

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, FEBRUARY 8, 2010

Present: Ald. Johnson (Chairman), Lappin, Baker, Lennon, Sangiolo, Shapiro, Swiston and Yates

Also Present: Ald. Crossley, Danberg, Gentile and Hess-Mahan

Others Present: Candace Havens (Acting Director, Planning Dept.), Jen Molinsky (Planning Dept.), John Lojek (Commissioner, Inspectional Services), Ouida Young (Acting City Solicitor), Marie Lawlor (Assistant City Solicitor) and Karyn Dean (Committee Clerk)

#475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER
proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development.
[12/09/08 @ 9:41 AM]

ACTION: **HELD 7-0 (Ald. Lennon not voting)**

NOTE: Ald. Hess-Mahan noted that the permitting process in the City of Newton could be difficult. In 2006, Chapter 43D was formed to create priority development sites, either commercial or industrial zoned, and provide an expedited permitting process. A priority development site is defined in the Regulations a privately or publicly owned site that is commercially or industrially zoned or zoned for mixed-use development. This definition is not in the statute however. Eligibility for this program would be for construction on a parcel of land suitable for at least a 50,000 square foot building. The purpose of this program was to target sites for development and provide incentive for developers to partner with the City to get projects done. The City would have to agree to expedited permitting (within 180 days) in order to adopt 43D. The Board would not give up its ability to deny an application that was either incomplete or faulty in some way.

He noted that he and several others met with the Economic Development Committee of the Newton-Needham Chamber of Commerce. Nancy Radzevich was in attendance and was working with the state's Executive Office of Housing and Economic Development (EOHED) and their expedited permitting process. EOHED provided logistical support and guidance on how to go through this process. Originally, some money was associated with this for technical assistance, but it was cut from the budget. A letter of support for

adoption of Chapter 43D from the Newton-Needham Chamber of Commerce was received by the Board.

Identifying Sites

Ald. Baker provided some research information and it is attached to this report. He said the key to this was to find a site that the City would like to expedite and then get all the permitting done within 180 days. The ordinances would have to be amended to accommodate projects. He wondered if there was a parcel that needed this type of incentive in order to attract development interest. He felt possible sites would be Needham Street, Riverside, Chestnut Hill, and maybe Newton Centre, and the Committee needed to think about possible sites. Ald. Hess-Mahan agreed and said that most communities identified a site, then adopted 43D.

Question of Benefit to City

Ald. Sangiolo wondered what the benefit would be to the City to adopt this. Ald. Hess-Mahan said the point was to stimulate the development of a targeted site for economic development, and then not tie up the developer in a lengthy and cumbersome permitting process. The presumption would be that the permitting would be granted because the review would all happen at the front end of the project as the site would be chosen by the City. Developers can spend a significant amount of time and money on a project with no guarantee of getting a permit - this program provided some sense of security. Ald. Hess-Mahan noted that a commitment would have to come from the Mayor's office as well.

Concerns and Follow Up

Ald. Yates had some concerns:

- Would Needham Street, for example, be an eligible site as it was zoned mixed use?
- Did the 50,000 square foot building have to be one building, or could it be several; or did the lot just have to be big enough to accommodate it?
- Who would determine if the application was "complete" as the 180 day timeline would start at that point? He was concerned there could be different interpretations of completeness and that could cause problems.
- How has this worked in other communities?

Ald. Swiston was concerned that many properties in Nonantum were zoned as commercial or industrial but probably should be residential. Ald. Hess-Mahan assured her that sites could only be used with the owner's approval.

Ald. Shapiro asked about the role of the Economic Development Commission position that was now open. Ald. Johnson asked that the job description be provided. It is attached to this report. Candace Havens said she has been interviewing people for this position. She felt it was a possibility for this new person to take on some of the responsibilities for this program.

Ald. Hess-Mahan said it would be beneficial to have some people from OEHD come to a meeting and discuss their experiences and answer specific questions. Ald. Baker

suggested perhaps Nancy Radzevich, who is Vice President of Planning and Permitting for MassDevelopment. Ald. Johnson also suggested asking some nearby communities to come in and discuss their experiences with this program.

Candace Havens said that the Planning Dept would do a map search to determine sites in the City that would meet the criterion. She said the average time for a big project is, at the most, 6 months. On the other hand, what they have heard from developers was that certainty and having a definite timeframe was extremely important.

Green Community Designation

Ald. Hess-Mahan said he and Ald. Crossley were working on designating Newton as a Green Community. The Stretch Energy Code that was adopted last year was one criterion that satisfied adoption of this designation. Another criterion would be adoption of Chapter 43D. He noted that other items, necessary to meet the overall criteria, would be docketed soon as well.

The Committee voted to hold this item by a vote of 7-0.

#474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]

ACTION: **HELD 6-0 (Ald. Lappin and Lennon not voting)**

NOTE: Ald. Hess-Mahan said this issue came up in the work done with the home business ordinance as well as the FAR special permits. He felt that there were many items that were handled through the Board that could be handled more efficiently and effectively in another body, such as the Zoning Board of Appeals (ZBA) or the Planning Board. He thought that the special permit processed worked well for projects of a moderate to large size and scale. But he noted some fairly simple projects could take 5 or 6 months to work their way through the docketing, assigning, committee discussions and full board voting process. At that rate, homeowners could lose an entire building season. He felt the community would be served by having the process be less cumbersome. Ald. Hess-Mahan explained that the Zoning Control Officer gets 45 days to review a special permit. If a shopping center was being reviewed, that took a significant amount of time. A small addition to a house might take 20 minutes, but might get delayed to accommodate the time needed to review the larger project.

Ald. Johnson said that the City currently has a one-size-fits-all process which may not be appropriate. She felt a careful list would need to be created so the Board did not lose oversight of the significant projects. Ald. Sangiolo felt there needed to be clearer language that just "Major Projects". Ald. Hess-Mahan said the Planning Department would still be doing the same kind of review of all special permits and that would not be lost. This would just remove the longer cycle time for fairly simple projects. Ald. Baker was concerned about making the correct categories to allow for the best process and

outcome and would like the committee to think about what problems they were trying to solve. He would like some more specific recommendations.

ZBA Appointments

Ald. Yates asked if the Planning Board and ZBA had any gaps in their yearly schedule. Ms. Havens said that they met regularly throughout the year. Ald. Swiston asked if the members of these bodies were required to have specific expertise in the areas of zoning and planning. Ald. Johnson said they did not. Commissioner Lojek said that the Mayor's office was currently reviewing all the appointments and re-appointments that were coming up to Boards and Commissions. Mr. Lojek said that many members of the ZBA were uniquely unqualified to make the decisions they were making and that most communities had members with expertise. Those communities were directed either by by-laws or ordinances, or there was a philosophy to appoint members who could make the best contribution. This made appointments to these Boards and Commissions quite competitive. He would like to see that happen in Newton and believed that was the intention of the Mayor's office. Ald. Hess-Mahan agreed and said if they were to move the granting authority to the ZBA, he would want it to be a well-appointed and expert Board. Ald. Yates felt temperament and wisdom could sometimes be more valuable than technical qualifications. He said the Board could push back on some appointments if they felt they weren't quite right.

Ald. Sangiolo still didn't understand why moving it to another body would make the current process more efficient. She felt that the process itself, perhaps, should be changed. Ms. Havens said there could be a process by which changes to the special permit could be suggested, and if people chose not to comply with the recommendations they could go onto another body for review. She also felt there could be some scheduling changes for Land Use meetings that might accommodate more meetings.

Ald. Sangiolo wasn't sure she liked the idea of this authority going to an appointed, and not an elected, body, although she was happy to hear that the Mayor's office was looking at appointing members with expertise. She was concerned, however, about members sitting on the Board for extended periods of time. Ald. Lappin thought it was a good idea to move some of this authority to another body. She would very much like it to be moved to a body with expertise as well.

The Committee held this item by a vote of 6-0

#391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN
requesting an amendment to §30-19 to allow payments-in-lieu of
providing required off-street parking spaces when parking spaces are
waived as part of a special permit application.

ACTION: **HELD 8-0**

NOTE: Ald. Danberg addressed the Committee. She explained that there has not been a way to take in any funds from special permits that provided parking waivers. She felt this was a way to collect funds that could be used to mitigate parking problems in the

City. Jennifer Molinsky, provided a PowerPoint presentation on this item. It is attached to this report. This was a preliminary discussion of this item. The questions regarding structuring of the program, what type of permits it would address, whether it would be a required or optional program, how the fees would be set and the timeline for collection, and how and where the fees would be used, were addressed and various options presented. All of these issues require further consideration.

Ald. Danberg and Yates pointed out that the funds collected did not necessarily have to go towards a parking structure. These fees might be used to mitigate parking in other ways such as subsidizing T passes or bike and pedestrian access. Ald. Baker said he had no problem with the idea but wanted to be sure it worked with the character of the villages. He would like some recommendations from precedents because he wanted the business owner and the public to be assured of a good outcome. Ald. Sangiolo said the fees would need to be carefully set. If they were too high, they may discourage business owners from coming to Newton; if they were too low, they might encourage abuse of the program.

Follow Up

Ald. Johnson said that the specific details of the program still needed to be researched. She asked Ald. Danberg to form some options for consideration after hearing the concerns of the Committee. One thing she would like to know was some specific locations and what the impact might be. She also asked her let the Committee know when she would be ready to come back for further discussion.

The Committee held this item by a vote of 8-0

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

ACTION: **HELD 8-0**

NOTE: This item will be held pending the outcome of item #391-01(2). Ald. Johnson wanted the Committee to keep this item in mind when discussing the main item. The Committee held this item by a vote of 8-0.

#150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM]

ACTION: **HELD 8-0**

NOTE: Ald. Gentile addressed the Committee. He said he was contacted by some residents about this problem. In one particular case, a business owner was parking his commercial vehicle on one of his rental properties. He did not live at that property and it was causing problems for the abutters of the rental property. He would like to see an ordinance that allows only for occupants of the property to park their commercial vehicles there.

He would like to take a little more time to find the right language for this item and asked to hold the item.

The Committee voted to hold by a vote of 8-0.

Respectfully submitted,

Marcia Johnson, Chairman

#475.08

City of Newton Job Posting

Position Title: SENIOR ECONOMIC DEVELOPMENT PLANNER

Department: Planning and Development **Location:** City Hall

Salary Range: \$49,990 - \$63,648 **Grade:** SO9
AFSCME, Local 3092 Members

Department Head: Candace Havens, Acting Director

Date of Notice: January 8, 2010


Posting: Departmental Employees X City Wide Employees X External

Responsibilities include: Preparation and management of the City's economic development work program; promotion and encouragement of business development in Newton; assistance to and facilitation of permitting requests from existing and new businesses; coordination and implementation of long- and short-range planning and marketing studies, and promotional materials; conducting studies and preparing of reports necessary for updating the City's *Economic Development Strategy* and implementing its goals and actions; participation in village center planning studies and corridor plans; providing staff and technical support to the Economic Development Commission and back-up technical support to the Land Use Committee on significant mixed-use development projects; other project planning, management and oversight; proposal development, needs assessment, and eligibility reviews; report generation; acting as a liaison to advisory/constituent groups; provision of technical assistance to policy, advisory and recipient groups.

Qualifications: Bachelor's degree (B.A.) in city planning, public administration or related field; plus five to seven years related experience and/or training; or equivalent combination of education and experience. Master's degree preferred. Computer proficiency required. Must be able to multi-task, prioritize and provide excellent customer service. Experience with both Geographic Information Systems (GIS) and AIPC membership are desirable.

Individuals interested in the above position should submit a completed application or resume within five (5) working days by January 14, 2010. Email (preferred) to: resumes@newtonma.gov with the job title in the subject line. Fax: (617) 796-1272. Mail: Human Resources, 1000 Commonwealth Ave, Newton, MA 02459

The City of Newton is an Equal Employment/Affirmative Action Employer.

Approval: 
Director of Human Resources

#475.08

The Official Website of the Executive Office of Housing and Economic Development (EOHED)

Mass.Gov

Housing and Economic Development



Home > Start, Grow & Relocate Your Business > Licensing & Permitting > Chapter 43D Expedited Permitting >

Chapter 43D Communities

| <u>Municipality</u> | <u>Date Approved by IPB</u> | <u>180-Day Local Commitment Starts*</u> | <u>Site</u> | <u>Single Point of Contact</u> |
|---------------------|-----------------------------|---|--|--|
| Worcester (2) | 1/2/2007 | 9/2/2007 | 49 Canterbury St. City Square | Julie Jacobson, Asst City Manager, (508) 799-1400 |
| Uxbridge | 4/11/2007 | 10/9/2007 | 55 Douglas Street | Jill Myers, Town Manager, (508) 278-8600 |
| Medway (3) | 4/11/2007 | 9/31/07 | Medway Business Park; East Medway Industrial Park PDS #1; East Medway Industrial Park PDS #2 | Suzanne Kennedy, Town Administrator, (508) 533-3264 |
| Attleboro | 4/11/2007 | 9/31/07 | Attleboro Industrial Park | Gary Ayrassian, City Planner, (508) 223-2222 |
| Leominster | 4/11/2007 | 10/21/2007 | Southgate Business Park | Lisa Vallee, Economic Development Coordinator, (978) 534-7526 ext. 257 |
| Pittsfield | 4/11/2007 | 10/9/2007 | Stanley Business Park | Deanna Ruffer, Comm Development, (413) 499-9449 |
| North Reading | 5/9/2007 | 10/21/2007 | 100-104 Lowell Road | Heidi Griffin, Planning Administrator, (978) 664-6050 |
| Burlington | 5/9/2007 | 10/21/2007 | Northwest Park | Robert Mercier, Town Administrator, (781) 270-1600 |
| Canton (4) | 5/24/2007 | 10/29/2007 | 130 Royall Street; 275 Dan Road; 85 Dan Road; 1 Colgate Way | William Friel, Town Administrator, (781) 821-5000 |
| Douglas (2) | 5/24/2007 | 10/23/2007 | Webster Street Gilboa Street | Michael Guzinski, Administrator, (508) 476-4000 |
| Lowell (2) | 5/24/2007 | 10/9/2007 | Hamilton Canal District 38 Prince Avenue | Adam Baacke, Asst City Manager, (978) 446-7200 |
| Marlborough (4) | 5/24/2007 | 10/21/2007 | Hayes Memorial Drive 417 South Street 326 Elm Street 100 Crowley Drive | Tom Wellen, Ex. Director, Marlborough 2010, Inc., (508) 229-2010 |
| Walpole (2) | 5/24/2007 | 10/24/2007 | Walpole Mall Coney Street | Stephanie Mercandetti, Economic Development, (508) 660-7352 |
| Shrewsbury (2) | 5/24/2007 | 10/27/2007 | Allen Property; Cen Tech Park East | Michael Hale, Asst Town Manager, (508) 841-8508 |
| Athol (3) | 9/13/2007 | 2/18/2008 | North Quabbin Business Park District; Mohawk Plaza EOA; 134 Chestnut Hill Street | David Ames, Town Manager, (978) 249-2496 |
| Deerfield | 9/13/2007 | 3/3/2008 | Former Oxford Foods Site | Bernard Kubiack, Town Administrator, (413) 665-4645 |

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| Palmer (5) | 9/13/2007 | 3/29/2008 | 4145 Church Street Chamber Road 1412-1416 Main Street Thorndike Street 289 Wilbraham Rd. | Linda LeDuc, Town Planner, (413) 283-2605 |
| Grafton | 9/13/2007 | 3/3/2008 | Grafton Science Park Two parcels of CenTech Park | Stephen Bishop, Town Planner, (508) 839-5335 |
| Amesbury | 9/13/2007 | 3/23/2008 | Golden Triangle Site | Bruce Keller, Economic Development Coordinator, (978) 338-8110 ext. 313 |
| Haverhill | 9/13/2007 | 2/18/2008 | Hilldale Avenue & 60 Fondi Road | William Pillsbury, Economic Development, (978) 374-2330 |
| Dalton (3) | 11/7/2007 | 5/3/08 | Parcels 117-9, 110-70 & 118-71 Parcel 227-37 Parcel 124-6 | Kenneth Walto, Town Manager, (413) 684-6111 |
| Billerica | 12/13/2007 | 6/13/08 | 45 Middlesex Turnpike | Stephanie Cronin, Economic Development Coordinator, (978) 808-5281 |
| Groton | 12/13/2007 | 5/28/08 | Station Avenue | Michelle Collette, Town Planner, (978-448-1105 |
| Littleton (2) | 12/13/2007 | 9/6/08 | 550 King Street Great Road at 495 | Keith Bergman, Town Administrator, (978) 952-2311 |
| Montague | 12/13/2007 | 9/7/08 | Strathmore Mill | Daniel Laroche, Town Planner, (413) 863-3200 x207 |
| North Andover | 12/13/2007 | 6/15/2008 | Osgood Landing | Curt Bellavance, Economic Development, (978) 688-9531 |
| Revere | 12/13/2007 | N/A | Waterfront Square | Frank Stringi, Planning & Development, (781) 286-8183 |
| Ayer | 1/9/2008 | 9/6/08 | 40 Groton Road | Shaun Suhoski, Town Administrator, (978) 772-8210 |
| Holyoke | 1/9/2008 | 9/16/08 | Crossroads Business Park | Kathleen Anderson, Planning Director, (413) 322-5575 |
| Fitchburg (2) | 3/13/08 | 9/7/08 | 0 Airport Road and 135 Intervale Road 0 Princeton Road | David Streb, Planning Coordinator, (978) 345-1018 |
| Agawam | 4/9/08 | 9/7/08 | Agawam Industrial Park at Shoemaker Lane | Deborah Dachos, Dir of Planning & Community Development, (413) 786-0400 x283 |
| Brockton | 4/9/08 | 9/9/08 | Fairfield Farm at 309 Battle Street | Pamela Gurley, Planning Dept., 508-580-7113 |
| Gill | 4/9/08 | 9/8/08 | Mariamante Site at main Road and West Gill Road | Tracy Rogers, Administrative Assistant, (413) 863-9347 |
| New Bedford (6) | 4/9/08 | 9/2/08 | New Bedford Business Park: MCT Site Lot 10 Lot 11 Fairhaven Mills Site Downtown Hotel Site Former Goodyear Site | Derek Santos, Director of Business Development, New Bedford Economic Development Council, (508) 991-3122 x41 |

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| Sharon | 4/9/08 | 9/5/08 | Business District A/Post Office Square | Benjamin Puritz, Town Administrator, (781) 784-1515 x160 |
| Somerville (2) | 4/9/08 | 9/9/08 | 228 Washington Street 0 Prospect Street & 266 Somerville Avenue | Rob May, Dir of Economic Development, (617) 625-6600 x2524 |
| Adams (2) | 5/14/08 | 9/16/08 | Greylock Glen off West Road; 5 & 7 Hoosac Street | Donna Cesan, Dir of Community Development, (413) 743-8317 x131 |
| Belchertown | 5/14/08 | 9/18/08 | Former Belchertown State School | Douglas Albertson, Town Planner, (413) 323-0407 |
| Chester | 5/14/08 | 9/18/08 | 18 Baystate Road | Edward MacDonald, Town Administrator(413) 354-7760 |
| Hudson (3) | 5/14/08 | 9/25/08 | 185-205 Washington Street Cabot Road 75 Reed Road | Michele Ciccolo, Dir of Community Development, (978) 562-9963 |
| Lee (2) | 5/14/08 | 9/25/08 | Eagle Mill Laurel Mill | Richard Vinette, Lee Community Development Corporation, (413) 243-5528 |
| Northampton | 5/14/08 | 9/16/08 | Village Hill at Northampton | Carolyn Misch, Sr. Land Use Planner, (413) 587-1287 |
| Orange (3) | 5/14/08 | 9/18/08 | Putnam Hall Block South Main Street Block West River Street Block | Richard Kwiatkowski, Town Administrator, (978) 544-1100 x107 |
| Watertown (3) | 5/14/08 | 9/25/08 | Pleasant Street Corridor; 270 Pleasant Street; Corner of Pleasant St. and Howard St. | Steve Magoon, Director of Community Development & Planning, (617) 972-6417 |
| Bernardston (2) | 9/17/08 | 5/13/09 | Church St., Northfield Rd., Industrial Drive; Northfield Rd. | Rebecca Jurek, Admin. Assist., (413)648-5401 |
| Carver (3) | 9/17/08 | 2/10/08 | Whitworth;Montello St.; North Main St. | Jack Hunter, Dir. of Planning & Comm. Dev., (508) 866-3450 |
| Chicopee (2) | 9/17/08 | 6/12/09 | Westover Airpark West; Chicopee River Business Park | Kate Brown, Planning Dir., (413) 594-1516 |
| Andover (9) | 9/24/08 | 5/13/09 | South Street; 1 Riverside Drive; 2 Tech Drive; 40 Shattuck Road; 300 Minuteman Road; 300 Brickstone Square; 160 Dascomb Road; 300 Federal Street; 800 Federal Street | Paul Materazzo, Dir. of Planning, (978) 623-8310 |
| Tewksbury | 9/24/08 | 5/13/09 | Simon Properties/RJ Kelly | Steven J. Sadwick, Dir. of Comm. Dev., (978) 640-4370 |
| Wilmington | 9/24/08 | 5/13/09 | Ballardvale Street | Carol Hamilton, Dir. of Planning & Conservation, (978) 658-8238 |
| Gardner (3) | 9/24/08 | 5/13/09 | Rear Main St.;Mill St.; Summit Industrial Park | Robert L. Hubbard, Dir. Dept. of Comm. Dev. & Planning (978) 630-4014 |
| Chelsea | 10/15/08 | 10/22/08 | 204 Maple St., 144 and 145-155 Beech St., 177 Everett Avenue & 201 Spruce St. | John DePriest, Dir. of Planning & Development, (617) 466-4180 |
| Boylston | 10/15/08 | 6/12/09 | 315 Main St. & Main St.; 141 Shrewsbury Street | Nancy T. Colbert, Town Administrator, (508) 869-6210 |

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|-----------------|----------|---------|---|--|
| Dedham | 10/15/08 | 5/13/09 | Keystone Lot | Kenneth Cimeno, Bldg. Commissioner, (781) 751-9150 |
| Greenfield | 10/15/08 | 5/13/09 | Bank Row | Eric Twarog, Senior Planner/GIS Coordinator, (413) 772-1548 x132 |
| Springfield (2) | 10/15/08 | 5/13/09 | Springfield Smith & Wesson Industrial Park; Chicopee River Business Park | Philip Dromey, Deputy Director, Springfield Office of Planning, (413) 787- 6020 |
| Taunton (2) | 10/15/08 | 5/13/09 | Liberty & Union Industrial Park; Myles Standish Industrial Park | Kevin Scanlon, City Planner, (508) 821-1051 |
| Northbridge (2) | 11/18/08 | 6/12/09 | Linwood Mill; Main Street | R. Gary Bechtholdt II, Town Planner, (508) 234-2447 |
| Sutton | 11/18/08 | 6/12/09 | Whitins Rd./Hough Rd. | Jennifer Hager, Planning Director, (508) 865-8729 |
| Norfolk (2) | 11/18/08 | 6/12/09 | Southwood Hospital; Town Center B1 District PDS Y | Robert J. Bullock, Jr., Building Commissioner, (508) 528-5088 |
| Bourne | 12/17/08 | 6/12/09 | Main St./Cohasset Ave. | Coreen Moore, Town Planner, (508) 759-0615 x346 |
| Chelmsford | 12/17/08 | 6/04/09 | 25 Katrina Road | Evan Belansky, Community Dev. Director, (978) 244-3341 |
| Freetown (2) | 12/17/08 | 7/11/09 | 0 Campanelli Drive; 0 South Main Street | Linda H. Remedis, Admin. Assistant, (508) 644-2201 |
| Gloucester | 12/17/08 | 4/03/09 | 32 Horton Street | Sarah Buck, Community Dev. Director, (978) 281-9781 |
| Lawrence | 12/17/08 | 6/12/09 | 280-350 Merrimack Street | Daniel A. McCarthy, Land Use Planner, (978) 620-3505 |
| Pepperell | 12/17/08 | 6/12/09 | 128 Main Street | Robert E. Lee, Jr., DPW Director/Town Engineer, (978) 433-0327 |
| Ashland | 6/10/09 | | 60 Pleasant Street; 61 Waverly Street | Matthew Selby, Conservation Agent/Economic Dev. Coordinator, (508) 881-0100 x656 |
| Clinton | 3/11/09 | 4/24/09 | 460-530R Main St. | Michael Ward, Town Administrator, (978) 365-4120 |
| Franklin (3) | 3/11/09 | 5/09/09 | 40-198 Pond Street; Forge Park; Franklin Industrial Park | Bryan Taberner, Director of Planning & Comm. Development, (508) 520-4907 |
| Lancaster | 3/11/09 | 6/04/09 | Lancaster Technology Park; Chisholm Property; Hill Property | Noreen Piazza, Planning Director, (978) 368-4007 |
| Randolph | 3/11/09 | 6/04/09 | Pacella Park Drive | Richard J. McCarthy, Jr., Planning Director, (781) 961-0936 |
| Westminster (3) | 3/11/09 | 5/09/09 | Fitchburg Road; Simplex Drive; Westminster Business Park | Marie Auger, Planning Coordinator, (978) 874-7414 |

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| Sturbridge | 6/10/09 | | 51 Technology Park Road; 90 Charlton Road; 198 Charlton Road; 178 Main Street; 660 Main Street | Jean M. Bubon, Town Planner, (508) 347-2508 |
| Lunenburg | 8/12/09 | | 100 Summer Street | Marion Benson, Planning Director (978) 582-4147 |
| Middleborough | 8/12/09 | | Middleborough Park @ 495 | Ruth Geoffroy, Planning Director (508) 946-2425 |
| Raynham (3) | 8/12/09 | | Raynham Wood Commerce Center Site #1; Raynham Woods Commerce Center Site #2; Raynham Woods Commerce Center Site #3 | Marilyn Whalley, Town Planner/Grant Writer (508) 824-2774 |

**If no date is listed under "180-Day Local Commitment Starts", the community has not yet completed the opt-in process.*

475.08

The Official Website of the Executive Office of Housing and Economic Development (EOHED)

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Housing and Economic Development



Home > Start, Grow & Relocate Your Business > Licensing & Permitting > Chapter 43D Expedited Permitting >
Chapter 43D Information >

Program Regulations: 400 CMR 2.00

[400 CMR 2.00 Word](#)

[2.01: Purpose](#)

[2.02: Program Overview](#)

[2.03: Definitions](#)

[2.04: Interagency Permitting Board](#)

[2.05: PDS Designation Process](#)

[2.06: Grant Application Process](#)

[2.07: Local Duties Upon Municipal Acceptance](#)

[2.08: Applications and Completeness Review](#)

[2.09: Permitting Process and Extensions](#)

[2.10: Permit Modifications](#)

[2.11: Automatic Grant of Approval](#)

[2.12: Cape Cod Commission & Martha's Vineyard Commission Reviews](#)

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[2.14: Permit Transfers and Renewals](#)

[2.15: Municipal Benefits](#)

[2.16: State Permitting](#)

[2.17: Regulatory Authority](#)

2.01: Purpose

400 CMR 2.00 *et seq.* establishes rules, standards and procedures for the Expedited Permitting Program created in Chapter 43D. The Executive Office of Economic Development (the "Office") is the regulatory agency for the program and is authorized to issue regulations to explain and to implement its operation.

2.02: Program Overview

The Expedited Permitting Program gives cities and towns the ability to promote commercial development on pre-approved parcels by offering expedited local permitting on those parcels. Such development shall be primarily commercial however mixed-use properties shall also qualify for priority designation so long as they conform to the statutory requirements for a priority development site. The program is at local option.

Cities and towns that accept the provisions of Chapter 43D will be eligible for a one-time technical assistance grant to assist the municipality to improve and streamline the local permitting process for commercial development.

2.03: Definitions

"All persons entitled to notice of hearing", abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the priority development site as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the issuing authority the names and addresses of persons entitled to notice of public hearing and such certification shall be conclusive for all purposes.

"Appropriate public transit services", an area that is located within .5 (1/2) miles of any part of an existing Transit Station or Planned Transit Station, including, but not limited to, parking areas proximate to the existing Transit Station or Planned Transit Station, entrance gates, and ticket dispensers, and shall have a form of access to the existing Transit Station or Planned Transit Station, or will have access resulting from a proposed project on the priority development site.

"Area of existing development", an area within .5 (1/2) miles of parcels with existing public or private infrastructure either currently in use or recently abandoned, which is served by transportation services that include roads, highways, or other forms of public transit.

"Division", the Division of Administrative Law Appeals.

"Governing body", in a city having a Plan D or Plan E charter the city manager and the city council and in any other city the mayor and city council, and in towns the board of selectmen, or as otherwise provided by local charter.

"Interagency permitting board", the board, as described in Section 62 of Chapter 23A established to review and

approve or deny municipal priority development site proposals and to administer technical assistance grants.

"Issuing authority", a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

"Mixed Use", use of a parcel of real property for both residential and commercial purposes.

"Parties to the proceedings", any person who provided testimony or submitted written comments on record during a Public Hearing for the project.

"Permit", a formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use, development or redevelopment of land, buildings, or structures required by any issuing authority including but not limited to those under statutory authorities contained in Sections 81A to 81J, inclusive, of Chapter 40A, and Sections 81X to 81GG, inclusive, of Chapter 41, Sections 40 and 40A of Chapter 131, Sections 26 to 32, inclusive, of Chapter 111, Chapter 40C, Sections 13 and 14 of Chapter 148, Chapter 772 of the acts of 1975, or otherwise under state law or local by-law or ordinance, and all associated regulations, by-laws and rules, but not including building permits or approvals pursuant to Sections 81O to 81W, inclusive, of Chapter 41. "Permit" shall not include the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipality or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

"Permitting Ombudsman", an individual appointed by the governor that will chair the interagency permitting board and direct that board to conduct state permit evaluation and streamline and expedite state agency permitting procedures. The ombudsman shall facilitate communication between municipalities and state agencies on permitting issues.

"Priority development site", PDS, a privately or publicly owned property that is: (1) commercially or industrially zoned, or zoned for mixed use development; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for development or redevelopment containing at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in under utilized buildings or facilities, or close to appropriate transit services.

"Secretary", the secretary of the executive office of economic development.

"Technical review team", an informal working group consisting of representatives of the various issuing authorities designated by the head of their issuing authority to review requests submitted under this chapter. The technical review team shall not include members of the zoning board of appeals.

"Under utilized building or facility" – a commercial or industrial building or collection of buildings that are currently vacant or that has 50% of its floor area unused, or a site that has previously been cleared of industrial or commercial use, or a site that has been remediated and is vacant or used sporadically.

2.04: Interagency Permitting Board

The members of the board shall be comprised of the state permit ombudsman who will serve as the chair, the secretary of economic development, the secretary of transportation, the secretary of environmental affairs, the secretary of public safety, the director of the department of housing and community development, the director of the department of business and technology, the director of the department workforce development, the director of the department of consumer affairs and business regulation, the chair of the commonwealth development coordinating council, and the executive director of the Massachusetts Development Finance Agency, or their designees. Six members shall be a quorum for the transaction of business. At the direction of the chair, the board shall meet no less than 8 times a year, and review and approve or deny municipal PDS proposals and administer technical assistance grants. The board shall monitor the development of priority development sites as provided for in Chapter 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency. The board shall administer the technical assistance grants program established in Section 3(b) of Chapter 43D.

2.05: PDS Designation Process

For each priority development site proposed, a town must vote to accept Chapter 43D by town meeting and a city must accept Chapter 43D by a majority vote of city council members. In order to qualify for PDS designation, written authorization of the property owner of each parcel included in the PDS application must be granted. Upon local acceptance of Chapter 43D, the governing body must apply to the board for PDS designation. The application shall include: (1) a detailed description of the property; (2) good faith commitment to comply with Chapter 43D; (3) written authorization of the property owner; and (4) at the discretion of the governing body, a request for technical assistance. The applications shall also identify if the site is located adjacent to areas of existing development or in under utilized buildings or facilities, or close to appropriate transit services. The board will review the application to determine whether the parcel meets all of the following requirements:

- Regulation: 800 CMR 2.00 Page 5 of 6
- (1) commercially or industrially zoned, or zoned for mixed use development;
 - (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for development or redevelopment containing at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
 - (3) has met with an affirmative vote of town meeting or city council.

Municipalities are strongly encouraged to consider sites close to areas of existing development, close to appropriate transit services, or containing under-utilized buildings or facilities when nominating potential PDS locations, however meeting one or more of these three principles is not required for the site to qualify for PDS designation.

The board shall have 60 calendar days from receipt of the PDS application to issue a decision.

PDS designation shall apply for a term no less than five years, beginning the day after the 120 calendar day phase-in period as described in Section 2.06. The governing body may decide to terminate PDS designation on a parcel after the initial five year term by providing timely written notice to the board. Absent a termination notice from the governing body, PDS designation shall remain in effect.

2.06: Grant Application Process

All requests for technical assistance grants shall include a detailed description of how the grant will be used and shall be submitted to the board with the application for PDS designation. Grants shall be used to implement the requirements of Chapter 43D, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services.

The board shall review applications for technical assistance grants, and issue a final decision within 60 calendar days of receipt in concurrence with the Board's decision on the application for PDS designation. All technical assistance grants under Chapter 43D are subject to legislative appropriation.

The grants are to be considered one-time grants. In special circumstances where a specific and originally unforeseen need can be demonstrated, the governing body may be eligible for an additional technical assistance grant if approved by the board and the secretary, provided the governing body has previously identified and successfully permitted at least one PDS prior to the second request for a technical assistance grant.

2.07: Local Duties Upon Municipal Acceptance

A governing body shall be deemed to have accepted the provisions of Chapter 43D by endorsing the check for a technical assistance grant. In the cases where no technical assistance has been granted, the governing body may accept the provisions of Chapter 43D by completing a form provided to them by the board.

Beginning on the day after a governing body accepts the provisions of Chapter 43D, the governing body will have 120 calendar days to conform to the requirements of this program.

These requirements shall be to:

- (a) appoint a single point of contact to serve as the primary municipal liaison for all issues relating to Chapter 43D;
- (b) amend rules and regulations on permit issuance to conform to Chapter 43D;
- (c) along with each issuing authority, collect and ensure the availability of all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit;
- (d) establish a procedure whereby the governing body shall determine all permits, reviews and predevelopment reviews required for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities and a procedure for notifying the applicant of the same;
- (e) establish a procedure, following notification to the applicant of all required submissions, for determining if all the materials required for the review of the project have been completed; and
- (f) establish a procedure to allow for all local permitting decisions for PDS projects to be issued within 180-calendar-days of submission of a completed application.

Nothing in Chapter 43D shall be construed to alter the jurisdiction of issuing authorities.

2.08: Applications and Completeness Review

The governing body shall provide an applicant with a comprehensive packet of permit applications necessary for the PDS project. In order to identify applicable permits for any project, the municipality may conduct preliminary reviews or conferences with the applicant. Once the applicant has submitted an application packet, the governing body has 20 business days to determine completeness of the applications. The governing body shall timely notice the applicant by certified mail as to the completeness of the applications. If the governing body fails to notice the applicant within 20 business days,

the application shall be deemed complete. The 180-calendar-day review period shall commence the day after notice is mailed.

Should the governing body determine an application is incomplete, the governing body shall timely notify the applicant in writing by certified mail with an explanation as to why the application is incomplete, and request the information necessary to complete the application. The resubmission of an application package will begin a new 20-business-day completeness review period. Subsequent completeness decisions must be sent by certified mail and conform to the process outlined in this section.

2.09: Permitting Process and Extensions

The governing body must complete the local permitting process within 180 calendar days after the certified notice of completeness is sent, or the 20-day-completeness review period has expired and the applications are deemed to be complete. This period may be waived or extended for good cause upon written request of the applicant with the consent of the governing body, or upon written request of an issuing authority with the consent of the applicant.

The 180-calendar-day review period may be extended by the governing body, if a previously unidentified permit or review has been determined necessary within the first 150 calendar days of the process. When a governing body determines that a previously unidentified permit is necessary, the governing body must send immediate notice of such additional requirements to the applicant by certified mail and copy the board. The governing body may exercise the extension for a maximum of 30 calendar days. Where public notice and comment or hearing are required for the previously unidentified permit, the required action date shall be not later than 30 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows.

The 180-calendar-day review period may be extended when an issuing authority determines that (1) action by another federal, state or municipal government agency not subject to this act is required before the issuing authority may act; (2) pending judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or (3) enforcement proceedings that could result in revocation of an existing permit for that facility or activity or denial of the application have been commenced. In those circumstances, the issuing authority shall provide written notification to the secretary and the board by certified mail. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, the secretary, and the board by certified mail, and shall complete its decision within the time period specified in this section, beginning the day after the notice to resume is issued by the governing body.

If governing body, in consultation with the issuing authority, has determined that substantial modifications to the project since the application render the issuing authority incapable of making a decision on an application, an extension of the 180-calendar-day review period may be granted by the board for demonstrated good cause at the written request of the issuing authority. The issuing authority shall provide terms for the extension including the number of additional days requested. Within ten business days of receipt of the request, the board, or permitting ombudsman if designated by the board, shall respond to the issuing authority with an extension determination.

If the applicant makes a substantial modification to a project for the purpose of public benefit, the issuing authority may request an extension from the board, and if granted, shall make every reasonable effort to expedite the processing of that permit application.

2.10 Permit Modifications

Issuing authorities shall make every reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. An issuing authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or requires additional information for the issuing authority to issue a decision. If additional information is required, the issuing authority shall inform an applicant by certified within 20 business days after receipt of the required additional information whether the modification is approved or denied or that further additional information is required by the issuing authority in order to render a decision.

2.11: Automatic Grant of Approval

Failure by any issuing authority to take final action on a permit within the 180-calendar-day review period, or properly extended review period, shall be considered a grant of the relief requested of that authority. In such case, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to the grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings as defined by Section 2.03 and all persons entitled to notice of hearing in connection with the application as defined by Section 2.03.

An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with this chapter.

The automatic grant of approval shall not occur:

(a) where the governing body has made a timely determination under Section 2.07 that the application packet is not complete and the applicant does not provide the requested information within 90 calendar days. In this case, the

governing body shall notify the board of the discontinuance of the permit process;

(b) the governing body, in consultation with the issuing authority, has determined that substantial modifications to the project since the application render the issuing authority incapable of making a decision on an application;

(c) the governing body has determined that a final application contains false or misleading information. In such event, the governing body must submit a statement of

findings to the board by certified mail and copy the applicant by certified mail. Such a finding may be appealed in Land Court on a motion of the applicant. Pending a court's ruling, the 180-calendar-day review period shall be tolled. If a court rules in favor of the appellant, the 180-calendar-day review period shall resume. If the court rules in favor of the governing body, the 180-day review process shall be waived.

2.12: Cape Cod Commission & Martha's Vineyard Commission Reviews

In municipalities where the Cape Cod Commission or Martha's Vineyard Commission have the authority to review permit applications, the municipality shall consult with the Cape Cod Commission or Martha's Vineyard Commission before commencing with a project on a PDS. The Commission and the municipality shall work together to consider any areas of potential concern or conflict prior to issuing applications for that project, and make every reasonable effort to expedite the processing of such applications. In municipalities that fall within the jurisdiction of either Commission, the 180-day review period will be tolled on the day the referral is made to the Cape Cod Commission and the Martha's Vineyard Commission and will resume when those bodies complete their review.

2.13: Appeals

Appeals of an issuing authority decision or from an automatic grant of approval shall be filed within 20 calendar days after the last individual permitting decision has been rendered or within 20 calendar days after the conclusion of the 180-day period, whichever is later. The 180-day period shall be increased by the number of days in any extension granted under this chapter.

The applicant or any person aggrieved by a final decision of any issuing authority, or by the failure of that authority to take final action concerning the application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the Division by bringing an action within 20 calendar days after a written decision was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed simultaneously and shall be consolidated for purposes of hearing and decision. This section shall not apply to appeals pursuant to Sections 40 and 40A of Chapter 131, which shall continue to be appealed in accordance with said Chapter 131, Chapter 30A and applicable regulations.

When hearing appeals under this chapter, the Division shall revise its rules, procedures and regulations to the extent necessary to accord with the requirements of Chapter 43D. The division shall render a final written decision within 90 days of the receipt of the appeal. Thereafter, an aggrieved party may appeal to the superior court department or to the Land Court in accordance with Section 3A of Chapter 185, by bringing action within 20 days after a written decision was or should have been rendered.

2.14: Permit Transfers and Renewals

Permits shall not transfer automatically to successors in title, unless the permit expressly allows the transfer without the approval of the issuing authority.

Issuing authorities may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the procedures and timelines specified in this chapter.

Permits issued pursuant to Chapter 43D shall expire 5 years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of construction of one building shall prevent expiration of all permits on that site. No permit issued under this chapter shall be affected by changes in the law subsequent to the issuance of such permits. Nothing in this section shall limit the effectiveness of Section 6 of Chapter 40A.

2.15: Municipal Benefits

Municipalities that adopt the provisions of Chapter 43D are eligible for priority consideration for state grants, including but not limited to, community development action grants, public works economic development grants, brownfields remediation grants, and other state resources such as quasi-public financing and training programs.

The Commonwealth, through the Massachusetts Office of Business Development, and a contract with the Massachusetts Alliance for Economic Development, shall promote PDS locations to the real estate and business community nationwide. The contract with the Massachusetts Alliance for Economic Development shall be contingent upon legislative appropriation.

2.16: State Permitting

Reviews required under the Massachusetts Environmental Policy Act, Sections 61 to 62H, inclusive, of Chapter 30,

or the Massachusetts Historical Commission, Sections 26 to 27C, inclusive, of Chapter 9, shall conclude within 120 calendar days of a state determination of completeness of required review materials, as established by the executive office of environmental affairs in consultation with the state secretary. The aforementioned reviews shall take place concurrently with the 180-calendar-day municipal permitting review process. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with this section. In the event an applicant fails to comply with all relevant time frames, the time shall be tolled until the applicant files the required documents.

2.17: Regulatory Authority

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Housing and Economic Development



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Frequently Asked Questions

Revised as of 3/18/09

WHAT IS A PRIORITY DEVELOPMENT SITE?

Answer: "PDS" is a privately or publicly owned property that is:

- (1) commercially or industrially zoned or mixed use;
- (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
- (3) designated as a priority development site by the state Interagency Permitting Board.

Several parcels or projects may be included within a single priority development site

IS SMART GROWTH CONSIDERED?

Answer: The state strongly encourages priority development sites to be located in areas that are near existing public transit service, adjacent to existing development, or in under-utilized buildings or facilities, but it is not a requirement for the site to qualify for PDS designation

WHAT IS THE GOVERNING BODY?

Answer: Depends on your municipal charter, but in most cases the governing body will be a Board of Selectmen, Town Council or City Council.

WHAT IS THE ISSUING AUTHORITY?

Answer: The issuing authority is the board or department reviewing a specific permit. For the purposes of this law, the issuing authority can be any or all of the following: Planning Board, Conservation Commission, Zoning Board of Appeals, Public Works, Fire Chief, Board of Health, Historic Commission.

WHAT IS THE INTERAGENCY PERMITTING BOARD?

Answer: A state board that is established to review and approve or deny municipal priority site development proposals and administer technical assistance grants. The members of the Board are comprised of representative from each state office that issues permits.

WHICH "ISSUING AUTHORITIES" WILL BE AFFECTED BY THIS LAW?

Answer: All boards, departments or agencies that are involved with land use development.

WHAT PERMITS ARE AFFECTED BY THIS LAW?

Answer: Orders of conditions and wetlands decisions issued by the Conservation Commission, Special Permits issued by the ZBA and/or Planning Board, Site Plan Review issued by the Planning Board, Flammable Materials License issued by the Fire Chief, historic district decisions, and Title V and septic decisions issued by the Board of Health.

**Building permits issued by the building inspector, ANR plan approval and subdivisions under the subdivision control law are not affected by this statute.*

HOW IS THE LAW ACCEPTED BY A MUNICIPALITY?

Answer: This law is at local option which means that in order for the law to become effective in a municipality it has to be authorized by a majority vote of Town Meeting, or City/Town Council.

HOW IS A PARCEL DESIGNATED AS A PRIORITY DEVELOPMENT SITE?

Answer: Once local approval is granted, the governing body must apply for the designation through the Interagency Permitting Board. The law is not accepted until the application is approved and the governing body decides to proceed with the designation.

WHAT IS A TECHNICAL ASSISTANCE GRANT?

Answer: Communities that accept this law are eligible for a one-time grant to implement the requirements of the expedited permitting law, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services. Eligible communities may apply for grants up to \$60,000. Eligible communities working with neighboring communities to further regional growth objectives may be eligible to for up to \$100,000 if extraordinary circumstances can be demonstrated. For more information on grants, please view the [Chapter 43D Application Guidance](#) [PDF](#).

ARE THERE ANY OTHER TOOLS AVAILABLE TO MUNICIPALITIES?

Answer: Yes. [Best Practices Model for Streamlined Local Permitting](#), developed by the Mass Association of

Regional Planning Agencies, is available as a reference tool and provides model checklists, flow charts, web services, and more.

In April of 2009, a free Permit Tracking Program will be available to all cities and towns via the MPRO website. Regional Market Overviews and a Marketing Toolkit are also under development to be released soon.

WHAT HAPPENS AFTER THE APPLICATION IS SUBMITTED TO THE BOARD?

Answer: The Interagency Permitting Board must review and determine eligibility of the proposals and applications for technical assistance within 60 days of receipt from the municipality.

WHAT HAPPENS AFTER THE MUNICIPALITY HAS RECEIVED APPROVAL FROM THE STATE?

Answer: If the governing body chooses to proceed with the designation, the governing body must do the following within 120 days:

- (a) appoint a single municipal point of contact for streamlined permitting;
- (b) amend local rules, regulations, bylaws, etc. to comply with 180 day permit timeline;
- (c) determine and make available the requirements for each permit;
- (d) establish a procedure for identifying necessary permits for a project;
- (e) establish a procedure for determining completeness of the required submissions.

After the 120-day phase-in period has expired, the municipality is required to conduct the permitting process on the PDS within 180 days. Extensions may apply in extenuating circumstances or for good cause.

HOW LONG DOES THE PDS DESIGNATION STAND?

Answer: PDS locations will maintain that designation for no less than five years. After five years, the municipality may request that the designation be removed. If no request is issued, the designation will remain in place.

DOES THIS LAW REQUIRE LOCAL BOARD AND COMMISSION TO REDUCE THEIR STANDARDS OF REVIEW?

Answer: No!! Nothing in the expedited permitting law alters the substantive jurisdictional authority of local boards or departments.

DOES THE LAW REQUIRE THAT ALL PERMIT APPLICATIONS ARE APPROVED?

Answer: No. The law only requires that all decisions are rendered by each issuing authority within 180 days.

WHAT HAPPENS IF AN ISSUING AUTHORITY DOES NOT RENDER A DECISION WITHIN 180 DAYS?

Answer: The application is deemed approved.

WHAT ARE THE FEES INVOLVED FOR THIS LAW?

Answer: The governing may establish additional fees to the developer for overseeing/administering the expedited permitting process. This fee is in addition to fees already charged by the Conservation Commission, the ZBA, and the Planning Board, etc and must be used for the purposes of this law.

WHAT EXTENSIONS MAY BE GRANTED?

Answer: The 180-day review period may be extended in the following circumstances:

- (a) if an additional and originally unforeseen permit or predevelopment review is required, the timeline may be extended for a maximum of 30 days;
- (b) if action by another federal, state or municipal government agency is required before the issuing authority may act, or judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application, or if enforcement proceedings that could result in revocation of an existing permit and denial of the application have been commenced, the timeline may be extended;
- (c) if the governing body and the applicant mutually request that the 180-day review period be waived or extend.

CAN THE ISSUING AUTHORITY USE LACK OF TIME AS A REASON FOR DENIAL?

Answer: No. An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with the expedited permitting law.

WHEN CAN AN APPEAL BEGIN?

Answer: Appeals from issuing authority decisions or from a grant by operation of law shall be filed within 20 days after the last individual permitting decision has been rendered or within 20 days after the conclusion of the 180 day period, whichever is later. The 180-day period shall be increased by the number of days in any extension granted.

WHERE ARE APPEALS HEARD? WHEN ARE THEY DECIDED UPON?

Answer: Appellants may bring consolidated appeals before the Division of Administrative Law Appeals to obtain a decision within 90 days. Appeals of DALA decisions may be filed within 20 days of the decision with Superior Court or Land Court. Appellants may also bring an appeal directly to Superior Court or Land Court (see MGL c.185 s.3A)

without going through the DALA process.

ARE THE PERMITS TRANSFERABLE? WHEN DO THEY EXPIRE?

Answer: Not automatically transferable unless the permit expressly allows the transfer. Permits issued pursuant to this law shall expire in 5 years from the date of applicable appeal period for the permit. Where permits cover multiple buildings, commencement and continued of construction of one building shall preserve the permit validity of all permits issued for that PDS.

WHAT ARE THE BENEFITS TO THE MUNICIPALITY?

Answer: A priority development site shall enable the municipality to take advantage of the following:

- (a) priority consideration for state grants;
- (b) priority consideration for quasi-public financing and training programs;
- (c) brownfields remediation assistance;
- (d) enhanced marketing of the parcel by the state;
- (e) technical assistance provided by the regional planning council;
- (f) competitive advantage for economic development opportunities.

HOW DOES THIS EFFECT THE MEPA PROCESS?

Answer: This law requires that MEPA and Mass Historic Commission reviews are conducted concurrent to the 180-day municipal review period. It is anticipated that the MEPA filing will be initiated in the 180 days, but may not be completed as the MEPA review is not abbreviated.

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INTERAGENCY PERMITTING BOARD
CHAPTER 43D APPLICATION

PART I: MUNICIPAL APPLICANT

Municipality:

Date:

Name of Individual who prepared this application:

Chapter 43D requires that a single person be designated to serve as the municipal point of contact on Priority Development Sites. The individual must be a municipal employee or an employee of a quasi-municipal agency who will be charged with responding to inquiries about the site, providing and accepting permit applications, communicating decisions to applicants, etc. It is recommended that the designated Point of Contact be a staff member and not an elected official.

Point of Contact, as designated by the governing body:

Name:

Title:

Address:

Telephone:

Fax:

Email:

Please check the box corresponding to the Technical Resource Providers that assisted you with this program:

- Regional Planning Agency
- Mass Office of Business Development
- Permit Regulatory Office (EOHED)
- MassDevelopment
- Mass Alliance for Economic Development

Chapter 43D requires a majority vote of the local governing body for each Priority Development Site being submitted by the municipality. Applications must be accompanied by a true attest certified copy of the municipal vote – stamped by Clerk.

Please identify the body that approved the submission of this application:

- City Council
- Town Council
- Town Meeting
- Other:

I hereby certify under the pains and penalties of perjury that the answers submitted in this application and the documentation submitted in support are accurate and complete.

Name:

Date:

Signature: _____

Title:

Signature of Clerk: _____ Date: _____

For Internal Use Only

Received by: _____ Date: _____

| | | |
|--|---|--|
| <input type="checkbox"/> Municipal Contact Information | <input type="checkbox"/> Certified Vote | <input type="checkbox"/> Land Owner Signatures |
| <input type="checkbox"/> Grant Application | <input type="checkbox"/> Electronic Copy Received | <input type="checkbox"/> Self-Assessment Checklist |
| <input type="checkbox"/> Required Maps | <input type="checkbox"/> Maps sent to EEA | IPB Meeting: |

PART II: PRIORITY DEVELOPMENT SITE (PDS)

Submit a separate Part II for each Priority Development Site.

Site Location (including street address and map and parcel numbers):

Please list any abutting communities to PDS:

Have these communities been notified of your proposal? Yes No

Number of parcels in your proposed site: **Total Acreage of PDS:**

Ownership: Private Public

Is the site eligible under current zoning for the construction or redevelopment of at least 50,000 sq feet of commercial or industrial space? Yes No

Chapter 43D requires a PDS to be zoned for commercial, industrial or mixed-use development. If PDS represents a combination of zoning, please explain. Please check all of the following boxes that apply to the PDS, including the means by which a proponent may permit on this site (i.e. special permit?).

PDS Zoning:

- By-right Special Permit Site Plan Review
- Commercial Industrial Mixed Use

After reviewing the definitions set forth in 400 CMR 2.00 respond to the following questions:

1. Is the site located within .5 miles of existing development? Yes No

Locations within or adjacent to existing development are preferred such as downtowns or village centers with a diverse mix of civic/cultural, residential, service, business, and other uses; municipal services (school, library, fire, police, city/town hall, parks, etc.); and/or a available labor.

Explanation: _____

2. Is the site served by existing infrastructure? If not, how far must service be extended?

Locations with existing utility service – gas, electric, telecommunications, etc. – as well as water & wastewater systems with sufficient water supply/treatment capacity and pipe condition/capacity adequate to deliver fresh water and remove wastewater are preferred.

- Water Sewer Utilities

Explanation: _____

3. Is the site located close to appropriate transportation facilities, including transit?

Locations served by adequate transit (within .5 miles of a bus stop, subway, train, or ferry stop), close to existing major transportation and freight routes—e.g. existing highway interchanges, heavily developed commercial corridors, rail lines, etc., and accessible by bike or on foot are preferred.

Transit

Access Roads

Pedestrian/Bike Access

Explanation: _____

4. Does the site include underutilized buildings or facilities? Yes No

Previously developed brownfield or greyfield sites & buildings - abandoned or underutilized shopping centers, institutions, big-box stores, mills or industrial sites, former military bases, etc. - are preferred locations.

Explanation: _____

5. Will sensitive or rare natural resources on or near the site be impacted?

Yes No

Sites that are flat, dry, and otherwise suitable for development (no sensitive natural resources; not identified as a conservation priority for habitat, water supply, agriculture, or other purpose) are preferred.

6. Has the municipality applied for or received other state grants for this site? Does the municipality anticipate applying for additional state funding?

If yes, please identify the program(s), dates applied for and/or received, and describe the project(s):

Total Potential Build-Out of PDS: _____

Is there a project proposal before the town for this site? Yes No

If yes, briefly describe the project below:

PART III: PROPERTY OWNER'S PERMISSION

Chapter 43D requires that 100% of property owners endorse this application for PDS designation. Identify every parcel included in the PDS by map and parcel number. Use Attachment A if additional space is required.

I hereby certify under the pains and penalties of perjury that I am the legal owner of the property outlined herein and I approve the inclusion of my property in the proposed Priority Development Site nominated herein.

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

Parcel: _____

Signature of legal owner: _____

PART IV: GRANT APPLICATION

Eligible municipalities may be approved for one or more Priority Development Site designations by the Interagency Permitting Board pursuant to MGL c.43D and 400 CMR 2.00. By accepting a grant through this program, the municipality will be legally bound to uphold the provisions of MGL c.43D and 400 CMR 2.00.

Chapter 43D grants for Technical Assistance should be considered a one-time grant to assist municipalities to meet the statutory requirements of Chapter 43D and to take actions that facilitate growth. Please consult *Guidance for Chapter 43D Applications* at www.mass.gov/impro for grant rules and a list of eligible requests.

Attach a complete grant proposal that includes the following:

- Brief narrative explaining activity on and around this site including existing development, development proposals, site remediation, infrastructure upgrades, etc
- Brief narrative explaining how the municipality will prepare to meet the 180-day permitting commitment on the PDS, including any preparation that has already been completed
- Concise list of tasks for which you are requesting grant funds including a description of how each task relates to expedited permitting or facilitates economic growth on and around the PDS, or through the municipality as a whole
 - Consulting requests must contain a very specific scope of work and corresponding list of deliverables
- Detailed timeline indicating the anticipated completion of each task
- Detailed budget including a breakdown by task and any local/private contribution

APPLICATION CHECKLIST

Check off completed items – only submit application if all items are checked

| | |
|--|--|
| MUNICIPAL CONTACT INFORMATION | |
| PREPARER OF APPLICATION'S SIGNATURE AND DATE (PAGE 1) | |
| CLERK'S SIGNATURE, DATE AND/OR TOWN SEAL ON (PAGE 1) | |
| CERTIFIED VOTE WITH CLERK'S SIGNATURE AND TOWN SEAL | |
| LAND OWNER'S ORIGINAL SIGNATURE (IN BLACK OR BLUE INK) FOR EVERY PARCEL, PUBLIC OR PRIVATE, INCLUDED IN A PRIORITY DEVELOPMENT SITE | |
| TOTAL POTENTIAL BUILD-OUT IN SQUARE FEET (PAGE 3) | |
| CITY/TOWN WIDE MAP IN THE FORM OF AN ORTHOPHOTO OF MUNICIPALITY INDICATING LOCATION OF PDS(S) – 14 COLOR COPIES, SIZE 11 x 17 | |
| A SEPARATE SITE MAP OF EACH PROPOSED PDS IN THE FORM OF AN ORTHOPHOTO – 14 COLOR COPIES FOR EACH PDS, SIZE 11 x 17 | |
| MAPS SENT TO THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS, KURT.GAERTNER@STATE.MA.US | |
| | |
| IF APPLYING FOR A GRANT, ALSO INCLUDE: | |
| BRIEF NARRATIVE FOR EACH PDS INCLUDING EXISTING DEVELOPMENT, DEVELOPMENT PROPOSALS, SITE REMEDIATION, INFRASTRUCTURE UPGRADES, ETC. | |
| BRIEF NARRATIVE EXPLAINING HOW MUNICIPALITY WILL PREPARE TO MEET 180-DAY PERMITTING COMMITMENT ON PDS(S), INCLUDING ANY PREPARATION PREVIOUSLY COMPLETED | |
| LIST OF TASKS THAT GRANT FUNDS ARE BEING REQUESTED FOR (EACH TASK MUST INCLUDE A DESCRIPTION OF HOW IT RELATES TO EXPEDITED PERMITTING OR FACILITATES GROWTH ON AND AROUND THE PDS(S), OR THROUGHOUT THE MUNICIPALITY AS A WHOLE) | |
| DETAILED BUDGET (ON A SEPARATE PAGE) INCLUDING BREAKDOWN BY TASK AND ANY LOCAL/PRIVATE CONTRIBUTION – TO BE TOTALED AT END | |
| CONSULTANT SCOPES(S) ON CONSULTANT LETTERHEAD CONTAINING A VERY SPECIFIC SCOPE OF WORK AND CORRESPONDING LIST OF DELIVERABLES | |
| DETAILED TIMELINE (ON A SEPARATE PAGE) SHOWING ANTICIPATED COMPLETION OF EACH TASK | |
| COMPLETE MUNICIPAL SELF-ASSESSMENT CHECKLIST | |
| | |

Overview: Payments in Lieu of Parking

Zoning & Planning
Committee
February 8, 2010

Agenda

- In-lieu fees overview
- Local and national examples
- Options for structuring fees

Current Docket Items

- #391-09 ALD. DANBERG, MANSFIELD, VANCE requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
- #391-09(2) ALD. DANBERG, MANSFIELD, VANCE requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

What are "in lieu fees"?

- "In lieu fees" or "payments in lieu" are fees charged to developers or property owners when parking space requirements are waived
- Fees are typically used by cities to provide or improve public parking, or to reduce parking demand

Why adopt a payment in lieu policy?

- Encourage shared parking and more pedestrian culture, rather than separate, private parking facilities that cause business patrons to drive more from one to the other
- Reap financial benefit when City is prepared to waive parking requirements for owners that cannot meet on-site parking requirements

Recent Special Permit Parking Waivers in Newton

| Year | Address | Use | Stalls Waived |
|------|---------------------------|-----------------------------------|----------------|
| 2005 | 194-303 North St. | | 7 |
| 2006 | 33-55 Boylston St. | bioretention facility | 3 |
| | 200 Wells Ave. | dance studio & math school | 12 |
| | 1165 Chestnut St. | earth station/ satellite antennas | 1 |
| 2007 | 225 Boylston St | annual rug sale (2 weeks) | 90 (temporary) |
| | 349 Dedham St. | Chabad | 61 |
| | 109 Oak St. | office building | 35 |
| | 18 Station Ave | dental office | 3 |
| | 218 Newtonville | 3-family home | 1 |
| 2008 | 149A California St. | adult day care | 16 |
| | 342 Elliot St | restaurant | 6 |
| 2009 | 35 Morseland St. | temple | 137 |
| | 118 Needham St. | restaurant | 10 |
| | 1239-43 Centre St. | restaurant | 23 |
| | 1-27 & 33-35 Boylston St. | restaurants, some office | 126 |
| | 304-06 Walnut St | yoga studio | 8 |
| | 39 Herrick Rd. | restaurant, residential | 27 |
| | 2345 Comm. Ave. | hotel | 53 |

Benefits of In-Lieu Fees

- Flexibility for developers, if providing on-site parking is physically or financially difficult
- Allows shared parking among different sites; can result in fewer spaces needed if uses have different peak times (e.g. bank and bar)
- Increases foot traffic, as patrons park once and visit multiple sites
- Consolidates parking, which assists in infill development, better urban design
- Encourages reuse of historic buildings that have little or no parking capacity

Benefits of In-Lieu Fees

- City reaps financial benefit of waived parking spaces; funds can be used toward improved parking or demand management programs

Concerns about In-Lieu Fees

- **Developers' perspective:**
 - Lack of on-site, owner-controlled parking
 - Fear of high fees
 - No guarantee about when/where public parking will be provided
 - Potential for fewer parking spaces (though fees can help provide more than if requirement were simply waived)

How are in lieu programs structured?

A number of options:

- Special permit or also as-of-right projects?
- Required or optional?
- City-wide or district specific?
- Fixed fee or one that is negotiated for each project?
- One time fee or annual fee?
- How high is the fee?
- How are fees to be used?

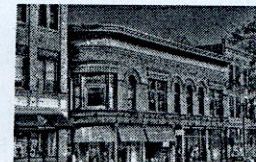
Santa Monica

- Third Street Promenade commercial district only
- Optional
- Annual fee of \$1.50 per square foot of floor area
 - 1 space for every 80 sq ft of theater, so fee is calculated as 80*\$1.50, or \$120 per year per parking space
- Funds are used to build public garages
- Because fee is flat, uses with high parking requirements make out well; has resulted in many theaters and restaurants



Northampton, MA

- Central Business District only
- Payment in lieu of providing parking is allowed as-of-right
- One-time fee is \$2000 per space
- Funds are used to add parking, reduce demand for parking, or improve existing public parking facilities



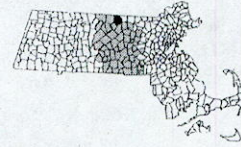
Oak Bluffs, MA

- Business 1 district only
- Special permits only
- Applies to uses that are unable to meet minimum off-street parking requirements
- Annual fees range from \$50-\$100 per space depending on number waived



Ashburnham, MA

- Village Center District only
- Special permit only
- Board must find adequate public-owned spaces in vicinity
- Fee is based on fair market value of the parking spaces plus the cost of building that number of spaces
- Fee is estimated by the Planning Board, Highway Superintendent



Braintree, MA

- Village Zoning District only
- Applies to new and changed uses unable to meet minimum parking requirements under special permit
- Annual fee per space
- Money used to allow town to provide off-street parking
- No use of program so far



How are in lieu programs structured?

A number of options:

- Special permit or also as-of-right projects?
- Required or optional?
- City-wide or district specific?
- Fixed fee or one that is negotiated for each project?
- One time fee or annual fee?
- How high is the fee?
- How are fees to be used?

Special permit or as-of-right development?

- Depending on the municipality,
 - Projects requiring special permits
 - As of right development
- Docket item 391-09 relates to special permits only

Required or optional?

- Typically **optional** – developers have option to provide on-site parking or pay fee
- Some cities **require** in lieu fees as part of their plan to centralize parking, discourage surface lots, improve design and pedestrian/bike circulation
- Newton may wish to allow fees only at Board's discretion when acting on a special permit

Where do in-lieu fees apply?

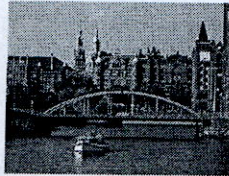
- Most examples use in-lieu fees to encourage shared parking in **central business districts**
- Could also be applied **city-wide** for all commercial uses – or ALL uses
- **Purpose** of program should be a consideration:
 - Encourage centralized parking?
 - Create financial benefit for city for spaces that will be waived due to constrained sites?
 - In residential districts, could discourage requests

Set or negotiated Fee?

- **Negotiated fees** can respond to market rate cost of parking but can take time to calculate and create uncertainty for developers
- **Uniform fees** are easier to administer and use
 - Most cities use these, though few cities have policies regarding fee *revision*
 - Some cities link fees to an index of construction costs (Beverly Hills, Palo Alto adjust fees annually according to a construction index)

Set or negotiated Fees?

- **Sliding scale of fees**, depending on location
 - Higher fees in city centers, where parking is most constrained, and lower fees on periphery (Hamburg, Germany)



One-time or annual fee?

- Some communities charge **annually** for waived space, some charge only **once**
 - One-time fee may provide more significant funds that City could use more quickly
 - Annual fee could result in more funds over time
- Consider how annual fees would run with property

Amount of Fee

- **Factors to consider:**
 - Why is a community charging fees?
 - To cover cost of providing public parking?
 - To offer relief from parking requirements?
 - What are funds to be used for?
 - Vancouver – fees are directly tied to provision of parking in a garage: fee equals expected cost per space in public garage, minus expected revenue (approx. \$10,000)
 - Many cities set fee below true cost of public parking space - reasons are unclear

Amount of Fee

- How much will developer pay (if there is a choice)?
 - Fee vs. cost of providing the parking space – value of parking space
 - Example: If cost of one space=\$15,000 and value=\$6,000, then loss to developer per space provided onsite=\$9,000. Developer will pay fee if below \$9,000
- How do other communities set fees?
 - Cost of construction of parking facilities
 - Price per square foot of development



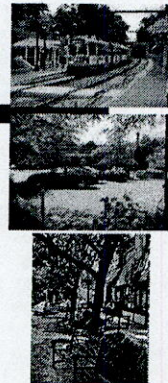
Amount of Fee

- Fee ranges in other communities:
 - One-time fees:
 - Average US: \$11,200 for one-time fee*
 - US range: \$6000-\$27,000 for one-time fee*
 - Northampton: \$2,000 one-time
 - Annual fees:
 - Santa Monica: \$120/year for certain uses
 - Oak Bluffs: \$50-\$100/year

**Data from 1996, The High Cost of Free Parking by Donald Shoup*

How are fees used?

- Reduce parking demand
 - Encourage mass transit, enhance pedestrian and biking infrastructure
- Improve existing parking
- Build new parking (street parking, lots, garages)



Options for Newton

- Citywide, set fee charged when spaces are waived as part of special permit may be easiest at outset of in-lieu program
- Options:
 - Annual or one-time fee?
 - Amount of fee?
 - All uses (including residential) or just commercial?
 - Use of fees?



Development Impacts

- Fee amount:
 - Affordable for small businesses, nonprofits, religious uses?
 - An option to reduce/waive fee?
 - Fee only applies to waivers of 6 or more spaces?
 - Why charge fees?
 - Consider likely use of fees and circumstances under which parking spaces are waived

