



**Local Permitting Focus Group Summary**  
**Massachusetts Association of Regional Planning Agencies**  
**September 2007**

## **Introduction**

Regional planning agencies statewide are collaborating to evaluate local permitting processes in Massachusetts and create a best practices resource guide for communities to use when considering permitting policy revisions. To that end, fourteen focus groups were held across the state in May, June, and July of 2007 to learn what is needed to make permitting more predictable, consistent, and efficient without compromising local jurisdiction, encouraging imprudent projects, or jeopardizing local resources. The 157 participants included representatives of private and public sector permitting professions from across the state, including land use attorneys, selectmen, planning and zoning board members, engineering consultants, small and large real estate developers, town managers, planners and community development directors.<sup>1</sup>

During the focus group discussions, common themes emerged that participants identified with potential to improve the local permit process in cities and towns.<sup>2</sup> Improving communication was a central theme necessary to increase permitting efficiency, including improving communication between the developer and municipality, and coordinating communication within a municipality. Another central theme was the need for adequate staffing and training in local permitting, which currently does not take place. Lastly, participants universally acknowledged that several aspects of the regulatory process would benefit from clarifying legal requirements.

### **Focus Group Locations**

Barnstable  
Boston (3)  
Brockton  
Fitchburg  
Haverhill  
Lowell  
Natick  
Pittsfield  
Northampton  
Taunton  
West Springfield  
Worcester

<sup>1</sup> Partial participant list located on last page.

<sup>2</sup> This summary is a compilation of common themes that emerged in group discussions of focus group participants, and are not ideas or proposals officially endorsed by MARPA at time of release. In publishing this report, MARPA is merely trying to capture as accurately as possible the statewide permitting conversation that took place throughout the summer of 2007.

## **I. Streamlining the Local Permitting Process**

Four themes emerged over the course of the focus groups that reflect a mutual interest in streamlining the process through increased communication and cooperation among stakeholders.

### **1) Improving Communication with the Permit Applicant**

#### *Informal, Pre-Application Meetings*

When asked which municipalities have good permitting processes, both developers and municipal representatives gave examples of communities that hold informal meetings between developers and staff prior to submitting formal development applications. It is most helpful when developers bring a schematic plan and an early project timeline for the municipal representatives to review at these meetings. The meetings serve to initiate a dialogue between relevant parties. Through this dialogue, municipal representatives have the opportunity to share the community's interests and concerns with the developer of the project in an informal setting while the project is still in the conceptual design phase. The Town of Greenfield, for instance, which was noted for its efficient permitting practices, holds technical review team meetings for permit applicants. Staff from key departments guide the applicant through the development review process.

Pre-application meetings are effective because they help to build trust, foster a willingness to work together, and most importantly, they allow stakeholders to identify upfront what aspects of the project, if any, will present the greatest challenges. Out of these meetings, a project "road map" may be created so that all parties involved will have a good idea of what to expect moving forward. In addition, pre-application meetings present a good opportunity for community representatives and permit applicants to negotiate and execute a developer's agreement for complex projects, should they decide to do so.

Communities electing to hold pre-application meetings must be mindful that the meetings do not violate the open meeting law found in Section 23b of Chapter 39 of the Massachusetts General Laws which prohibits a quorum from meeting in private to decide or deliberate toward a decision. It should be made clear to participants that the intent and objective of such meetings when held is to review proposals for completeness in order to avoid the perception that projects are being "approved" prior to formal submittals and hearings.

### **2) Improving Communication between Boards and Offices**

#### *Regularly Scheduled Inter-Departmental Meetings*

Increasing cooperation and communication between municipal department heads and boards with permit granting authority through frequent and regular meetings to review development proposals would help eliminate so-called "turf issues" between departments

and the boards they serve. The source of such “turf issues” may be one of a number of things: a contentious aspect of the proposal, the local political climate, or even a personal conflict between public officials. Whatever the cause of the discord, requiring inter-departmental meetings would help to resolve any obvious sticking points as well as resolve for the developer the question of which authority to go to first. Through inter-departmental coordination, the order of approvals by department could be standardized to eliminate needless back and forth for the project applicant.

#### *Co-Locating Departments*

Physical proximity of municipal departments is a significant factor that ought to be considered to improve communication and coordination throughout the permitting process. It was the experience of the focus group participants that where planners, engineers, and conservation officials are co-located in the same building or on the same floor, efficiency of the process is increased.

#### *Multi-Disciplinary Technical Review Teams*

There was uniform agreement that municipalities should create Technical Review Teams that meet regularly (weekly or twice a month) on the status of permit applications. Communities that do this organize their review teams very differently. A team could be made-up of the staff of each board and the municipal manager, or one member from each board and one or two staff members. Some of the teams, but not all, include the developer at the meetings. They hold both public meetings with notice provided and others met privately. The community and project proponent both benefit from a more comprehensive approach to permitting that is a result of the collaboration between permit granting authorities through the a Technical Review Team.

### **3) Issues of Adequacy: Staffing, Training, and Education**

#### *Inadequate Staffing*

Inadequate staffing at the municipal level can debilitate the permitting process, especially in small communities. Developers were in unison that communities with volunteer boards that do not provide for adequate planning staff were the hardest to do business with. The following suggestions came out of the focus group discussions:

- Appointing a community development director or planner makes permitting more efficient. In communities that have done so, this point-person is most efficient when he or she is empowered by the municipality to work with the relevant public officials and to usher developers through the permitting process. In addition, the development director or planner must be familiar with the community’s master plan, and use the plan as a roadmap for assessing development permitting decisions.
- When available, utilizing peer review funds - as provided for under Section 53G, Chapter 44 of the Massachusetts General Laws or by other means – alleviates demands placed on already burdened planning staff to resolve technical issues in a

timely fashion. A clear and concise statement of the reviewer's scope will help to ensure that the peer review process is an objective one.

### *Board and Staff Training*

Many focus group participants expressed concern that local board members and staff often lack sufficient knowledge or necessary qualifications to serve their public office adequately. The members of local boards with permit granting authority and their staff must have more than a basic understanding of their regulatory function and their respective job functions to ensure that permitting fairly balances competing interests consistently, from project to project. Where public officials lack these skills upon entering service, the communities often lack resources to educate and train them in their new role. The challenge is greatest in three areas:

- 1) Legal knowledge of the relevant zoning bylaws or ordinances and land use law,
- 2) Procedural knowledge of running a public meeting, and
- 3) Institutional knowledge of the regulatory role, jurisdiction, and enforcement mechanisms of the local boards.

These challenges are compounded in communities where the turnover rate of public officials is higher than average. Without education and training for board members and staff, permitting decisions are more likely to be inconsistent, vulnerable to inappropriate political considerations, and judged by subjective factors rather than the criteria set forth in zoning regulations and adopted planning documents.

Suggestions to improve education and training of board members and staff came out of the focus group discussions, although consensus was not reached on these:

- Mandatory training for conservation commissions, zoning boards of appeals, and planning boards was suggested by several participants. Generally, participants agreed that mandatory training would be a benefit, but many felt the requirement was too onerous for volunteers and would deter volunteers from serving in the future.
- Standardizing criteria for appointments to boards was another suggestion. An objective set of criteria that included relevant experience and education levels would serve all communities, especially those where the turnover rate is higher than average. Participants felt that this was an admirable goal and should be implemented whenever possible, while recognizing the fact that the candidate qualifications in communities that hold open elections for board positions is difficult to standardize.
- Increase the availability of educational and training opportunities for new board members to take on a voluntary basis, and make them mandatory for board staff. While most participants felt that the Citizen Planner Training Collaborative currently provides high quality trainings, municipalities and regional planning agencies should arrange additional trainings to be offered on a more flexible basis closer to where people live, and on evenings during the week. In addition,

municipalities should reimburse board members that voluntarily elect to participate in training, which may reduce litigation and insurance costs.

#### **4) Standardization of the Process**

Developers and municipal officials agree that standardizing and formalizing many aspects of the approval process would increase efficiency. Standardization of process, project design, and submittal requirements would allow developers to know what a city or town wants to see developed, and how to get through the approval process. Municipalities should consider the following actions to increase the efficiency of the overall process:

- Create a master plan that clearly represents current community priorities as to land use and location;
- Ensure that zoning regulations reflect the plan.

Small development projects should be immunized from traffic, noise, and other impact studies that drag out the process, drive up costs, and sometimes kill projects. By that same token, projects larger than an established threshold ought to automatically have impact studies done and the plan reviewed by a professional planner or engineer. A threshold such as this would serve the goal of transparency and predictability.

##### *One Point-of-Contact for Permit Applicants*

A single point-of-contact to work with developers who intend to invest in the community will improve clarity and productivity for both the applicant and the regulators. The point-of-contact is responsible for directing the developer to the necessary permits and appropriate contacts in a city or town. A municipality experiences efficient permitting when this person is charged with important administrative tasks, such as reviewing applications for completeness when they are received, tracking applications through the process, and ensuring that municipal staff is aware of activities by other boards.

##### *Exactions and Impact Fees*

Chapter 40A of the Massachusetts General Laws on zoning is ambiguous regarding the amount and type of mitigation or exactions developers may be asked to pay the local government during the permit process. Developers expressed frustration that they are often at the mercy of municipalities' frequent and routine exaction of fees. While the fees are an integral part of the approval process, they are not formally authorized in law or calculated in any systematic way. Many participating developers said the real frustration stems from the timing and the lack of predictability of the demands rather than the amount of the exactions themselves. Community advocates and developers agree that Chapter 40A should more clearly define a process of determining and applying impact fees and exactions that is transparent, consistent, and effectively addresses municipal needs.

### *Special Permits versus Planning and “Of-Right” Permitting*

Both developers and municipal officials acknowledged that the approval process for special permit applications is inefficient. However, municipal officials expressed concern that reducing the number of special permits in favor of “of-right” zoning would threaten the community’s ability to preserve “community character” because the objective empirical standards in “of-right” zoning often result in projects which undermine community priorities and character. To balance this concern with the need to expedite the permitting process, municipalities should consider the following:

- 1) Update the master plan through town meeting,
- 2) Re-zone areas to permit more as-of-right development subject to design guidelines,
- 3) Require all of-right zoning to conform to the master plan, and
- 4) Utilize site-plan review whenever possible to ensure that the design of projects fits the plan for growth in that community.

### *Flawed Permit Applications*

Where proposals appear to be fatally flawed, do not conform to some enforceable provision of the community’s master plan, or are otherwise unlikely to be approved, the applicant should be apprised of the problem as soon as possible. To do otherwise wastes the time of the municipal staff, board members, and developers. It also slows the review process for more promising proposals. Focus group participants felt that a prolonged period of peer review, if used to delay indefinitely rather than actually improve the project, wastes time and money and engenders ill-will between the development community and the local permit granting authorities. Municipal officials through a technical review team should devise a checklist to be presented to permit applicants upon submission in order to quickly separate applications for review from those that fail to meet basic requirements. This “quick no” method to weed out flawed applications is not a legal determination, but rather delivery of an initial assessment for the applicant’s consideration.

### *Efficiency through Technology*

Several municipalities use technology to expedite the permitting process. Systematic permit tracking software with automatic notifications is employed by several communities. In cases where there is someone to manage the data and administer the software package, this is a very effective means to track applications and to inform board members and staff of what projects are proposed in the community. Electronic notifications may be sent to abutters of any developments proposed and related meetings. Submitting online applications, although not widely utilized, would allow the application to be submitted easily by the developer and shared seamlessly with any staff or board members, as well as with other boards and the public.

## *The Zoning Enabling Act and Subdivision Control Law*

Uniformly, focus group participants agreed that Chapter 40A of the Massachusetts General Laws is outdated and confusing, although solutions to the problem generated more controversy. Statutory provisions requiring permits to be issued within a certain timeframe are frequently ignored. Insufficient municipal control over development due to grandfathering and approval not required (ANR) plans may result in overreaching by officials in areas they do control, taking advantage of laws that have been loosely construed over the years. Many participants agreed that local governments should be required to make land use plans and zoning regulations conform to each other. This would enable permits to be issued more consistently and predictably by local authorities and reduce the number of appeals, although all recognize the challenges to creating approved plans. Delays incidental to the appeals process were widely criticized by the development community. Most discussions called for clearer zoning enabling legislation and for comprehensive planning to take a more active and compulsory role in land use development.

## **II. The Role of Regional Planning Agencies**

The most frequent recommendation for the role of regional planning agencies (RPAs) was as educator. RPAs could be effective in that role by producing permitting process materials and conducting training that municipalities could offer newly appointed or elected officials. RPAs could produce and promote online resources to further educate local planners and reviewers. They could also compile and disseminate best practices associated with local permitting.

RPAs frequently have a diverse staff with a broad range of planning expertise, including housing, transportation, environmental, economic development, and other specialties. RPAs could accommodate opportunities for shared staffing between communities, or continue in their role as independent third party reviewer in situations where neither the staff nor a consultant is appropriate.

In regions with small towns that do not have municipal planning or conservation staff, the RPAs already frequently provide a planner to act as a “circuit rider” on a regular or as-needed basis. The planner provides technical assistance to facilitate the permitting process for large or complicated projects, provide zoning enforcement assistance, act as a facilitator between the communities and state agencies, and assist local planning boards, conservation commissions or zoning boards of appeals. The implementation challenge is a lack of dedicated funding for RPAs providing such services and the inability of small municipalities to pay for the services themselves.

The RPAs, individually or through MARPA, could establish a pre-qualified pool of trusted consultants that would increase trust and reliance on the use of third party consultants, or they could act in collaboration with state agencies to establish the Master Service Agreement list, as was done under Executive Order 418. This would enable towns to skip the Chapter 30B process and reduce the likelihood of a community hiring

firms that are too small or incapable of doing the review adequately. At the very least, the RPAs could formulate guidelines for proper consultant or peer review selection, including technical analysis.

RPAs should continue to work with local regulatory officials interested in tools of analysis, design, and land use control such as, for example, cluster development, transferable development rights, and innovative stormwater management. They should continue to encourage cities and towns to develop master plans with community involvement.

The RPAs could also be effective advocates for useful state legislation including, for example, to counteract “border wars” between communities where the impacts but none of the benefits of a large scale development are felt by a neighboring community. For an example of effective brokering of one such “border war,” the communities of Andover, Tewksbury, and Wilmington are currently engaged in a tri-community effort to reach consensus on large scale commercial developments and transportation projects in the area. This type of cooperation could be mandated through state legislation. As of now, the only recourse an adversely affected community has is to reach out to members of the state legislature to try to stop the project or to submit comments during a public review process, which do not have to be acted upon by the host community. This is a largely ineffective tactic that may exacerbate ill-will between municipalities.

### **III. State Agency Permitting**

Local permitting issues took up the majority of time in the focus group discussions. However, RPAs and focus group participants felt that it was unfair to target local procedures without at least addressing related state permitting. Throughout the state, regardless of location, the two agencies that received the overwhelming majority of comments from local officials and developers about needed improvements were the Massachusetts Highway Department and the Massachusetts Natural Heritage and Endangered Species Program.

#### **1) Massachusetts Highway Department**

MassHighway was frequently characterized as an agency that caused delays and had inconsistent requirements. Many participants asserted that it can take months or more to move a project through the MassHighway permit process. Specifically, the curb cut approval process was cited as being particularly flawed by many focus group participants. Operating procedures vary greatly from district to district, and between the districts and the central office. In addition, budget cuts and personnel reductions have crippled the agency’s response times. The effectiveness of the new MassHighway Design Guidebook, which was designed to improve some of these processes, remains to be seen. Enough time has not elapsed to evaluate the guidebook’s effectiveness.



## **2) Natural Heritage and the Endangered Species Program**

The most consistent subject of permitting criticism was Massachusetts Natural Heritage MESA (Massachusetts Endangered Species Act) permits. While many participants thought the permits were fair prior to 2006, significant criticism was voiced regarding the regulatory changes, remapping, and the subsequent implementation that occurred last year. On one hand, many public officials felt that communities were not adequately consulted in the remapping. Many locally knowledgeable participants believe that significant swaths of undeveloped land was remapped based on the most general criteria, despite insufficient scientific evidence of endangered species. On the other hand, developers commented that information requests are not dealt with promptly. Moreover, mitigation and habitat delineation appear to be without clear criteria or effective dispute resolution.

## **3) Massachusetts Environmental Policy Act (MEPA)**

The Massachusetts Environmental Policy Act (MEPA) received positive reviews related to clarity of process and efficiency. However, the timing of MEPA review did receive some criticism where many felt that MEPA review occurs too late in the design process to effectively address possible project design changes.

## **Conclusion**

Throughout the summer, focus group participants from around the state suggested many ways to increase permitting efficiency. Some of the suggestions would require local governments to amend or adopt regulations and others would require state legislation such as updating M.G.L. Chapter 40A, the Zoning Enabling Act. Even more suggestions could be acted on immediately, however, to improve communication and affect inter-departmental coordination at the local level. What every recommendation had in common was the need to foster collaboration between the various boards and staff in a community, and between the community and the permit applicant.

Volunteer board members spend hundreds of hours in night meetings deliberating over permit issues and millions of tax dollars are lost each year because of process delays. Collaborating with new partners, both public and private, to make permitting more efficient is a shared objective of the focus group participants and beyond. Finding new approaches to permitting in order to expedite a process that is time consuming and costly is in the best interest of each of our communities.

## Partial Participant List

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