Citizen Planner Training Collaborative (CPTC)
Workshop Supplement

ADOPTING AND REVISING RULES AND REGULATIONS

A. Introduction

> While the movement for uniform, comprehensive administrative procedure acts at the federal and state levels achieved a considerable measure of success, particularly in the decade or so following World War II, it never reached down to achieve a comparable measure of success at the local governmental level. Massachusetts, just as most other states, never adopted a uniform and comprehensive administrative procedure act to govern the activities of local administrative agencies and officials in the cities and towns of the Commonwealth…
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> Massachusetts has enjoyed a strong and continuing tradition of local self-government and home rule which, of course, militates against the concept of state statutorily imposed uniform and comprehensive standards of local administrative agency or official procedure. Moreover, the existence of specific statutes in various areas of local governmental activity controlling the exercise of power by municipal agencies and officials and, in some areas, setting forth a right of appeal to state administrative agencies or officials, or affording judicial review of municipal action by aggrieved parties in the event of adverse local decisions, has tended to obscure the need for a uniform and comprehensive municipal procedural code.[1]

1. Regulatory authority, generally

"An administrative agency has the authority to promulgate regulations giving effect to legislative mandates." Massachusetts Federation of Teachers, AFT, AFL-CIO v. Board of Education, 436 Mass. 763, 773 (2002).

A regulation, however, does not have the same force or effect as does an ordinance or bylaw, duly-adopted. Administrative regulations are not binding on Massachusetts courts; yet the courts do "give great weight to a reasonable construction of a regulatory statute adopted by the agency charged with its enforcement." Zoning Bd. of Appeals of Wellesley v. Housing Appeals Committee, 385 Mass. 651, 654 (1982)

(citations omitted). "[W]e must apply all rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate," they have said. Consolidated Cigar Corp. v. Department of Public Health, 372 Mass. 844, 855 (1977).

2. Types of rules and regulations

A variety of rules and regulations arise in the context of municipal land use, planning and zoning law. Boards of appeal and planning boards, e.g. where the latter act as special permit granting authority, as site plan review authority or in the area of subdivision control, frequently choose to, or are required to, adopt rules and regulations governing process, procedure and even the substance of their application reviews. The most common types of rules and regulations promulgated by these boards are addressed below. Also addressed, but not at length, are the regulatory powers of conservation commissions, boards of health, historic district commissions and other local bodies. Finally, the assessment of fees is addressed, including the types of fees, their reasonableness and the difference between fees and taxes.

B. Zoning Regulation

Under G.L. c. 40A, § 12, a board of appeals "shall adopt rules, not inconsistent with the provisions of the zoning ordinance or by-law[,] for the conduct of its business and for purposes of this chapter [a.k.a. the Zoning Act] and shall file a copy of said rules with the city or town clerk." See also G.L. c. 40, § 33 (which provides that "[a] copy of all rules and regulations made by town boards or officers for which a penalty is provided by law shall be filed with town clerk within ten days after they take effect"). The board is further directed by G.L. c. 40A, § 9, with regard to special permits, to "adopt and from time to time amend rules related to the issuance of such permits, and… file a copy of said rules in the office of the city or town clerk." Said provision applies equally to any planning board designated as special permit granting authority. G.L. c. 40B, §§ 20-23, ("Chapter 40B") includes a similar instruction in connection with comprehensive permits, mandating that the board of appeals adopt rules for the conduct of its business and file a copy of said rules with the municipal clerk.

Notwithstanding the obligatory language of these statutes, the Supreme Judicial Court has concluded that the statutory requirements relative to the adoption and filing of rules are "merely directory and not mandatory," Kiss v. Board of Appeals of Longmeadow, 371 Mass. 147, 157 (1976),[2] such that a board's failure to adopt or file them, or both, will not invalidate its actions.

1. Special permits, variances, etc.

"The permissible scope of internal operating rules remains unclear; no reported decisions indicate limits."[3] Board of appeals and planning board rules are generally more about procedure than substance; the bases for approval or denial of a variance, special permit or administrative appeal are either statutory or required to be a part of the municipality's bylaw or ordinance, not merely contained in the rules or regulations of these boards. See G.L. c. 40A, § 9 ("[s]pecial permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions *set forth therein*…" (emphasis added)). Efforts to circumvent town meeting approval, or approval by the city or town council, through the adoption, as rules, of standards, criteria or other substantive requirements that ought to be in a bylaw or ordinance will be subject to challenge as contrary to statute.[4]

Among the operating or procedural standards frequently incorporated into local rules and regulations are the following:

Form of application required
Required materials in support thereof, including content of plan(s)
Requisite number of copies of the application, plan(s), etc.
Filing procedures
Fees
Responsibility for and manner of payment of the newspaper for publication of notice
Timing of submittal of certain items (e.g. certified list of abutters, assessor's map(s), studies or reports, additional supporting documentation)
Delivery or referral to other public bodies for review, feedback and recommendation(s)

See also G.L. c. 40A, § 9 ("[s]uch rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submittal and approval…") Rules and regulations may and often do authorize boards to waive strict compliance with the procedures above for certain projects, where it is in the public interest to do so and not inconsistent with the purpose(s) or intent of the ordinance or bylaw provision(s) under which zoning relief is sought.

Where local rules address the substance, versus the process, of application reviews, they (should) do so sparingly. Rules might reference or incorporate design

guidelines; they may establish certain threshold(s) for completion of a traffic study or assessment; they might recommend incorporation of low impact development (LID) techniques or other measures protective of the environment; or they may give instruction on landscaping, lighting, open space or other topics. For example, the Norwood Planning Board's Major Project Special Permit Rules include traffic impact guidelines "intended as guidance for all development approval decisions… to the extent that traffic impacts are within legitimate public jurisdiction."[5] Similarly, Rules and Regulations adopted by the Hamilton Planning Board regulate open space and farmland preservation development by requiring-in-part and recommending-in-part compliance with open space design principles, environmental criteria, lighting and landscaping standards, building place and design requirements, etc.[6]

Express authority in the ordinance or bylaw for a board to adopt substantive rules or regulations addressing topics omitted therefrom, or cited therein without specificity, may help validate the content of a board's enactment.

2. Local rules under Chapter 40B

Under G.L. c. 40B, §§ 20-23, a.k.a. the Comprehensive Permit Law, zoning boards of appeal charged with reviewing applications for affordable housing projects pursued thereunder may either adopt Chapter 40B regulations of their own or defer to those promulgated by the Commonwealth, namely by the Executive Office of Housing and Livable Communities (EOHLC). 760 CMR 56.05(1) states:

> Local Rules. The Board shall adopt rules, not inconsistent with M.G.L. c. 40B, §§ 20 through 23, for the conduct of its business and shall file a copy of said rules with the city or town clerk. Such rules shall be consistent with the purpose of M.G.L. c. 40B, §§ 20 through 23[,] to provide a streamlined permitting process that overcomes regulatory barriers to the development of Low or Moderate Income Housing…
>
> Rules adopted by a Board shall be presumed consistent with M.G.L. c. 40B, §§ 20 through 23 to the extent that they conform with 760 CMR 56.05. A Board may seek non-binding advice from the Department as to whether a proposed set of local rules is consistent with M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.05. If a Board does not adopt and file rules, it shall conduct business pursuant to 760 CMR 56.05.

Where boards have adopted Chapter 40B regulations in lieu of deferring to the Commonwealth's, they have generally mimicked the EOHLC rules in form, structure and,

to an extent, substance. They have required submittals beyond those necessitated by other types of projects, including: a report on existing site conditions with a summary of conditions in the surrounding area(s); preliminary, scaled architectural drawings; a tabulation of proposed buildings by type, size and coverage, with a summary of coverage by impervious surface(s); a preliminary utilities plan; and a copy of the so-called Preliminary Eligibility Letter issued by a subsidizing agency and pursuant to which the project is proceeding.

Chapter 40B rules adopted by municipalities also frequently address, in addition to the topics specified in Section B.1, above, the following:

Applicant credentials and experience with Chapter 40B housing creation
Environmental impact analysis of the project
Traffic or transportation study in the vicinity of the site
Affordability restriction(s)
Local preference in the sale or rental of affordable units
Long-term monitoring of affordability
Waivers or exceptions from use, dimension or other local requirements and regulations
Post-permit changes, both insubstantial and substantial

For an example of rules and regulations including the foregoing topics, see the Acton Zoning Board of Appeals' Rules and Regulations for Comprehensive Permits.[7]

3. Site plan review rules and regulations

"Although not specifically provided for in G.L. c. 40A, site plan review is a… mechanism used by municipalities to review and condition certain uses or activities where the underlying use is permitted by right or allowed subject to a special permit."[8] The Zoning Act does not establish the process of, or even reference, site plan review. Its use as a zoning tool was acknowledged by The Report of the Department of Community Affairs Relative to Proposed Changes in the Zoning Enabling Act, Mass. H.R. Rep. No. 5009 (1972), i.e. the precursor to adoption of the Zoning Act, but the Act itself is silent as to site plan review. Its existence today is thus "entirely the creature of the cities and towns and the judiciary."[9]

In light of the above, there is no statutory authorization for the adoption of rules or regulations implementing site plan review. But boards routinely adopt such rules when the municipal ordinance or bylaw creates a site plan review process for certain use(s) or structure(s) in the community. These rules often resemble those created under G.L. c.

40A, § 9, and G.L. c. 40A, § 12, for special permits and variances, respectively, but frequently emphasize project design, orientation, layout, scale, architecture, materials, etc., i.e. those aspects of development that are the particular focus of site plan review. The Lexington Planning Board's Site Plan Review Regulations, for example, contemplate a pre-application review of a sketch site plan; and they dictate compliance with extensive design standards, site development standards, vehicular and pedestrian traffic requirements and utility obligations.[10] Likewise, the Ipswich Planning Board's Rules and Regulations Governing the Granting of Site Plan Review require conformance to standards regarding stormwater management, water supply, sewage disposal, environmental preservation, exterior lighting, landscaping and consistency with the character and scale of the surrounding neighborhood.[11]

C. Subdivision Rules and Regulations

The Subdivision Control Law, G.L. c. 41, §§ 81K-81GG, *requires* planning boards to adopt rules and regulations "relative to subdivision control not inconsistent with the subdivision control law or with any other provision of a statute or of any valid ordinance or by-law of the city or town." G.L. c. 41, § 81Q; see also Lyman v. Planning Bd. of Winchester, 352 Mass. 209, 212 (1967). The adoption of rules and regulations is obligatory. "As a practical or functional matter, effective municipal subdivision control law must have regulations for substance and standards… [S]ubdivision control requires detailed codification 'so that owners may know in advance what is or may be required of them.' … No common law of subdivision control is available as a substitute for an omitted code of rules and regulations." Ridgeley Management Corp. v. Planning Bd. of Gosnold, 82 Mass. App. Ct. 793, 799 (2012) (citation omitted).[12]

Like the other types of rules and regulations addressed above, adoption requires only a simple majority vote of the planning board; however, unlike rules and regulations relative to Zoning Act permissions or relief, comprehensive permits or site plan review, the adoption of subdivision rules and regulations must occur at or following a public hearing. Notice of the time, place and subject matter of said public hearing "shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing" or, where no newspaper is in general circulation, "by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing." G.L. c. 41, § 81Q. Once adopted, the rules and regulations may be amended "in the same manner… from time to time." Id.

Per G.L. c. 41, § 81Q, "[a] true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the

planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town." A copy certified by the city or town clerk must also be transmitted by the board to both the register of deeds and recorder of the Land Court. See id. "[I]t appears that rules and regulations and amendments thereto are effective when adopted, not when 'transmitted.'"[13]

1. Scope

The permissible scope of subdivision regulation is defined by G.L. c. 41, § 81M, which is incorporated by reference into G.L. c. 41, § 81Q (stating that the planning board's rules "shall set forth the requirements of the board… established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M"). Said Section 81M provides, in part:

> The powers of a planning board… shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements…; and for coordinating the ways in a subdivision with each other and with… public ways… and with the ways in neighboring subdivisions.

2. Contents

The content of subdivision rules and regulations differs from community to community, guided by the foregoing scope of the planning board's jurisdiction as well as the explicit provisions of G.L. c. 41, § 81Q.

> "Section 81Q contains two general mandates directed at planning boards:
>
> rules and regulations dealing with the size, form, contents, style, and number of copies of plans and the procedure for the submission and approval thereof shall be such as to enable the person submitting the plan to comply with the requirements of the register of deeds for the recording of the plan and to have a copy for the applicant's files; and

> the rules and regulations of the planning board shall set forth requirements in furtherance of the purposes of Section 81M with respect to the location, construction, width, and grades of the proposed ways shown on a plan and the installation of municipal services therein… [with] due regard… paid to the prospective character of different subdivisions, whether open residence, dense residence, business, or industrial, and the prospective amount of travel upon the various ways therein…

A long series of cases holds that a planning board exceed[s] its authority [in refusing subdivision approval] where [it is] not shown to be any conflict with… the planning board's rules and regulations. Pieper v. Planning Bd. of Southborough, 340 Mass. 157, 160 (1959)."[14]

a. *Technical or procedural requirements*

Again, subdivision rules and regulations must prescribe the size, form, contents, style and number of copies of plans that the planning board requires; as well as the procedure for their submittal. These requirements may, and often do, differ depending on the type of application made and the approval or endorsement sought. An approval-not-required (ANR) plan, i.e. which is not a subdivision at all, may nonetheless be addressed in a board's regulations, but the technical requirements applicable thereto may be far more lax than for an application for approval of a definitive subdivision plan. Less may also be required for or with the submittal of an application for preliminary, versus definitive, plan approval.

Requirements as to content of subdivision plans can be quite extensive. In Worcester, for example, the Planning Board's Subdivision Regulations impose upon an applicant a series of 28 so-called "plan requirements" for definitive subdivision plans submitted for approval, plus an additional four (4) pages or so of content regulation.[15]

b. *Substantive requirements*

Included in G.L. c. 41, § 81Q are both mandatory and discretionary topics for inclusion in a planning board's rules and regulations. The mandatory topics are the technical or procedural standards referenced in Section C.2.a, above, as well as a directive that the rules identify "the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein." G.L. c. 41, § 81Q. More expansive is the list of discretionary topics, which includes authorization for the board to adopt:

a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way;

a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services;

a requirement that poles and any associated overhead structures, of a design approved by the board, be provided for use for police and fire alarm boxes and any similar municipal equipment, and for use for street lighting;

standard(s) that encourage the use of solar energy systems and protect, to the extent feasible, their access to direct sunlight;

standards for the orientation of new streets, lots and buildings, building setback requirements from property boundaries, limitations on the type, height and placement of vegetation and restrictive covenants protecting solar access, provided that the foregoing are not inconsistent with the local ordinance or bylaw; and

a restriction that not more than one building designed or available for use for dwelling purposes be erected or placed or converted to use as such on any lot within a subdivision without the board's consent and, further, that such consent be conditional upon the provision of adequate ways furnishing access to each building site.

Id.

Also stated in G.L. c. 41, § 81Q are certain prohibitions on what the rules and regulations may dictate. They shall not:

require referral of a subdivision plan to any other board or person prior to its submission to the planning board;

establish standards or criteria applicable to the layout, construction, alteration or maintenance of ways within a subdivision which exceed those commonly applied by the municipality to the layout, construction, alteration or maintenance of its publicly-financed ways situated in similarly-zoned district(s);

> except as required for compliance with the local ordinance or bylaw, relate to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction; or
>
> require, or impose as a condition of subdivision approval, that any of the land within a subdivision be dedicated to the public use, or conveyed or released to the Commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation paid to the owner thereof.

Id.

These substantive requirements, and prohibitions, are not exhaustive; again, a planning board's authority to adopt subdivision rules and regulations and the scope and extent thereof are as expansive as the purposes defined in G.L. c. 41, § 81M will allow.

3. Waivers

G.L. c. 41, § 81R, provides that "[a] planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations…" Many rules and regulations explicitly acknowledge the board's authority to grant waiver(s) therefrom.

A planning board is not obligated to issue waivers, see, *e.g.*, Wine v. Planning Bd. of Newburyport, 74 Mass. App. Ct. 521, 528 (2009) (noting that "compelling evidence" is needed to overturn a waiver denial); but, where a waiver is issued, the board is entitled to a "large measure of judgment or discretion," Arrigo v. Planning Bd. of Franklin, 12 Mass. App. Ct. 802, 809 (1981), and the board need only act reasonably in applying the aforementioned standard. The waiver of a rule or regulation will be upheld as proper unless the inconsistency (with the intent and purpose of the subdivision control law) promoted by the waiver is determined to be substantial. Id. It has been said that "in respect to 'public-interest' waivers, the burden [to show error on the part of the board granting them] is nearly insupportable." Windsor v. Planning Bd. of Wayland, 26 Mass. App. Ct. 650, 657 (1988).

D. Other Non-Zoning Regulatory Authority

Rules and regulations are also adopted by conservation commissions, boards of health, historic district commissions and other local bodies in cities and towns throughout the Commonwealth, sometimes pursuant to express statutory authority, e.g. G.L. c. 111, § 31 (authorizing boards of health to "make reasonable health regulations"), G.L. c. 40C, § 10(e) (authorizing historic district commissions to "adopt and amend such rules and regulations not inconsistent with the provisions of th[e Historic Districts] Act"), and in other instances with presumed authority to administer a statutory scheme with which they are charged.

An agency's authority to promulgate regulations as aforesaid, and their force and effect as compared to powers(s) derived from statute, ordinance or bylaw, is addressed in Section A.1, above.

E. Fee Schedules

"Towns may exact reasonable fees pursuant to G.L. c. 40, § 22F, … which provides that '[a]ny municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates... and may fix reasonable charges to be paid for any services rendered or work performed…'" Tompkins v. Planning Bd. of Rowley, 60 Mass. App. Ct. 1120 (2004) (unpublished disposition) (citation omitted); see also Boston Gas Co. v. Newton, 425 Mass. 697, 706 (1997) ("a municipality required by statute to participate in a scheme established by statute is entitled to 'cover reasonable expenses incident to the enforcement of the rules'"); Southview Co-op Housing Corp. v. Rent Control Bd. of Cambridge, 396 Mass. 395, 400 (1985) ("the authority to regulate also includes the authority to exact fees to defray the cost of conducting hearings and performing other services in conjunction with… petitions").

Massachusetts law, however, "restricts the amount a locality or local board may charge as a 'fee' for a license or a permit; … such a fee… should not be designed to raise additional revenue." Nextel Communications of the Mid-Atlantic, Inc. v. Randolph, 193 F.Supp.2d 311, 321 (D.Mass. 2002). On the one hand, "[r]egulatory fees may encompass more than just 'the costs to the municipality... which arise directly in the enforcement of the regulatory provisions themselves… [but] may properly be fixed with a view to reimbursing the city, town, or county for all expenses imposed on it by the business sought to be regulated... not the expense merely of direct regulation, but all the incidental consequences that may be likely to subject the public to cost in consequence of the business licensed.'" Id. (quoting Emerson College v. City of Boston, 391 Mass. 415, 425

(1984)). On the other hand, "[a]t its heart… a fee may only 'compensate the governmental entity providing the services for its expenses.' Id. (quoting Emerson College, 391 Mass. at 425).

1. Types of fees

Included among the types of fees charged by boards of appeal and planning boards are administrative fees, i.e. meant to compensate the board for costs incurred in the receipt, dissemination, processing of and action on an application; fees associated with notice and publication, sometimes included among the aforesaid administrative fees but often charged separately upon or subsequent to submittal of an application; and project review fees for applications requiring review by outside consultant(s), on the board's behalf, due to the size, scale or complexity of the project, its anticipated effect(s) on the municipality and/or the lack of necessary expertise on the board or via municipal staff to review certain component(s) of the application.

2. G.L. c. 44, § 53G

Whereas administrative fees need only be duly-adopted, e.g. pursuant to G.L. c. 40A, §§ 9 or 12, G.L. c. 40B, § 21, G.L. c. 41, § 81Q, or otherwise, and be reasonable, the collection and expenditure of fees for outside consultant review(s) must be expressly authorized in accordance with statutory requirements.

G.L. c. 44, § 53G offers boards of appeal and planning boards, among others, the opportunity to reap the benefits of expert analysis, advice and recommendations in their review of applications, at an applicant's expense. But the board must first promulgate rules permitting the engagement of outside consultants and the imposition of fees for said purpose; and must include in said rules a mechanism "for an administrative appeal from the selection of the outside consultant" based on a conflict of interest or failure to possess the minimum required qualifications to perform a review. Once it has done so, Section 53G authorizes the establishment of a special revolving account, to-be-funded by the applicant, from which expenditures can be made by the board without further appropriation. Upon project completion, "[a]ny excess amount in the account attributable to a specific project, including any accrued interest, … shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available…"

For more information on fees collectable under G.L. c. 44, § 53G, see Massachusetts Department of Revenue Division of Local Services, Special Revolving Funds for Outside Consultant Fees, Informational Guideline Release (IGR) No. 17-14 (May 2017),

available at https://www.mass.gov/files/documents/2017/09/11/igr17-14.pdf.[16]

3. Fee versus tax

Too excessive an application fee may be subject to challenge as an impermissible tax, and invalidated. "In Massachusetts, towns have authority to collect fees but not to tax beyond property taxes."[17] The Emerson College case, supra, is well-known for its analysis of fees and taxes, distinguishing between them. Said analysis arose in the context of an impact fee assessed by the City of Boston, not a mere administrative fee charged for application processing. The ruling is nonetheless applicable to any type of fee that an applicant is required to pay: that "revenue obtained from a particular charge is not used exclusively to meet expenses incurred in providing the service but is destined instead for a broader range of services, while not decisive, is of weight in indicating that the charge is a tax." Id. at 427 (citations omitted).

F. Conclusion

Rules and regulations are an important source of authority for boards of appeal and planning boards in Massachusetts, providing them with a means to demand compliance with certain operating, procedural or technical standards and, especially in the context of subdivision review, to require an applicant to satisfy more substantive criteria before its plan is approved. Fee schedules can also accompany these rules and regulations, allowing a board to recoup the costs and expenses incurred by it during the review of an application, and even to assess consultant review fees to an applicant in appropriate circumstances.

[1] 38 Mass. Prac., Administrative Law & Practice § 1.14 (Apr. 2019).

[2] See Cheney v. Coughlin, 201 Mass. 204, 211 (1909), stating: "As to a statute imperative in phrase, it has often been held that where it relates only to the time of performance of a duty by a public officer and does not go to the essence of the thing to be done, it is only a regulation for the orderly and convenient conduct of public business and not a condition precedent to the validity of the act done."

[3] Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 10.02 (4th ed.) (2018).

[4] "A few boards have been tempted to use internal rules to adopt controversial design criteria that might not otherwise pass muster at town meetings. This practice is not recommended, unless an ordinance or bylaw clearly delegates authority to the board to fill in the gaps." Id.

[5] Norwood Planning Board, Major Project Special Permits Rules (Mar. 25, 2002), *available at* http://www.norwoodma.gov/document_center/Planning/Major%20Project%20Rules%20and%20Regulations.pdf.

[6] Hamilton Planning Board, Rules and Regulations Governing Special Permits (Mar. 24, 2009), *available at* https://www.hamiltonma.gov/government/planning-board/special-permits/.

[7] Acton Zoning Board of Appeals, Rules and Regulations for Comprehensive Permits (Aug. 7, 2017), *available at* https://www.acton-ma.gov/DocumentCenter/View/3534/Rules-and-Regulations-for-Compre-hensive-Permits?bidId=; see also Needham Zoning Board of Appeals, Comprehensive Permit Rules of the Board of Appeals (Sept. 15, 2011), *available at* http://needhamma.gov/DocumentCenter/Home/ View/3812.

[8] Nathaniel Stevens, Local Zoning, Subdivision and Nonzoning Control, Massachusetts Environmental Law, § 20.1.4 (Massachusetts Continuing Legal Education (MCLE)) (4th ed.) (2016).

[9] Bobrowski, supra, § 9.08.

[10] Lexington Planning Board, Site Plan Review Regulations (Nov. 15, 1993, amended through Aug. 30, 2017), *available at* https://www.lexingtonma.gov/sites/lexingtonma/files/pages/sec_8_-_site_plan_review_10-16-15.pdf.

[11] Ipswich Planning Board, Rules and Regulations Governing the Granting of Site Plan Review (undated but as-in-effect on June 30, 2019), *available at* https://www.ipswichma.gov/DocumentCenter/View/1041/Site-Plan-Review-Regulations.

[12] See also Castle Estates v. Park and Planning Bd. of Medfield, 344 Mass. 329, 334 (1962) (stating that rules and regulations must be "comprehensive, reasonably definite, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them"); 18A Mass. Prac., Municipal Law & Practice § 18.13 (Apr. 2013) ("[c]ourts have expressed concern that regulations which are open ended and devoid of standards lend themselves too readily to subjective approval or disapproval of plans merely because the planning board believes general public considerations make such action desirable").

[13] Richard J. Gallogly, Subdivision Control Law, Massachusetts Zoning Manual, § 17.9.3 (Massachusetts Continuing Legal Education (MCLE)) (6th ed.) (2017).

[14] Id., § 17.9.4.

[15] Worcester Planning Board, Subdivision Regulations (Oct. 1, 1992, amended through Apr. 24, 2013), *available at* http://www.worcesterma.gov/uploads/bc/42/bc42daca5792585a3c73bd296d5a484f/subdivision-regulations.pdf.

[16] See also Bobrowski, supra, App. C (for Model Planning Board Regulations Governing Fees and Fee Schedules including project review fees).

[17] Martin R. Healy and Michael K. Murray, Zoning Power and its Limitations, Massachusetts Zoning Manual, § 2.6.7 (Massachusetts Continuing Legal Education (MCLE)) (6th ed.) (2017).