

# Roles and Responsibilities of Planning and Zoning Boards

Presented by:

Adam J. Costa, Esq.

Mead, Talerman & Costa, LLC

(978) 463-7700, Ext. 102

[adam@mtclawyers.com](mailto:adam@mtclawyers.com)



Prepared for the  
Citizen Planner  
Training Collaborative

**MODULE 1**

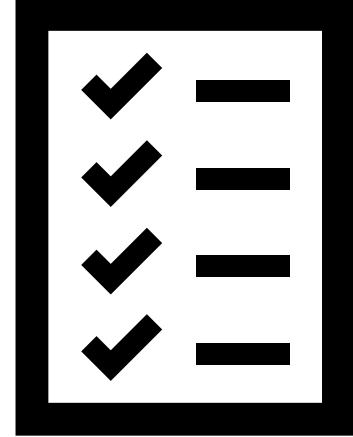
# Roles and Responsibilities of Planning and Zoning Boards

Introduction

# Introduction COURSE OBJECTIVE

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

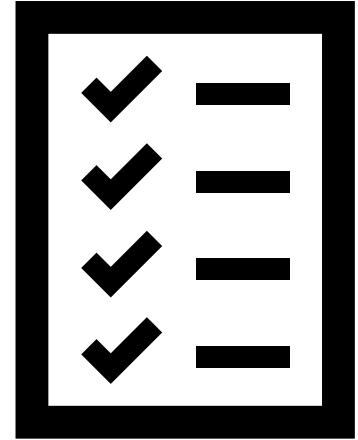
- What do planning boards and zoning boards (ZBAs) do?
- How are planning boards different from zoning boards?
- What sorts of rules and regulations should planning and zoning boards create and adhere to?



*What should you  
be leaving the  
room with today?*

# Introduction COURSE OBJECTIVE

- What are the Open Meeting Law, the Public Records Law and the Conflict of Interest Law; and how do they pertain planning and zoning boards, and their proceedings?



*What should you  
be leaving the  
room with today?*

# Introduction OVERVIEW

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



- This module discusses the roles of the Planning Board and the Zoning Board of Appeals.
- The vast majority of land use decisions occur at the local level.
- The Home Rule Amendment to the Massachusetts Constitution grants municipalities the right to adopt local ordinances and bylaws that do not conflict with state or federal law

# Introduction OVERVIEW

## Zoning Basics

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



## Introduction OVERVIEW

*Board Membership*

### An effective board member knows:

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



# Board Composition

	Planning Board	Zoning Board of Appeals
No. of Members	5, 7, or 9 members	3 or 5 members
Elected or Appointed	Depends on municipality	Typically appointed
Associate Members	<ul style="list-style-type: none"><li>Only allowed for special permits and possibly site plan review depending on procedure and local regulations.</li><li>PB of 5 members can have 1 associate member; PB of more than 5 can have 2 associate members.</li><li>Designated by chair if needed for a case.</li><li>Acts only due to absence, inability to act, conflict, or vacancy.</li></ul>	<ul style="list-style-type: none"><li>No statutory language dictates how many associate members a ZBA can have.</li><li>Designated by chair if needed for a case.</li><li>Acts only due to absence, inability to act, conflict, or vacancy.</li></ul>

## Introduction OVERVIEW

*Responsibilities of  
Planning Boards*

### The Planning Board is involved with:

Area	Statute (If Applicable)
Master Plans	G.L. c. 41, § 81D
Zoning Amendments	G.L. c. 40A, § 5
Special Permits (if authorized by local bylaw or ordinance)	G.L. c. 40A, § 1A, § 9
Subdivisions	G.L. c. 41, §§ 81K-81GG
Approval Not Required (ANR) Plans	G.L. c. 41, §§ 81L, 81P, 81X

## Introduction OVERVIEW

*Responsibilities of  
Planning Boards*

### The Planning Board is involved with:

Area	Statute (If Applicable)
Site Plan Review (if authorized by local bylaw or ordinance)	N/A
Repetitive Petitions	G.L. c. 40A, § 16
Scenic Roads and Shade Trees	G.L. c. 40, § 15C, G.L. c. 87
Establishment of Historic Districts	G.L. c. 40C, § 3
Comprehensive Permits (in advisory role if requested)	G.L. c. 40B, §§ 20-23
And more!	

## Introduction OVERVIEW

*Responsibilities of  
Zoning Boards*

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

Area	Statute (If Applicable)
Appeals	G.L. c. 40A, § 8, § 15
Special Permits (if authorized by local bylaw or ordinance)	G.L. c. 40A, § 1A, § 9
Variances	G.L. c. 40A, § 10
Appeals from Decisions of Zoning Administrator	G.L. c. 40A, § 13
Nonconforming Uses/Structures	G.L. c. 40A, § 6
Comprehensive Permits	G.L. c. 40B, §§ 20-23

# Roles and Responsibilities of Planning and Zoning Boards

Powers and Duties

## Powers and Duties

### PLANNING BOARDS

*Master Plans*

#### Master Plans: G.L. c. 41, § 81D

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

# Powers and Duties

## PLANNING BOARDS

*Master Plan*

A Master Plan is . . .

A policy framework

Tailored to the individual municipality

A visionary document anticipating future events and needs

A blueprint for guiding decisions on land use and growth issues

A statement of policies, goals, and standards

## Powers and Duties **PLANNING BOARDS**

*Zoning Amendments*

### **Zoning Amendments: G.L. c. 40A, § 5**

- The Planning Board is one of several entities able to put forth proposed zoning amendments.
- Planning Boards have authority and duty to hold a public hearing on and provide recommendations for any changes to the zoning bylaw or ordinance. (Can be jointly held with City Council.)
- Changes then require a 2/3 Town Meeting or City Council vote.

# Powers and Duties

## PLANNING BOARDS

### *Special Permits*

#### Special Permits: G.L. c. 40A, § 1A

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

## Powers and Duties PLANNING BOARDS

### *Special Permits*

#### **Special Permits: G.L. c. 40A, § 9**

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

## Powers and Duties **PLANNING BOARDS**

### *Special Permits*

#### **Special Permits: G.L. c. 40A, § 9**

<b>Public Hearing</b>	Must be held 65 days from receipt of a special permit application. Can be extended by mutual agreement.
<b>Notice</b>	First public hearing notice must be published at least 14 days before the date of the public hearing.
<b>Final Action</b>	Decision and filing with municipal clerk must occur within 90 days of the close of the public hearing. Can be extended by mutual agreement.
<b>Voting</b>	Unanimous for 3-member board; 4 of 5-member board; 2/3 more than 5 members. Cannot transform into a smaller board.
<b>Lapse</b>	Special permits lapse within three years (or less).

## Powers and Duties PLANNING BOARDS

### *Subdivisions*

### **Subdivisions: G.L. c. 41, §§ 81K-81GG**

#### **Purpose of Subdivision Control Law:**

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

## Powers and Duties PLANNING BOARDS

### *Subdivisions*

### Subdivisions: G.L. c. 41, §§ 81K-81GG

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



# Powers and Duties

## PLANNING BOARDS

### *Subdivisions*

### **Subdivisions: G.L. c. 41, §§ 81K-81GG**

#### The Planning Board:

- Adopts subdivision rules and regulations
- Determines whether a plan requires approval
- Reviews and approves or disapproves preliminary and definitive subdivision plans
- Holds public hearings for definitive plans
- Obtains performance guarantees (G.L. c. 41, § 81U)
- Releases lots
- Advises the ZBA on comprehensive permits that are subdivisions

Powers and  
Duties  
**PLANNING BOARDS**

*Subdivisions*

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

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

## Powers and Duties **PLANNING BOARDS**

### *Subdivisions*

#### **Preliminary Subdivision Plans**

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

## Powers and Duties PLANNING BOARDS

### *Subdivisions*

#### **Definitive Subdivision Plans**

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

## Powers and Duties PLANNING BOARDS

### *Subdivisions*

#### Definitive Subdivision Plans

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

## Powers and Duties PLANNING BOARDS

### *ANR Plans*

### **ANR Plans: G.L. c. 41, § 81L/81P**

A plan dividing land into two or more lots does not require Planning Board approval if:

- All lots on the plan meet frontage requirements, and
- The plan provides adequate access to all lots via:
  - Public way or way used and maintained as a public way;
  - Way shown on an approved definitive plan; or
  - Way in existence when the subdivision control law took effect in the town and which is suitable for proposed use of lots.

## Powers and Duties **PLANNING BOARDS**

*ANR Plans*

### **ANR Plans: G.L. c. 41, § 81P**

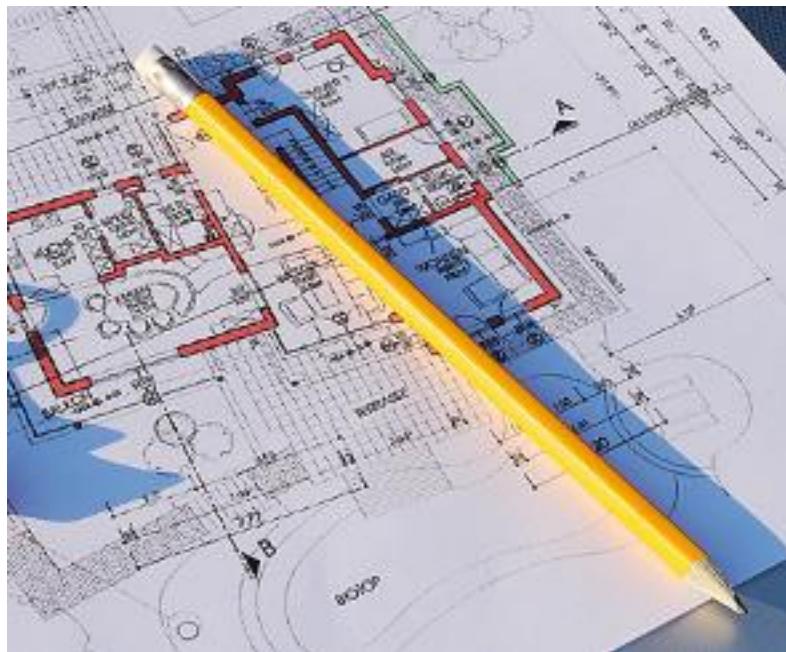
- No public hearing is required.
- Any person may apply.
- The Planning Board has 21 days to endorse the plan or decide subdivision approval is required. Written notice of the Planning Board's decision must be provided to municipal clerk and applicant.
- Constructive approval may be granted if no action within 21 days. There is no provision for extension.
- The Planning Board cannot rescind an ANR endorsement.

## Powers and Duties PLANNING BOARDS

### *Site Plan Review*

## Site Plan Review

While Zoning Act does not mention Site Plan Review (SPR), municipalities may adopt SPR requirements and procedures as part of their bylaws or ordinances. Site Plan Review is:



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

## Powers and Duties PLANNING BOARDS

### *Repetitive Petitions*

### Repetitive Petitions: G.L. c. 40A, § 16

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

# Powers and Duties

## PLANNING BOARDS

*Other Roles*

### Other Planning Board Roles

Planning Boards also:

- Exercise authority over scenic roads and shade trees along them. **G.L. c. 40, § 15C; G.L. c. 87, § 3**
- Are involved with the creation of Historic Districts. **G.L. c. 40C, § 3**
- May provide recommendations to the Zoning Board of Appeals when they review comprehensive permits. **G.L. c. 40B, § 21**
- May serve on a Community Preservation Committee. **G.L. c. 44, § 5**

## Powers and Duties **ZONING BOARDS**

### Zoning Board of Appeals: G.L. c. 40A, § 1A

- The Zoning Act designates the Board of Appeals as the “permit granting authority.”
- The Zoning Board of Appeals, or ZBA, interprets and applies the zoning bylaw or ordinance to matters that come before it.



## Powers and Duties **ZONING BOARDS**

### *Appeals*

#### **Appeals: G.L. c. 40A, § 8 and § 15**

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

## Powers and Duties **ZONING BOARDS**

### *Special Permits*

### **Special Permits: G.L. c. 40A, § 1A and § 9**

- Special Permit Granting Authority (SPGA) may include:
  - Board of Selectmen
  - City Council
  - **Board of Appeals**
  - Planning Board
  - Zoning Administrators
- Section 9 of the Zoning Act outlines the procedural requirements for special permits.

# Powers and Duties

## ZONING BOARDS

*Variances*

### Variances: G.L. c. 40A, § 10

- Under certain circumstances, the ZBA may permit a **variance** of a zoning requirement.
- Types:
  - Dimensional variances
  - Use variances (very rare and only if local bylaw or ordinance “expressly” allows)

## Powers and Duties **ZONING BOARDS**

### *Variances*

#### **Variances: G.L. c. 40A, § 10**

The ZBA may only grant petitions for variances if:

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

## Powers and Duties **ZONING BOARDS**

*Appeals from Decisions  
of Zoning Administrator*

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

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

## Powers and Duties **ZONING BOARDS**

*Nonconforming  
Uses or Structures*

### **Nonconforming Uses or Structures: G.L. c. 40A, § 6**

- Uses and structures, if lawful when created, are exempt from subsequently-enacted zoning provisions
- Zoning applies to change or substantial extension of a use; reconstruction, extension or structural change of a structure; alterations for a substantially different purpose
- Role of the ZBA is to determine:
  - Whether modification qualifies as any of the above
  - If so, and if authorized by the ordinance or bylaw, whether to issue a finding or grant a special permit that the modification is not “substantially more detrimental” to the neighborhood

## Powers and Duties **ZONING BOARDS**

*Comprehensive Permits*

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

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



# Powers and Duties

## REACHING A DECISION

### Decision Making Process

The Board's record for any decision should include:

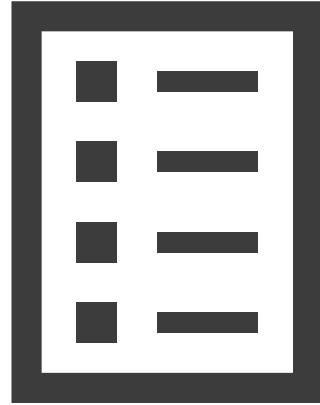
- Application
- Correspondence between applicant and city/town staff
- Written comments submitted by members of the public
- Oral evidence presented at hearing
- Plans, drawings, photographs, deeds, surveys, and consultant/expert reports
- Written testimony
- Public hearing notice
- Municipal records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

# Roles and Responsibilities of Planning and Zoning Boards

Rules and Regulations

# Rules and Regulations

## STATUTORY REQUIREMENTS



## Rules and Regulations

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

# Rules and Regulations

## STATUTORY REQUIREMENTS

### Statutory Requirements

#### ZBA

- G.L. c. 40A, § 12
- ZBAs must adopt procedural rules & regulations and file with clerk.

#### SPGA

- G.L. c. 40A §9
- SPGAs must adopt special permit rules & regulations and file with clerk.

#### Planning Board

- G.L. c. 41, §81Q
- PBs must adopt subdivision rules & regulations and file with clerk, then with registry of deeds and recorder of land court.

# Rules and Regulations COMPONENTS

*Procedures  
and Organization*

## Board Organization

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

# Rules and Regulations COMPONENTS

*Procedures  
and Organization*

## Meetings

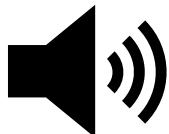
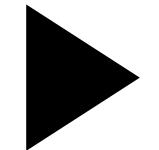
- Time, days of week, location, agendas, and postings for both regular and special meetings
- Guidelines for the preparation and conduct of meetings
- Procedures for public hearing notices
- Additional means of outreach the board employs beyond statutory requirements
- The roles of officers during meetings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



# Rules and Regulations COMPONENTS

*Procedures  
and Organization*

## Exception to the Mullin Rule: G.L. c. 39, § 23D



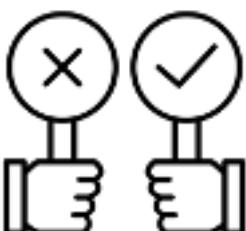
- Board members who missed one public hearing session may participate and vote if the municipality has adopted G.L. c. 39, § 23D.
- Board member must certify in writing (and file with municipal clerk) that they reviewed all evidence of missed session including:
  - 1) Videotape or audio recording of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

# Rules and Regulations COMPONENTS

*Procedures  
and Organization*

## Quorum and Voting Requirements

- Generally, the majority of a board is a quorum and the majority of a quorum may act.
- However, Rules and Regulations should include special voting requirements (e.g., Special Permits require a 2/3 vote for a 7- to 9-member board, a 4/5 vote for a 5-member board, and a unanimous vote for a 3-member board.)
- Cannot transform into a smaller board for zoning or SDCL.



# Rules and Regulations COMPONENTS

*Procedures  
and Organization*

## Remote Participation - 940 CMR 29.10

- Must be adopted by City Council or Board of Selectmen.
- The “remote” member is part of the quorum and can vote, but there must be a “quorum number” present at meeting.
- Chair must determine that certain factor(s) make it difficult to attend, e.g. illness, emergency, military service.
- Chair must announce use of technology by member and the reason.
- Remote participants must be visible/audible to all persons.
- If connection lost at any time, deliberations are halted.

# Rules and Regulations COMPONENTS

## *The Permitting Process*

### Permitting

To avoid a constructive approval or indefensible decision, Board regulations should outline the following permitting guidelines:

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

# Rules and Regulations COMPONENTS

*The Permitting Process*

## Permitting

Board	Type of Application/Petition	Statute Requiring Rules and Regulations
ZBA	Appeals	G.L. c. 40A, § 12
	Variances	
	Changes to nonconforming uses/structures	
	Comprehensive Permits	G.L. c. 40B, § 21
SPGA	Special Permits	G.L. c. 40A, § 9
Planning Board	Subdivisions	G.L. c. 41, § 81Q
	ANR Plans	

# Roles and Responsibilities of Planning and Zoning Boards

Open Meeting Law

# Open Meeting Law

G.L. c. 30A, §§ 18-25

## Purpose and Certification

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



# Open Meeting Law

G.L. c. 30A, §§ 18-25

## Meeting Notices

Meeting notices must:

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

# Open Meeting Law

G.L. c. 30A, §§ 18-25

## Executive Session

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

# Roles and Responsibilities of Planning and Zoning Boards

Public Records Law

# Public Records Law

G.L. c. 4, § 7(26)

## Public Records; Custodian; Minutes

- Every document, paper, record, map, photograph, etc., as defined by law, that is made or received by a government entity or employee is presumed to be a public record.
- The Records Custodian is responsible for providing copies of existing public records upon request.
- Meeting minutes are public and must be made available.
- No requirement that the minutes be transcribed or approved before they are made public; but should be marked “draft.”

# Roles and Responsibilities of Planning and Zoning Boards

Conflict of Interest Law

# Conflict of Interest Law

## G.L. c. 268A

### Applicability and Requirements

- Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, is considered a municipal employee.
- All city and town employees must:
  - Be provided with a Summary of the Conflict of Interest Law for Municipal Employees **within 30 days of hire or election**, and then annually thereafter; and
  - Acknowledge in writing that they received the summary.

# Conflict of Interest Law G.L. c. 268A

## Violations



- The State Ethics Commission can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation.
- The Commission can order the violator to repay any economic advantage gained by the violation, and to make restitution to injured third parties.
- Violations of the Conflict of Interest Law can also be prosecuted criminally.

# Conflict of Interest Law

## G.L. c. 268A

### Types of Restrictions

Restriction	Types
On-the-Job	<ul style="list-style-type: none"><li>• Bribes</li><li>• Gifts and gratuities</li><li>• Misuse of position</li><li>• Self-dealing and nepotism</li><li>• False claims</li><li>• Appearance of conflict</li><li>• Mishandling of confidential information</li></ul>
After-Hours	<ul style="list-style-type: none"><li>• Second job conflicting with duties</li><li>• Divided loyalties</li><li>• Inside track</li></ul>
After Leaving Municipal Employment	<ul style="list-style-type: none"><li>• Forever ban</li><li>• One-year cooling off period</li><li>• Restrictions for partners</li></ul>

# Roles and Responsibilities of Planning and Zoning Boards

COVID-19 Update

# COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

## Chapter 53 of the Acts of 2020

- A/k/a “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19.”
- Section 17 addresses local permitting, with a “permit” defined as any “permit, variance, special permit, license, amendment, extension or other approval issued by a permit granting authority.”
  - Pursuant to statute, ordinance, bylaw, rule or regulation.
  - “[W]hether ministerial or discretionary.”
- Omits determinations, endorsements, etc.; but consensus is that a broad interpretation was intended and is supportable.

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### Application Filing

- Applications deemed duly accepted when filed with and certified accepted by the municipal clerk. See Section 17(b)(i).
- Applications may be filed electronically through electronic submission website or via e-mail, with certification of receipt to be provided electronically. See Section 17(b)(i).
- Completeness of application may be challenged if:
  - Ultimately denied “on other grounds.”
  - Or appealed by the applicant. See Section 17(b)(i).

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### Hearings

- Any requirement that a hearing commence with a specific time period after filing of an application or request is suspended “as of March 10, 2020,” to resume 45 days after termination of the State of Emergency. See Section 17(b)(ii).
- A hearing opened before March 10, 2020 but not concluded, or continued, is “automatically tolled and continued” to the first hearing date following, but not later than 45 days after, termination of the State of Emergency. See Section 17(b)(vii).
- Chair may reschedule hearing or decision deadline(s) by declaration, with or without a quorum present, to a date not more than 45 days after termination of the State of Emergency. See Section 17(b)(v).

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### Existing Permits Tolled

- Any permit in effect or existence as of March 10, 2020 (including any deadlines or conditions of the permit) “shall not lapse or otherwise expire...” See Section 17(b)(iii).
- Expiration of such a permit, or time period for meeting a deadline or performing a condition, is tolled “during” the State of Emergency. See Section 17(b)(iii).

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### No Constructive Approval

- No permit is considered granted, approved or denied, constructively or otherwise, due to failure to act so long as action occurs within 45 days of the termination of the State of Emergency. See Section 17(b)(iv).
- But applicant and permit granting authority may agree to alternative timing in writing. See Section 17(b)(iv).

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### Recording

- Requirements to record permits within a certain period of time suspended while registries of deeds are closed or access is restricted. See Section 17(b)(vi).
- Failure to record permit does not preclude application for or obtaining or commencing work pursuant to other required permit or approvals, e.g. a building permit. See Section 17(b)(vi).

## COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

### Open Meeting Law Suspended

- “Order Suspending Certain Provisions of the Open Meeting Law,” provides that public bodies need not conduct meetings in a place open and physically accessible to the public if:
  - “Adequate, alternative means” of public access are provided
  - Including telephone, internet or satellite-enabled audio or video conferencing
  - Must enable public to “clearly follow the proceedings while [they] are occurring”
  - Economic hardship justifies after-the-fact posting of transcript or record on municipal website, instead

# COVID-19 Update

*Ch. 53 of the Acts of 2020*  
§ 17

## Open Meeting Law Suspended

- Where active, real-time participation by the public is otherwise required by law, alternative means of access must provide for it
- Access must be without subscription, toll or other charge to the public
- Also allows:
  - Remote participation by all members in any meeting of the public body
  - No requirement that the Chair or a quorum be physically present

Questions?



## Additional Resources STATUTES

### Referenced Statutes

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

## Additional Resources FURTHER READING

**Massachusetts Housing Partnership**  
[www.mhp.net](http://www.mhp.net)

**Comprehensive Permits**

**DHCD**  
[www.mass.gov/hed/economic/eohed/dhcd/](http://www.mass.gov/hed/economic/eohed/dhcd/)

---

**Open Meeting Law Guide and Training**  
[www.mass.gov/the-open-meeting-law](http://www.mass.gov/the-open-meeting-law)

**OML/PRL-COI Guides**

**Public Records Law Guide**  
[www.sec.state.ma.us/pre/prepdf/guide.pdf](http://www.sec.state.ma.us/pre/prepdf/guide.pdf)

**Conflict of Interest Law Guide and Training**  
[www.mass.gov/orgs/state-ethics-commission](http://www.mass.gov/orgs/state-ethics-commission)

---

**Citizen Planner Training Collaborative**  
[www.masscptc.org](http://www.masscptc.org)

**Sources of Support**

**Mass Planners List Serve**  
<http://mailman.cs.umb.edu/mailman/listinfo/massplanners>

**American Planning Association-Massachusetts Chapter**  
[www.APA-MA.org](http://www.APA-MA.org)

**Mass. Association of Planning Directors** [www.massplanning.org](http://www.massplanning.org)



[www.masscptc.org](http://www.masscptc.org)

Thank you!

Presented by:  
Adam J. Costa, Esq.  
Mead, Talerman & Costa, LLC  
(978) 463-7700, Ext. 102  
[adam@mtclawyers.com](mailto:adam@mtclawyers.com)