

The Citizen Planner Training Collaborative

“ROLES & RESPONSIBILITIES OF PLANNING BOARDS AND ZONING BOARD OF APPEALS”

The Citizen Planner Training Collaborative:

*University of Massachusetts Extension
Massachusetts Department of Housing and Community Development
American Planning Association, MA Chapter
Massachusetts Assn. of Regional Planning Agencies
Massachusetts Assn. of Planning Directors
Massachusetts Federation of Planning and Appeals Boards*

CPTC: 109 Hills North, 111 Infirmary Way
UMass, Amherst, MA 01003
www.umass.edu/masscptc ~ 413-545-2188

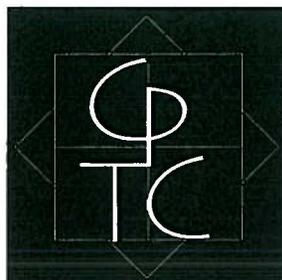
ROLES AND RESPONSIBILITIES OF PLANNING BOARDS AND ZONING BOARDS OF APPEALS

An introduction into the basic terms, rules and tools new board members need to know. This course is also recommended for new Building Inspectors.

Based on the audiotape presentation by Jeanne Armstrong, Land Use, Inc.

Edits and updates have been made by DHCD and are indicated by an asterisk (*) preceding the text.

A CPTC Core Curriculum Course



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INTRODUCTION

THE CITIZEN PLANNER TRAINING COLLABORATIVE

It is the mission of the Citizen Planner Training Collaborative to empower local officials serving on Planning Boards and Zoning Boards of Appeals to make effective and judicious decisions providing them with educational opportunities, access to information and resources and by encouraging the cooperation and integration of land use boards within local government. This workshop is one of the building blocks of a core curriculum for local planning boards and zoning boards of appeals. Taking this set of courses over a period of two or three years will provide you with the knowledge and skills you need as a board member to perform the basic duties of your position effectively.

This approach to training requires the cooperation of all the major players in the field of planning and zoning. The Collaborative combines the expertise and resources of the Massachusetts Federation of Planning and Appeals Boards, Massachusetts Department of Housing and Community Development, University of Massachusetts Extension, American Planning Association, Massachusetts Association of Regional Planning Agencies and the Massachusetts Planning Directors.

You are attending this program because you are willing to serve your community on a local Board by donating your time, learning a lot of new information, dealing with a fair amount of frustration, and receiving usually more criticism than praise. The Citizen Planner Training Collaborative strongly believes that you deserve all the training and support you can avail yourself. Your community also deserves well trained local officials who make decisions judiciously, objectively, and effectively.

We are offering a menu of training modules across the state to make training **accessible, affordable, and available** every year -- basic courses for new members and additional modules for your tool chest. We are diversifying our training media so that you will have access to workshops, audiotapes and electronic online services that will make information accessible to you via your home or town/city hall computer – for example, training modules, calendars, model bylaws and links to state statutes and regulations.

We need to charge local boards a training fee to help offset costs. We encourage you to establish a small budget item for training in your annual budget in anticipation of attending trainings regularly. We are working hard to make the trainings worth the expense.

COURSE OBJECTIVES

Participants will learn:

- how to build cooperative working relationships in town/city hall
- the major tools for planning, their purposes and mechanisms, and
- how to follow the laws of conduct for public officials

WHAT IS PLANNING?

Planning is:

"...the conscious attempt to solve problems and control the course of events by foresight, systematic thinking, investigation, and the exercise of value preferences in choosing among the alternative lines of action."

Gilbert & Specht
Planning for Social Welfare 1977

Do you feel that this is what you are doing at your Board meetings? The Citizen Planner Training Collaborative hopes to help you get out of the reactive mode most officials find themselves in, so that you can get into the proactive mode that is true planning.

Some of the purposes of planning:

- Orderly growth to minimize costs and conflicts
- Clean water and air
- Healthy economy, local jobs
- Good schools, other municipal services
- Housing appreciation, availability and affordability
- Efficient use of taxes
- Recreation areas and open space
- Natural and cultural resource protection

LEGAL RESPONSIBILITY TO PLAN

State statute (The Zoning Enabling Act, MGL Chapter 40A) assigns to:

- the planning board = long range planning, zoning and subdivision administration
- the zoning board of appeals = appeals and other key decisions

In addition, case law has evolved from continuous interpretations of substantive and procedural aspects of the Zoning Act.

Overall, planning is a good thing to do. It's possible and legal. But most boards do not find the time to do it.

DOING YOUR JOB RIGHT: ADMINISTRATION

There are four essential aspects of doing your job that you must get control of. They are clear, reasonable, and straight-forward. Do them right, and you will be meeting your fundamental, ethical obligation of fairness. You will also be keeping yourself and your municipality out of legal entanglements or lawsuits.

- Establishing working relationships with other boards and municipal staff
- Adopting rules and regulations
- Adhering to the Open Meeting Law
- Being mindful of ethics/conflict of interest concerns

ESTABLISHING WORKING RELATIONSHIPS WITH OTHER BOARDS & MUNICIPAL STAFF

Your board does not work in a vacuum but is part of the local government team operating out of town or city hall. It is important that you establish effective working relationships with those offices that play into planning and zoning decisions:

It is recommended that you take a team approach to your work within town/city hall. Though there are few laws that require a team approach, it is:

- very much to your community's benefit,
- makes your jobs easier by tapping others' knowledge and authority, and
- fairer to applicants and to abutters

A team approach (rather than a turf approach) to the administration of bylaws/ordinances and regulations is more efficient, fairer to the public, and better for your physical and mental health in the long run. It is not an easy tradition to start up: different boards and officials have different responsibilities, personalities, expertise, and legal mandates. But you must still see that you are on **the same side**, and that means doing your best on behalf of the community.

CITY/TOWN HALL TEAM LINE-UP

- 1. City/Town Clerk**
Filings, postings
- 2. Building Inspector**
Zoning Enforcement
- 3. Board of Health**
Title 5 issues (on-site water disposal), subdivision filing (their decisions are binding and planning boards must follow them)
- 4. Conservation Commission**
Wetlands Protection Act with respect to new developments
- 5. Historic Commission**

Reviews development impacting National Register or state listed properties or historic districts.

In addition to those listed above, consider some of the other officials in your municipality that you need to work well with. Is there anyone here who has not at some point said, 'Oh no!! We're going to have to deal with X?' This is a diagnostic sign that you need to work on establishing more of a team approach **before** the next controversial application comes in!

This holds also for the relationships between the two boards we bring together in this course. What is your relationship with the other respective board in your city/town? Be teammates. Avoid frustration and burn-out. Don't sue each other... communicate. Here are some ways to collaborate that will make everyone's life easier and help get you rolling together.

Shared computer database: The management and sharing of information - today facilitated by computers - is crucial to timely and good decisions. Who has not wasted time spinning wheels because you did not have the right information?

Check-off circulation list for all applications: Numerous boards and officials receive applications for a variety of permits. Each of you can require that -- together with submitting it to you -- the applicant must circulate copies of the application to a designated list of other boards and officials. Each of them checks off on the circulation list that they have received it.

Development review process manual: A clear road map through your development review process will help the applicant avoid that feeling of being a pinball bouncing fruitlessly back and forth. It will make clear just what homework needs to be done before taking up your time. And you and your fellow officials will learn a lot from the discussions you'll have as you try to figure out how an application should make its way through town/city hall.

Regular all-boards' meeting: The lack of communication among local officials can be staggering. Sitting together in the same room 2 or 3 times a year can work wonders. You can work out problems in the review process, discuss the implications of expected applications, and strategize for long-range planning.

Map Inventory: Work towards developing a comprehensive map inventory, which is parcel based and which can be shared among municipal boards.

ADOPTING RULES AND REGULATIONS

Your board should have duly adopted Rules and Regulations on such topics as:

Election of Officers: How you will establish rotation of Board responsibilities without hard feelings

Appointments: How you will schedule them on your agenda ahead of time, so you can review materials before the meeting and budget your time.

Meetings: Time, location, agenda

Record of Proceedings: How you keep and provide access to the minutes (more about minutes later on)

Conduct of meetings (applicants, citizen participation): How you will handle 'who gets to talk, and when'. "Open meeting" does not mean you must let anybody seize the floor whenever he or she wants to. You cannot do your job if you don't plan and enforce a balance between public input and your time for deliberations.

Applications (special permits, site plan review, subdivisions, etc.): How you will handle all the applications. Be clear about what constitutes a complete application. Incomplete information can be reason for denial. The review period clock always starts ticking upon submittal.

Public Hearings How you will conduct your public hearings. Who doesn't have a horror story about a public hearing that got out of hand? The only way to avoid this is to do homework ahead of time about how to conduct a constructive hearing -- and then stick by your rules.

Writing of Decisions This is how you are clear to the concerned parties, and how you provide firm footing for future proceedings. Pull your board's rules and regulations out and look them over. These may be topics of future workshops.

You will probably find that reviewing these topics with your fellow board members will prompt much more discussion and varied opinions than you would expect. It is worth the effort to come to thoughtful agreement because the way you craft and follow your rules and regulations will have a great influence on whether you drag yourselves home from meetings at midnight, exhausted and frustrated, or get home at a reasonable hour feeling the satisfaction of having completed your work and done it well.

Quorums

- General rule: majority of board is a quorum, in absence of statutory restrictions, and a majority of a quorum may act (usually by majority vote of those present and voting)

- No regard for vacancies, i.e. a majority of the number of members there are supposed to be
- Cannot count member with conflict for quorum in regard to that matter
- Ordinarily if a super majority is required (e.g. 2/3, 3/4 or unanimous), you should have that number of members present
- No telephone calls for quorum. Neither serial nor conference calls are permissible if a quorum is involved
- Upon municipal acceptance, a member may miss one session of a hearing and still vote as long as that member certifies in writing that he/she has reviewed all evidence of the missed session

A super majority means that the vote required to approve is greater than the simple majority of 50% plus one. Whether a super majority is required is determined by a variety of statutes pertaining to such decisions as special permits, and variances. The exact number required can vary according to the number of board members. For example, a three member ZBA may need all three votes to achieve a super majority, whereas a five member board may only need four out of the five. If you have questions about this, check with your town counsel or city solicitor.

Voting

- Must take place at meeting. No call-ins or faxes.
- Abstention counts toward quorum, but not as vote for or against a motion.
- Tabulate vote based on those present and voting. Majority (or super majority) required for motion to pass.
- A tie vote usually defeats a motion.

Public Hearings

- Due process may necessitate a public hearing, even if statute does not require one.
- Constitutional requirements take precedence over statutory ones.
- Public hearings may not be on the same day as state or municipal election, caucus, or primary in a town or city (for special permits, variances, appeals or any public hearing on Zoning Act related issues.)
- Public hearings can continue to a certain date without sending out new notices, but must state the date, time and place at the hearing and re-post with 48 hour notice!!
- When interested parties may no longer present information, and argument is finished, the hearing has ended and the time clock for your decision starts ticking.

TOOLS OF PLANNING AND ZONING

The comprehensive or master plan, zoning bylaws or ordinances and subdivision regulations are your municipality's basic planning tools. This workshop will provide you with an overview of the purposes of each tool, and how they should fit together to provide a solid basis for local officials' on-going decision-making on behalf of the community. We will also consider your respective statutory responsibilities in regard to the adoption and administration of these tools. We'll start with brief definitions of what these tools are. You'll hear more about them later in the workshop.

THE COMPREHENSIVE OR MASTER PLAN

The comprehensive or master plan is a policy document outlining the municipality's current situation and desired future. It is a public document with legal standing if duly adopted by the policy board that guides municipal decisions.

Emphasis on:

- future patterns of land use,
- provision of services,
- relationship among different parts of the community (e.g. housing, business, open space, transportation).

ZONING BYLAW OR ORDINANCE & ADMINISTRATION

- Special permits
- Variances
- Site plan review

The bylaws or ordinance regulates the pattern and appearance of development; creates zoning districts within which certain uses will be prohibited, permitted or permitted by special permit, and spells out the development review process.

ZONING MAP WITH OR WITHOUT OVERLAY DISTRICTS

The zoning map shows the locations of the different districts within the city or town.

OFFICIAL MAP (DIFFERENT FROM THE ZONING MAP)

The official map shows public ways and parks previously laid out and established by law and private ways existing and used in common by more than two owners.

SUBDIVISION REGULATIONS

(THE SUBDIVISION CONTROL ACT MGL CHAPTER 41 §§ 81K-81GG)

The subdivision regulations regulate division of land into smaller parcels. They specify standards for roadways and other improvements in resulting new rights of way.

In addition to the tools mentioned above, planning boards should add to their basic set of tools:

CAPITAL IMPROVEMENTS PROGRAM (CIP)

The Capital Improvements Program is the on-going municipal plan to schedule and pay for needed major expenses.

DUTIES AND RESPONSIBILITIES

PLANNING BOARD

Now we are going to focus in more detail on the specific responsibilities of the planning board. We talked about their basic tools earlier. We will finish up by doing the same for the zoning board of appeals. For each board we will focus on your make-up, and your special areas of responsibility.

- Composition (as set by state statute)
- Principal Duties and Statutory Responsibility
 1. Master (or Comprehensive) Plan
 2. Zoning
 3. Subdivision Control Law
 4. Scenic Roads

COMPOSITION OF THE PLANNING BOARD

- At least five, no more than nine members
- Three or five year terms determined by town meeting or city council
- At least one term expiring each year (staggered terms)
- Elected or appointed (varies by municipality)
- A Board's level of independence can be highly influenced by whether it is elected or appointed. This is determined by your municipal charter.

ZONING BOARD OF APPEALS

Now it's the ZBA's turn! Here are the key points we'll be looking at.

- Composition
- Duties and Responsibilities regarding:
 1. Adopt own Rules for conducting your business
 2. Zoning
 3. Comprehensive Permits

COMPOSITION OF THE ZONING BOARD OF APPEALS

- At least three but no more than five members.
- Elect Chair and Clerk annually.
- One term expiring each year
- Appointed unless local charter says otherwise
- Local Zoning Bylaw/Ordinance may allow for associate members. This is a particularly important point for the ZBA, given the judicial nature of your responsibilities and the tough spot you are in if you haven't got a quorum or one or more members have to excuse themselves due to conflict. Think through the implications of this option, and consider amending as necessary the zoning provision that establishes the local ZBA.

AREAS OF RESPONSIBILITY

Zoning

Zoning protects health, safety and welfare. It divides the community into districts, each with regulations regarding: use of land, area of buildings as shown on the official zoning map, etc.

Zoning can't regulate everything, but it greatly influences the look and use of our constructed environment. It is a tool for implementing the comprehensive/master plan: zoning should be guided by and consistent with the plan. Other workshops will go into much more depth about zoning. Our purpose here is to stress how important it is that your zoning be tailored to fit with the objectives of your comprehensive/master plan, and also to outline what part the planning board plays in the adoption and administration of zoning.

Planning Board Duties Relating to Zoning

The three major categories of responsibilities under the zoning act for the Planning Board are:

- Conducting public hearings about zoning changes,
- Responding to special permit applications and
- Conducting site plan review.

Variances to the zoning bylaw are the responsibility of the Zoning Board of Appeals.

Conduct public hearing and make recommendation on proposed zoning or amendments, no matter who initiates these steps.

As the board responsible for long range planning, you must advise the town/city regarding how a proposed change would work for or against the community's desired future. A good master/comprehensive plan clearly explains what that desired future is and provides the rationale you can use to evaluate whether or not a proposed amendment would be in the best interests of the community.

About Special Permits: The Zoning Act allows certain land uses by special permit. Granting a special permit is discretionary but should follow clear standards spelled out in the zoning bylaws. Who is the Special Permit Granting Authority (SPGA) in town hall varies with the different special permits.

The planning board may be the Special Permit Granting Authority. This is a crucial decision made in your zoning ordinance. The planning board's expertise lies in making planning-related judgment calls, whereas the ZBA's expertise tends to be in adjudicative decision-making. The Special Permit Granting Authority should fall on the board which is in the best position to exercise judgment on behalf of the community.

About Site Plan Review: Site Plan Review is a zoning or nonzoning mechanism that allows the municipality to review and condition certain uses or activities where the underlying use is permitted by right or allowed subject to a special permit. Your zoning bylaw will specify what uses, activities or structures will be subject to site plan review.

Master (Comprehensive) Plan

A comprehensive or master plan is a public document with legal standing. A sound, properly adopted master plan serves as an argument for why decisions based upon it are not arbitrary and capricious.

Adopted by majority vote of planning board following public hearing. For sound political reasons, and to ease future implementation, you may choose to have town meeting/city council endorse or accept the plan, but it becomes the municipality's official plan when *you* adopt it.

Addresses current and forecasted land uses.

Sets policies and plans for long term management of growth and development. These are the *physical* aspects of your community that must be included in your plan, according to state statute. But it is *your* community's plan. You can include other things, too. For example, how town hall will relate to, and work with, the business community or local volunteer groups. These "nonphysical" considerations may be very important to your planning to achieve implementation, for example to win the votes necessary to amend your zoning or to fund capital improvements. Or working with your Downtown Business Association may be key to implementing the economic development component of your plan.

Must be comprehensive and internally consistent. Your plan must be comprehensive and internally consistent precisely because of its basic purpose: to understand how all the parts of your community fit together and to set policies and guidelines to help your regulations and actions be consistent. Don't let this discourage you. 'Comprehensive' doesn't have to mean 'encyclopedic'. Gather the best information you can for now, and think about the broad outline of your community and the overall patterns of development. What is crucial is community-wide consideration of the big picture, and agreeing on useful policies to help make important decisions. A good master plan is a living document. You can fill in missing pieces, get more specific, and adjust it over time. The important thing is to plan for your shared future. You may already have pieces of a master/comprehensive plan, for example an open space and recreation plan, an historic survey, or an economic development Plan.

Planning Board Duties Relating to the Master/Comprehensive Plan

Adopt and amend from time to time, State statute designates you as the body who may adopt and update the local comprehensive plan. A tool that is rusty and out of date won't be used. Make sure that your plan addresses and gives guidance on the issues that confront you and your

fellow officials. If it does not provide a basis for making the decisions that you face, it is due for an update.

Spearhead broad-based process to inform, involve, and gain knowledgeable support from residents and other officials. Speaking philosophically, if this is a plan for the community, the community must develop it. Speaking practically, the five or nine members of one board (even with a fantastic staff, RPA, or consultants) do not have the knowledge or energy to generate a good master plan. Speaking politically, a plan developed in a vacuum won't have a prayer of a chance of implementation. You adopt the Plan. Other people vote the regulations and money to implement critical objectives. Daily decisions by other officials will follow its guidance or undercut its intentions. How can they pay attention to a master plan they don't understand and may not agree with? If this is seen as 'the planning board's plan', you've wasted your effort and not done your job, because there still is no master plan that is guiding the municipality.

Consider seeking Town Meeting or City Council endorsement. If the process that generated the master plan also generated a community-wide mandate for the plan, it should be fairly easy to get this vote, and subsequent votes on implementation actions will be made much easier.

Advocate use as guide for decisions. Keep reminding officials and residents that the Plan is their tool to help make decisions easier. Quote from it during public debate. Refer to it in your decisions and recommendations to other governmental bodies. Ask that an agenda item in all Board's meeting be periodic consideration of whether the plan is still a useful reference for the decisions confronting your fellow officials.

The Planning Board and Subdivision Regulations

About Subdivision Regulations:

- They control the conversion of undeveloped land into smaller lots (residential and non-residential) and the roadways and services required.
- They should be guided by and consistent with master/comprehensive plan and zoning
- They address:
 1. adequate access for safety
 2. compliance with Zoning
 3. compliance with other Bylaws
 4. adequate utilities and water and waste water services
 5. adequate drainage, stormwater management

The density and development pattern reflect what your Zoning allows and requires, but through your Subdivision Regulations and review process you determine a great deal about how new development is laid on the landscape.

Planning Board Duties Relating to Subdivisions

Determine whether plan is Approval Not Required (ANR). That is, exempt from subdivision regulations because the lots have adequate frontage on an existing way. The issue of determining whether adequate access already exists is the subject of another workshop.

Adopt Subdivision Rules and Regulations. What should new roads look like? Just how much pavement fits on your landscape? What about sidewalks, paths, street trees, utilities, walls, other elements in public rights of way, including easements? What information should be on plans and in the submittal package before you accept and consider an application? Your subdivision regulations tell the applicant what you expect, what you require, and what your standards are.

To adopt or amend your regulations requires a duly posted public hearing followed by a majority vote of the planning board.

Review and approval or disapproval of Preliminary Subdivision Plans: Preliminary plans are required for non-residential plans, and strongly recommended for residential ones. At this early stage, you have an excellent opportunity to suggest, influence, negotiate, and drive home your requirements. You can approve, conditionally approve, or disapprove the preliminary plan. In the case of disapproval, you must outline the reasons for your disapproval.

Review and approval or disapproval of Definitive Subdivision Plans: Definitive Subdivision Plans require a Public Hearing. The Board of Health must have received a copy at filing and must approve the plan. You cannot approve a plan that doesn't comply with their recommendations. If the Board of Health does not report within 45 days, it is deemed approved. See Chapter 41 §1U

You can approve, approve with modifications, or disapprove a definitive plan. You can only disapprove it for specific violations of the subdivision regulations or for not following Board of Health recommendations.

If you disapprove the plan, you must detail in writing the basis for your disapproval and specify definite suggestions for amendment. Be clear and complete.

Planning Boards and Scenic Roads

About Scenic Roads. Once a municipality designates by town meeting vote a road scenic, trees and stone walls *in the right of way*, cannot be cut, removed, or destroyed as part of road repair or reconstruction without prior written consent of the Planning Board.

A municipality cannot give scenic designation to a state-owned or maintained roadway.

Planning Board Duties Relating to Scenic Roads

- May recommend designation
- Hold Public Hearing on request to cut, remove, or destroy tree or stone wall, public hearing held jointly with Tree Warden, if it concerns cutting a Public Shade Tree
- Decide whether to provide written consent

Once a road is designated as scenic, written consent from the planning board must be obtained before a tree or stonewall in the right of way can be cut, removed, or destroyed as part of roadway maintenance or reconstruction. Note that this protection does not extend to private landowners making these changes, for example to build a driveway. That concern must be addressed by other means, for example through your Subdivision Regulations or Site Plan Approval.

AREAS OF RESPONSIBILITY

ZBA Duties Relating to Adopting Own Rules

Earlier we scanned the contents of board rules that apply to most boards, and these are relevant to the ZBA, too. Because you have such a range of appeals and administrative processes crossing your desk, you have to be especially careful that your standard operating procedures are fair and clear to all parties, adhere to the various "ticking clocks" that apply to different matters, and provide you with the best information and most time to exercise your best judgment. They have to be:

- Consistent with statute and local zoning,
- Filed with Town or City Clerk, and
- If the ZBA appoints Zoning Administrator, the duties and limitations of the position must be identified in the rules.

A word regarding the Zoning Administrator position. This is not the same as the Zoning Enforcement Officer. Local bylaws can designate an official who is charged with enforcing zoning. By default, this is the Building Inspector in most municipalities. Under state statute the ZBA could appoint a Zoning Administrator, to whom the ZBA delegates certain of their powers, for example ruling on appeals. Few ZBAs have chosen to follow this course.

Tomorrow dig out your own rules about how you conduct your business on behalf of the community. Are they current? Do they truly reflect how you operate? If not, should they be changed, or should you update how your meetings and hearings are conducted?

ZBA Duties Relating to Zoning

Note that state statute carefully lays out a process and schedule for each of these.

- Administrative appeals (For example, regarding the Building Inspector's decisions)
- Appeals from decisions of zoning administrator (If you have one)
- Special Permit Granting Authority (if specified by local zoning)
- No power to determine whether zoning is invalid
- Variances

This is the most frequent violation of the law committed by ZBAs!! Pull out and memorize the provision of the statute that specifies the conditions under which you may grant a variance!! Each and every one of those prerequisites must be there for you to grant the variance. The illegal granting of variances is undermining plans and regulations all over the Commonwealth. Beware of thinking that local traditions, or previous practice provide a guide.

The following graphic¹ sums up the requirements very clearly. Unless every one of these conditions is true, you cannot grant a variance.

...there are several prerequisites to the granting of a variance. These are stated conjunctively and not disjunctively. A failure to establish any one of them is fatal...

Blackman v. Board of Appeals of Barnstable
334 Mass. 446, 136 N.E. 2d 198 (1956)

¹ Based on a graphic created by the Massachusetts Federation of Planning and Appeals Boards.

For both use and dimensional variances, the conditions affecting the parcel or building must not affect the whole district. There must be substantial hardship that would result from strict enforcement of zoning on that particular parcel. The variance must be possible without detriment to the public good and without derogating the intent or purpose of the Zoning.

*If even **one** is not true, you must deny the request.*

ZBA Duties Relating to Comprehensive Permits

Under Massachusetts law, if a developer proposes a project that will contain affordable housing, he or she may apply for a comprehensive permit, which supersedes local zoning's density and use regulations, and review procedures.

Here is where the ZBA becomes involved in a subdivision type decision -- the kind of decision that you are not usually called on to make. You need information and quick response from all your fellow officials in order to have the best basis possible for your decision.

Comprehensive permits can be a useful tool for the town or city to support a locally initiated effort by your Housing Partnership, or a private developer who is trying to build what the

municipality's housing plan says you want, to achieve certain housing opportunities without totally altering your zoning bylaw.

Here are the steps required by state statute. They are logical and they require quick, coordinated action.

1. Receive and rule on applications
2. Notify each applicable board quickly, so they have time to get back to you.
3. Hold Public Hearing (within 30 days of the application)
4. Decision by majority vote (40 days after termination of Hearing)
5. Written decision, findings, reasons

Here is where your skill and good judgment show. Your decision must be carefully considered and based on solid information. This is why you need a good comprehensive/master plan and productive local housing effort. If the applicant has agreed to make changes to make the plan acceptable, specify every one of them in your written decision. If you have not been able to gain concessions that make the plan acceptable, consider very carefully how a housing development of the nature proposed could be made to fit on the site. Then spell it out in a conditional approval. Quote chapter and verse from your master plan, your housing policies and plan, the data on natural resource constraints.

Approach a comprehensive permit application as an opportunity to obtain a benefit for your community: affordable housing that meets local needs. Your responsibility is to marshal the available information, listen carefully to advice and opinions particularly from your fellow officials, work for the best development plan you can get, decide whether it is acceptable, and carefully record all your findings and reasons.

CONDUCT

OPEN MEETING LAW (OML) (CHAPTER 30A §11A½, 39 §23A, 39 §23B)

Purpose: To conduct government in full view of the public and to eliminate secrecy surrounding deliberations and decisions on which public policy is based. Note that this means that the public has to be able to watch and listen. They do not have to be allowed to speak or participate in the discussion. Be careful – during a *public hearing* the public must be given an opportunity to speak.

Rule: No quorum of a governmental body may meet in private for the purpose of *deciding* on or *deliberating* on any matter.

Requirement: All meetings of a governmental body must be open to the public.

- A Subcommittee is a governmental body
- Work sessions are meetings
- Site visits are not meetings

Exceptions: Executive Sessions: By law there are now nine reasons why a body may go into executive session. The most common reason relating to planning/zoning deliberations has been to discuss strategy regarding actually pending litigation or immediately threatened litigation if an open meeting would be deleterious to the municipality's position. The body itself must be a party in the litigation or reasonably expect to be a party. A recently added likely reason for you to go into executive session could be to conduct a mediation procedure.

The proper way to go into Executive Session is: first convene in open session of a posted public meeting. Then vote by majority roll call to go into executive session. The presiding officer must first state the purpose for the session and say whether or not the board will reconvene afterwards.

Required Notices of Meetings are the responsibility of the Officer calling the meeting.

- File with the town/city clerk and post publicly in the clerk's office or main community bulletin board
- The notice must be posted at least 48 hrs. in advance (including Saturday, but not Sunday or legal holidays)
- Include *date, place, time*. "Every 3rd Wednesday" is not enough. A specific list can be posted if you adhere to it rigidly.
- You can post a series of meetings ahead of time, but any change must be posted at least 48 hours ahead of the meeting affected.

Required Record of Proceedings (*also known as Minutes*): The following content is required for minutes:

- Date, Time, Place
- Members present/absent
- Actions taken

- Roll call votes

Minutes become public records immediately except for executive session minutes. However, executive session minutes must be made available to the public after the reason for secrecy no longer applies.

No special format is required. Keep tapes or discs until official printing.

The Open Meeting Law does *not* apply to:

- site visits (generally)
- chance/social meetings, even if matters relating to official business are discussed so long as no final agreement is reached

The Open Meeting Law does *not* require:

- printed or posted specific agenda - but this is obviously a good idea,
- public participation (i.e. people do not have to be allowed to speak)
- publication or mailing notice to abutters (except as required by law, for example, for public hearings)
- a public meeting to reduce a decision to writing, but all conditions of approval need to have been made known at public session. Once the decision is made at a meeting, a member can write it up later.

Emergency meetings (sudden, unexpected occurrence or set of circumstances *demanding immediate action*) must adhere to Open Meeting Law but not to the notice of meeting requirement.

Conducting Meetings with Meaningful Access

The meeting environment has to allow all persons to *hear* (and preferably *see*) all discussion and decisions. (note Americans with Disabilities Act guidelines) You must take action to remove disturbances, and use a large enough hall so that all may fit. The Presiding Officer may (and should) request all persons to be silent, and may (should) remove anyone who persists in disorderly behavior despite warnings. There should be no closed doors unless there is a sign inviting people in.

In an open meeting, attorney/municipal client privilege is waived. That is, an attorney must deliver advice to you in the open, except under the strict limitations of executive session.

Avoid conduct that leaves the impression of OML violation.

THE CONFLICT OF INTEREST LAW (CHAPTER 268A)

Who is covered?

The law applies to everyone from Governor to unpaid board member, whether you are

1. Elected or appointed,
2. Full or part-time,
3. Paid or unpaid,
4. Current or former,
5. Partners of current or former.

What activities are covered?

- Bribes (i.e. to influence action). No making, seeking, or receiving bribes.
- Extra pay, gifts, privileges, (i.e. because of your official actions). Nothing of value over \$50, even out of simple gratitude for a job well done. No tickets or free passes to sports events etc.
- Participating in a matter in which there is any financial interest of: you or member of your immediate family (including as abutter) your business partners, an organization (including non-profit) for which you are officer, director, present or prospective employee

What should you do?

If you have a question concerning your own position, request opinion from town counsel or contact the State Ethics Commission *before* engaging in the activity or participating in the matter. Stay totally clear of the matter until you receive a favorable opinion. If conflict comes up, advise the person or board who appointed you (or fellow board members) *in advance, in writing and file with the town or city clerk.*

This allows others to assign the matter to someone else, or to make a written determination that your interest is not so substantial as to require your withdrawal from the matter.

Someone who is otherwise disqualified because of a conflict may still act on the matter if his/her not acting would defeat the purpose of the proceeding and the result is a failure of justice. (For example, no action is possible without your vote, and there is no alternative member or other board or official who has jurisdiction.) This Rule of Necessity can only be invoked if a board is unable to act because of a lack of quorum resulting from the disqualification of one or more of its members. You cannot invoke the Rule because of vacancies or absences or to break a tie vote. You can only use it as a last resort. Only the chairperson (not the disqualified member) may invoke it, on advice of the town counsel or city solicitor. If the Rule is invoked, note in the minutes how and why you used it as a last resort.

Standards of Conduct

You may not . . .

- Accept other employment which would impair your independent judgment
- Improperly disclose confidential information
- Use your position to gain privileges

For yourself or others: Give reasonable impression that you will listen to all sides impartially and that you are not improperly influenced. If the matter is adjudicative, disqualify yourself if you've already made up your mind, or have a closed mind about the facts or parties involved, or have personal animosity. For making public policy or factual determinations, you do not necessarily have to disqualify yourself even if you've already made up your mind.

ADDITIONAL MATERIALS

From the Commonwealth of Massachusetts State Ethics Commission:

Educational Materials List

For County/Municipal/State Employees and Officials

Conflict of Interest Law (Chapter 268A) Guidelines

Commission Advisory No. 05-01:

(former Fact Sheet #1)

Avoiding “Appearances” of Conflict of Interests Standards of Conduct

Commission Advisory No. 05-05:

(former Fact Sheet #5)

Rule of Necessity

Commission Advisory No. 05-02:

(former Fact Sheet #6)

Don’t Vote On Matters Affecting Abutting or Nearby Property

Executive Session Information

Kopelman and Paige, P.C., Boston, MA

Sample By-Laws:

Zoning Board of Appeals Rules and Regulations

Planning Board Special Permit Rules and Regulations

Planning and Zoning Resource Materials



Planning & Zoning Appeals Boards

Sources of Support

Your Regional Planning Agency

The Internet Site of the MA Government: www.mass.gov/portal
Listings of all agencies, cities and towns, publications etc.

Department of Housing & Community Development: www.state.ma.us/dhcd
Don Schmidt, Manager Smart Growth Zoning Programs and
Elaine Wijnja Principal Land Use Planner: (617) 573-1360

State Attorney General's Office: www.ago.state.ma.us
One Ashburton Place, Boston, MA 02108-1698: (617) 727-2200
Western (Springfield) office: (413) 784-1204
Central (Worcester) Ma Division: (508) 792-7600

State Ethics Commission: www.state.ma.us/ethics 1-8888-485-4766

Citizens Planner Training Collaborative (CPTC): www.umass.edu/masscptc (413) 545-2188
Training programs, bylaw collection, website with good links

Executive Office of Environmental Affairs: www.state.ma.us/envir (617)626-1000
Community Preservation Act

Coastal Zone Management (CZM): www.state.ma.us/czm (617) 626-1200

MA American Planning Association (MA APA): www.massapa.org

Educational Materials

This hand out is comprised of select sections from the State Ethics Commission website

The State Ethics Commission has reorganized its educational materials to make them more accessible to the public. **All** Commission's educational materials are now available online. (Some materials have been renumbered while others have been withdrawn or eliminated. For example, the Commission will no longer publish fact sheets. Over the next year, the Commission plans to revise, add and update many of these publications.) It is important to keep in mind that educational materials are general in nature and are not exhaustive reviews of the conflict law. For specific questions, public officials and employees should contact their agency or municipal counsel or the Legal Division of the State Ethics Commission at (617) 371-9500.

ETHICS PRIMERS

Primers are discussions of a particular section of the conflict of interest law that originally appeared in the Commission's Bulletins. The information provided is educational in nature and should not be considered legal advice.

MUNICIPAL PRIMERS

Municipal Officials Appearing Before Town Boards (Summer 2002)

Former Municipal Employees(Fall 2002)

Self-Dealing, Financial Interests and the Rule of Necessity for Municipal Employees (Fall 2001; Spring 2002)

Financial Interests in Contracts for Municipal Employees (Spring 2001)

The Code of Conduct (Spring 2003)

Giving Gifts and Gratuities (Summer 2003)

Receiving Gifts and Gratuities (Fall 2004)

STATE PRIMERS

State Officials Appearing Before State Agencies and Boards (Summer 2005)

Former State Employees (Fall 2005)

Self-Dealing and Financial Interests for State Employees (Spring 2005)

Financial Interests in Contracts for State Employees (Spring 2006)

The Code of Conduct (Spring 2003)

Giving Gifts and Gratuities (Summer 2003)

Receiving Gifts and Gratuities (Fall 2004)

ADVISORIES

The Commission issues Advisories periodically to interpret various provision of the conflict of interest law. Advisories respond to issues that may arise in the context of a particular advisory opinion or enforcement action but which have the potential for broad application. Advisories have been renumbered sequentially and by the year in which they are issued.

To find an Advisory using the old number system, use the following links:

1* 2* 3* 4 5 6 7* 8* 9 10* 11 12* 13A 13B 13C 14
(* = withdrawn)

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- No. 84-01: Political Activity (Revised April 2006) (*Formerly Advisory No. 4*)
No. 84-02: Municipal Districts and Authorities and Their Special Municipal Employees (Revised November 1992) (*Formerly Advisory No. 5*)
No. 84-03: Municipal Lawyers Representing Both a Municipal Employee and a Municipality in the Same Suit (Revised January 2004) (*Formerly Advisory No. 6*)
No. 86-01: Public Employee Stock Ownership (Revised January 2004) (*Formerly Advisory No. 9*)
No. 86-02: Nepotism (Revised January 2004) (*Formerly Advisory No. 11*)
No. 88-01: Agency, Part A: Municipal Employees Acting as Agent (Revised July 1994) (*Formerly Advisory No. 13A*)
No. 90-01: Negotiating for Prospective Employment (Revised January 2004) (*Formerly Advisory No. 14*)
No. 90-02: Former State Employees Serving as Legislative Agents (*Formerly Fact Sheet 13*)
No. 94-01: Agency, Part B: State Employees Acting as Agent (*Formerly Advisory No. 13B*)
No. 94-02: Agency, Part C: County Employees Acting as Agent (*Formerly Advisory No. 13C*)
No. 98-01: The Conflict Law and Legislators' Private Employment
No. 04-01: Free Tickets and Special Access to Event Tickets
No. 04-02: Gifts and Gratuities
No. 05-01: The Standards of Conduct
No. 05-02: Voting on Matters Affecting Abutting or Nearby Property
No. 05-03: Elected Officials Voting on Budgets and Signing Payroll Warrants that Include Salaries for Family Members
No. 05-04: Voting on Matters Involving Competitors
No. 05-05: The Rule of Necessity
No. 06-01: Consultants and Attorneys who Provide Services to Government Agencies May Be Public Employees Subject to the Conflict of Interest Law

SUMMARIES OF THE LAW

- No. 1: Selectmen (Revised September 2005)
No. 2: City Councilors (November 1987)
No. 3: Municipal Managers (May 1987)
No. 4: Town/City Clerks (September 1987)
No. 5: Treasurers (August 1987)
No. 6: Planning Board members (October 1987)
No. 7: Zoning Board of Appeals members (October 1987)
No. 8: Board of Health members (Revised May 1996)
No. 9: Conservation Commission members (July 1987)
No. 10: Auditors and Accountants (March 1988)
No. 11: School Committee members (October 1988)
No. 12: Former State Employees (Revised March 1993)
No. 13: Former Municipal Employees (March 1989)

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- No. 14: [Housing Authority Employees](#) (July 1989)
- No. 15: [Municipal Finance Committee Members](#) (February 1995)
- No. 16: [Special Municipal Employees](#) (August 1992)
- No. 17: [Municipal Building Officials](#) (September 2004)

FACT SHEETS

The following fact sheets will be removed as they are replaced with advisories.

- No. 1: *See* [Advisory 05-01: The Standards of Conduct](#) (Revised February 2005)
- No. 2: *See* [Advisory 05-04: Voting on Matters Involving Competitors](#) (Revised June 2005)
- No. 3: *See* [Advisory 05-03: Elected Officials Voting on Budgets and Signing Payroll Warrants that Include Salaries for Family Members](#) (Revised June 2005)
- No. 4: *See* [Summary 16: Special Municipal Employees](#) (Revised August 1992)
- No. 5: *See* [Advisory 05-05: The Rule of Necessity](#) (Revised December 2005)
- No. 6: *See* [Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property](#) (Revised June 2005)
- No. 13: *See* [Advisory No. 90-02: Former State Employees Serving as Legislative Agents](#) (December 1990)

OTHER

M.G.L. 268A - [The Conflict of Interest Law](#)

M.G.L. 268B - [The Financial Disclosure Law and State Ethics Commission Enabling Statute](#)

[930 CMR: State Ethics Commission](#) (regulations governing Ethics Commission proceedings) (Revised July 1993)

[Investigation and Enforcement Procedures](#) (Revised February 2004)

[Introduction to the Conflict Law](#) (tri-fold) (pdf)

[Introduction to the Conflict Law for the Private Sector](#) (tri-fold) (pdf)

[Top Ten Rules for Municipal Employees](#)

[Top Ten Rules for State Employees](#)

This page was last updated on December 16, 2005.

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Conflict of Interest Law (Chapter 268A) Guidelines

This hand out is comprised of select sections from the State Ethics Commission website

Introduction to the State Ethics Commission and the Conflict of Interest and Financial Disclosure Laws

The Ethics Commission was established to foster integrity in government and promote public trust. The Commission enforces the Conflict of Interest Law and the Financial Disclosure Law. The [Conflict of Interest Law](#) regulates the conduct of all state, county and municipal employees and volunteers, whether paid or unpaid, full or part-time, intermittent or temporary. General Law chapter 268A governs what public officials and employees may do on the job, what they may do after hours, or on the side, and what they may do after they leave public service.

History

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Bay State. Massachusetts General Laws [c. 268A](#) governs what public employees may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service. It also sets standards of conduct for all state, county and municipal employees and officials. The law requires that public servants give undivided loyalty to the government they work for and act in the public interest rather than for private gain. Until the law was revised in 1978, it was enforced solely as a criminal matter under the jurisdiction of the Attorney General and the various local District Attorneys.

In addition to strengthening the conflict of interest statute, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law requiring public officials, political candidates and certain designated public employees to annually file a statement of their financial interests and private business associations. Chapter 210 also created the State Ethics Commission, and empowered it to interpret and enforce [G. L. c. 268A](#) and [c. 268B](#). The Commission provides free legal advice, education and other information regarding the conflict of interest and financial disclosure laws and serves as the primary civil enforcement agency for these laws.

Agency Profile

The non-partisan Commission consists of five members appointed to staggered, five-year terms. Three commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments -- and no more than three members of the Commission as a whole -- may be from the same political party. The commissioners serve part-time, are paid on a *per diem* basis, and employ a full-time staff. The Commission staff is made up of four separate divisions, under the supervision of the executive director. The Legal Division provides free, confidential advice to public employees

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regarding the legality of proposed activities; it also represents the Commission in court. The Statements of Financial Interests ("SFI") Division administers the financial disclosure law and audits SFIs filed with the agency. The Public Education Division conducts free seminars for public employees, publishes a wide range of educational materials and maintains the Commission's web site. The Enforcement Division investigates and prosecutes alleged violations of the laws.

Introduction to the Conflict of Interest Law for the Public Officials and Public Employees

Introduction to the Conflict of Interest Law for the Public Officials and Public Employees Chapter 268A of the General Laws governs your conduct as a public official or employee. Below are some of the general rules that you must follow. You could face civil and criminal penalties if you take a prohibited action. Many aspects of the law are complicated and there are often exemptions to the general rules. We encourage you to seek legal advice from the Commission or your agency's legal counsel regarding how the law would apply in a particular situation.

In general:

- You may *not* ask for or accept *anything* (regardless of its value), if it is offered in exchange for your agreeing to perform or not perform an official act.
- You may *not* ask for or accept anything worth \$50 or more from anyone with whom you have official dealings. Examples of regulated "gifts" include: sports tickets, costs of drinks and meals, travel expenses, conference fees, gifts of appreciation, entertainment expenses, free use of vacation homes and complimentary tickets to charitable events. *If a prohibited gift is offered:* you may refuse or return it; you may donate it to a non-profit organization, provided you do not take the tax write-off; you may pay the giver the full value of the gift; or, in the case of certain types of gifts, it may be considered "a gift to your public employer", provided it remains in the office and does not ever go home with you. You may not accept honoraria for a speech that is in any way related to your official duties, unless you are a state legislator.
- You may *not* hire, promote, supervise, or otherwise participate in the employment of your immediate family or your spouse's immediate family.
- You may *not* take any type of official action which will affect the financial interests of your immediate family or your spouse's immediate family. For instance, you may not participate in licensing or inspection processes involving a family member's business.
- You may *not* take any official action affecting your own financial interest, or the financial interest of a business partner, private employer, or any organization for which you serve as an officer, director or trustee. For instance: you may not take any official action regarding an "after hours" employer, or its geographic competitors; you may not participate in licensing, inspection, zoning or other issues that affect a company you own, or its competitors; if you

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serve on the Board of a non-profit organization, you may not take any official action which would impact that organization, or its competitors.

- Unless you qualify for an exemption, you may *not* have more than one job with the same municipality or county, or more than one job with the state.
- Except under special circumstances, you may *not* have a financial interest in a contract with your public employer. For instance: if you are a town employee, a company you own may not be a vendor to that town unless you meet specific criteria, the contract is awarded by a bid process, and you publicly disclose your financial interest.
- You may *not* represent anyone but your public employer in any matter in which your public employer has an interest. For instance, you may not contact other government agencies on behalf of a company, an association, a friend, or even a charitable organization.
- You may not *ever* disclose confidential information, data or material which you gained or learned as a public employee.
- Unless you make a proper, public disclosure -- including all the relevant facts -- you may *not* take any action that could create an appearance of impropriety, or could cause an impartial observer to believe your official actions are tainted with bias or favoritism.
- You may *not* use your official position to obtain unwarranted privileges, or any type of special treatment, for yourself or anyone else. For instance: you may not approach your subordinates, vendors whose contracts you oversee, or people who are subject to your official authority to propose private business dealings.
- You may *not* use public resources for political or private purposes. Examples of "public resources" include: office computers, phones, fax machines, postage machines, copiers, official cars, staff time, sick time, uniforms, and official seals.
- You may *not*, after leaving public service, take a job involving public contracts or any other particular matter in which you participated as a public employee.

Introduction to the Conflict of Interest Law for the Private Sector

The Conflict of Interest Law, [G. L. c. 268A](#), is one of several laws that govern your dealings with public officials and employees. Below are some of the general rules that you must follow. You could face civil and criminal penalties if you take a prohibited action. Many aspects of the law are complicated and there are often exemptions to the general rules. We encourage you to seek legal advice from the Commission regarding how the law would apply in a particular situation.

- **Bribery:** You may not offer or give anything to a public official in exchange for that official agreeing to perform or not perform an official act. This prohibition applies to *all* offers and gifts, regardless of their value. You also may not give, offer or promise anything to a public employee (or prospective public employee) with the intent to

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influence an official act, or to persuade the employee to commit, collude in or allow a fraud. [G. L. c. 268A, §2]

- **Registered Executive and Legislative Agents:** If your job involves interaction with the state Legislature, the Executive branch, or independent authorities, you should contact the Secretary of State's Office regarding whether you are required to register as an Executive or Legislative Agent. Registered Agents may not give *anything* to a public official or policy-making public employee, or to an immediate family member of a public official or policy-making public employee. This prohibition applies to meals, drinks, entertainment, and all other types of offers or gifts, regardless of their value. [G.L. c. 3, §43]
- **Gifts and Gratuities:** Even if you are *not* a Registered Agent, you may not give a public official or *any* public employee anything "of substantial value" for or because of the official's duties. [G. L. c. 268A, §3(a).]

Gifts that are worth \$50 or more are considered to be "of substantial value", and are therefore prohibited.

This restriction applies to meals, drinks, entertainment, discounts, free educational conferences, waived event admission costs, travel reimbursements, gifts of appreciation, retirement presents, and all other forms of gratuities that are given to public officials. Honoraria for speeches may be given to state legislators, but *not* to appointed officials or employees.

If more than one gift is given to a public employee, the value of all gratuities may be aggregated to reach the "substantial value" threshold. The value of gifts given to immediate family members of a public employee may, in certain circumstances, be attributed to the public employee. "Standing offers" (e.g., "call me anytime you want to go to a game") are almost always considered to be "of substantial value", even if the cost of a single event is less than \$50, because the public employee could accept the offer more than once.

You *may* generally pay for travel and limited other expenses incurred by a public employee in connection with a "legitimate speaking engagement". Contact the Legal Division of the State Ethics Commission for more information about this exemption.

You *may* pay for travel, meals and other costs for state executive branch employees who utilize the "Travel and Participation in Training Sessions where Private Entities Provide Financing" process described in 801 CMR 7.00. Note that this process requires advance approval by the state employee's Agency Head and Cabinet Secretary.

- **Hiring Public Employees:** Except in rare instances, you may *not* pay or otherwise compensate a public employee in connection with any matter that is "of direct and substantial interest" to their public employer. [G. L. c. 268A, §§ 4(b), 11(b) and 17(b)]

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Types of matters that are considered "of direct and substantial interest" to the Commonwealth (or, in the case of a county or municipal employee, the relevant public employer) include: any matter pending before, under the official jurisdiction of, or involving action by an agency, board, commission or department of the public employer; any effort to change regulations, policies or procedures; and any contract, court case, or other legal matter to which the public employer is a party.

You *may* pay "special" state, county and municipal employees in connection with matters of interest to their public employers, if they have not personally participated in the matters, and the matters are not under their official jurisdiction. Also, special exemptions apply to state legislators; contact the Ethics Commission for more information.

- **Hiring Former Public Employees:** Former public employees and their business partners may *never* accept pay or other forms of compensation in connection with matters in which they participated as public employees. Also, even if they did not personally participate in the matters, there is a one-year "cooling-off" period before former public officials may personally appear before government agencies in connection with matters that had been under their official responsibility. [G. L. c. 268A, §§ 5, 12 and 18.]

Special prohibitions apply to former state employees who worked on privatization contracts; contact the State Ethics Commission for more information.

Commission Services

Schedule a Seminar

The Commission provides free educational seminars for municipalities, state and county agencies and public groups explaining how the conflict of interest law restricts the conduct of municipal, county and state officials and employees. Some of the topics covered at these informative sessions include restrictions on receiving gifts, outside employment, contracting with the public employer, acting on matters in which family members and business associates have a financial interest, leaving municipal, county or state government to work for companies which conduct business with the town, county or commonwealth and avoiding appearances of conflicts of interest.

Due to Fiscal Year 2003 budget cuts and staff reductions, the Commission's ability to provide seminars is limited. Cities interested in sponsoring seminars should contact the Ethics Commission. Seminars for towns will be subject to the following criteria:

- a minimum of 30 attendees
- only one seminar per town
- only one seminar every two years

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- The Commission staff regularly offers free seminars at its Boston office, Room 619, One Ashburton Place. Please contact the Commission at 617-371-9500 if you are interested in sponsoring a seminar at your facility or in attending one of the Commission's in-house training sessions.

Request an Opinion

Anyone who is covered by the conflict of interest law may request free, confidential legal advice about how the law applies to them in a particular situation. To request such an opinion, either:

- **Call the Ethics Commission's "attorney-of-the-day"** at (617)371-9500 or for those outside the 617 area, call (888)485-4766
- **Write a letter**, include all the relevant facts, address to: Legal Division, State Ethics Commission, Room 619, One Ashburton Place, Boston, MA 02108.

If you need advice by a certain deadline, please include that information in your request.

The Legal Division will only provide advice about your own conduct -- not about someone else's behavior. Also, the Legal Division is only able to give advice about *prospective* conduct (i.e., actions you have not yet taken), and cannot answer questions about past actions.

The Commission publishes [Summaries of Advisory Opinions](#). The full texts of opinions from 1992 to the present and the full texts of selected opinions prior to 1992 are available on that page, which is a lengthy document and may take a few moments to load.

Additional information about the conflict of interest law may be found at [Educational Materials](#).

File a Complaint

If you wish to file a complaint about a violation of the conflict of interest law, either:

- **Call the Ethics Commission's "investigator-of-the-day"** at (617)371-9500 or for those outside the 617 area, call (888)485-4766
- **Write a letter**, include all the relevant facts, address to: Enforcement Division, State Ethics Commission, Room 619, One Ashburton Place, Boston, MA 02108.

Complainants' names are kept confidential.

For additional information, see:

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Investigation and Enforcement Procedures

Statute of Limitations

Penalties

Summaries of Advisory Opinions

Summaries of Enforcement Actions

Educational Materials

Commission Investigation Procedures

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter sent to the subject of the investigation. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the Commissioners to conduct a Preliminary Inquiry. During the Preliminary Inquiry the Commission staff has subpoena powers for testimony under oath.

After a preliminary inquiry is conducted, the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause" the subject of the complaint is entitled to a public hearing before the Commission to present evidence and testimony on his own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision directly to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

Penalties

The Commission is authorized to impose civil fines of up to \$2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against any individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a state agency, damages in the amount of the economic advantage or \$500, whichever is greater. In certain circumstances, the Commission may also recover multiple damages.

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Further, any violation which has substantially influenced an action taken by a state, county or municipal agency is grounds to avoid, rescind or cancel that action.

The law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies.

Statute of Limitations

In general, the State Ethics Commission will review cases which are not more than six years old. The Commission has established rules governing the Statute of Limitations. These rules state that the Statute of Limitations begins on the date that the State Ethics Commission (or another law enforcement agency, such as the District Attorney) learn about an alleged violation of the conflict law. This is usually the date when someone makes a complaint. The State Ethics Commission has three years from the date it learns of an alleged violation to issue an Order to Show Cause which starts public proceedings against an individual.

An Order to Show Cause may not be issued more than six years after the alleged violation occurred. Therefore, if a state official violated the law in 1980, if the Commission did not learn of the violation until 1988, the Ethics Commission could not take any action against the official.

COMMISSION ADVISORY NO. 05-01
THE STANDARDS OF CONDUCT (Section 23)
(formerly Fact Sheet #1 – Avoiding “Appearances” of Conflict of Interests)

This Advisory explains the provisions of the Standards of Conduct contained in Section 23 of G.L. c. 268A, the conflict of interest law. The Standards of Conduct provide a general code of ethics for all public employees when faced with the overlap of private interests and official responsibilities. Conflict of interest law violations under Section 23 may be created when a public employee’s personal interests or relationships overlap with his or her public obligations and may result in penalties of up to \$2,000 per violation. The term “public employee” includes both elected and appointed state, county and municipal employees, whether paid or unpaid. Unpaid volunteer board members as well as, in some instances, consultants and contractors are considered public employees for purposes of the conflict of interest law.

I. UNWARRANTED PRIVILEGES (G.L. c. 268A, § 23(b)(2))

Public employees are prohibited from, knowingly or with reason to know, using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. “Substantial value” has been set at \$50 or more by the courts and the Ethics Commission. In some instances, “substantial value” may not be readily ascertainable, such as when a public employee uses his or her position to get preferential treatment, to secure a special benefit or to retaliate against someone. In such cases, the Ethics Commission will view the totality of the circumstances to determine whether the substantial value threshold has been met. “Similarly situated individuals” can mean, in various situations, other people, businesses or entities in the city, town, state or county who are not necessarily public employees.

Using public equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others. Thus, the use of public resources valued at \$50 or more for personal, private or political purposes violates the conflict of interest law. In addition, public employees may not use the “inherently coercive authority” of their position to seek anything of substantial value.

Example: A manager may not use official time, his staff or the supplies or equipment available to him in his office in order to write books.

Example: An elected official may not invoke his position to seek preferential treatment from police officers during a traffic stop.

Example: A public employee may not generally solicit donations for a private or charitable organization from individuals with whom he conducts official business.

II. "APPEARANCES" OF CONFLICTS (G.L. c. 268A, § 23(b)(3))

Public employees must avoid conduct that creates a reasonable impression that any person may improperly influence them or unduly enjoy their official favor, or that they are likely to act (or fail to act) because of kinship, rank, position or undue influence of any party or person. A reasonable impression of favoritism or bias may arise when a public employee, knowingly or with reason to know, acts on matters affecting the interest, whether financial or non-financial, of a friend, a business associate or a relative other than an immediate family member or a non-financial interest of an immediate family member.¹¹

The conflict of interest law allows public employees to act on matters, even if it creates the appearance of a conflict, if they openly admit all the facts surrounding the appearance of bias prior to any official action. Specifically, the conflict of interest law states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public employee might be improperly influenced, the public employee can dispel this impression of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a public employee to disclose a personal relationship with someone appearing before his or her board.

Appointed employees must make such disclosures in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection. An elected employee's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action. In addition, the Commission advises public employees to make an oral disclosure for inclusion in the meeting minutes. Occasionally, an appearance of a conflict of interest arises for the first time during a public meeting. In that case, a public employee should make an oral disclosure at the meeting and file a written disclosure as soon as possible thereafter. Alternatively, instead of filing a written disclosure under Section 23(b)(3), a public employee may simply abstain from participating, i.e. debating, voting or otherwise being involved, in a matter that creates an appearance of a conflict.

Once a public disclosure has been made, the public employee may participate in the matter notwithstanding the "appearance" of a conflict. When public employees do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person.

Example: An elected planning board member participates in the planning board's consideration of a subdivision plan submitted by a contractor who previously built the planning board member's house. Her participation in the planning board's consideration would create a reasonable basis for the impression that the contractor might unduly enjoy the planning board member's favor in the performance of her official duties. To dispel this appearance of bias, the

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planning board member must disclose in writing her private business relationship with the contractor and file the disclosure with the town clerk before participating. She may then participate in the board's consideration of the subdivision plan, including voting on the plan.

Example: The longtime friend of the head of a state agency applies for a job in the agency. If the agency head gets involved in the hiring process, it would appear to a reasonable person that he might be biased in favor of his friend. To dispel the appearance of favoritism, the agency head must disclose his private friendship with the job applicant in writing to his appointing official. The appointing official may then determine whether further steps should be taken to avoid the appearance of a conflict (e.g., instruct the agency head not to participate in the hiring and delegate the matter to another employee).

III. DEALINGS WITH SUBORDINATES (G.L. c. 268A, § 23(b)(2))

The inherently exploitable nature of the relationship between superior and subordinate requires formal safeguards to protect against even accidental or unintended coercion or undue pressure by the superior. Section 23 of the conflict of interest law prohibits both actual exertion of undue influence and also the appearance of acting in anything but a completely objective manner. Therefore, persons in supervisory positions may not ask their subordinates to work for them in a private capacity or to contribute to any private interest or organization. In such situations, the subordinate employee may feel coerced even if there is no such intent on the part of the supervisor, and it would be impossible to avoid the "appearance" of impropriety in such situations. The limitations of Section 23 also apply to a public employee dealing with vendors and other individuals that the employee regulates.

Example: A public employee is doing substantial renovations on his home, and he knows that his administrative assistant and his brother do roofing work on the side. The public employee may not ask his assistant to re-shingle the roof, even if he is willing to pay a fair market wage for the work. If, however, the solicitation is made by the subordinate, either directly or through advertisement, rather than the superior, private employment of the subordinate by the superior may be permissible if the proper public disclosures are made to the superior's appointing official. Individuals considering such arrangements should contact the Ethics Commission's Legal Division for specific advice.

IV. INHERENTLY INCOMPATIBLE ACTIVITIES (G.L. c. 268A, § 23(b)(1))

A public employee is prohibited from, knowingly or with reason to know, accepting other employment involving compensation of substantial value (\$50 or more), the responsibilities of which are inherently incompatible with the responsibilities of his or her public office. For example, a public employee who is acting as a mediator would violate the conflict of interest law by working privately for a union when he was simultaneously involved in mediating a labor dispute with the same union.

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V. USE OF CONFIDENTIAL INFORMATION (G.L. c. 268A, § 23(c))

No current or former officer or employee of a state, county or municipal agency may, knowingly or with reason to know:

accept employment or engage in any business or professional activity that will require disclosure of confidential information the employee has gained by reason of his or her position or authority; nor

improperly disclose material or data that are not considered public records, when an employee acquired such information in the course of his or her official duties; nor

use such confidential information to further his or her personal interests.

Example: A former employee of the town personnel office sets up her own employment placement service and uses confidential information from the town's personnel records to prepare a client list for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of her official duties to further her personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other placement services).

* * *

For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission (www.mass.gov/ethics)
One Ashburton Place, Room 619
Boston, MA 02108
(617) 371-9500

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FOOTNOTE

¹The conflict of interest law (in Sections 6, 11 and 19) expressly prohibits public employees from acting on any matter that affects the financial interest of themselves, their immediate family members or businesses for which they serve as an employee, partner, officer, director or trustee. "Immediate family" is defined in the law as the employee and his or her spouse and each of their parents, children, brothers and sisters. The public disclosure process is not available for elected public employees when faced with matters affecting these groups - the officials must abstain from participating in the matter. Public employees who are appointed or hired to their jobs should contact the Ethics Commission or consult its "[Advisory 86-02: Nepotism](#)" before taking any action on such matters.

COMMISSION ADVISORY NO. 05-05

THE RULE OF NECESSITY

(formerly Fact Sheet #5 – Rule of Necessity)

If an elected member of a town or city board has a conflict of interest with respect to a matter before the board that involves his own financial interest or that of a partner, an immediate family member or a business organization with which the board member has certain affiliations, that member will be disqualified from acting as a board member on that matter.^{1/} In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum or some other number of members required to take a valid affirmative vote. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these circumstances, the board may be able to use what is called the Rule of Necessity to permit the participation of the disqualified member(s) in order to allow the board to act.

The Rule of Necessity is not a law written and passed by the Legislature. Rather, the Rule of Necessity was developed by judges who applied it in their court decisions. The Rule of Necessity may only be used as a last resort. We strongly suggest that the rule be used only upon prior written advice from town or city counsel since improper use of the rule could result in a violation of the conflict of interest law.

The Rule of Necessity works in the following way:

1. The Rule of Necessity may only be used when an elected board is legally required to act on a matter and it lacks enough members to take valid official action solely due to board members being disqualified by conflicts of interest from participating in the matter.

Example: A five member elected board has a meeting and all members are present. Three of the five members have conflicts in a matter before the board. Three members are the quorum necessary for a decision. The two members without conflicts do not make a quorum. The board cannot act. The Rule of Necessity will permit all members to participate in that matter.

Example: A five member elected board has a meeting and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The Rule of Necessity may not be used because there is a quorum of the board which is able to act. The absence of one member does not permit use of the Rule of Necessity.

Example: A five member elected board has a meeting and all members are present. One member has a conflict and is disqualified. The vote is a two-to-two tie. The Rule of Necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on. (Stated differently, a tie vote will maintain the status quo.)

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Example: A five member elected board has a meeting and all members are present. A quorum is three. However, one agenda item, on which board action is legally required, needs four votes, rather than the usual simple majority, for an affirmative decision. Two of the board members have conflicts. Although a quorum is available, the required four votes needed for this particular matter cannot be obtained without the participation of one or both of the members who have conflicts. The Rule of Necessity may be invoked and all five of the board members could participate.

If one or more members of an elected board have ‘appearances’ of conflicts of interest that can be dispelled by making a written disclosure, the Rule of Necessity may not be invoked. Section 23(b)(3) of the conflict law prohibits a public official from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that the public official is likely to act or fail to act as a result of kinship, rank or position. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

Example: One member of a three member elected board has a daughter who is a candidate for a police officer position. A second member has a niece who is a candidate for the same position. This member can make a disclosure to dispel the appearance of a conflict of interest and may then participate in the matter. Thus, the three member board has a quorum and is able to act and the Rule of Necessity may not be invoked.

2. Before invoking the Rule of Necessity, every effort must be made to find another board or other authority in the municipality with the legal power to act in place of the board that could not obtain a quorum due to conflicts of interest. (Municipal counsel should be consulted to identify another municipal board or authority to act.)

3. While the absence of one or more board members is generally not sufficient cause to invoke the Rule of Necessity, when a board is legally required to take action by a certain time and is unable to do so because of the lack of a quorum, the Rule of Necessity may be invoked.

Example: A statute requires selectmen to approve payroll warrants on a weekly basis. One selectman of a three member board is absent and the board cannot otherwise obtain a quorum due to the disqualification of one selectman whose immediate family member works for the town. The Rule of Necessity may be invoked.

4. The Rule of Necessity should be invoked by one or more of the otherwise disqualified members, upon advice from town or city counsel or the State Ethics Commission.

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5. If it is proper for the Rule of Necessity to be used, it should be clearly indicated in the minutes of the meeting that as a result of disqualification of members due to conflicts of interests, the board lacked a sufficient number of members necessary to take a valid vote and, as a last resort, that all those disqualified may now participate under the Rule of Necessity. Each disqualified member who wishes to participate under the Rule of Necessity must first disclose publicly the facts that created the conflict.

Example: Two members of a three member elected board have conflicts of interest that prohibit them from participating in a matter involving property owned by a private school for which they serve as trustees. No other board exists which can act on the matter before the board. One of the board members with a conflict should invoke the Rule of Necessity and direct that it be included in the minutes. Both of the board members who had been prohibited from participating may then do so. Prior to such participation, however, they must disclose the fact that they serve as trustees and may then participate in the matter.

It should be noted that invoking the Rule of Necessity does not require all previously disqualified members to participate; it merely permits their participation.

In some instances, where a single elected official is the only person who, by law, can take a specific action, and that elected official has a conflict of interest, the rule of necessity may be invoked for the limited purpose of designating another person to carry out the action.

Example: A mayor, whose spouse is a firefighter, is the sole collective bargaining authority for the city. She may invoke the rule of necessity to designate an alternate to serve as the city's collective bargaining representative with the firefighter's union.

* * *

For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission (www.mass.gov/ethics)

One Ashburton Place, Room 619

Boston, MA 02108

(617)371-9500

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FOOTNOTE

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^{1/} Elected state and county officials and appointed municipal officials who cannot participate in matters because of a conflict of interest should contact the Ethics Commission for advice regarding the rule of necessity.

COMMISSION ADVISORY NO. 05-02
VOTING ON MATTERS AFFECTING ABUTTING OR NEARBY PROPERTY

(formerly Fact Sheet #6- Don't Vote on Matters Affecting Abutting or Nearby Property)

The conflict of interest law is intended to ensure that public employees act in the best interests of the citizens they represent, and do not pursue their own self-interests or other private interests. The law prohibits a public employee from participating, by voting, discussing, delegating or otherwise acting, in any matter that affects:

his or her own financial interests or those of a business partner;

the financial interests of his or her immediate family members (i.e., the employee's spouse; and the parents, siblings and children of either the employee or the employee's spouse);

the financial interests of a private or "after-hours" employer, or anyone with whom the employee is negotiating or has an arrangement for prospective employment; or

any organization, either charitable or for-profit, in which the employee is serving as an officer, director, partner or trustee.

The term "public employee" includes both elected and appointed state, county and municipal employees, whether paid or unpaid, full-time or part-time. An unpaid volunteer board member as well as, in some instances, a consultant who is a contractor are considered public employees for purposes of the conflict of interest law.

I. PARTICIPATION IN A PARTICULAR MATTER

The conflict of interest law defines participation as participating in agency action or in a particular matter personally and substantially through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. Thus, a public employee participates not only when he makes a final decision or vote on a matter, but also when he discusses the merits of a matter with a colleague or makes a "non-binding" recommendation. A particular matter is any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination or finding.⁽¹⁾

II. DETERMINING PROHIBITED FINANCIAL INTERESTS

The restrictions of the conflict of interest law apply regardless of the size of the financial interest. They apply in any instance when the private financial interests are directly and immediately affected, or when it is reasonably foreseeable that the financial interests would be affected. Also,

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the conflict of interest law prohibits any type of official action in such matters, regardless of whether the proposed action would positively or negatively affect the private financial interests.

Example: An elected board of health member owns property abutting a proposed landfill. If the landfill is approved, it will negatively affect the value of the board of health member's property value. Despite the fact that it will negatively affect his property value, the board of health member is in favor of the landfill. He may not participate in the discussion and vote of the landfill. (As discussed below, an appointed board member may participate if he discloses and receive from his appointing authority an exemption that would allow him to participate.)

III. ABUTTING OR NEARBY PROPERTY MAY AFFECT A PUBLIC OFFICIAL'S FINANCIAL INTEREST

Under the conflict of interest law, a property owner is presumed to have a financial interest in matters affecting abutting and nearby property. Thus, unless she can clearly demonstrate that she does not have a financial interest, a public employee should not take any action in her official capacity on matters affecting property that is near or directly abuts:

- her own property;

- property owned by a business partner;

- property owned by any immediate family members;

- property owned by a private employer, or prospective employer; or

- property owned by any organization in which the public employee is an officer, director, partner or trustee.

Otherwise, she risks violating the conflict of interest law.

The following factors are considered to determine whether, in a particular situation, a person or organization has a financial interest in an abutting or nearby property. A financial interest is presumed whenever:

- her property directly abuts (i.e., it shares any part of a property line); or

- her property is directly opposite a street, public way or private way, or she is an abutter to an abutter within 300 feet of the property line; or

- she, because of an act or failure to act by the board or commission, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public; or

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the matter would otherwise alter her property value, rights, or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage or safety improvements.

Example: An appointed state employee is reviewing an environmental impact report for a large development. The development abuts property owned by his parents. The state employee must notify his appointing authority, i.e., the individual or board responsible for appointing the public employee to his position, and the State Ethics Commission of the conflict and may not participate in the matter unless he follows the exemption process discussed below.

Example: An elected planning board member is also a business owner. A residential subdivision application is filed with the planning board for property abutting her business. She must not participate in the subdivision application review and approval process.

IV. REBUTTING THE PRESUMPTION THAT A FINANCIAL INTEREST EXISTS

As discussed above, the Commission presumed that a property owner has a financial interest in matters affecting abutting and nearby property unless he can clearly demonstrate that he does not have such a financial interest. If a public official, in good faith, believes that no such financial interest, positive or negative, exists, he can rebut or refute that presumption by getting an independent real estate appraisal that concludes that the matter affecting the abutting or nearby property will not affect the financial interest of the public official. Such an appraisal should be a bona fide appraisal that includes such things as the credentials of the appraiser, sufficient detail about the property and the appraisal and a description of the basis of the opinion.

V. ABSTAINING WHEN A CONFLICT OF INTEREST OCCURS

Not only must a public employee abstain from voting when he has a conflict of interest, he may not participate in any official discussion of the matter. Ordinarily, the best course of action is simply to leave the room during the deliberation and vote of the board.

Example: A selectman who discusses the environmental and traffic impacts of a license application for a business located next to his property but abstains from the final vote will nevertheless have participated through his discussing the license application.

While a municipal employee and members of boards and commissions at both the state and municipal level are not required to disclose the reason for their abstention, an appointed state or county employee who would normally be required to participate in a particular matter as part of his job must disclose, in writing, to his state appointing official and the State Ethics Commission even if he wishes to abstain. The appointing official then determines if such an abstention should occur by following the exemption process discussed below. This disclosure is required even if the appointed state or county employee abstains.

VI. EXEMPTIONS

Statutory exemptions can, in certain instances, allow a public employee to take actions that would otherwise be prohibited.

State and County Employees

One exemption is available to all appointed state and county employees. This exemption is not available to any elected employee. As discussed above, an appointed state or county employee who would normally be required to participate in a particular matter as part of his job must disclose, in writing, to his appointing official and the State Ethics Commission the nature and circumstances of the matter and the financial interest. The appointing official, who receives the disclosure described above, may assume responsibility for the matter, assign responsibility for the matter to another employee or provide the state or county employee with a written determination allowing her to participate in the matter. Both the disclosure and the appointing official's determination are public records and, in addition, must be filed with the State Ethics Commission.

Example: A state employee responsible for approving small business grants must make a written disclosure to her appointing official when a grant application to fund expansion of a day care center across the street from her home is assigned to her and may not participate in reviewing the grant unless the appointing authority provides her with a written determination that will allow her to do so. Both the disclosure and the written determination must be filed with the State Ethics Commission.

Municipal Employees

As noted above, an appointed municipal employee may choose to abstain from a matter in which she has a prohibited financial interest and, if she does so, need not make a disclosure. In order to participate in a matter involving abutting property, a municipal employee must disclose, in writing, to her appointing official the nature and circumstances of the matter and the financial interest. The appointing official, who receives the disclosure described above, may assume responsibility for the matter, assign responsibility for the matter to another employee or provide the municipal employee with a written determination allowing her to participate in the matter. Both the disclosure and the appointing official's determination are maintained as a public record by the appointing official and are not filed with the State Ethics Commission. This exemption is not available to any elected municipal employee.

Example: The appointed department of public works director may make a disclosure and receive a written determination from his appointing official that will allow him to negotiate a contract that will build a new road in front of his property or he may abstain and his appointing authority may assume responsibility for negotiating the contract or assign it to another. The exemption is

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not available to the elected Board of Health member approving septic systems in a subdivision abutting her property; rather, she must abstain.

An additional exemption is available to municipal employees. It allows a municipal employee to act provided that the particular matter is one of general policy and provided further that the issue affecting the private financial interests of the municipal official and his immediate family members also affects a “substantial segment” of the municipality’s population. The Ethics Commission has advised that at least 10% of a municipality’s population is a “substantial segment” for the purposes of the conflict of interest law; therefore, a municipal employee may act on matters affecting his own financial interests, or the interests of immediate family members, if the financial interest also affects at least 10% of his municipality’s residents (as determined by the most recent federal census).

Example: An elected city councilor who owns a home in the city may participate in the establishment of residential tax rates. While the tax rate is a matter in which he has a financial interest, it is shared by more than 10% of the population, i.e., all homeowners in the municipality.

VII. RULE OF NECESSITY

If more than one member of a board or committee is disqualified because of actual conflicts of interest, the board may not be able to act because it does not have a quorum. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these instances, as a matter of last resort, the board can use what is called the rule of necessity to permit the participation of the disqualified members in order to allow the board to act. Prior to invoking the rule of necessity, public officials should review the Ethics Commission’s Primer on Self-Dealing, Financial Interests and the Rule of Necessity or contact the city solicitor, town counsel or the Ethics Commission.

VIII. CONCLUSION

While certain private relationships may not trigger the restrictions discussed above, they may require disclosure and compliance with other sections of the conflict of interest law. Again, for further advice, contact your town counsel, city solicitor or the Legal Division of the State Ethics Commission at 617-371-9500.

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Massachusetts State Ethics Commission

FOOTNOTE

^{1/}Note, however, that general legislation is not a particular matter. Thus, a public official may act on matters of general legislation, and certain home-rule petitions. For example, a legislator, a town manager or a state agency head may draft, promote or oppose general legislation, or legislation related to a municipal government's organization, powers, duties, finances or property. Matters involving other types of "special legislation," regulations or administrative policies are not eligible for this exemption. For a determination as to whether a bill is "general legislation" or "special legislation," contact the city solicitor, town counsel, agency counsel or the Legal Division of the State Ethics Commission.

PLANNING BOARD - TOWN OF _____
SPECIAL PERMIT RULES AND REGULATIONS
ADOPTED PURSUANT TO MGL C. 40A, § 9

ARTICLE I
ORGANIZATION

Section 1. Members and Officers

The Planning Board shall consist of *(five (5) to nine (9)) regular members and one(1) associate member for a five (5) member board or two (2) associate members for a Board of more than five (5) members if the Planning Board has been designated as a special permit granting authority* elected or appointed as determined by an Annual Town Meeting. Regular members shall elect annually a chairman from its own number and a clerk. *In addition, Boards may elect such other officers as they so choose. Vacancies shall be filled for unexpired terms, for elected Boards by appointment by the Board of Selectmen and the Planning Board and for appointed Boards as determined by an Annual Town Meeting vote.* The Board may, subject to appropriation, employ experts and clerical and other assistants. It may appoint a custodian of its plans and records who may be the Town Clerk.

Section 2. Chairman: Powers and Duties

The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules s/he shall decide all points of order, unless overruled by a majority of the Board in session at the time. S/he shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning By-Laws of the Town of _____, the Subdivision Rules and Regulations, and subject to these rules and further instruction of the Board, the chairman shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory power. S/he shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

Section 3. Acting Chairman: Powers and Duties

In the event the chairman is absent, disabled or otherwise unable to perform her/his duties, the Board may, by majority vote, elect a regular member to serve as acting Chairman.

Section 4. Clerk: Powers and Duties

The Clerk shall supervise all of the clerical work of the Board including all correspondence, send and/or file all notices required by law, prepare rules and orders of the Board, receive and scrutinize all applications for compliance with the rules of the Board, keep docket and minutes of the Board's proceedings, compile all required records, maintain all necessary files and indices and record the roll at all Board meetings. If the Clerk is absent, the Chairman shall appoint an acting Clerk.

Section 5. Associate Members

The Planning Board shall have associate members if it has been designated as a special permit granting authority. An Annual Town Meeting vote shall determine the procedure for filling this position. The Chairman shall designate an Associate Member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member.

Section 6. Quorum

A quorum shall consist of a majority of the Board being present and able to vote on matters.

Section 7. Regular Meetings

Regular meetings of the Board shall be held on the _____ day of each _____ at the Town Hall. If a regular meeting day falls on a holiday or any day of a national, state or municipal election, caucus or primary or is in conflict with a session of Town Meeting, the meeting may be held on an alternate date. Regular meetings shall be open to the public pursuant to MGL c.39, §23A - §23C. Except in an emergency, a notice of each Board meeting shall be filed with the Town Clerk, and a notice or copy thereof shall be publicly posted in the office of the Town Clerk or on the Town Bulletin Board in the Town Hall at least 48 hours, including Saturdays, but not Sundays and legal holidays, prior to such meetings.

Business at such meetings shall include site and other plan examinations and all other matters in the province of the Board including applications for special permits. Public hearings on applications before the Board may be held prior to or following the regular meeting, as designated by the Chairman. Regular meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairman, be ruled out of order.

Site plans which come to the Board may be sent to the _____ for an advisory opinion or _____ as required by the Zoning By-Laws of the Town.

Section 8. Special Meetings

Special meetings may be called by the Chairman, or at the request of a quorum of the Board. Written notice thereof shall be given to each member and associate member at least forty-eight (48) hours before the time set, except that an announcement of a special meeting at any meeting attended by all members shall be sufficient notice of such meetings. Notices shall be posted publicly as required by Section 8 above.

Section 9. Viewings

The Board may decide to conduct a site visit of the property which is the subject of a special permit application. Applicants should be prepared to meet with the Board at the site before the public hearing date or at any later date to be determined by the Board.

Section 10. Public Hearing Schedule and Procedure

- a. Before the hearing begins maps, photographs or other visual displays should be set up.
- b. People planning to speak should sign-in or indicate their intention to address the hearing to the Board Chairman.
- c. The Chairman will call the hearing to order, announce the purpose and describe the rules of procedure for the hearing. The notice of publication or posting for the hearing will be read and procedures used to notify all interested parties will be stated and entered into the record.
- d. If testimony is to be given under oath, speakers so designated will be administered the oath by the Chairman.
- e. Comments or arguments shall be made in the following order:
 - i. Applicant(s) and/or proponent(s).
 - ii. Questions from Board.
 - iii. Questions from public.
 - iv. Opponent(s).
 - v. Questions from Board.
 - vi. Questions from public.
 - vii. Concluding statement/rebuttal by applicants or proponents.
 - viii. Concluding statement/rebuttal by opponents.
- f. The Chairman, in consultation with the Board, may choose to call one or more 10 minute recess(es) during the hearing.
- g. Questions from the public will be addressed through the Chairman and questioners will be asked to identify themselves, state their question and specify to whom it is addressed.
- h. If the Board determines that the public hearing needs to be continued to another time and/or date they shall vote by majority to do so. At the conclusion of a public hearing that is to be continued, the Chairman shall state the intention of the Board to continue the public hearing to a specific time, date and place.
- i. Following the conclusion of testimony, if the hearing has been held separate from a Board meeting, the Chairman will formally adjourn the public hearing. If the hearing is part of the agenda at an otherwise scheduled Board meeting, the Chairman will formally close the public hearing portion of the agenda.

- j. The Board may either continue in open meeting to discuss the application/matter of concern, have a vote of the Board and render their decision or the Board may choose to take the matter under advisement to a subsequent specified date and act thereon.
- k. The required time limits for the holding of a public hearing and rendering a decision may be extended by written agreement between the Board and the applicant(s). A copy of the agreement shall be filed with the Town Clerk.
- l. An applicant may appear in her/his behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board shall decide on the matter using the information it has otherwise received, or it may vote pursuant to Article III, Section 1 that it is withdrawn without prejudice.

ARTICLE II APPLICATIONS TO THE BOARD

Section 1. Application Form

Every application for action by the Board, including applications for special permits, shall be made on the official form of the Board and shall be furnished by the Town Clerk or the Building Inspector upon request. Any communication purporting to be an application shall be treated as merely advisory and no application shall be deemed to have been filed, until such time as it is made on the official application form, all required documents are attached to the application, the fee is paid and the application and documents are filed with the Town Clerk.

Section 2. Abutter's List

Each application shall be accompanied by a list of all names and addresses of abutters within three hundred (300) feet of the property line of the subject property, and landowners directly opposite on any public or private street, as well as all abutting towns. Names and addresses shall be in label format and shall be listed as they appear on the most recent applicable tax list. This list shall be certified by the Board of Assessors.

Section 3. Plan of Land to Accompany Application - See Samples.

Section 4. Fees

All applications for action by the Board shall be accompanied by cash or certified check, payable to the Town of _____, in the amount of _____ (\$.00). The applicant shall also be responsible for the cost of advertising and notice of the public hearing.

Section 4.1 Consultants' Fees

- a. The Board may impose reasonable fees on applicants which will be used for the employment of outside consultants to assist the Board with review of the application.

- b. These fees will be deposited in a special account established by the Town Treasurer and shall be kept separate and apart from other monies.
- c. This account, including accrued interest, if any, shall be expended by the Board without further appropriation and only in connection with the carrying out of the Board's responsibilities under the law.
- d. Any excess amount in the account, including any interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest.
- e. The Town Accountant shall submit an annual report on this special account to the Board of Selectmen, the Chief Administrative Officer and the Bureau of Accounts for review and said report shall be printed in the Annual Town Report.
- f. Applicants may appeal the selection of the consultant to the Board of Selectmen.
- g. Grounds for any such appeal shall be limited to claims that the consultant has a conflict of interest or does not meet the minimum required qualifications.
- h. Consultants' minimum qualifications shall be either an educational degree in or related to the field at issue, or three or more years of practice in the field at issue or a related field.
- i. The time limit for action upon an application shall be extended by the duration of the administrative appeal.
- j. If one month has passed after an appeal has been filed and the Board of Selectmen have taken no action, the consultant selection made by the Board shall stand.
- k. The administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this regulation.

Section 5. Filing

All applications shall be filed with the Town Clerk and a copy, certified as to date and time of filing with the Town Clerk, shall be filed forthwith with the Building Inspector. The Town Clerk shall forthwith transmit a copy of the application to the Board. The date of receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed with the Board. It shall be the responsibility of the applicant to furnish all supporting documentation with the application.

Section 6. Special Permits

Section 6.1 Application Plans and Specifications.

Size, form, contents, style and number of copies of plans and specifications and all other required documentation should be detailed in this section . (See Samples)

Section 6.2 Notice

Notices for public hearings shall be provided pursuant to MGL c.40A, §11. *(See Notice and Publication for Public Hearings Memo).*

Section 6.3 Public Hearings

Public hearings shall be held within the timetable established pursuant to MGL c.40A, §9. *(See Granting of Special Permits Memo).*

Section 6.4 Voting Requirements

Board approval of a special permit application requires the number of votes detailed in MGL c.40A, §9. *(See Granting of Special Permits Memo).*

Section 6.5 Decisions

Decisions shall be rendered within the timetable established pursuant to MGL c.40A, §9. *(See Granting of Special Permits Memo).*

Section 6.6 Expiration

Special permits shall lapse within the period as detailed in MGL c.40A, §9. *(See Granting of Special Permits Memo).*

ARTICLE III DISPOSITION BY THE BOARD

Section 1. Reapplication/Withdrawal

No application which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two years after the date of final unfavorable action unless said Planning Board finds, by a vote of four members of a five member Board or a two-thirds vote of a Board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Any application for a special permit which has been transmitted to the Planning Board may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the Planning Board.

Section 2. Reconsideration

Once a decision has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision by the Board, unless remanded by the Court.

**ARTICLE IV
POLICIES AND ADVICE**

Section 1. Opinions and Advice

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board.

Section 2. Waiver

The Board shall have the authority to alter or waive the requirements in Article II, Section 3 as it deems necessary or appropriate in particular cases.

Section 3. Amendments

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

**ARTICLE V
ADOPTION**

The foregoing rules and regulations are hereby adopted this ____ day of _____
by the Planning Board; all former rules of this Board including those adopted on _____
are hereby repealed.

ZONING BOARD OF APPEALS - TOWN OF _____
RULES & REGULATIONS ADOPTED PURSUANT TO MGL C. 40A, § 12

ARTICLE I
ORGANIZATION

Section 1. Members and Officers

The Zoning Board of Appeals shall consist of *(three (3) or five (5) regular and one(1) to five (5))* associate members appointed by the Board of Selectmen. Regular members shall elect annually a chairman from its own number and a clerk. *In addition, Boards may elect such other officers as they so choose. Vacancies shall be filled for unexpired terms by appointment by the Board of Selectmen.* The Board may, subject to appropriation, employ experts and clerical and other assistants.

Section 2. Chairman: Powers and Duties

The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules s/he shall decide all points of order, unless overruled by a majority of the Board in session at the time. S/he shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning By-Laws of the Town of _____ and subject to these rules and further instruction of the Board, the chairman shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory power. S/he shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

Section 3. Acting Chairman: Powers and Duties

In the event the chairman is absent, disabled or otherwise unable to perform her/his duties, the Board may, by majority vote, elect a regular member to serve as acting Chairman.

Section 4. Clerk: Powers and Duties

The Clerk shall supervise all of the clerical work of the Board including all correspondence, send and/or file all notices required by law, prepare rules and orders of the Board, receive and scrutinize all applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain all necessary files and indices and record the roll at all Board meetings. If the Clerk is absent, the Chairman shall appoint an acting Clerk.

Section . Zoning Administrator

The ZBA may appoint a Zoning Administrator pursuant to MGL c.40A, §13. The Zoning Administrator shall have those powers delegable by the ZBA as described in MGL c.40A, §13. The Inspector of Buildings may be the Zoning Administrator.

Section 5. Associate Members

Associate members shall be appointed by the Board of Selectmen. The ZBA Chairman shall designate an Associate Member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member. In the event of any vacancy on the Board, the Chairman shall designate an associate member to sit on the Board until said vacancy is filled by the Board of Selectmen.

Section 6. Removal of Board members.

Any member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing conducted by the Board of Selectmen.

Section 7. Quorum

A quorum shall consist of a majority of the Board being present and able to vote on matters.

Section 8. Regular Meetings

Regular meetings of the Board shall be held on the _____ day of each _____ at the Town Hall. If a regular meeting day falls on a holiday or any day of a national, state or municipal election, caucus or primary or is in conflict with a session of Town Meeting, the meeting may be held on an alternate date. Regular meetings shall be open to the public pursuant to MGL c.39, §23A - §23C. Except in an emergency, a notice of each Board meeting shall be filed with the Town Clerk, and a notice or copy thereof shall be publicly posted in the office of the Town Clerk or on the Town Bulletin Board in the Town Hall at least 48 hours, including Saturdays, but not Sundays and legal holidays, prior to such meetings.

Business at such meetings shall include site and other plan examinations and all other matters in the province of the Board including applications for special permits and variances and appeals from the decision of the Building Inspector. Public hearings on applications and appeals before the Board may be held prior to or following the regular meeting, as designated by the Chairman. Regular meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairman, be ruled out of order.

Site plans which come to the Board may be sent to the _____ for an advisory opinion or _____ as required by the Zoning By-Laws of the Town.

Section 9. Special Meetings

Special meetings may be called by the Chairman, or at the request of a quorum of the Board. Written notice thereof shall be given to each member and associate member at least forty-eight (48) hours before the time set, except that an announcement of a special meeting at any meeting attended by all members shall be sufficient notice of such meetings. Notices shall be posted publicly as required by Section 8 above.

Section 10. Viewings

The Board may decide to conduct a site visit of the property which is the subject of a permit or variance application, or appeal matter. Applicants should be prepared to meet with the Board at the site before the public hearing date or at any later date to be determined by the Board.

Section 11. Public Hearing Schedule and Procedure

- a. Before the hearing begins maps, photographs or other visual displays should be set up.
- b. People planning to speak should sign-in or indicate their intention to address the hearing to the Board Chairman.

- c. The Chairman will call the hearing to order, announce the purpose and describe the rules of procedure for the hearing. The notice of publication or posting for the hearing will be read and procedures used to notify all interested parties will be stated and entered into the record.
- d. If testimony is to be given under oath, speakers so designated will be administered the oath by the Chairman.
- e. Comments or arguments shall be made in the following order:
 - i. Applicant(s) and/or proponent(s).
 - ii. Questions from Board.
 - iii. Questions from other town officials
 - iv. Questions from the public.
 - v. Opponent(s)
 - vi. Questions from Board.
 - vii. Questions from other town officials.
 - viii. Questions from the public.
 - iv. Concluding statement/rebuttal by applicants or proponents.
 - x. Concluding statement/rebuttal by opponents.
- f. The Chairman, in consultation with the Board, may choose to call one or more 10 minute recess(es) during the hearing.
- g. Questions from the public will be addressed through the Chairman and questioners will be asked to identify themselves, state their question and specify to whom it is addressed.
- h. If the Board determines that the public hearing needs to be continued to another time and/or date they shall vote by majority to do so. At the conclusion of a public hearing that is to be continued, the Chairman shall state the intention of the Board to continue the public hearing to a specific time, date and place.
- i. Following the conclusion of testimony, if the hearing has been held separate from a Board meeting, the Chairman will formally adjourn the public hearing. If the hearing is part of the agenda at an otherwise scheduled Board meeting, the Chairman will formally close the public hearing portion of the agenda.
- j. The Board may either continue in open meeting to discuss the application/matter of concern, have a vote of the Board and render their decision or the Board may choose to take the matter under advisement to a subsequent specified date and act thereon.
- k. The required time limits for the holding of a public hearing and rendering a decision may be extended by written agreement between the Board and the applicant(s). A copy of the agreement shall be filed with the Town Clerk.

- I. An applicant may appear in her/his behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board shall decide on the matter using the information it has otherwise received, or it may vote, pursuant to Article III, Section 2, that it is withdrawn without prejudice.

ARTICLE II APPLICATIONS TO THE BOARD

Section 1. Application Form

Every application for action by the Board, including appeals from decisions of the Building Inspector and applications for special permits, variances and comprehensive permits shall be made on the official form of the Board and shall be furnished by the Town Clerk or the Building Inspector upon request. Any communication purporting to be an application shall be treated as merely advisory and no application shall be deemed to have been filed, until such time as it is made on the official application form, all required documents are attached to the application, the fee is paid and the application and documents are filed with the Town Clerk.

Section 2. Abutter's List

Each application shall be accompanied by a list of all names and addresses of abutters within three hundred (300) feet of the property line of the subject property, and landowners directly opposite on any public or private street, as well as all abutting towns. Names and addresses shall be in label format and shall be listed as they appear on the most recent applicable tax list certified by the Board of Assessors.

Section 3. Plan of Land to Accompany Documents (See Samples)

Section 4. Fees

All applications for action by the Board shall be accompanied by cash or certified check, payable to the Town of _____, in the amount of _____ (\$.00). The applicant shall also be responsible for the cost of advertising and notice of the public hearing.

Section 4.1 Consultants' Fees

- a. The Board may impose reasonable fees on applicants which will be used for the employment of outside consultants to assist the Board with review of the application.
- b. These fees will be deposited in a special account established by the Town Treasurer and shall be kept separate and apart from other monies.
- c. This account, including accrued interest, if any, shall be expended by the Board without further appropriation and only in connection with the carrying out of the Board's responsibilities under the law.
- d. Any excess amount in the account, including any interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest.

- e. The Town Accountant shall submit an annual report on this special account to the Board of Selectmen, the Chief Administrative Officer and the Bureau of Accounts for review and said report shall be printed in the Annual Town Report.
- f. Applicants may appeal the selection of the consultant to the Board of Selectmen.
- g. Grounds for any such appeal shall be limited to claims that the consultant has a conflict of interest or does not meet the minimum required qualifications.
- h. Consultants' minimum qualifications shall be either an educational degree in or related to the field at issue, or three or more years of practice in the field at issue or a related field.
- i. The time limit for action upon an application shall be extended by the duration of the administrative appeal.
- j. If one month has passed after an appeal has been filed and the Board of Selectmen have taken no action, the consultant selection made by the Board shall stand.
- k. The administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this regulation.

Section 5. Filing

All applications shall be filed with the Town Clerk and a copy, certified as to date and time of filing with the Town Clerk, shall be filed forthwith with the Building Inspector. The Town Clerk shall forthwith transmit a copy of the application to the Board. The date of receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed with the Board. It shall be the responsibility of the applicant to furnish all supporting documentation with the application.

Section 6. Special Permits

Section 6.1 Application Plans and Specifications.

Size, form, contents, style and number of copies of plans and specifications and all other required documentation should be detailed in this section. (See Samples)

Section 6.2 Notice

Notices for public hearings shall be provided pursuant to MGL c.40A, §11. *(See Notice and Publication for Public Hearings Memo).*

Section 6.3 Public Hearings

Public hearings shall be held within the timetable established pursuant to MGL c.40A, §9. *(See Granting of Special Permits Memo).*

Section 6.4 Voting Requirements

Board approval of a special permit application requires the number of votes detailed in MGL c.40A, §9. (See *Granting of Special Permits Memo*).

Section 6.5 Decisions

Decisions shall be rendered within the timetable established pursuant to MGL c.40A, §9. (See *Granting of Special Permits Memo*).

Section 6.6 Expiration

Special permits shall lapse within the period as detailed in MGL c.40A, §9. (See *Granting of Special Permits Memo*).

Section 7. Variances

Section 7.1 Application Plans and Specifications.

Size, form, contents, style and number of copies of plans and specifications and all other required documentation should be detailed in this section. (See Samples)

Section 7.2 Notice

Notices for public hearings shall be provided pursuant to MGL c.40A, §11. (See *Notice and Publication for Public Hearings Memo*).

Section 7.3 Public Hearings

Public hearings shall be held within the timetable established pursuant to MGL c.40A, §15. (See *Variance Memo*).

Section 7.4 Voting Requirements

Board approval of a variance application requires the number of votes detailed in MGL c.40A, §15. (See *Variance Memo*).

Section 7.5 Decisions

Decisions shall be rendered within the timetable established pursuant to MGL c.40A, §15. (See *Variance Memo*).

Section 7.6 Expiration

Variances shall lapse within the period as detailed in MGL c.40A, §10. (See *Variance Memo*).

Section 8. Appeals

This section of these Rules and Regulations apply to all appeals pursuant to MGL c.40A, §§8 and 13.

Section 8.1 Application Plans and Specifications.

Size, form, contents, style and number of copies of plans and specifications and all other required documentation should be detailed in this section. (See Samples)

Section 8.2 Notice

Notices for public hearings shall be provided pursuant to MGL c.40A, §11. (See *Notice and Publication for Public Hearing Memo*).

Section 8.3 Public Hearings

Pursuant to MGL c.40A, §15 public hearings shall be held within sixty-five (65) days from the receipt of notice by the Board.

Section 8.4 Voting Requirements

A concurring vote of all the members of a three member Board, and a vote of four members of a five member Board shall be necessary to reverse any order or decision of any administrative official.

Section 8.5 Decisions

The decision of the Board shall be made within one hundred (100) days of the filing of the appeal, pursuant to MGL c.40A, §15.

Section 9. Comprehensive Permits

This section of these Rules and Regulations shall apply to the application for and granting of comprehensive permits pursuant to MGL c.40B, §21.

Section 9.1 Application Plans and Specifications.

Size, form, contents, style and number of copies of plans and specifications and all other required documentation should be detailed in this section

Section 9.2 Notice

Notices for public hearings shall be provided pursuant to MGL c.40B, §21, which requires notice to all applicable boards and pursuant to MGL c.40A, §11. (See *Notice and Publication for Public Hearings Memo*).

Section 9.3 Public Hearings

Public hearings shall be held within thirty days of the receipt of an application pursuant to MGL c.40B, §21.

Section 9.4 Voting Requirements

Board approval of a comprehensive permit application requires a majority vote of the Board, pursuant to MGL c.40B, §21.

Section 9.5 Decisions

Decisions shall be rendered within forty (40) days after the termination of the public hearing, pursuant to MGL c.40B, §21.

ARTICLE III DISPOSITION BY THE BOARD

Section 1. Reapplication/Withdrawal

No appeal or application which has been unfavorably and finally acted upon by the Board shall be acted favorably upon within two years after the date of final unfavorable action unless the Board finds, by a *unanimous vote of a three member Board or a vote of four members of a five member Board*, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Any application for a variance or for a special permit which has been transmitted to the Board may be withdrawn, without prejudice by the applicant prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the Board.

Section 2. Reconsideration

Once a decision has been voted upon and the meeting adjourned, there shall be no reconsideration, of a decision by the Board, unless remanded by the Court.

ARTICLE IV POLICIES AND ADVICE

Section 1. Opinions and Advice

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board.

Section 2. Waiver

The Board shall have the authority to alter or waive the requirements in Article II, Section 3 as it deems necessary or appropriate in particular cases.

Section 3. Amendments

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

**ARTICLE V
ADOPTION**

The foregoing rules and regulations are hereby adopted this _____ day of _____
by the Zoning Board of Appeals; all former rules of this Board including those adopted on _____
are hereby repealed.

Prepared September 1990 by Trudel, Bartlett, Barry, Wilson & MacNicol, P.C. This sample is intended for informational purposes and does not constitute legal advice. Due to the technical, complex and constantly changing nature of municipal laws and regulations, the reader is advised to consult with legal counsel in order to determine how these Rules and Regulations relate to specific facts or situations.

SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 7

ZONING BOARD OF APPEALS MEMBERS

Zoning Board of Appeals (ZBA) members are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities on the ZBA. The law is broadly written so that situations which even give the appearance of a conflict may be avoided.

If you have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) Most ZBA members may be designated as specials; see the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

CONFLICT QUESTIONS AND ANSWERS

Accepting Gifts (Section 3)

Q: The ZBA heard a case involving a dispute between a developer and a local citizen's group over whether to grant a variance to allow a hotel to be built. The ZBA decided unanimously not to grant the variance. To show its gratitude, the local citizens group offers each ZBA member a gift certificate to a fine restaurant in Boston. May you accept?

A: It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of the town position you hold, from someone or some group with whom you have official dealings -- even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. If your dinner is worth \$50 or more, you may not accept the gift certificate.

If the dinner is valued at less than \$50 you may accept the gift provided that it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict of interest law permits local boards to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid any appearance of conflict or favoritism which may be created by accepting gifts.

Prohibited Actions Affecting Financial Interests (Section 19)

Q: You are a professional architect for a development company presently building condominiums in town. May you, as a ZBA member, deliberate and vote on your

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company's request for a special permit if you have not worked on the architectural plans for this development?

A: No. You may not participate in any matter that affects the financial interest of your employer (whether or not you have worked on it for your company). You also may not act in your capacity as a ZBA member on a matter that affects your own financial interest or those of your "immediate" family or a business for which you serve as officer, director, partner or trustee. You also must abstain on matters affecting your competitors.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a proposed development, you should abstain when the developer comes before your board seeking a zoning variance. Your sister, as abutter, has a financial interest in the matter.

There is an exemption to this restriction available for appointed ZBA members. If you are appointed, you may act on a matter affecting your own, your immediate family's or your business' financial interest only if you receive written permission from your appointing authority prior to taking any action.

Appearances of Conflict and Misuse of Official Position (Section 23)

Q: Your cousin, a lawyer, is representing a client in a request for a zoning variance. May you be one of the ZBA members to hear this matter?

A: Yes, provided that you publicly disclose your private relationship with your cousin in writing to your appointing authority (whatever board or person appointed you) prior to taking any action. This disclosure must be kept available for public inspection. We also suggest that you make a verbal disclosure at a public meeting in which the matter arises. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives (who are outside the definition of "immediate family") or friends.

In addition, you must act objectively and not attempt to obtain any special favors for your cousin because of your relationship. Using your position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

Restrictions "After Hours" (Section 17)

Q: You are a business manager working for a development company. May you, along with other development company employees, represent the development company before the Planning Board on a subdivision plan?

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A: If you are a regular municipal employee, no. You may not act as the agent or attorney for any private party, including your own company, before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not.

If you are a "special" municipal employee, it depends. You may represent private parties before other town boards (not your own) unless your representation is on a matter in which you personally participated or which is now or within the past year was within your official responsibility as a ZBA member. In this example, the proposed development would likely come before the ZBA for its approval. Therefore, you could not represent the development company before the Planning Board, whether or not you are designated as a special. To emphasize, it is not enough simply to abstain from official action on your own board -- if the same matter is before other town boards you must not act as the representative for a private company before those boards.

Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

Q: You want to serve as elected school committee member. If elected, may you hold both positions on the appointed ZBA and school committee?

A: It depends. If both positions are unpaid, yes. If the ZBA position is appointed and unpaid, and the school committee position is paid, you may hold both positions.

However, if the ZBA position is appointed and paid, you must be designated as a special municipal employee in the school committee position in order to hold both positions in compliance with the law.

Talk to your municipal lawyer about the technical requirements you must meet to hold multiple positions or call the Ethics Commission at (617) 371-9500.

Restrictions After You Leave Government Service (Section 18)

Q: You have resigned as a member of the ZBA and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?

A: It depends. 1) You may not represent the developer before a city agency concerning a matter in which you participated as a ZBA member. 2) For one year after you leave the ZBA you may not appear before city boards on a matter which was under your official responsibility if it was before the ZBA within the two years before you left. 3) You may represent the developer before city agencies (including your own) with no "cooling off" period, on a matter you never dealt with and which was not before the ZBA while you were a member.

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Advisory Opinion

This summary presents a brief overview of the conflict law and suggests activities which you, as a Zoning Board of Appeals member, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at (617) 371-9500 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request advice prior to engaging in the activity in question.

If you have questions about others' activities in your town or city, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

* * *

Commission Summaries are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

ISSUED: October 1987

SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 6

PLANNING BOARD MEMBERS

Planning Board members are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities on the Planning Board. The law is broadly written so that situations which even give the appearance of a conflict may be avoided.

If you have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) Most Planning Board members may be designated as specials; see the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

CONFLICT QUESTIONS AND ANSWERS

Accepting Gifts (Section 3)

Q: A development company has recently received your board's approval for a subdivision plan. To foster goodwill and say thank you, the developer offers each of the board members a gift certificate to a fine restaurant in Boston. May you accept?

A: It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of the town position you hold, from someone or some group with whom you have official dealings -- even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. If your dinner is worth \$50 or more, you may not accept the gift certificate.

If the dinner is valued at less than \$50, you may accept the gift provided it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict law permits local boards to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid any appearance of conflict or favoritism which may be created by accepting gifts.

Prohibited Actions Affecting Financial Interests (Section 19)

Q: You are a site engineer for a development company presently building condominiums in town. May you deliberate and vote on your company's proposed subdivision plan if you have not worked on the plan?

A: No. You may not participate in any matter that affects the financial interest of your employer (whether or not you worked on the matter for your company). You also may not act on a matter

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that affects your own financial interest or those of your "immediate" family or of a business for which you serve as officer, director, partner or trustee. You also must abstain on matters affecting your competitors.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a proposed subdivision (whether or not she challenges the subdivision), you should abstain when the issue comes before your board. Your sister, as abutter, has a financial interest in the matter.

There is an exemption to this restriction available for appointed planning board members. If you are appointed, you may act on a matter affecting your own, your family's or your business' financial interest only if you receive written permission from your appointing authority prior to taking any action.

A final exemption allows you to act as a planning board member on any determination of "general policy" which affects a substantial segment of your community's population in the same way. For example, you are a local developer. Your board is drafting zoning changes which would affect a major portion of the geography of your town. These changes would affect your financial interest because of your business in town, but because they would also affect a large area and a large segment of your town's population, you may participate in drafting the new zoning changes. Not all zoning changes will fall into the category of "general policy." Seek advice from your local town or city counsel or the Ethics Commission if you have specific questions.

Appearances of Conflict and Misuse of Official Position (Section 23)

Q: Your cousin, a lawyer, is representing a client before your board. May you participate in the matter?

A: Yes, provided that you publicly disclose your private relationship with your cousin prior to taking any action. If you are an appointed planning board member, your disclosure must be made in writing to your appointing authority (whatever board or person appointed you to the Board). If you are elected, your disclosure must be made in writing and filed with the town or city clerk. These disclosures must be kept available for public inspection. We also suggest that you make a verbal disclosure at a public meeting in which the matter arises. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives (who are outside the definition of "immediate family") or friends.

In addition, you must act objectively and not attempt to obtain any special favors for your cousin because of your relationship. Using your position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

Restrictions "After Hours" (Section 17)

Q: You are a professional engineer working for a development company. May you represent the development company before the conservation commission concerning a development located in wetlands?

A: If you are a regular municipal employee, no. You may not act as the agent or attorney for any private party, including your own company, before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not.

If you are a "special" municipal employee, it depends. You may represent private parties before other town boards (not your own) unless it is a matter in which you officially participated or which is now or within the past year was within your official responsibility as planning board member. In this example, if the proposed development already was before the planning board or was about to come before the planning board, you could not represent the development company before the conservation commission, whether or not you are designated as a special. To emphasize, it is not enough simply to abstain from official action on your own board -- if the same matter is before other town boards you must not act as the representative for a private company before those boards.

Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

Q: You want to serve as elected school committee member. If elected, may you hold positions both on the planning board and school committee?

A: It depends. If you are elected in both positions, yes. If both positions are unpaid (whether they are elected or appointed), yes. If the planning board position is appointed and unpaid, and the elected school committee position is paid, you may hold both positions. However if the planning board position is appointed and paid, you must be designated as a special municipal employee in the school committee position in order to hold both positions.

Talk to your municipal lawyer about the technical requirements you must meet to hold multiple positions or call the Ethics Commission on this one: (617) 371-9500.

Restrictions After You Leave Government Service (Section 18)

Q: You have resigned as a member of the planning board and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?

A: It depends. 1) You may not represent the developer before a city agency concerning a matter in which you participated as a planning board member. 2) For one year after you leave the commission, you may not appear before city boards on a matter which was under your official responsibility if it was before your board within two years before you left 3) You may represent the developer before city agencies (including your own) with no "cooling off" period, on a matter

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you never dealt with and which was not before your board while you were a member of the board.

Advisory Opinion

This summary presents a brief overview of the conflict law and suggests activities which you, as a Planning Board member, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at (617) 371-9500 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request advice prior to engaging in the activity in question.

If you have questions about others' activities in your town or city, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

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Commission Summaries are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

ISSUED: October 1987