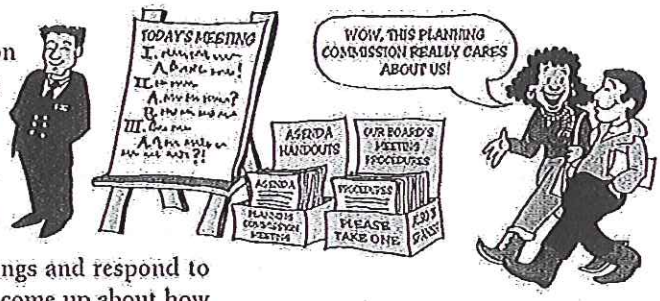
hood meetings attended by planning staff is that "they tend to dampen local criticism because the people get to look at the proposal before it gets into the official planning board review process." Pflueger believes that, "most of the time it seems that people fear the unknown so if the project is brought to them, they can see what is really being proposed rather than just hear the rumors about the project."

A related benefit, Pflueger notes, is that staff hear "what the real and perceived problems may be ... and if the problems cannot be put to rest at the neighborhood meeting, staff at least know what to concentrate on during its review and can point out the problem to the planning board prior to its meeting so that the board is not surprised when people show up."

• In *ARVADA, COLORADO*, applicants for rezonings, major subdivisions, PUDs, and conditional use permits are typically required to hold a neighborhood meeting at least twenty-one days before the planning commission hearing.[3] According to Senior Planner Gary Hammond, planning department staff (but not commissioners) attend these meetings and respond to any questions that come up about how the development review process works.



Hammond has found neighborhood meetings helpful since they give applicants a clearer sense of neighbors' concerns and an early opportunity to respond to them. At the same time, the meetings often "work to quell rumors residents have heard about what is going in." Copies of a summary of the meeting are provided to the planning commission before the public hearing. Applicants must indicate how they intend to address (or why they are unwilling or unable to address) concerns, issues, or problems expressed during the meeting.

• In *LAFAYETTE, COLORADO*, says Community Development Director Phillip Patterson, AICP: "We require applicants to provide comment cards to the participants of neighborhood meetings. This way the developer/applicant isn't in a position to 'summarize' the neighborhood's comments." Patterson also adds "we caution applicants on the format of their neighborhood meetings." As he explains: "Formal meetings, where a single presentation is made to a large group, can cause issues. While many of the attendees may be opposed to the project and are willing to speak, there may be others who support the project but are uncomfortable speaking out before their neighbors." As an alternative, "we encourage an open house type format where there are many representatives from the applicant available to speak one-on-one with members of the public."

While neighborhood meetings are also required for certain projects in *BAR HARBOR, MAINE*, Planning Director Anne Krieg, AICP, adds this note: "They seem to be effective in fleshing out the issues outside the hearing process, but they can backfire too, as they often give abutters a sense of empowerment that they don't have." That's because, she says, "the final review, deliberation, and decision rests with the planning board ... and when the planning board approves something the neighbors didn't like, but meets the ordinance, there is animosity at the end."

3. Have a Plan for Citizen Participation

Do you have a plan for how you involve the public in zoning and comprehensive plan amendments, as well as site

Editor's Note: The following is from Bar Harbor, Maine's land use ordinance.

Sketch Plan Review

A. Contents. Prior to requesting a review of a proposed subdivision plan ... an applicant shall submit a preapplication sketch which shall show ... the proposed layout of the streets, lots and other features in relation to existing conditions. The sketch plan shall be accompanied by:

(1) A copy of that portion of a USGS topographic map encompassing the site;

(2) Any written request for the waiver of submissions that the applicant intends to submit pursuant to §125-63;

(3) An outline of data on existing covenants, medium-intensity soil survey and soil interpretation sheets, and available community facilities and utilities, and by information describing the subdivision proposal such as number of residential lots, typical lot width and depth, price range, business areas, playgrounds, park areas and other public areas, proposed protective covenants, and proposed utilities and street improvements.

... C. Review of sketch plan ... the Planning Board shall entertain brief public comment on the proposal for the limited purpose of informing the applicant of the nature of any public concerns about the project so that such concerns may be considered by the applicant in preparing his/her application.

(1) Upon its review of a preapplication sketch plan, the Planning Board shall:

(a) Set a date for a site inspection ... within 30 days;

(b) Make specific suggestions to be incorporated by the applicant in subsequent submissions;

(c) Act on the applicant's request for submission waivers, if any;

(d) Determine the need to hold a neighborhood meeting in accordance with §125-74A.

... F. Rights not vested. The submission or review of or public comments about a preapplication sketch plan or the conduct of a site inspection shall not be construed to be a substantive review of the proposed subdivision as defined by 1 M.R.S.A. § 302...

3 For the text of the Arvada ordinance: http://arvada.org/city-services/land-development-code. Then look for Article 3.1.6 - Neighborhood Meetings.

plan, subdivision, planned development, and conditional use application reviews? The extent and methods of public participation may vary, but it makes sense to have written procedures or protocols in place and available to the public.

• Arizona law requires cities and counties to adopt procedures for "early and continuous public participation."[4] In *GLENDALE, ARIZONA*, for example, the city requires applicants to prepare a Citizen Participation (CP) Plan for staff review.[5] According to Tabitha Perry, a principal planner for the city, depending on the circumstances, the applicant may be asked to hold a neighborhood meeting before the public hearing.

The purpose of the CP Plan, Perry says, "is to ensure that applicants pursue early and effective citizen participation in conjunction with their land use applications." It gives them the opportunity "to understand and try to mitigate any real or perceived impacts their application may have." As a result, she observes, "most of the times we don't get any surprises" at the planning commission public hearing. *Citizen Participation Plan*

• When complex plans or zoning amendments are at issue, it is especially important to provide citizens with the opportunity to provide input early in the process. As Eric Damian Kelly and Barbara Becker have noted in their book *Community Planning: An Introduction to the Comprehensive Plan*: "At a public hearing on a complex plan – whether 23 pages or 223 pages – that has evolved from a year-long effort by the planning body, it is much more difficult for citizens to participate meaningfully ... At that stage in the planning process, both the planning body and the project budget are likely to be nearing exhaustion."[6]

Editor's Note: The following is excerpted from the City of Glendale, Arizona's zoning ordinance. The ordinance requirements are implemented in the city's "Citizen Participation & Public Notification Manual," available to download on our Public Hearings Resource page: www.plannersweb.com/hearings.html.

Citizen Participation Plan

... (d) At a minimum the citizen participation plan shall include the following information:

(1) Which residents, property owners, interested parties, political jurisdictions and public agencies may be affected by the application;

(2) How those interested in and potentially affected by an application will be notified that an application has been made;

(3) How those interested and potentially affected parties will be informed of the substance of the change, amendment, or development proposed by the application;

(4) How those affected or otherwise interested will be provided an opportunity to discuss the applicant's proposal with the applicant and express any concerns, issues, or problems they may have with the proposal in advance of the public hearing;

(5) The applicant's schedule for completion of the citizen participation plan;

(6) How the applicant will keep the planning department informed on the status of their citizen participation efforts.

(e) The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. The target area for early notification will be determined by the applicant after consultation with the planning department. ...

4. Conduct a Site Visit

After an application for a development project has been filed, but before the public hearing, many planning commissions conduct a site visit. Besides the benefits this provides commissioners in being able to better visualize the proposal, it can also serve as a vehicle for resolving – or at least understanding – neighbors' concerns.

Site visits call for staff or the Chair to go over the "ground rules" right at the start of the walk, and then make sure that discussions take place only when everyone in the group is together.

Anne Krieg has found that site visits "allow discussions to be a little more informal." But she also notes that during site visits she often becomes "the conversation police" in order to "make sure there isn't any unintentional ex-parte communication."

• Ken Lerner, Assistant Planning Director for *BURLINGTON, VERMONT*, has noted that: "Site visits are a critical part of the review process for major projects. We formally announce the time and place of any site visit during the public hearing on a project. Members of the public are welcome to attend. In order to help avoid ex-parte contacts and inappropriate comments during the site visit, we have prepared 'site visit guidelines' which are distributed to all those attending the site visit. In addition, either the commission Chair or a staff member verbally summarizes the guidelines at the start of the visit."[7]

Author's note: Having participated in quite a few site visits myself, I can attest to the above points. As a planning commissioner, I've seen neighbors and the applicant engage in conversations during site visits that have clarified important issues and concerns. But I've also heard concerns raised about commissioners who veer off into private side conversations with either representatives of the applicant or with neighbors. Even if they

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4 See Arizona Revised Statutes, "The governing body shall: adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of general plans. ..." Title 9, Sec. 461-06. For rezonings, " ... adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning *before* the public hearing. Title 9, Sec. 462-03 (emphasis added). Similar provisions apply to counties.

5 Glendale's "Citizen Participation & Public Notification Manual" (Sept. 1, 2009) is available to download on the PlannersWeb Public Hearings Resource page: www.plannersweb.com/hearings.html

6 Eric Damian Kelly and Barbara Becker, *Community Planning: An Introduction to the Comprehensive Plan* (Island Press, 2000), p. 118.

7 These Guidelines are included in a Sidebar to Greg Dale's, "Site Visits: Necessary But Tricky," *PCJ* #39 (Summer 2000); available to order & download at: www.plannersweb.com/wfiles/w346.html.

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were just chatting about the weather or last night's ball game, someone observing from several yards away may believe something of greater substance was being discussed.

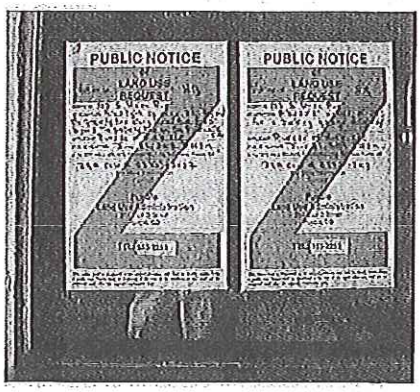
5. Make Your Meeting Noticeable

Providing adequate notice of meetings at which a project will be reviewed is essential. As Christine Mueller points out, the number one complaint she hears in *Dearborn County, Indiana*, is people saying "we didn't know about it."

Many planners and planning commissioners may view this as the kind of complaint that no amount of notice will ever totally eliminate. Nevertheless, it makes sense to review your public notice policies to see if you're consistently reaching those who might have a concern about a project. In today's online age, there's also really no excuse for not posting information about upcoming hearings on your municipal web site and using other online tools.

• Carolyn Braun, Planning Director for *Anoka, Minnesota*, suggests that when mailing out notices: "Include an additional paragraph – beyond the legal text – that explains, as simply as possible, the proposed development or request. Also, make it clear that comments can be mailed or emailed if they cannot make the meeting."

• Little things can also make a difference, such as making sure that application notices are designed to be highly visible, and spot checking to see that notices are not hidden behind screen doors or tucked away in obscure locations. A growing number of cities and towns, like *Pueblo, Colorado* (photo below) have switched to bold, easy-to-spot zoning notice signs.

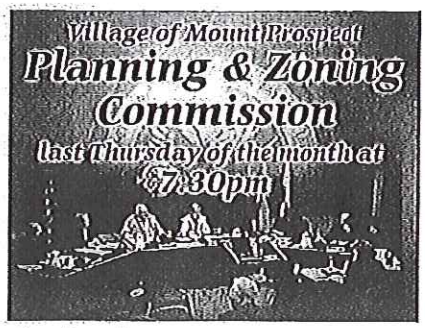


• Web sites and online social media can supplement posted and mailed public notices. For example, just in the past several months dozens of cities have started to use Twitter to announce upcoming meetings and post links to agendas and meeting minutes (see some of the municipal "tweets" posted on Nov. 15, 2009).

• Cable television has enabled many communities to broadcast public hearings. Some are even experimenting with allowing for public comment to be provided interactively. Cable can also allow for summaries of upcoming meeting agendas to be broadcast a few days in advance. For several years in *Burlington, Vermont*, the local public access channel broadcast a twenty minute show during which one of the city's planners took viewers on a "tour" of projects on the next agenda, providing a visual overview of each project.

6. Review the Agenda

It can be quite helpful for the Planning Director to meet with the Chair in advance of the meeting to go over the agenda and discuss the likely time requirements for each project. They can also identify potential problems or areas of controversy. The end result is having



The Village of Mount Prospect, Illinois, and the City of Troy, Michigan (above) are among the growing number of communities that broadcast their planning commission meetings live.

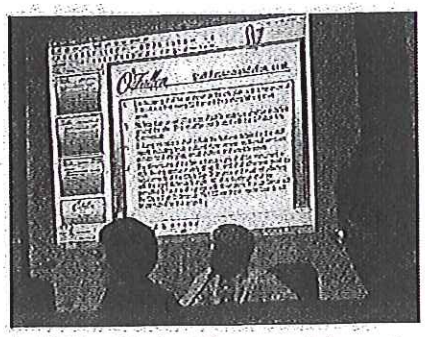
Online Tools & Public Participation

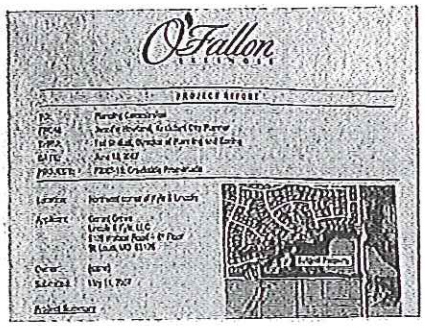
In a thoughtful series of articles on his web blog, Rob Goodspeed, a PhD student in urban studies and planning at MIT, addresses public participation in light of the rapidly increasing use of the Internet. For Goodspeed, online tools can supplement the use of public hearings. They are valuable in providing additional opportunities for public input and in allowing citizens to track issues and projects they're most interested in.

As Goodspeed notes: "The Internet is the ideal 'home base' for any multidimensional strategy for several reasons. It is increasingly the repository for disclosing government information. For this reason government officials often post meeting minutes, reports, and other documents of presumptive public interest."

"Also its persistent character means it is ideal to store reference or archival information for review at any time and place with a connection."

See "The Internet as a Participation Tool," Goodspeed Update (http://goodspeedupdate.com/2008/2225; posted June 26, 2008).





In O'Fallon, Illinois, staff recommendations and project reports are available as handouts and displayed on the hearing room screen.

the Chair more comfortable in running the meeting. It also almost goes without saying that all members of the commission should have the meeting agenda and packet in hand at least several days in advance.

• *PCJ* columnist Elaine Cogan suggests putting controversial items early in the agenda. "Too often, planners still put [the issues which most concern the public] last or next to last on the agenda even though they are well aware of one or more matters certain to attract a big crowd. It is no wonder that people get restless and cranky if they have to sit through several hours of deliberations that do not concern them."[8]

During the Hearing

7. Make Your Introductions Count

Open your meeting by introducing members of the commission and staff, and then explain how the meeting will be conducted and when public comments will be allowed. These first few minutes can go a long way towards reducing tensions at public hearings.

It's important to remember that for many members of the public, this may be their first time at a planning board meeting. Things that may seem matter-of-fact to you as a commissioner may seem mysterious or confusing to members of the public – a problem compounded by the jargon and acronyms often used when discussing planning issues. The only remedy is to take the time to go over the basics and explain terminology that's likely to be unclear.

Related to this, be sure to have plenty of copies of the agenda available, as well as handouts related to the applications under review, such as project summaries or staff recommendations.

• David Preece, AICP, Executive Director of the *Southern New Hampshire* Planning Commission, offers several common-sense suggestions: (1) have the Chair, not staff, start the meeting by going over its purpose, and describing the basic ground rules; (2) remember to have a sign-in list so people can receive a copy of the minutes and be alerted to any future meetings related to the application; and (3) have staff provide as objective as possible overview of each application.

8. Stay on Target

Planning commission meetings can go more smoothly, and take less time, when applicants clearly describe their project and how it meets the land use ordinance's review criteria. While the quality of the presentation is largely out of the commission's hands, planning staff can help ensure that pertinent, helpful information is provided.

Public confusion and anger at meetings can also be reduced when staff provide a clear summary of the project, an explanation of the relevant review criteria, and, if it's your community's practice, their recommendations on how the project meets or fails to meet these criteria. Consider also making any written staff

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8 Elaine Cogan, "First on the Agenda is the Agenda!" *PCJ* #49 (Winter 2003); available to order & download at: www.plannersweb.com/wfiles/w251.html.

Mediation & Consensus Building

by Kate Harvey

Across the country, many permit decisions on local land use applications unnecessarily end up in protracted litigation. While some of these disputes may in fact require litigation, many end up in court because the parties were never offered an opportunity for another way to resolve their dispute.

Several studies by the Lincoln Institute of Land Policy and the Consensus Building Institute have demonstrated that mediation and consensus building can be effective in resolving land use disputes.

Mediation is a way to resolve disputes that relies on the assistance of a trained neutral who works with the parties to develop voluntary solutions that are acceptable to all the parties.

Consensus building uses a set of techniques to help many diverse parties reach mutually acceptable agreements. It usually relies on non-partisan professionals to facilitate the process and typically includes five key steps: convening; clarifying responsibilities; deliberating; deciding; and implementing agreements.

These processes create opportunities for parties to understand and align divergent interests, develop creative solutions, build agreement on outcomes that all parties find acceptable, and plan for resolving "predictable" disputes related to implementation. Successful mediation and consensus building processes require selecting the right case, at the right time, and matching them with appropriate neutral assistance.

Increasing the use of mediation and other facilitated processes in the land use permit and appeal processes can reduce the burden on valuable judicial resources, save the parties time and money, and perhaps most importantly, resolve disputes that otherwise would divide the community into opposing camps.

Kate Harvey is an Associate at The Consensus Building Institute, Inc., where she works as a facilitator, mediator, researcher, and project manager. For a more in-depth look at this topic, including responses to frequently asked questions, see "Building Consensus: Dealing with Controversial Land Use Issues & Disputes," by Lawrence Susskind & Patrick Field in PCJ #48, Fall 2002, available to order & download at: www.plannersweb.com/wfiles/w168.html

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recommendations available to the public; this can reduce public distrust of the review process and allow for better focused comments.

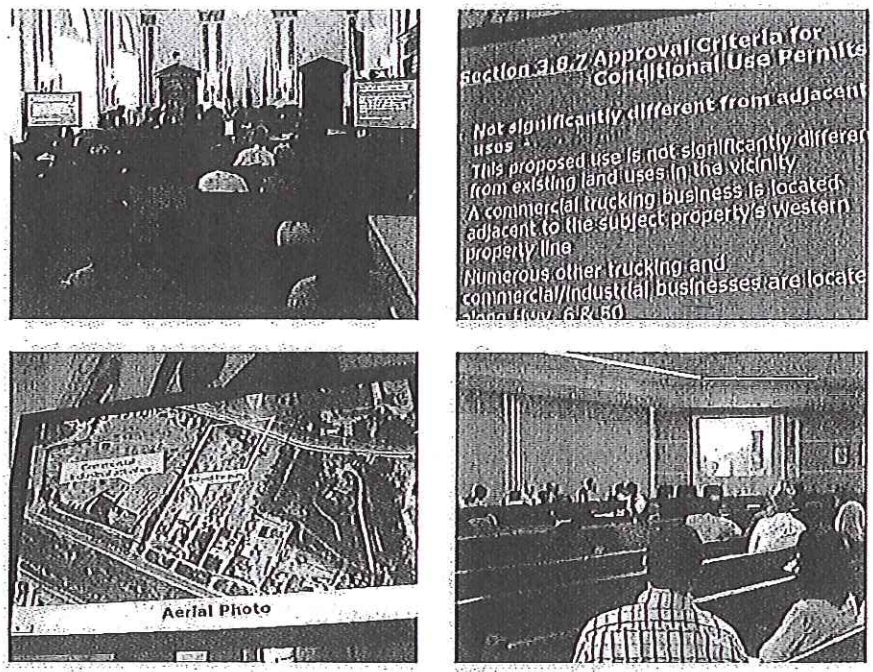
• *Wichita, Kansas*, planning consultant and attorney C. Bickley Foster, AICP, recommends using check lists to help keep a planning commission or zoning board on track and avoid technical errors. "We have hearing and decision making check lists for all zoning and subdivision matters, including sample motions. These were tested again last year when we provided consulting assistance on five casino cases. We have found them to be very useful, especially for contentious public hearings."

9. Have Visible Information

With laptop computers and screens or monitors readily available, there's little reason why maps, photos, charts, and other exhibits shouldn't be visible to all attending the hearing. There can be nothing as frustrating for a member of the public than not being able to see what an applicant is showing members of the planning commission.

Some communities also require applicants for larger projects to provide 3D models – either actual, physical models or computer simulations.

• Delia Fey told me how the use of laptops and projectors at planning meetings has been a big plus in her town of *Woodstock, Connecticut* (population 7,800): "Applicants used to bring their plans in and put them on an easel for the Commission to see. The audience could hear it but couldn't see it. Now, we have joined the modern age and require the applicant to bring digital images so we can project them on the screen with the laptop and computer projector. Even for a small town, it is not that expensive to do. That way everyone, including the audience, is looking at the same plans."



The display of information can be of great benefit to members of the public. Top row: Mesa County, Colorado, Planning Commission public hearing; bottom left: Jefferson City, Missouri, Planning Commission hearing; bottom right: hearing before the O'Fallon, Illinois, Planning Commission.

• In *Mesa County, Colorado*, and *O'Fallon, Illinois*, planning department staff also post the review criteria and their recommendations for each application on large monitors in the meeting room while giving their summary of the project. This clearly informs the public just what is relevant to the commission's review.

• Phillip Patterson says that in *Lafayette, Colorado*, "for larger developments we have been asking developers to present 3D models of their projects using Sketchup [a software program] to create fly-bys so that the planning commission and the public can get a better sense of the scale of the project and the actual design."

10. Allocate Time to Foster Useful Input

One challenge facing planning commissions when dealing with controversial applications is how to allow the applicant and members of the public adequate time to provide their presentations, comments, and questions – and, at the same time, avoid having hearings drag on late into the night.

There is also the need to get constructive input in a way that is helpful to the commission in reaching its decision. While many planning commissions set specific time limits for comments by members of the public, there may be better approaches, especially for complex projects. This includes opportunities for input and discussion in advance of the hearing (see also Tips 1-3).

• For complex applications, attorney Timothy Bates recommends setting, in advance of the hearing, time limits for the applicant and for any major interveners or abutters who have hired experts. Bates also suggests that "the Chair should encourage everyone who wishes to speak, but also say that if someone else has said more or less what they were going to say, they can limit their comments to endorsing the position previously taken."

• Another time-saving recommendation from Bates: "Avoid, if at all possible, having the Secretary read into the record letters and reports. The Secretary should report what letters and reports have been received and generally what they say and enter them in the record." As Bates explains, "forcing an unhappy public to sit there while each letter is read word for word simply raises the anger level."

Get Some Training

Planning Director David Preece recommends holding a planning commission training session to discuss how to run and participate at meetings, and how to deal with difficult behaviors that may come up.

Former *PCJ* Editorial Board Member Wayne Lemmon offered an interesting option.[9] "In the typical public hearing format, you get a long list of pro and con speakers that line up for hours of very repetitive three-minute statements. What I have seen work effectively is this: if there are organized or even just semi-organized groups (citizens for the plan / citizens against the plan), invite their leaders to make organized presentations of, say, fifteen minutes each, limiting those invitations to just the primary factions that can be identified. You'll get truly articulate and well-marshaled arguments for and against. Moreover, the speakers (particularly the opponents) finally get a feeling that they've had a chance to lay out all their arguments."

According to Lemmon: "Another benefit of this is that emotional and over-hyped comments are minimized, and the overall tone of the meeting is much more civil. You still get to do a general hearing, but after the formal presentation session, the speaker list is much shorter."

• David Preece suggests that the Chair not allow "back and forth" debates between members of the public and the applicant as this can be time-consuming and distracting.

11. Stay Cool: Recesses, Continuances, and Multi-Session Hearings

Don't be afraid to take a short recess during your meeting. Staff may be able to quickly resolve a question that has come up, or you may get an opinion from your legal counsel on an important point.

Continuing a hearing to your next meeting can also allow for a cool-off period, or give the applicant a chance to respond to suggestions from commissioners and the public.

With complex hearings it sometimes makes sense to divide the hearing into two sessions, rather than hear from the staff, applicant, supporters, and opponents, and have questions and discussions from commissioners, at a single meeting. If this is planned and announced in advance, it can also lower the heat at the initial session, as everyone knows that no immediate action will be taken.

• In *Manchester, Vermont*, says Planning Director Lee Krohn, AICP: "The use of a brief, mid-hearing recess has worked remarkably well on several occasions. We were able to resolve a key question of law or practice, and then keep the hearing moving forward. Since we had a crowd in the meeting room, it was simpler for the board and me to go to a small room to discuss in deliberative session, rather than inconvenience everyone else who would then have to mill about in the hallway. In other cases, we've simply called a five or ten minute recess to let everyone stretch – which can also help quite a bit in calming down overheated persons or emotions."

• Gary Gelzer, Chairman of the *Goodyear, Arizona*, Planning Commission, told me that: "When we run into a situation where things are not going well, or when staff is recommending a denial, yet the applicant is insisting that we have the hearing and reach some sort of decision, we have come up with the following that we usually offer during the hearing: 'Mr. Applicant, would you like a continuance or a denial?' and then some additional comments on having heard both the pros and cons for the case. This offer, right from the dais, either by myself or one of the other commissioners, usually halts most testimony in its tracks. Then a hasty conference between the applicant and their lawyer takes place. The next pronouncement from the Chair is 'I would suggest you work with staff to get these concerns ironed out so that we can make a decision on this case at the next meeting.' "

• Scott Wood, Assistant Director of the *New Albany, Indiana*, City Plan Commission, explains that "we have used tabling to help cool temperatures down, but only when the plan commission has some element that seems to be a 'deal breaker' and they want staff to work with the applicant to see if there's some way to make it palatable for all parties."

Wood cautions, however, to be careful with this tactic "because the developer often gets the feeling that if they satisfy staff then the board or plan commission will also go along ... when they don't go along, I get the grief!"

Florida planner Larry Pflueger

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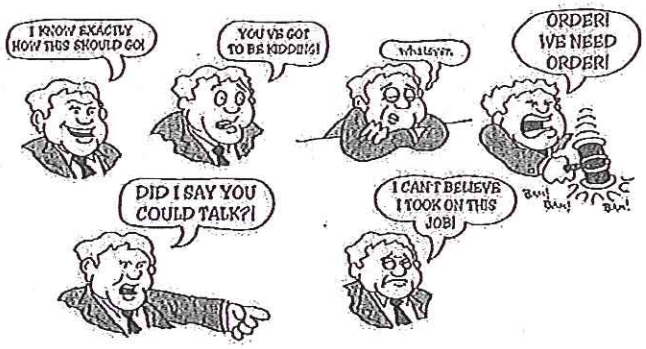
Chairing the Meeting

"The critically important role of the chair of a planning board cannot be overemphasized. The planning process suffers if the chair is either weak and unfocused or too strong and intimidating. Always show fairness and do not express your personal opinions, except when it is time to vote. If you must speak out, turn over the gavel to your vice chair. However, exercise that prerogative sparingly. Fairness also means you give everyone a chance to speak and deal quickly and decisively with those, either commission members or the public, who try to dominate the discussion."

Excerpted from Elaine Cogan, "On Being An Effective Commission Chair," from Now That You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner (Planning Comm'rs Journal 2006).



9 Wayne Lemmon passed away last winter, not long after providing feedback for this article. Lemmon was a long-time member of the *Planning Commissioners Journal*'s Editorial Advisory Board, and author of "Proforma 101: Getting Familiar With a Basic Tool of Real Estate Analysis" (*PCJ* #65, Winter 2007) and "The New "Active Adult" Housing" (*PCJ* #51, Summer 2003).

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advises that: "The continuance should be to a date and time certain. That way, neither party can play games with the process, for example, the government stringing the applicant along over an extended period of time to get concessions it otherwise might not have obtained."

• In *Lafayette, Colorado*, says Phillip Patterson "a technique that we have used that has been very successful is to require a controversial or very technical development plan to have two hearings before the planning commission." As he explains: "The first hearing is only the presentation by staff and the applicant. The planning commission can ask questions for clarification purposes, and the public is invited, but planning commission and public comments are held until the second meeting. The purpose of this two-part hearing process is to give the planning commission and the public the opportunity to fully understand the proposal prior to hearing public comments. This has assisted in focusing public comments on the specifics of the development plan, and reduced, but not necessarily eliminated, inaccurate, irrational, and emotional comments."

12. Show Respect

The single most important factor in "lowering the temperature" of public hearings is the model set by the Chair and members of the commission. If planning commissioners remain respectful of each other, of the applicant, of the public, and of staff, the odds of having a fruitful public hearing will be significantly improved.[10] At least that's my observation from having served on a planning commission for over ten years, and having attended meetings in a variety of cities and towns across the country.

Being respectful includes obvious, but too often forgotten, points like: arriving on time; not engaging in side conversations during the hearing; being polite to members of the public; and staying awake and attentive throughout the hearing!

It can be hard for commissioners to maintain their composure in the face of verbal assaults from members of the public. In fact, the commission – through its Chair – has an obligation to maintain decorum in the hearing room. But this doesn't negate the need for commissioners to control their temper and show respect.

• Attorney Timothy Bates notes that it is important for the Chair "to caution the public against cheering or jeering and inform them that while the Commission is anxious to hear the substance of any concerns, it cannot be swayed by the popularity or lack thereof of a particular project."

• Over the years, *PCJ* columnist Elaine Cogan has provided numerous tips on how planning commissioners can best deal with difficult members of the public.[11] But Cogan also reminds us that: "It is important that you show respect to the questioner even when you doubt the question. People ask stupid questions... hostile ones... tough ones... all of which you and your colleagues should answer as well as you can, but always respectfully. Sometimes, you and a citizen will have to 'agree to disagree,' but you should never show anger or lose your temper."[12]

They're Not Necessarily Wrong

"Though the worst personal traits often come out at public hearings, people are not necessarily wrong because they are angry, obstreperous and noisy ... as annoying as they may be, try to overlook these so that you can understand and respond to the substance of their comments."

– Elaine Cogan, "Show Respect to All," In Now that You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner (2006).

Summing Up:

Public hearings are an essential component of local democracy, allowing for public input on development applications, zoning cases, and comprehensive plan amendments. Given the significant role that public hearings play, it's not surprising that on complex or controversial projects they can become acrimonious. There are a number of ways, however, in which planners and planning commissioners can reduce the heat at hearings, while ensuring that they serve as an important and productive vehicle for public input.◆

Wayne Senville is Editor of the Planning Commissioners Journal. His previous articles and reports for the PCJ include "Libraries at the Heart of Our Communities," PCJ #75 (Summer 2009); "Downtown Futures," PCJ #69 (Winter 2008); "Crossing America," PCJ #68 (Fall 2007); and "Bright Ideas," PCJ #61 (Winter 2006). Senville has also served on the Burlington, Vermont, Planning Commission (1991-1999, and 2008-present, including three years as Chair).

Editor's Note:

Our "Consultants"

Thanks to the following individuals for providing feedback in the preparation of this article: Allan Slovin; Anne Krieg; C. Bickley Foster; Carolyn Baldwin; Carolyn Braun; Christine Mueller; Cynthia Tidwell; David Foster; David Preece; Delia Fey; Gary Gelzer; Gary Hammond; Jeff Levine; Jon Slason; Larry Pflueger; Lee Krohn; Mike Gurnee; Phillip Patterson; Rob Goodspeed; Ross Moldoff; Scott Bernhart; Scott Wood; Tabitha Perry; Timothy Bates; and the late Wayne Lemmon. A special thanks also to others who replied anonymously to questions we posted on the Cyburbia.org web site.

10 Commissioners should never berate staff in public. It is uncalled for and can threaten the effective functioning of the commission. For more on this point, see Elaine Cogan's "Staff Needs a Little TLC, Too," *PCJ* #3 (Mar./Apr. 1992); available to order & download at: www.plannersweb.com/wfiles/w440.html.

11 See, e.g., "Dealing With Difficult People Requires Finesse," *PCJ* #7 (Nov.Dec. 1992); available to order & download at: www.plannersweb.com/wfiles/w407.html, and "Meaningful Dialogue With the Public," *PCJ* #73 (Winter 2009); www.plannersweb.com/wfiles/w153.html.

12 "Show Respect," from *Now That You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner* (Planning Comm'rs Journal 2006).

Another Meeting?

by Elaine Cogan

"Another meeting? I sure didn't expect the commission to be that busy!"

"If I had known what I was getting into, I never would have let the mayor talk me into this."

"You'll just have to count me out next Wednesday. It's my bowling night."

If these or similar comments are such a familiar refrain that meetings are plagued by spotty attendance or lackluster participation, your planning board has a serious problem. Even the most diligent members must be absent sometimes, but this should be the exception not the rule. Following are examples of board members who exhibit such behavior and suggestions for what can be done about it.

Rejects special meetings. This member is willing to attend most or all scheduled meetings but balks at extra ones, even though the rest of the board may think it is essential. She may be a very organized person who allots only so much time to each activity and does not want to give her planning role one hour more than she "signed up for." Or she may be just marginally interested in the position.

If you ignore her needs with surprise or sudden meetings, you probably will have to put up with her absence. She might agree to attend an extra meeting once in a while, if it is set in advance so she has sufficient time to adjust her schedule. On the other hand, it is important to discipline yourselves and not have a habit of calling extra meetings. This is a disservice to all volunteer commissioners.

Unreliable attendee. This commission member never can be counted on, even for regular meetings. Though he agrees to come, he often has a last minute "emergency." Many planning boards can replace members who miss a certain number of meetings in a row. But what about the person who is absent sporadically? The chair should have a frank talk with him or with the office holder who appointed him, explaining how important it is to have all members attend regularly. Or speak to him personally, appealing to his sense of importance, "We really need your input, Tom and miss you when you're not here." With these approaches, you are likely to find the unreliable attendee improves his attendance, at least for a while.

> "You'll just have to count me out next Wednesday. It's my bowling night."

Commissioner "in name only." This commissioner has a sterling attendance record but rarely, if ever, participates. If he is truly disinterested, he may show it by yawning or tapping his pencil on the desk. Lack of participation can have other causes. He may be shy or convinced his opinion is not worth much. Whatever the reason for the behavior, the result is the same: a non-functioning member who dilutes the effectiveness of board discussions and decisions.

Do not let this behavior continue without specific efforts to draw him out. Commission members or the chair can ask him a pointed question such as "Joe, you have lots of experience in this area, what do you think?" or "before we vote, let's hear from everyone who hasn't said anything so far." To show how much he is valued, use his remarks as a point of reference to your own. He probably never will be the first to raise his hand, but he may feel more comfortable participating.

Not all members can be expected to have the same level of commitment. Retirees may have more time than business or professional people. The politically ambitious may view the appointment more as an impressive line on a resume than a commitment toward actual work.

Your community can increase the likelihood of having effective planning commissioners by taking several steps. First, make sure that all potential members are aware of what they are being asked to "sign up" for. Whoever makes the appointments should have a clear understanding of the responsibilities required of the commission, conveying this to potential appointees. To make sure everyone has the same information, draw up a "job description." Some people may decline after learning what this unpaid service entails.

Very soon after a new member is appointed, the chair or planning director should set up an introductory meeting to explain the ground rules and expectations and answer any questions about the workload and the level of preparation and participation necessary.

Finally, if you find that attendance by several commissioners continues to be a problem, it may be that your meetings are uninteresting or unchallenging. If so, ask yourselves if you spend too much time rubber-stamping development projects or staff recommendations and not enough time doing long-range planning. The latter is a challenging but fascinating task that should keep all commissioners actively involved. ◆

Elaine Cogan, partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, is a consultant to many communities undertaking strategic planning or visioning processes. Her column appears in each issue of the PCJ.

A Best Practices Model for Streamlined Local Permitting

Produced by:
The Massachusetts Association
of Regional Planning Agencies

MARPA

November 30, 2007

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Produced by:
The Massachusetts Association
of Regional Planning Agencies
Online at www.mass.gov/mpro

November 30, 2007

MASSACHUSETTS ASSOCIATION OF REGIONAL PLANNING AGENCIES

Berkshire Regional Planning Commission
1 Fenn Street, Suite 201, Pittsfield, MA 01201-6629
(413) 442-1521 • http://www.berkshireplanning.org/

Cape Cod Commission
3225 Main Street, Barnstable, MA 02630
(508) 362-3828 • http://www.capecodcommission.org/

Central Mass. Regional Planning Commission
35 Harvard Street, 2nd Floor, Worcester, MA 01609-2801
(508) 756-7717 • http://www.cmrpc.org/

Franklin Regional Council of Governments
425 Main Street, Suite 20, Greenfield, MA 01301-3313
(413) 774-3167 • http://www.frcog.org/

Martha's Vineyard Commission
P.O. Box 1447, 33 New York Avenue, Oak Bluffs, MA 02557
(508) 693-3453 • http://www.mvcommission.org/

Merrimack Valley Planning Commission
160 Main Street, Haverhill, MA 01830
(978) 374-0519 • http://www.mvpc.org/index.asp

Metropolitan Area Planning Council
60 Temple Place, 6th Floor, Boston, Massachusetts 02111
(617) 451-2770 • http://www.mapc.org/

Montachusett Regional Planning Commission
R1427 Water Street, Fitchburg, MA 01420
(978) 345-7376 • http://www.mrpc.org/

Nantucket Planning and Economic Development Commission
2 Fairgrounds Road, Nantucket, MA 02554 • (508) 228-7237
http://www.nantucket-ma.gov/Pages/NantucketMA_Planning/npedc

Northern Middlesex Council of Governments
Gallagher Terminal, 115 Thorndike Street, Lowell, MA 01852
(978) 454-8021 • http://www.nmcog.org/

Old Colony Planning Council
70 School Street, Brockton, MA 02301-4097
(508) 583-1833 • http://www.ocpcrpa.org/

Pioneer Valley Planning Commission
26 Central Street, Suite 34, West Springfield, MA 01089-2753
(413) 781-6045 • http://www.pvpc.org/

Southeastern Regional Planning and
Economic Development District
88 Broadway, Taunton, MA 02780
(508) 824-1367 • http://www.srpedd.org/

Massachusetts Association of
Regional Planning Agencies
www.pvpc.org

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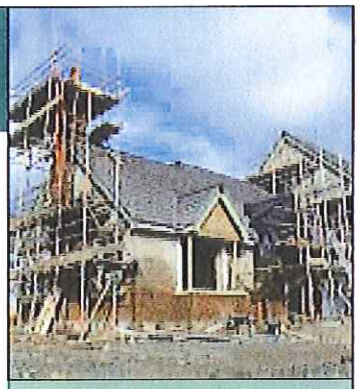
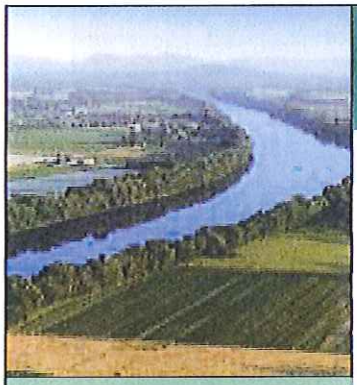


"Streamlined permitting is meant to get to a yes or no answer as quickly as possible without lowering any environmental or other review standards. This landmark MARPA work will help us to achieve that goal."

Representative Michael J. Rodrigues (D – Westport)

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



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SUMMARY

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

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

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

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

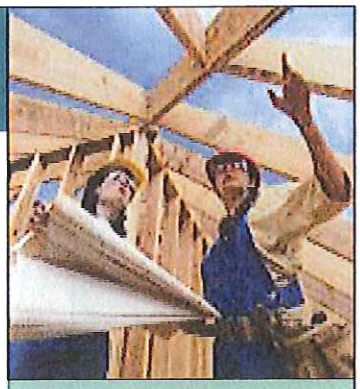
Upon receiving the Best Practices Guide, municipal leaders will have at their disposal an assortment of tools, all aimed at making permitting more predictable, consistent, and efficient without compromising local jurisdiction, encouraging imprudent projects, jeopardizing local resources or endangering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

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

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

Gregory Bialecki, State Permit Ombudsman & Assistant Secretary

I. INTRODUCTION



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

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

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

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

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

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

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

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

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

INTRODUCTION I.

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

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

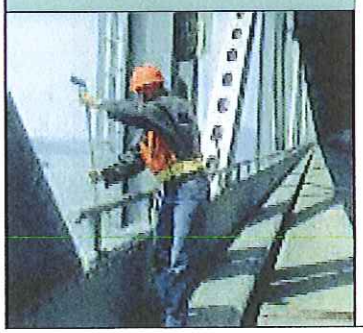
"At a time when many in the Commonwealth are considering changes to planning and zoning regulations and statutes, the Best Practices Guide provides a useful model to help community clearly and effectively express their visions to development stake-holders, and to provide economic development opportunities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

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

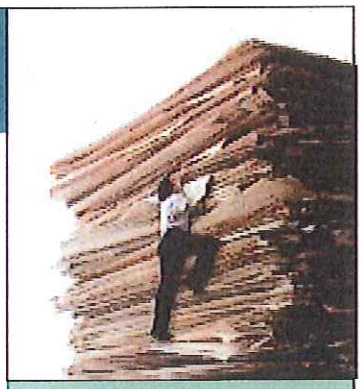
Implementing many of the recommendations in this Guide may be accomplished through administrative action led by town administrators and each regulatory board. Other Best Practices may require local legislative changes through Town Meetings, City Councils, or the Boards of Alderman. Still other recommendations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

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

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



II. BEST PRACTICES for Streamlining the Local Permitting Process



IMPROVING COMMUNICATION WITH PERMIT APPLICANTS

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

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

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

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

Richard L. Fitzgerald
Town Manager
Town of Palmer, MA

Single Point of Contact

#1

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

BENEFITS

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

CHALLENGES

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

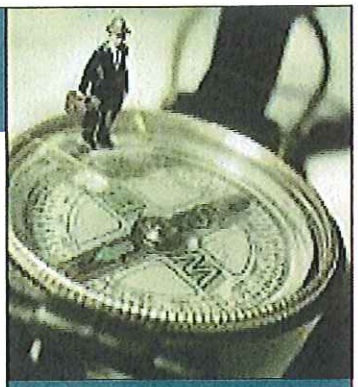
IMPLEMENTATION

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

REFERENCES

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

#2 User's Guide to Local Permitting



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

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

BENEFITS

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

CHALLENGES

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

Sample Permitting Guide

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

I. Introduction
   a) Purpose of guide/handbook
   b) List of what activities require permits/approvals

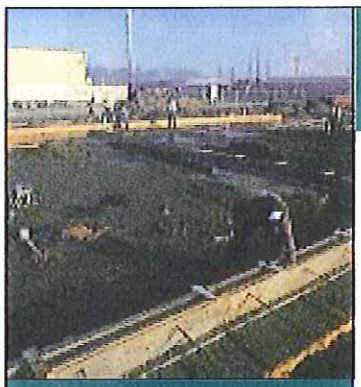
II. The People
   For each department and board involved in permitting, such as Planning Board, Board of Health, Conservation Commission, Building Department, Historic Commission, Board of Appeals, etc., the following information can be provided:
   a) Staff liaison and contact information
   b) Meeting schedule

REFERENCES

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

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

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



User's Guide to Local Permitting #2

c) Members

d) Description of board/commission/committee

e) List of permits issued

f) Process for obtaining permits

g) Timeframe for public hearing

h) Timeframe for decision

i) Appeals procedure

j) Fee schedule

k) Applicable local, state and federal statutes

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

III. The Permits

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

IV. The Process

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

Subdivision approval

Special permits

Variances

IMPLEMENTATION

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

REFERENCES

For specific examples see:

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

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

#3 Permitting Flow Charts & Checklists

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

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

BENEFITS

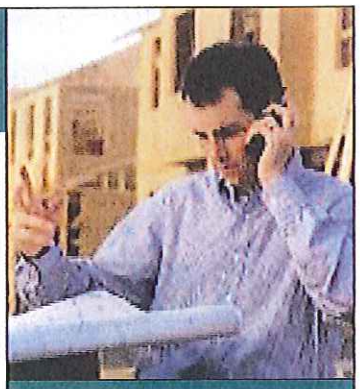
- Checklists and flow charts make the process transparent and demonstrate its uniformity.
- They are a valuable primer for applicants and new board or commission members with a limited knowledge of the permitting procedures and processes.

CHALLENGES

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

IMPLEMENTATION

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



REFERENCES

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

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

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

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

Permitting Flow Charts & Checklists

#3

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

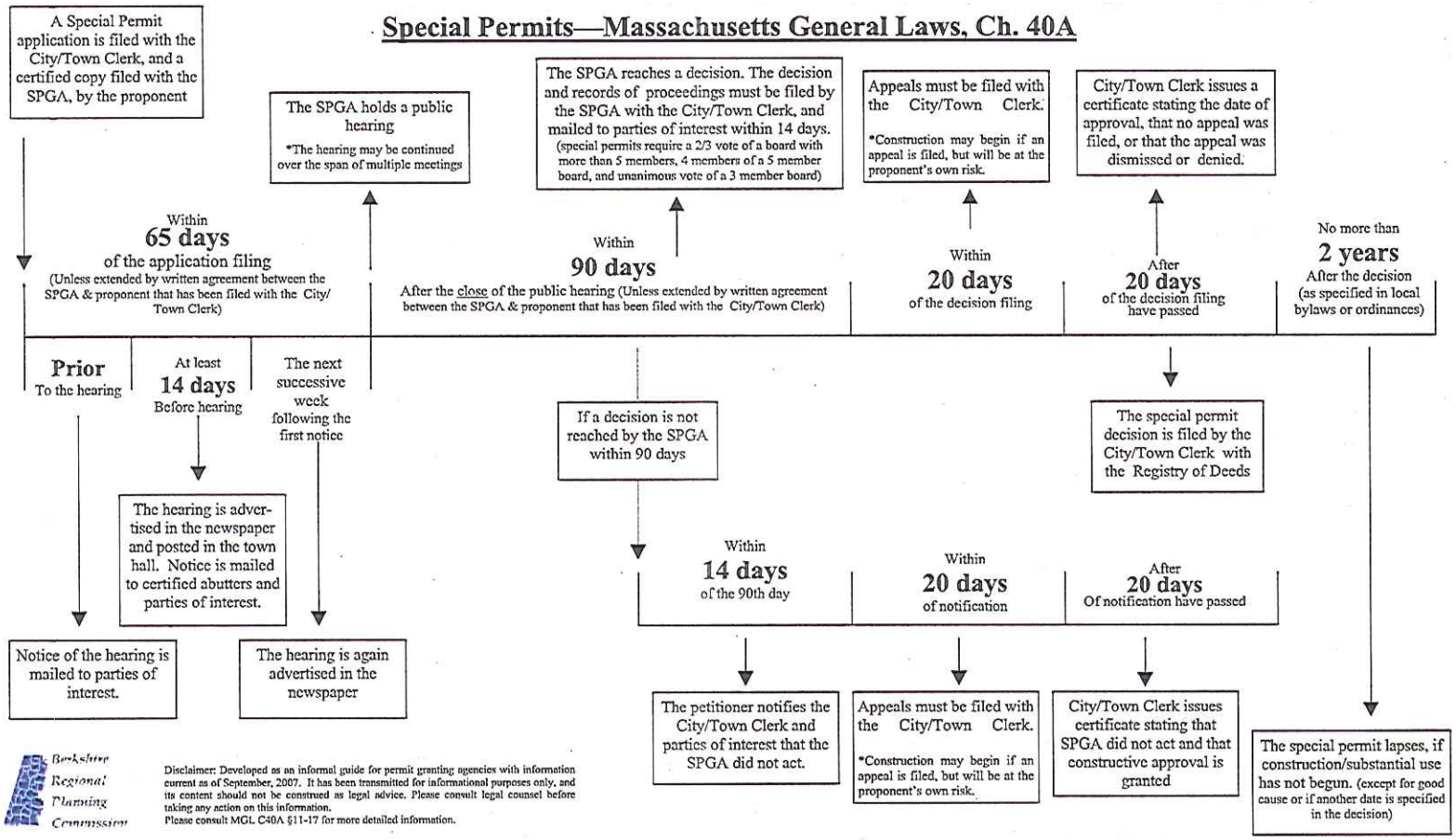
SPECIAL PERMIT CHECKLIST

Applicant: _____ Application No. _____

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

A = Applicant
O = Other party
B = Special Permit Granting Authority
Z = Zoning Officer
C = City/Town Clerk

Special Permits—Massachusetts General Laws, Ch. 40A



Berkshire Regional Planning Commission

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

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

Massachusetts Order of Conditions Timeline

A Notice of Intent (NOI) is filed with the municipal Conservation Commission and Mass DEP. Abutters within 100 feet of property lines are notified by certified mail. (Copies are also filed with MNHESP if work is located within a rare wetlands wildlife habitat area)

Within **21 days** of the NOI filing

If the NOI submission is incomplete → The DEP issues a No File Notification Number (NFN) → Within **21 days** of the NFN issue → The applicant must submit missing information

If the NOI submission is complete → The DEP issues a File Notification Number (FNN)

The Conservation Commission holds a public hearing (Hearing is closed when the ConCom is satisfied that the work meets standards, can't be permitted, or when the applicant refuses to allow a continuation)

Within **21 days** Of the FNN issue

At least **5 days** Before the hearing → The hearing is advertised in the newspaper and posted at town hall (at the expense of the applicant)

If a hearing is not held within 21 days of the FNN issue → Within **70 days** of the ConCom's failing to issue an Order or failing to hold a hearing → The applicant may file a lack of action appeal and request a Superceding Order of Conditions from DEP

The Conservation Commission issues an Order of Conditions

Within **21 days** of the close of the hearing

If an Order of Conditions is not issued within 21 days → Within **70 days** of the ConCom's failing to issue an Order or failing to hold a hearing → The applicant may file a lack of action appeal and request a Superceding Order of Conditions from DEP

Orders must be filed with the Registry of Deeds before work commences

Within **10 days** of the issuance of the Order of Conditions

Appeals may be filed, or DEP can intervene → Within **70 days** of an appeal or intervention

The DEP holds a site visit

If information is insufficient, supplements are requested of the applicant by DEP → Within **70 days** of the request for more info → The applicant must submit missing information

If there is sufficient information → The DEP issues a Superceding Order of Conditions (may be appealed within 10 days of issuance by the filing of a Notice of Claim for an Adjudicatory Appeal)

Within **40 days** of the submittal of missing information → The DEP issues a Superceding Order of Conditions

The Order expires, unless the issuing authority specifies that it is valid for longer (up to five years) Extensions can be requested by the applicant up to 30 days before the Order expires

Within **3 years** After the issuance of an Order or Superceding Order

Within **21 days** of the submittal of missing information → The DEP issues a File Notification Number (FNN)

Berkshire Regional Planning Commission

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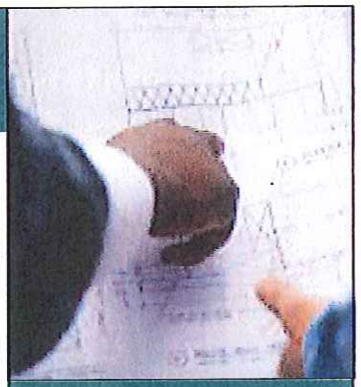
Please consult MGL C30A and 310 CMR 10.00 1.00 &4.00 for more detailed information.

#4 Clear Submittal Requirements



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

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

The following are useful materials to accompany agency submittal requirements:

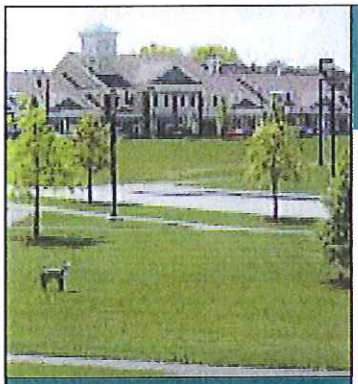
- *Timeframe for action:* This provides all parties with a schedule and deadlines for action.
- *Process for proposed project review:* This outlines how the board or commission conducts its reviews, including required public meetings or hearings.
- *Process for review of the application by other municipal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

BENEFITS

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

REFERENCES

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



Clear Submittal Requirements

#4

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

#5 Concurrent Applications

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

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

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

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

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

BENEFITS

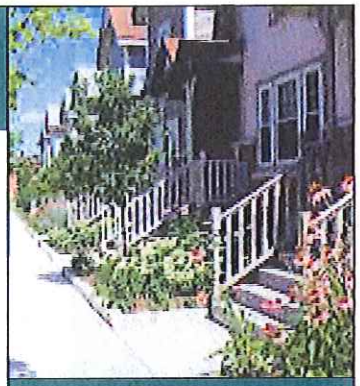
- May reduce the length of the permitting process.
- Allows the municipality to coordinate reviews, particularly of large or complex projects.
- Maximizes the benefits of other recommendation, such as Best Practice #6, *Combined Public Hearings* and Best Practice #8, *Project Technical Review Teams*.

CHALLENGES

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

IMPLEMENTATION

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



REFERENCES

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

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

Combined Public Hearings

#6

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

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

#7 Pre-Application Process

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

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

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

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

Project Technical Review Team

#8

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

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

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

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

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

BENEFITS

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

REFERENCES

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

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

#8 Project Technical Review Team

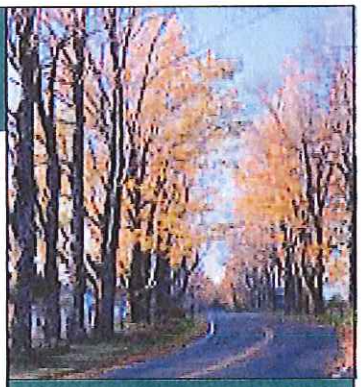
- Identifies critical issues and/or problems early in the application process.
- Allows sharing of a site's history and/or anecdotal information about the site.
- Enables creative solutions to design issues, perceived impacts, and municipal benefits.

CHALLENGES

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

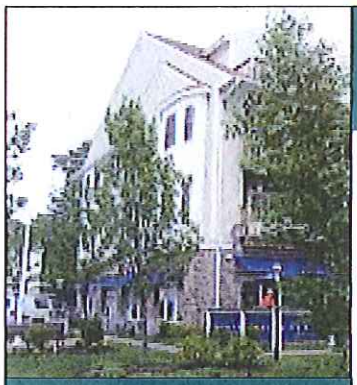
IMPLEMENTATION

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



REFERENCES

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



Regularly Scheduled Inter-Departmental Meetings

#9

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

#10 Physical Proximity of Professional Staff

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

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

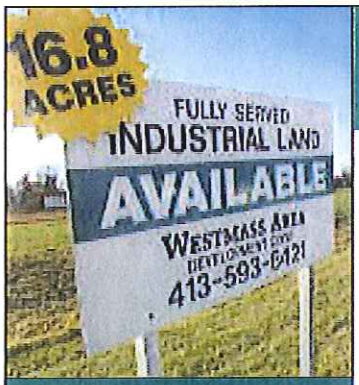
The municipal executive would implement, with department head concurrence.

REFERENCES

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

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

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



Development Agreements

#11

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

BENEFITS

For the Applicant/Developer

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

For the Municipality

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

CHALLENGES

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

REFERENCES

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

Downtown Hyannis Growth Incentive Zone, Hyannis, MA.

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

#11 Development Agreements

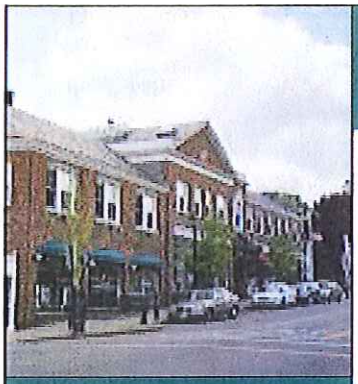
- To the extent that a development agreement may incorporate provisions which exceed existing regulatory authority, town meeting or city council approval may be required.
- Except in conjunction with a disposition of public land or a publicly bid contract, there exists debate as to the authority of municipalities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

IMPLEMENTATION

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

REFERENCES

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



Encourage the Use of Third-Party Consultants

#12

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

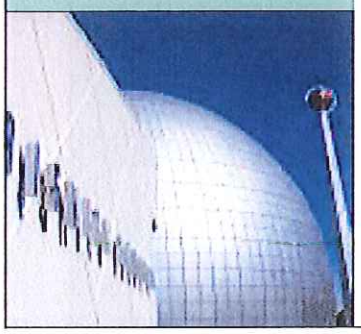
Municipalities that adopt Section 53G of Chapter 44 of the Massachusetts General Laws must amend the local rules and regulations to include a provision enabling municipalities to contract with outside consultants for planning services and other technical assistance.

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

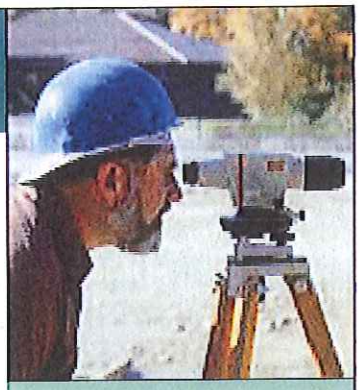
REFERENCES

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

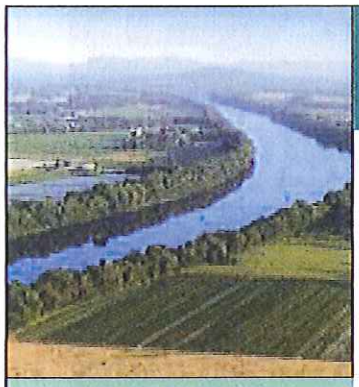
Town of West Tisbury provides for applicant-funded consultants to review wireless communications. http://www.town.westtisbury.ma.us/Documents/WT%20Zoning%20Bylaws%20April%2006.pdf



#12 Encourage the Use of Third-Party Consultants



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



STANDARDIZING THE PERMITTING PROCESS

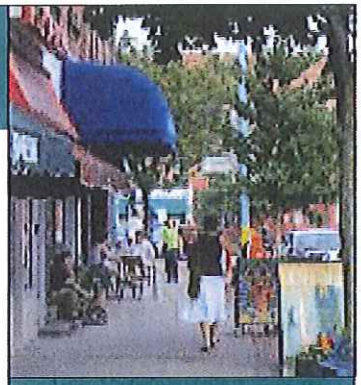
Predictability and consistency of the permitting process within a municipality advances the goal of more efficient local permitting. Permit applicants ought to have a good idea of what to expect from the municipal boards they encounter through the process, substantively as well as procedurally.

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

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

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

#13 Predictable Impact Fees



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

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

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

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

BENEFITS

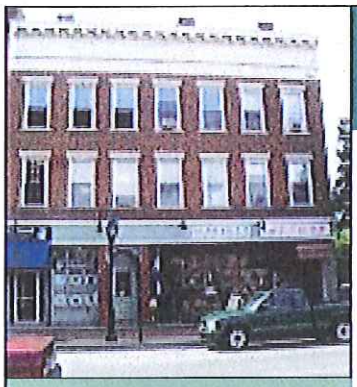
- Standardized and equitable impact fees can improve equity and promote impartiality in the mitigation of development-related impacts.
- Municipalities will have less risk than exists where payments are negotiated in return for discretionary permits, and applicants will have more clear and objective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

CHALLENGES

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

REFERENCES

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



Predictable Impact Fees #13

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

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

IMPLEMENTATION

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

#14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans

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

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

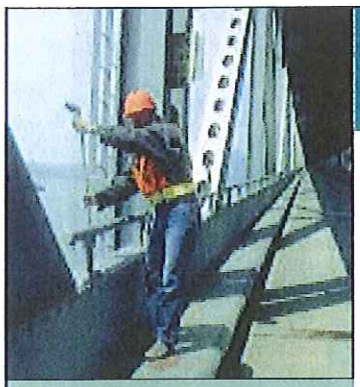
The development of a master plan or a community development plan would help to address this concern by permitting the municipality to enumerate its standards, expectations, and aspirations for developments of various types, in various locations. If a project were submitted that follows the specific development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

BENEFITS

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

REFERENCES

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



Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans

#14

CHALLENGES

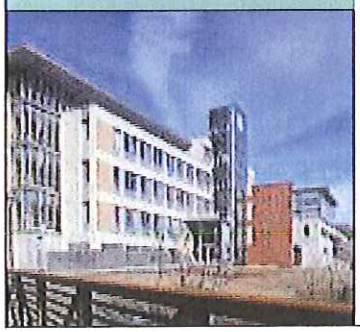
- Municipalities need to determine parameters of development that is desired. This can require additional planning and a potentially difficult political process.
- By shifting to by-right development, the community must identify in advance desirable mitigation for impacts of the development (see Best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

IMPLEMENTATION

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

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

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



#15 Effective Use of Site Plan Approval

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

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

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

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

BENEFITS

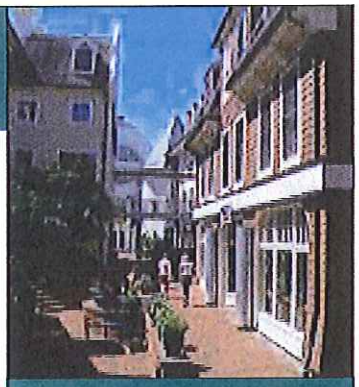
- Site Plan Approval/Review can be used to shape a project according to a plan for growth and change within a municipality.
- Site Plan Approval/Review gives a municipality the ability to define the character and scope of a project on a specific site.
- Site Plan Review brings a degree of certainty to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

CHALLENGES

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

IMPLEMENTATION

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



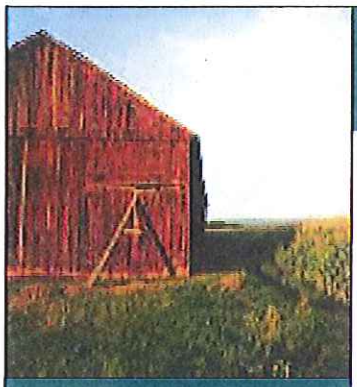
REFERENCES

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

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

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

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



Two-Tier Assessment Process #16

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

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

#17 Delegating Minor Decisions to Staff

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

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

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

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

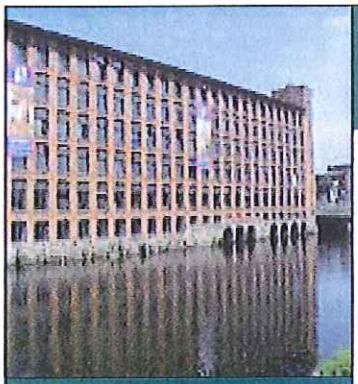
Massachusetts General Laws, in the Administrative Procedures Act, permits delegation of determinations and duties to staff but additional clarity would be helpful. See Section 13 of Chapter 40A of the Massachusetts General Laws. http://www.mass.gov/legis/laws/mgl/40a-13.htm

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

REFERENCES

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

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



Uniform Timelines, Notifications, and Appeals

#18

REFERENCES

See Best Practice #3 *Permitting Flow Charts & Checklists*

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

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

BENEFITS

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

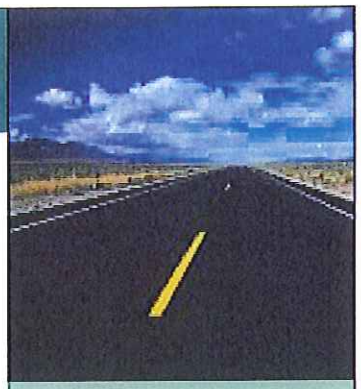
CHALLENGES

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

IMPLEMENTATION

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

RESOURCES FOR IMPROVING LOCAL PERMITTING PERFORMANCE

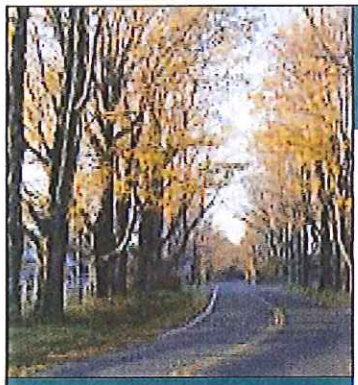


Adequate staffing and resources are integral to efficient planning and permitting. Unfortunately, communities across the Commonwealth are experiencing budgetary constraints that affect many public services, and planning and regulatory agencies are often most dramatically affected. These shortages are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

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

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

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



Adequate Staffing

#19

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

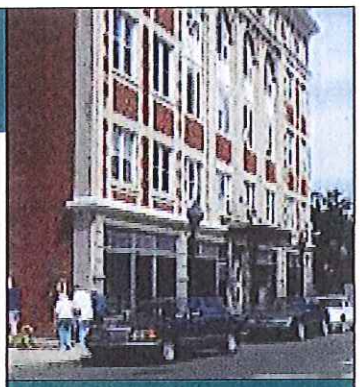
Generally speaking, Town Meeting or City Council approval is necessary to establish and fund staff positions, while the appointing authority is left to the mayor or municipal manager. State financial assistance through municipal aid, conditional grants or technical assistance can materially improve local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

REFERENCES

Consult your regional planning agency for available technical assistance.

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

#20 Create a Culture of Training



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

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

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

Maximize the Municipal Website #21

The use of the internet is increasingly becoming the preferred mode of communication for towns and cities across the Commonwealth. Municipalities are using the internet to conduct business and to communicate with residents, owners/applicants and non-profits via a "virtual town hall" website. While limited resources and inertia have slowed adoption of municipal web based regulatory education, administrative forms, information, and even filings, commentators agree that more universal web information would help regulators, administrators, owners, professionals, and applicants.

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

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

#21 Maximize the Municipal Website

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

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

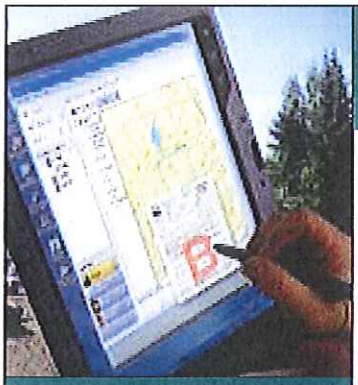
State regulatory agencies having oversight of local regulatory programs including Department of Environmental Protection, Department of Public Health, could provide standardized forms and web based availability, such as those used to administer the Wetlands Protection Act.

REFERENCES

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

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

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



Electronic Permit Tracking Systems #22

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

BENEFITS

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

CHALLENGES

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

IMPLEMENTATION

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

REFERENCES

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

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

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

#23 Create an Electronic Filing Process for Permit Applicants

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

BENEFITS

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

CHALLENGES

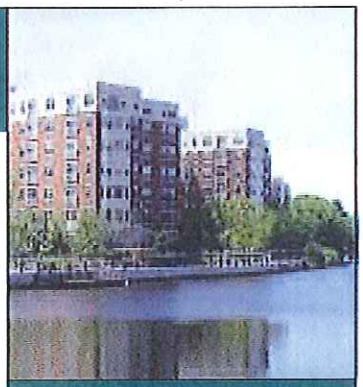
- All of the challenges related to Best Practices #21 *Maximize the Municipal Website.*
- Electronic filing systems must be managed. That means they must be updated regularly and consistently, and used uniformly.
- Like any software packages, it is corruptible and only as reliable as the network it is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

IMPLEMENTATION

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

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

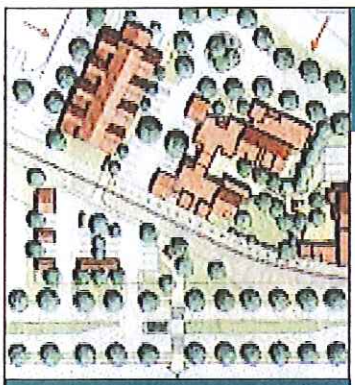
Effective electronic filing will require acceptance by each municipal regulatory board and commission, and also acceptance by associated state agencies, landowners, and applicants.



REFERENCES

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

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



PLANNING

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

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

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

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

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

REFERENCES

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

#24 Selecting Preferred Sites for Commercial or Industrial Development

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

BENEFITS

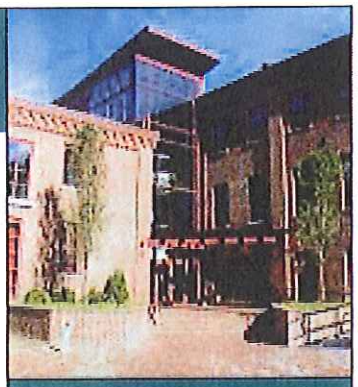
- The community is able to proactively select sites for particular types of development, rather than reacting to development proposals.
- Notice of the availability of such sites for development may be rapidly conveyed to investors/developers.
- Planning work already completed by the municipality and/or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

CHALLENGES

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

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

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



REFERENCES

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

Selecting Preferred Sites for Commercial or Industrial Development #24

Key elements of each step are summarized:

1. **Review existing planning reports and studies; collect new data as needed.**

- Did the community participate in Executive Order 418 Community Development Planning? If so, much of the work may have been done, and is likely to be current and timely. Gather all materials produced by the EO 418 Planning effort such as maps, narratives, information.
- The official website for Community Development Plans with a list of participating communities is found at: **http://commpres.env.state.ma.us/content/cdplans.asp#.**
- If the community did not participate in EO 418 Planning, collect all studies and reports, particularly those about land use. Contact the regional planning agency for resources.
- The Massachusetts Office of Geographical Information Systems is a resource for maps and data: **http://www.mass.gov/mgis/massgis.htm.** Regional planning agencies are also a good source for these materials.

2. **Propose appropriate sites for commercial, industrial, and mixed uses.**

- Study existing maps, reports, plans, and zoning for sites already identified as appropriate or being used for commercial or industrial uses (but perhaps not yet for expedited permitting). Include brownfields and state or federal surplus lands in the lands being reviewed.
- Consult with elected and appointed municipal officials, particularly members of any economic development committee as well as other relevant boards (e.g., Planning Board, Zoning Board of Appeals, the Board of Health, and Conservation Commission) and departments (e.g., planning, economic development, housing, community development, water and sewer, transportation). The Regional Planning Agency and state economic development agencies may also be consulted.
- Review available market information to determine feasibility of specific sites for proposed uses.
- Seek private sector expertise, such as the chamber of commerce, local realtors, and developers with a history of beneficial and desirable economic activity within the municipality.

3. **Analyze the sites.**

- Preferred sites should be evaluated based on:
  - a) Physical attributes, including topography, geology, soils, and hydrology.
  - b) Biological attributes, including wildlife and vegetation.
  - c) The Commonwealth's Ten Sustainable Development Principles (see www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf).
  - d) Cultural attributes, such as nearby historic sites, recreational resources, or tourist attractions. Such facilities may hinder or enhance the suitability of the site for commercial or industrial development.

REFERENCES

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

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

#24 Selecting Preferred Sites for Commercial or Industrial Development

- Existing infrastructure including transit services, bicycle and pedestrian access, water and sewer infrastructure, and proximity to town or city centers. Generally speaking, sites with existing or planned infrastructure are more suitable for commercial or industrial development than sites that would require entirely new infrastructure or the expenditure of substantial public dollars for expansion.
- Widespread stakeholder input is important. The site selection process is far more likely to result in successful permitting process and ultimate development if neighbors (both residential and commercial), as well as other key organizations and individuals in the municipality, support efforts to attract commercial and/or industrial development. Stakeholders are more likely to support the outcome if they have been involved in the deliberative process from the beginning.
- Town staff and board members, such as the Planning Board and Conservation Commission, might assist in evaluating sites.

4. **Compare the sites against existing zoning.**

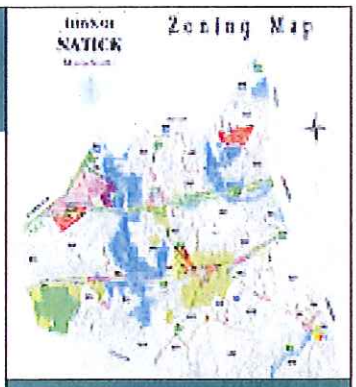
- Are the sites identified for industrial and commercial use actually zoned "Industry (or Manufacturing)" or "Commercial"?
- Do the uses permitted in the zoning bylaw or ordinance match contemporary industrial or commercial uses? For example, is medical device manufacturing allowed as-of-right in an area zoned for industrial uses?

5. **Review market criteria and potential uses.**

- Consult with local real estate professionals and development officials to determine which types of development have the greatest market demand both currently and in the near future, and assemble the siting criteria and potential impacts of these development types.
- Apply market criteria to the prospective sites, focusing on those sites which have the greatest potential for specific types of uses.
- Note that market conditions tend to change more rapidly than plans or land use regulations, and that significant flexibility should be built into the site selection and any proposed zoning or regulatory changes.

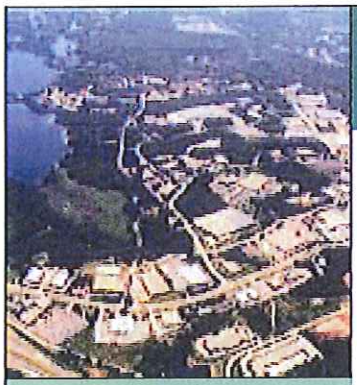
6. **Finalize the list of sites.**

- Eliminate sites that did not pass analysis under Step 3 with particular regard for the Ten Sustainable Development Principles.
- Consult Best Practice #25 *Designating Priority Development Sites Under Chapter 43D*, to determine if any preferred sites for development identified also qualify for funding through the 43D expedited permitting program.
- Eliminate sites that are not appropriately zoned and cannot be re-zoned for future economic development.
- Propose new zoning regulations, such as site plan approval, a "pre-permit" process, or other methods to expedite permit approvals for the properties on the list of preferred sites.



REFERENCES

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

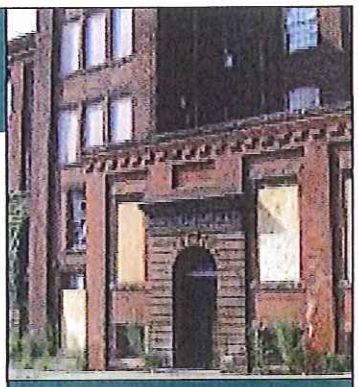


Selecting Preferred Sites for Commercial or Industrial Development #24

IMPLEMENTATION

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

#25 Designating Priority Development Sites Under Chapter 43D



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

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

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

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

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

BENEFITS

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

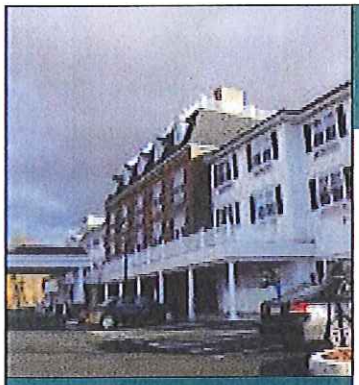
REFERENCES

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

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

Designating Priority Development Sites Under Chapter 43D

#25



CHALLENGES

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

IMPLEMENTATION

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

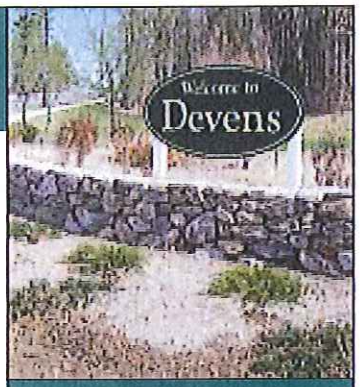
As of November 1, 2007, the Interagency Permitting Board has approved Chapter 43D sites in the following municipalities Worcester, Uxbridge, Medway, Attleboro, Leominster, Pittsfield, North Reading, Burlington, Canton, Douglas, Lowell, Marlborough, Walpole, Shrewsbury, Athol, Grafton, Amesbury, Haverhill,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

REFERENCES

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

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

#26 Pre-Permitting for Selected Sites



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

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

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

What additional mitigation may be necessary.

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

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

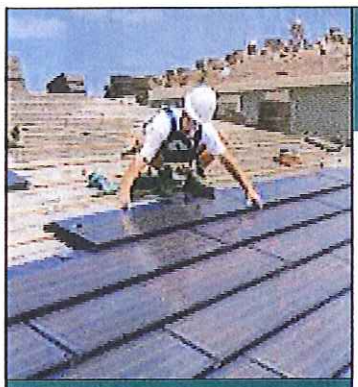
BENEFITS

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

REFERENCES

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

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



Pre-Permitting for Selected Sites #26

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

CHALLENGES

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

IMPLEMENTATION

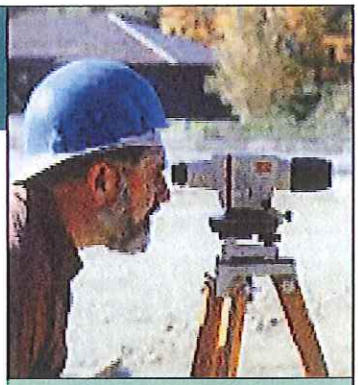
Local bylaws, ordinances, or rules and regulations may need to be adopted or amended to include a pre-permitting process that balances community interests and concerns with the municipality's interest in promoting itself as an attractive candidate for economic investment to developers.

REFERENCES

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

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

III. IMPLEMENTATION



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

WHAT LOCAL GOVERNMENT LEADERS CAN DO NOW

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

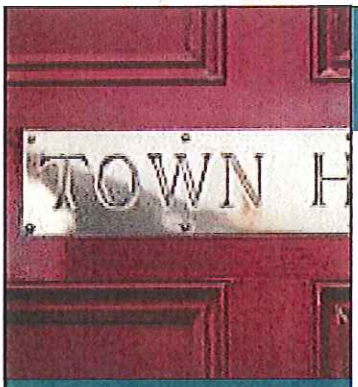
The Best Practices listed below can be accomplished by modifications to staffing or organizational structure within municipal government. Any department or board affected by proposed changes would be involved in implementing the Best Practice. Some other Best Practices can be accomplished through a directive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

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

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

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

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



IMPLEMENTATION

#20 Create a Culture of Training

#21 Maximize the Municipal Website

#22 Electronic Permit Tracking Systems

#23 Create an Electronic Filing Process for Permit Applicants

#24 Selecting Preferred Sites for Commercial or Industrial Development

REFERENCES

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

WHERE LOCAL ORDINANCE OR BYLAW CHANGES MAY BE NEEDED

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

#4 Clear Submittal Requirements

#6 Combined Public Hearings

#7 Pre-Application Process

#11 Development Agreements

#12 Encourage the Use of Third-Party Consultants

#14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans

15 Effective Use of Site Plan Approval

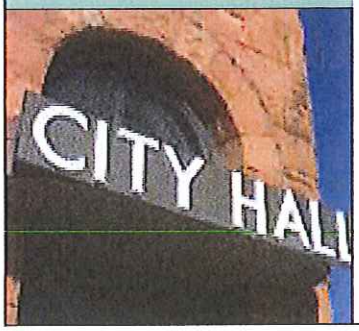
#16 Two-Tier Assessment Process

#17 Delegating Minor Decisions to Staff

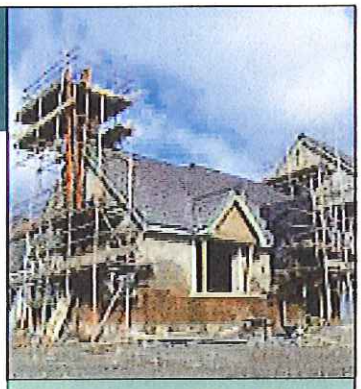
#18 Uniform Timelines, Notifications, and Appeals

#25 Designating Priority Development Sites Under Chapter 43D

#26 Pre-Permitting for Selected Sites



IMPLEMENTATION



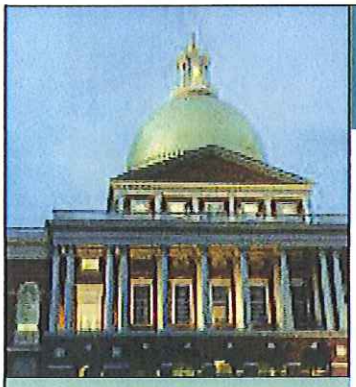
WHERE STATE LEGISLATIVE ACTION MAY BE NEEDED

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

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

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

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



IMPLEMENTATION

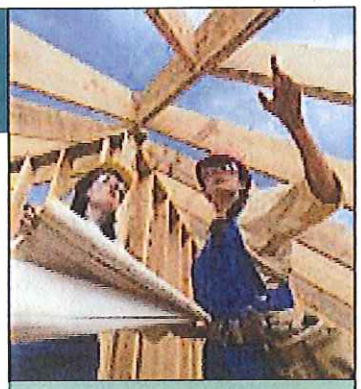
STATE ASSISTANCE

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

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

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

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



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

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

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

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

CONCLUSION IV.

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

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

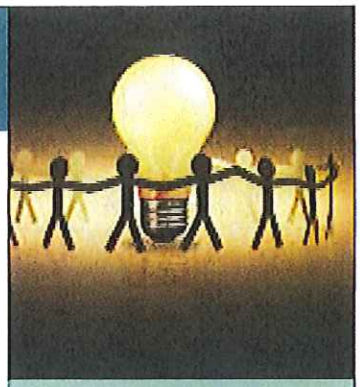
David Wluka, Immediate Past President, Massachusetts Association of Realtors

V. ACKNOWLEDGEMENTS

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

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

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



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

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

Keith A. Bergman
Town Administrator
Town of Littleton, MA

MARPA

APPENDICIES

VI.

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

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

A. Chapter 43D: A Step-by-Step Guide to Adoption
(see page 57)

B. Literature Review on Steamlining Permitting
The Review provides background information and summarizes the efforts of previous Administrations to analyze permitting practices in the Commonwealth and includes their recommendations to improve the system. (Appendix B can be found online at www.mass.gov/mpro)

C. Permit Tracking Software Guide
The Software Guide reviews and provides comparisons of commercially available products that a municipality may choose to invest in to track permits electronically. (Appendix C can be found online at www.mass.gov/mpro)

D. Summary of Municipal Permitting Statewide Survey
The report summarizes the survey results on the local permitting practices of 215 municipalities, representing 61% of the Commonwealth. The basic categories of the questions were: the objective local permitting characteristics; the level of interest in state incentive programs; and the local opinion of the development and permitting process. (Appendix D can be found online at www.mass.gov/mpro)

E. Summary of Statewide Focus Group Sessions on Expedited Permitting
The report summarizes the common themes and major topics addressed at 14 focus groups, with participation of over 160 people from private and public sector permitting professions including business representatives, attorneys, selectmen, local board and commission members, developers, planners, and engineers, to name a few. (Appendix E can be found online at www.mass.gov/mpro)

F. References and Links
(see page 62)

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

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

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

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

(1) zoned for commercial, industrial or mixed uses;

(2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and

(3) approved by the landowner(s) as a priority development site.

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

(1) located adjacent to areas of existing development;

(2) include underutilized buildings or facilities; or

(3) ocated close to appropriate transit services.

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

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

Step 2: Consult your Regional Planning Agency (RPA)

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

Step 3: Approach the relevant landowners

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

Step 4: Review Zoning Bylaws and Ordinances

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

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

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

Step 5: **Consult with relevant boards and commissions**

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

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

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

Step 6: **Finalize Location**

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

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

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

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

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

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

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

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

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

Step 9: Identify a Single Point of Contact

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

Step 10: Submit Application to Interagency Permitting Board

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

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

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

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

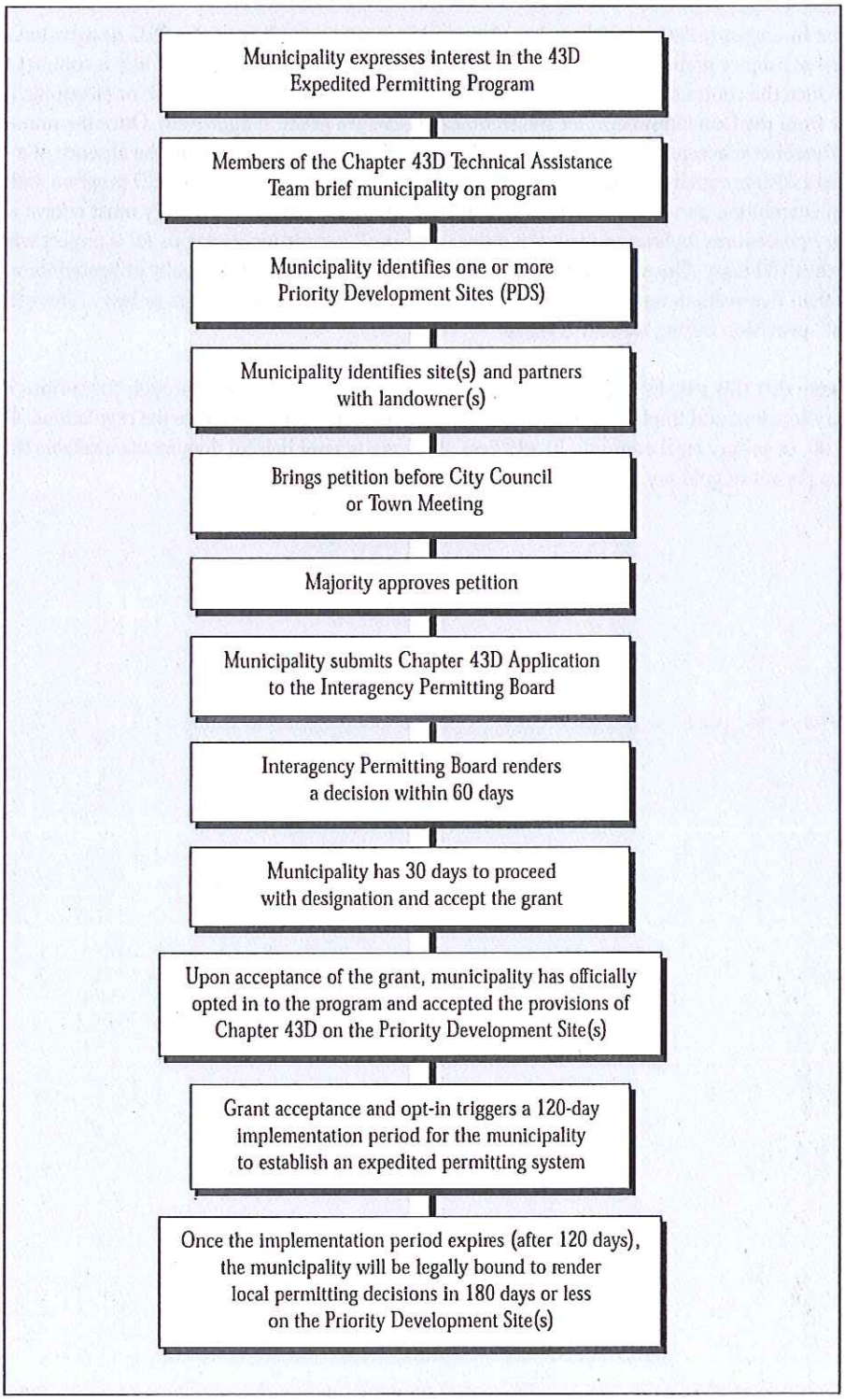
Step 11: Opting in

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

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

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

Massachusetts Permit Regulatory Office
CHAPTER 43D FLOW CHART



APPENDIX F: References and Links

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

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

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

#1 Single Point of Contact

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

#2 User's Guide to Local Permitting

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

#3 Permitting Flow Charts & Checklists

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

#4 Clear Submittal Requirements

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

#5 Concurrent Applications

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

#6 Combined Public Hearings

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

#7 Pre-Application Process

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

All documents shown in RED can be found online at www.mass.gov/mpro.
For websites shown here in BLUE, please go directly to the website address listed.

- Martha's Vineyard Commission pre-application staff/applicant meetings (or scoping sessions) at www.mvcommission.org

#8 Project Technical Review Team

- www.ashlandmass.com/planning/public_documents/pln_rulesregulations.pdf
- http://www.hingham-ma.com/document/ZoningBylaw.pdf
- See http://www.town.canton.ma.us/ for information on Canton's Permit Advisory Committee.

#9 Regularly Scheduled Inter-Departmental Meetings

- Lincoln and Hingham have initiated inter-departmental meetings. See http://www.lincolntown.org/; http://www.hingham-ma.gov/selectmen/townadministrator.html

#10 Physical Proximity of Professional Staff

- Newton and Franklin share office space. See http://www.ci.newton.ma.us/; http://www.franklin.ma.us/

#11 Development Agreements

- Contact the Cape Cod Commission at (508) 362-3828 for more information on development agreements regarding a) the Downtown Hyannis Growth Incentive Zone, Hyannis, MA; b) The Town of Barnstable and Cape Cod Health Care.
- For the Cape Cod Commission Model Development Agreement Bylaw, see Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990 of the Massachusetts General Laws.
- See the Town of Sharon Developer's Agreement for Sharon Commons, received and recorded at the Norfolk County Registry of Deeds Book 24610 P338 dated March 12, 2007.

#12 Encourage the Use of Third-Party Consultants

- See Section 53G of Chapter 44 of the Massachusetts General Laws.
- Town of West Tisbury provides for applicant-funded consultants to review wireless communications at http://www.town.westtisbury.ma.us/Documents/WT%20Zoning%20Bylaws%20April%2006.pdf

#13 Predictable Impact Fees

- Towns within Barnstable County may impose impact fees upon certification of their local comprehensive plans by the Cape Cod Commission. See Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990 of the Massachusetts General Laws.

#14 Objective Criteria for Special Permits, Of-Right Zoning, and Master Plans

- Contact DHCD for the most up-to-date listing of communities that have adopted 40R; and EOHED Permit Regulatory Office for complete list of communities that have adopted Chapter 43D of the Massachusetts General Laws.

#15 Effective Use of Site Plan Approval

- Raynham and Danvers are two municipalities with site plan bylaws or ordinances. See http://www.town.raynham.ma.us/Public_Documents/RaynhamMA_ZoningRegs/Article13 and http://www.danvers.govoffice.com/
- See the Citizen Planner Training Collaborative at www.umass.edu/masscptc; Click training programs, then click training modules.

#16 Two-Tier Assessment Process

- See the Town of Franklin Site Plan Review at the Citizen Training Collaborative www.umass.edu/masscptc

All documents shown in RED can be found online at www.mass.gov/mpro.
For websites shown here in BLUE, please go directly to the website address listed.

#17 Delegating Minor Decisions to Staff

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

#19 Adequate Staffing

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

#20 Create a Culture of Training

- Citizen Planner Training Collaborative at www.umass.edu/masscptc

  For information on MACC (Massachusetts Association of Conservation Commissions) see http://www.maccweb.org/
- For information on MAHB (Massachusetts Association of Health Boards) see http://www.mahb.org/

#21 Maximize the Municipal Website

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

#22 Electronic Permit Tracking Systems

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

#23 Create an Electronic Filing Process for Permit Applicants

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

#24 Selecting Preferred Sites for Commercial or Industrial Development

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

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#25 Designating Priority Development Sites Under Chapter 43D

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

#26 Pre-Permitting for Selected Sites

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