

Citizen Planner Training Collaborative Conference

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The Guidebook to Massachusetts Land Use Planning & Zoning

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Background

- Guidebook Sponsor – the Massachusetts Chapter of the American Planning Association
- MA Chapter considerations in deciding to sponsor:
 - Strong sense there was a need for a new comprehensive guidebook on planning and zoning to serve its members and the wider planning community.
 - The Chapter has received many requests to sponsor various guidebooks.
 - Previous MFPAB Planners Handbook was limited in scope.
 - The Chapter issued an RFP for consultant services to write the Guidebook – hired Bob Mitchell & Bob Ritchie.
 - This is the second guidebook to be produced. (The first was the *Neighborhood Road Design Guidebook*.)

What this Guidebook is Not

- The Guidebook is not a Tools & Techniques to Planning & Zoning & Subdivision topics.
- The Guidebook is not an encyclopedia of planning and land use.
- The Guidebook is not an “update” to the former Mass. Federation of Planning & Zoning Boards Planners Handbook.
- The Guidebook is not a resource that can answer every single possible question that anyone could ever think of related to planning, zoning and subdivision topics. (Really, it is not!)

What the Guidebook is

- The Guidebook is a basic text focused principally on the statutes and some CMRs (regulations) related to land use in Massachusetts.
- It focuses primarily, although not exclusively, on M.G.L. chapters 40A and 41.
- It attempts to “translate” & paraphrase the sometimes incomprehensible language, misplaced topics and inconsistencies of the statutes into more reader friendly format.
- It attempts to strip away the “fog” of legislative language.

What the Guidebook is

- The Guidebook is designed to be used electronically but can also be used in print version.
- The Guidebook is physically organized to be as user-friendly as possible. Formatting includes:
 - Restructuring of statute language into related topics.
 - A numbering system to organize all of the material into chapters, sections and subsections.
 - Navigation facilitated by internal and external hyperlinks.
 - Use of blue colored text boxes to highlight certain text.

What the Guidebook is

- It uses white space, shorter sentences and paragraphs, bullet points.
- It creates tables and charts to break down large sections of the statutes into a more readable and understandable format. (for example, Chapter 40A, Section 3, Exempted Uses and Chapter 40A, Section 6, Nonconformities).
- It creates “Action Date” Tables with a step-by-step guide for land use permitting procedures (subdivisions, SPs, variances etc.) and for other topics such as zoning adoption & amendments.

What the Guidebook is

- For the more difficult sections of the statutes, the Guidebook breaks down the topic into multiple Chapter sections.
- For example, while M.G.L. c. 41, § 81P, Approval Not Required Plans is one page in the statute, with only 438 words, the Guidebook has four separate Subdivision Chapter Sections for this topic.

Section 5-06 – ANR – Introduction

Section 5-07 – ANR – Adequate Access

Section 5-08 – ANR – Lots with Inadequate Frontage

Section 5-09 – ANR – Other Considerations

Legal Issues & Court Decisions

- The Guidebook is not a substitution for consultation with legal counsel.
- The Guidebook is not a comprehensive legal research tool.
- The Guidebook is not a replacement for other legal resources. (For example, Mark Brobowski's *Handbook on MA Land Use and Planning Law* or MCLE's *Massachusetts Zoning Manual*.)
- It is a Guidebook that links the language of the statutes (and sometimes CMRs) and the most relevant court decisions. In addition to brief explanations of each case there is a hyperlink to the case itself.
- There is an agreement with the State Trial Court Law Library to hyperlink to cases in its data base.
- Most all links are to either MA Supreme Judicial Court cases or to MA Appeals Court cases (with limited links to Federal Court decisions and MA Land Court decisions.)
- Links will include relevant cases into 2016, available as of the publication date of the Guidebook.

Table of Contents

❖ Chapter One	Introduction
❖ Chapter Two	Good Government Laws
❖ Chapter Three	Planning
❖ Chapter Four	Zoning
❖ Chapter Five	Subdivision
❖ Chapter Six	Selected Additional Land Use Topics
❖ Chapter Seven	Selected Federal Land Use Topics
❖ Chapter Eight	Administrative Topics & Meetings
❖ Appendices	
❖ Index	

Table of Contents

Chapter One - Introduction

- Guide to the Guidebook
 - * Purpose
 - * Organization
 - * Conventions
 - * Hyperlinks
 - * Disclaimer
- Credits & Thanks

Chapter Two – Good Government Laws

- Table of Contents
- Introduction
- Open Meeting Law
- Public Records Law
- Conflict of Interest

Table of Contents

Chapter Three – Planning

- Table of Contents
- Introduction
- Planning Board - Establishment
- PB – Roles & Responsibilities
- PB – Powers & Duties
- PB – Studies, Reports & Park Commissioners
- Master Plans
- Official Map
- Exterior Lines of Public Ways
- Regional Planning Agencies

Chapter Four – Zoning

- Table of Contents
- Introduction to Zoning
- Origins and History of Zoning & Home Rule in MA
- Purposes of Zoning
- Government Exemptions from Zoning
- City of Boston Zoning
- Title, Citation & Definitions
- Board of Appeals
- Exemptions from Zoning
- Zoning Districts & Maps

Table of Contents

Chapter Four – Zoning

- Zoning Adoption
- Vested Rights and Non-conforming Uses
- Enforcement
- Administrative Appeals
- Special Permits - Part I – Overview & Procedures
- Special Permits – Part II – Zoning Regulations & SP Uses
- Adult Uses
- Solar
- Child Care Facilities
- Variances
- Public Hearing Requirements

Zoning

- Decision Notice; Effective Date; Exercise of Special Permit Rights
- Zoning Administrator
- Repetitive Petitions
- Court Appeals
- Determination of Zoning Validity
- Housing / 40B
- Expedited Permitting 43D
- Smart Growth Zoning 40R & 40S
- Site Plan Review
- Inclusionary Zoning
- Growth Rate & Moratoria regulations
- Overlay Districts
- Zoning Action Date Tables

Table of Contents

Chapter Five - Subdivision

- Table of Contents
- Introduction - Subdivision Control
- Designation of Law & Definitions
- Purpose
- Acceptance of Subdivision Control
- Regulations of New Subdivisions & Submission of Plans
- Approval Not Required (ANR) Plans - Overview
- Approval Not Required (ANR) Plans - Adequate Access
- Approval Not Required (ANR) Plans - Lots with Inadequate Frontage
- Approval Not Required (ANR) Plans - Other Considerations
- Subdivision Rules & Regulations
- Waivers of Compliance
- Preliminary Plan – Process, Timeline
- Submission of Plans & Public Hearing
- Definitive Plan – Approval, Modification, Disapproval, Actions, Timeline

Table of Contents

Chapter Five – Subdivision

- Definitive Plan – Performance Guarantee
- Land for parks or recreation
- Final Approval of Plans – Endorsement or Certificate
- Modification, Amendment, Rescission
- Requirements for Recording of Plans
- Restrictions, Liability, Court Jurisdictions
- Subdivision Board of Appeals – Establishment and Powers & Duties
- Court Appeal
- Planning Board - Entry on Private Land & Transitional Powers
- Application of Law: Damages
- Registry of Deeds/ Recorder of Land Court
- Application of Subdivision Control on Registered & Unregistered Land
- Subdivision Plan Freeze Protections
- Subdivision Plans – Action Date Timeline tables

Table of Contents

Chapter Six – Additional Land Use Topics

- Table of Contents
- Introduction
- Local Historic Districts
- Scenic Roads & Shade Trees
- Outdoor Advertising
- Urban Renewal
- Action date timeline tables

Chapter Seven – Selected Federal Land Use Topics

- Table of Contents
- Introduction
- Takings
- RLUIPA
- Telecommunications Act

Table of Contents

Chapter Eight – Administration & Meetings

- Table of Contents
- Introduction
- Hearings & Decisions
- Findings
- Review Fees
- Mullen Rule & Remote Participation

Appendices

- Website list of government entities, organizations and others
- Website list of topic resources
- List of RPAs
- List of Referenced Court cases

Index

G.L. c. 40A, § 5, Zoning Adoption & Amendment (excerpt)

- 2nd paragraph (8 sentences – 460 words – 57.5 words/sentence)

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected 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 said hearing, and 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 said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

G.L. c. 40A, § 5, Zoning Adoption & Amendment Excerpt

- 2nd paragraph – 7 topics covered in the paragraph
 - Planning Board public hearing requirement
 - Timeline for holding public hearing
 - Hearing notice requirements – publication, posting, mailing
 - Waiver of notice provisions
 - Notice included in property tax bills – zoning bylaw/ordinance
 - Procedures for non-resident taxpayers to receive notice
 - Defect in notice

Guidebook Chapter 4, Section 4-05

- **Adoption & Amendment – G. L. c. 40A, § 5 and c. 40, § 32**
- [1.0](#) – Introduction
- [2.0](#) – Initiation of a Zoning Amendment
- [3.0](#) – Adoption Process – Notice Requirements
- [4.0](#) – Adoption Process – City Council/Town Meeting Actions
- [5.0](#) – Referendum
- [6.0](#) – Other Considerations

Section 4-05

Zoning Adoption & Amendment

[G.L. c. 40A, § 5; G.L. c. 40, § 32]

1.0 – Introduction

1.1 – STATUTORY REFERENCES – While the authority to enact zoning regulations is vested within the Home Rule authority of cities and towns, the procedures, requirements, and limitations applicable to the enactment process are governed by the General Laws. These are found mainly in [G.L. c. 40A, § 5](#), and (with respect to town bylaws) [G.L. c. 40, § 32](#).

1.2 – ZONING MAP – The official zoning map is also part of the zoning ordinance or bylaw, and thus changes to the map are subject to the same standards as changes to the text of the zoning ordinance or bylaw. [Hanna v. Town of Framingham](#), 60 Mass. App. Ct. 420 (2004).

Section 4-05

1.4 – ZONING LAW VS. GENERAL LAW

There are a number of factors to be considered in determining whether a proposed bylaw or ordinance is a general or a zoning law. These include:

- whether the subject of regulation is one that municipalities have historically or traditionally regulated under zoning;
- the extent to which the city or town itself may have regulated the subject in its own local general code; and,
- most importantly, whether the objective to be served was primarily linked to the character of the neighborhood or area rather than to public health generally or other non-zoning objectives.

A case illustrating the cautions of the *Rayco* case is [*Spenlinhauer v. Town of Barnstable*](#), 80 Mass. App. Ct. 134 (2011). There, the Appeals Court struck down Barnstable's overnight off-street parking ordinance that had been adopted as a general ordinance.

Action Date Table

Variations

Action	Action Date	Enter date or N/A
A1 – Application is filed		
A2 – 1 st Notice of hearing	= > 14 days prior to A4	
A3 – 2 nd Notice of hearing	Within the next successive week following A2	
A4 – Public hearing	< = 65 days of A1	
A5 – Public hearing closed	After evidentiary sessions are completed, but not later than 100 days after A1	
A6 – Decision is made	After evidentiary sessions are completed, but not later than 100 days after A1	
A7 – Written decision is filed	< = 14 days of A6	

The Guidebook - Next Steps and Remaining Issues

- **When will it be completed?** – Currently expected Summer 2016
- **How will it be available?** – Under discussion but at a minimum, likely will be available on the APA-MA Chapter website as a PDF.
- **Will printed copies be available?** Under discussion. (You can always print the PDF.)
- **How will it be maintained/updated?** To be determined.
- **What happens if zoning reform (or other statutory changes) passes?** At least some of the Guidebook will need to be updated to reflect the new legislation.
- **How will Guidebook be amended to reflect Zoning Reform or other statutory changes?** To be determined.