

## **Introduction to Planning Board Administrative Rules and Regulations Berkshire Regional Planning Commission March, 2008**

Municipal planning boards have a variety of rules, tools and regulations to assist them in administering the zoning and planning laws of both the community and the state. Subdivision rules and regulations are the basis for regulating developments along existing roads, and the creation of new streets. Zoning bylaws divide towns into zoning districts, and specify what types of property uses are allowed within those zones. Planning Boards also have another tool, that many boards are unaware of, and do not use to full advantage.

Planning Board Administrative Rules and Regulations lay out a set of procedures for the board to follow. They are not the same as *subdivision* rules and regulations. Subdivision rules and regulations are substantive rules that deal with items such as the length and width of roads, sidewalks and drainage structures, and what must be shown on a subdivision plan. Administrative Rules and Regulations, however, are procedural and specify how the board will hold hearings, conduct meetings, organize, and seek advice from other boards and professional consultants.

Some Planning Boards may be reluctant to explore the adoption of Administrative Rules and Regulations; for fear that such a document would impose additional restrictions on the Board, or change its everyday business proceedings. Instead, Administrative Rules and Regulations should put into writing the unwritten policies that a Board already has in place. They should also clarify procedures for other tasks that the Board may be required to do, but tackle less frequently or have not yet had to deal with. These include hiring consultants to review projects, and making recommendations to other town boards. Administrative Rules and Regulations establish policies that are in accordance with state and local laws, and help to ensure that each applicant is treated fairly and equally. Although it is especially critical for boards which grant special permits or deal with site plan review to adopt rules and regulations to governing review procedures, general rules and regulations are important and beneficial for any board.

Many communities have some of the Planning Board's procedural requirements contained in the zoning bylaws, or even the Town's general bylaws. Filing requirements, fee schedules, and decision criteria for special permits and site plan review are often contained within the zoning bylaws. Although there is nothing prohibiting procedural requirements from being contained within zoning bylaws, it is beneficial for both applicants and board members to have all procedural material contained in a single location. While substantive requirements, such as road standards and zoning districts, are amended very rarely, procedural requirements, such as fee schedules, the number and size of plans to be submitted, and application forms, are changed quite often. The requirements for amending zoning bylaws and subdivision regulations are more stringent than those for amending planning board rules and regulations- these can be amended by a majority vote of the board, with or without a public hearing, depending on what the Planning Board decides to specify within the Administrative Rules.

## **Requirements for amendment:**

### **Zoning Bylaws**

- Require a properly posted public hearing by the planning board
- Must be placed on a town meeting warrant
- Planning board should make a ‘report with recommendations’ to town meeting
- Require town meeting approval by supermajority vote
- Must be approved by the Attorney General
- Following attorney general approval, must be posted by the town clerk

### **Subdivision Rules and Regulations**

- Requires a properly posted public hearing by the planning board
- Require a simple-majority vote of the planning board

### **Planning Board Administrative Rules and Regulations**

- Can be accepted by a simple-majority vote of the planning board at an open meeting, or following a properly posted public hearing by the planning board – whichever is stated within the Administrative Rules and Regulations.

The following topics should be considered for inclusion in municipal planning board rules and regulations. Though not an exhaustive list, these cornerstone items will help to lay a solid foundation for the everyday business conducted by the board. These items will help both board members and applicants to know exactly what is required of them. Before adopting any set of Administrative Rules and Regulations, the Planning Board should submit them to Town Counsel for review.

### **Introduction**

The introduction to the Planning Board’s Administrative Rules and Regulations should clearly outline the purpose for the document – to guide the Planning Board’s organization and conduct. It should also specify that applicants need not only to comply with the provisions set forth in the Administrative Rules and Regulations, but also with the Town’s Zoning Bylaws and Subdivision Regulations, and applicable portions of Massachusetts General Law.

### **Organization**

A section dealing with organization should set forth rules for the organization of the Planning Board; establish the number of board members, the details of the Boards’ election, and what should happen in the event of a vacancy. This section should create a Chair and other board officers as appropriate, depending on the construction of the Planning Board in question. Duties for each position should be created, including notes on what procedures should be followed in the absence of the Chair. If the board has associate members, or elects a representative to act as the signatory on all plans and documents, these positions should also be noted. The organization section also creates standards of conduct for board members, noting the requirements for adherence to the open meeting law and the conflict of interest law.

## **Roles & Responsibilities**

This section establishes the powers and duties of the Planning Board, including creating a master plan, administering the subdivision rules and regulations, and acting as a special permit granting authority (and site plan reviewer) as defined by municipal zoning bylaws, and Massachusetts' Zoning Enabling Legislation.

## **Meetings**

The meetings section should define what constitutes a meeting, establish a meeting schedule, and outline requirements for posting of agendas. It should also specify the number of members required to conduct business, contain instructions for holding special meetings, and procedures to follow if a regularly scheduled meeting day occurs on a holiday. More detailed regulations pertaining to meetings could also outline meeting agendas, create deadlines for the public to submit agenda items, and limit public comment to a designated period in the agenda.

## **Preliminary Review**

An Administrative Rules and Regulations section dealing with preliminary review should encourage applicants to schedule informal preliminary review meetings with the Planning Board to discuss projects before a formal application has been submitted. Preliminary meetings are often effective ways to iron out issues with an application before the public hearing clock has begun ticking. Preliminary meetings are usually held at no cost to the applicant in order to effectively encourage these types of meetings, but the board may elect to charge a fee, especially for subsequent preliminary meeting requests for the same project.

## **Special Permit Review**

This section should establish guidelines for the planning board's review of special permit applications, as well as Site Plan Review, if the Town's zoning bylaws have created uses subject to site plan review. The section should include instructions for the applicant regarding where to obtain applications and how to fill them out completely, how many copies should be filed and the cost for application filing. The applicant should also be instructed to identify all other permits or variances that may be required for a project. This will help applications to be filed concurrently and also to avoid the identification of additional permits that may be required late in the permitting process. The Special Permit Review procedures should also create procedures for obtaining professional consultants for additional application review. Although this process is established in MGL C 44, §53, many local boards are hesitant to seek outside review, often due to a lack of experience or understanding of the procedures for obtaining such review. The procedures should also state that review criteria for special permits should be consistent with those outlined in the zoning bylaw, and list voting requirements and procedures for appeal.

### **Planning Board Hearings**

It is important that planning boards conduct hearings in accordance with all applicable laws, including public posting, notice to interested parties, and compliance with the open meeting law. Public hearings are held not only for the issuance of special permits, but also for definitive subdivision applications, and amendment of zoning bylaws and subdivision rules and regulations. If a planning board also holds public hearings for additional purposes, such as the adoption of a master plan or for site plan review, those should also be noted in the hearings section. This section can detail posting requirements, and clarify procedures for publishing legal notices. This section should also provide an outline of the procedure of the hearing, from the reading of the notice to the close of the public hearing.

### **Planning Board Recommendations**

The Recommendations section should establish a procedure for the Planning Board to follow when seeking comment and review from other town boards for applications filed with the Planning Board. It should also establish a procedure for the Board to follow when other town boards have sought the Planning Board's input on applications before them. The section should include a time period by which referred reviews should be completed, so as not to slow the permitting process. If a board does not submit a review within this period, it should be stated that the board has no comments about the project or application. The section should also establish criteria for the Planning Board to consider when reviewing permits and applications.

### **Waiver of Rules**

A waivers section should specify that waivers from the Administrative Rules and Regulations may be granted at the discretion of the Planning Board. It should make clear the procedural requirements for applicants to follow when requesting waivers. Importantly, it should also specify that waivers only apply to administrative requirements of the Administrative Rules and Regulations, and not to the substantive requirements of the Town's zoning bylaw.

### **Administration**

An Administration section should contain the date that the rules and regulations were approved by the planning board, and the procedure for amendment, repeal or revision of the rules and regulations. It should also contain a statement that in the event of a conflict between the Administrative Rules and Regulations, Massachusetts General Laws, and the Town's Zoning Bylaws, state law and the Zoning Bylaws take precedence.

### **Fee Schedule**

As new types of permits and reviews are added to a planning board's toolbox, fee schedules must be updated to reflect those changes. Creating a comprehensive listing of fees within the rules and regulations provides one-stop shopping for applicants and board members, and also makes the erases the need for frequent updating of different sections of the zoning bylaw.

## **Decisions**

An Administrative Rules and Regulations section on decisions should contain a list of what is to be included in the planning board's written decision and should create procedures for the planning board to follow that are consistent with the requirements of Massachusetts General Laws C 40 §9, and local zoning bylaws. Procedures should include time limits for decision rendering, what is to be included in a decision, and with whom it should be filed. The procedures created for the granting or denial of a special permit should aim to make the boards intent clear, in the event that a decision is appealed.

## **Application Forms**

The rules and regulations should contain a library of forms used by the planning board, such as applications for special permits and site plan review. Forms included in the subdivision rules and regulations, such as "Form A" for Approval Not Required plans need not be duplicated within the Administrative Rules and Regulations. The Planning Board should ensure that the forms contained in the Subdivision Regulations are complete.

## **Site Plan Review**

If a Planning Board employs Site Plan Review as a technique within its zoning bylaws, the procedural requirements for the filing of site plan review applications should be contained within the Administrative Rules and Regulations. Procedural requirements for Site Plan Review should include includes instructions for the applicant regarding where to obtain applications and how to fill them out completely, how many copies should be filed and the cost for application filing. If these requirements are the same for both special permits and site plan review, this should also be specified.

## **Subdivisions**

The procedural requirements for the submission of preliminary and definitive subdivision plans, and timelines and requirements for the board's subdivision decision-making process are contained within subdivision regulations. Duplication of these items in the Administrative Rules and Regulations is unnecessary. The Administrative Rules and Regulations should refer to the Subdivision Regulations for information on subdivision applications.

## **Conclusion**

Planning Board Rules and Regulations can be extensive, providing detailed listings of forms, fees, requirements for granting of permits, and procedures for making recommendations to other town boards. They can also be less detailed, establishing only the number and roles of board members, and some basic procedures for the conducting of meetings and hearings. They are not intended to impose additional restrictions or duties on a board; only to outline the procedures already employed by a board for the clarification of both members and applicants. The Planning Board Administrative Rules and Regulations should always agree with both state and local laws. Although elements such as public notice posting requirements and requirements for special permit review may sometimes duplicate certain elements of other laws and regulations, they should never contradict what is contained in local zoning or Massachusetts General Law. The

Planning Board's Administrative Rules and Regulations should be the only place where fee schedules and special permit submittal requirements should be listed. Unnecessary duplication of these items in the zoning bylaws can lead to confusion, and would require the updating of both documents. As new special permits and site plan reviews are created, the fee schedule, forms index, and submittal requirements contained in the Administrative Rules and Regulations can be updated by the Planning Board.

A good set of Planning Board Administrative Rules and Regulations creates a place for "one-stop-shopping." Administrative Rules and Regulations are intended to guide the Planning Board in its everyday operation by outlining the Board's organization, roles and responsibilities, and the procedures for how meetings and hearings are conducted. Although the Rules and Regulations are by necessity and by law a public document, and must be made available to the general public, The Planning Board may decide to create an "excerpt" of the Rules and Regulations intended primarily for applicants that contains the fee schedule and forms, with the main document intended primarily for Planning Board use.

Planning Board Administrative Rules and Regulations are a helpful place for new board members to learn roles and responsibilities, and are a valuable reference document when administrative questions arise. Administrative regulations can also make it easier for Planning Boards to amend and update items that require frequent changes to remain current, such as forms and fee schedules. By clarifying procedures, the Administrative Rules and Regulations help to make the permitting process easier for applicants and board members alike.