

Richmond Planning Board Meeting
Town Hall
Minutes
May 13, 2019

Members present: Doug Bruce, Rick Bell, John Hanson (Chairman), Katherine Keenum, Pete Lopez

Others present: John C. Donna, Boys' and Girls' Club of the Berkshires; Mike Hoffman, Boys' and Girls' Club of the Berkshires; Tim Armstrong, Hill Engineering, Dalton, Mass.

Mr. Hanson opened the meeting at 6:30 p.m.

1. The first item of business was an *Application for a Determination of Planning Board Jurisdiction and for Endorsement That Planning Board Approval under Subdivision Control Law Is Not Required (Form A)* by the Boys' and Girls' Club of the Berkshires for adding 2,410 square feet to Lot 1 Plat Q-3 on East Beach Road. Mr. Armstrong presented a mylar plan of the property and two paper copies. Mr. Donna presented a check for \$50.00. The original definitive subdivision plan that created the lot had been approved by the Planning Board on September 6, 2018. The property was now up for sale by the Boys' and Girls' Club, and a prospective purchaser had expressed a desire to build a dock. The additional 25 feet of water frontage was intended to meet state requirements for building a dock on a Massachusetts Great Pond. The new ANR Form A application was unanimously approved.

2. Mr. Hanson moved that the minutes for the meeting of April 8, 2019, be accepted as written. Mr. Bell seconded the motion. The vote was unanimous, 5-0.

3. Mr. Hanson reported that the departing Town Administrator, Mark Pruhenski, had recommended that after the Planning Board's election of officers in June, the chairman should request to be put on the agenda for a July meeting of the Board of Selectmen to ask what they wanted to do about appointing a committee to work the Planning Board and the Berkshire Regional Planning Commission (BRPC) on updating the master plan. Any update needed to be a showpiece that could be posted on the town's website as part of its marketing efforts. Mr. Hanson pointed to the Otis master plan as showing what a town of comparable size had achieved. After discussion, the Board agreed to proceed along the lines outlined by Mr. Hanson and Mr. Pruhenski.

4. At the end of the April 8th meeting, Mr. Bell had recommended that the new members of the Planning Board study the section of his proposed "Organization and Procedures Manual" that deals with how a zoning change is made (see Exhibit 1). On May 13, 2019, Ms. Keenum distributed a memorandum in response (see Exhibit 2). Members debated the relative merits of an extensive compendium of materials gathered from various sources and a shorter, more accessible guide. Mr. Bell argued that without comprehensive documentation, a new chairman would be unable to conduct Planning Board business after Mr. Hanson is no longer chairman. Mr. Bruce acknowledged the impending loss of institutional memory but pointed out that the Town Administrator and BRPC would also be resources. Mr. Lopez suggested that it could be useful to devote a short period of each meeting to educating the new members. In response, Mr. Hanson reviewed the night's application from the Boys' and Girls' Club to explain the zoning law involved and show how to examine a site plan. No decision on a manual was reached.

5. It was agreed without a vote that Mr. Bell could pursue the changes he wished for the Planning Board's page on the town's website.

6. In response to a request for comments on two special-permit applications from the Board of Appeals (ZBA) concerning (1) an addition to a nonconforming dwelling at 300 Shore Road and (2) short-term rentals at 590 Canaan Road, Mr. Hanson pointed out that members of the Planning Board would not be present at the public hearings held by the ZBA and therefore had no additional knowledge of the particular cases. For each one, it was moved and seconded that the Planning Board should make no recommendation. Both motions passed unanimously, 5-0. Mr. Hanson undertook to send out responses to Mr. Pruhenski and the ZBA.

The meeting was adjourned at 8:28 p.m.

Respectfully submitted,
Katherine Keenum, Clerk

Exhibit 1: Excerpt from Mr. Bell’s Proposed Organization and Procedures Manual

14 APPENDIX F – Zoning Change Procedure 14.1 PURPOSE

The purpose of this appendix is to document the step-by-step working procedures/guidelines to adopt and amend the Richmond MA zoning by-laws.

14.2 PROCEDURE GENERAL REQUIREMENTS

The Planning Board shall become involved in the zoning amendment process in one of two scenarios.

- Scenario 1: The Planning Board on its own initiative or at the request of another person develops an amendment to the local zoning by-law and then initiates the amendment process by submitting the proposed amendment to the board of selectmen (see step 1 and beyond below). In this situation, the Planning Board is the sponsor of the zoning amendment.

- Scenario 2: Another person or board initiates the amendment process by submitting the proposed amendment to the board of selectmen. In this scenario, the Planning Board is not the sponsor and the Planning Board’s sole responsibility is to hold a properly noticed public hearing and to make a report to the town meeting (see step 5 and beyond below). M.G.L. c. 40A s. 5 sets forth the required procedure to adopt, amend or delete a zoning by-law. For the purposes of this section, the term “statute” refers to M.G.L. c. 40A s. 5. The following is a brief outline of the steps required by the statute.

14.3 PROCEDURE DETAILS

The table below provides the key steps, responsible party(ies)/boards, and timing for this procedure. The details for each step are provided in the following subsections.

Step #	Responsibility	Procedural Step
1	Developer	Develop the Zoning Amendment Proposal
2	Initiator	Submit the Zoning Amendment Proposal to the Board of Selectmen
3	Board of Selectmen	Refer Zoning Amendment to the Planning Board for a Public Hearing

4	Planning Board	Publish Public Hearing Notices
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5	Planning Board	Hold a Public Hearing
6	Planning Board	Prepare a Report for the Legis
7	Town Residents	Vote to Adopt the Proposal by
8	Town Clerk	Submit the Adopted Amendme Disposition
9	Town Clerk	Post the approved Zoning Ame

14.3.1 Develop the Zoning Amendment Proposal

Although this step is not explicitly listed in the statute, the implication is that someone has to develop a proposal to amend the local zoning by-law. The development of a proposal to amend the local zoning by-law can be done by the Planning Board, a resident or other municipal board. If the board or individual is not an eligible entity to initiate the zoning process as described in step 2, then an eligible board or resident(s) must be convinced to initiate it.

14.3.2 Submit the Zoning Amendment Proposal to the Board of Selectmen

The statute identifies the eligible parties which can initiate the zoning amendment process by submitting a proposal to amend the local zoning by-law to the board of selectmen. A proposal may be initiated by:

- Board of Selectmen
- Planning Board

- An individual who owns land which would be affected by the proposal ***This page in printed form may not be the latest issue. Verify latest issue online.*** Page 37 of 51

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- Ten or more registered voters
- Zoning Board
- a Regional Planning Agency

14.3.3 Refer Zoning Amendment to the Planning Board for a Public Hearing

The statute instructs the board of selectmen to refer the proposal to amend the local zoning by-law to the Planning Board within 14 days of its receipt. The board of selectmen take action to ensure that the proposal to amend the local zoning by-law is acted upon by the legislative body (i.e. by a vote of the residents at a town meeting in a town.)

Note: The statute is silent as to the failure of the Board of Selectmen to submit the proposal to the Planning Board within the required fourteen-day period. We must assume that any examination of a proposal must be completed within the fourteen days. However, in considering the Court's rationale in *Vokes v. Lovell*, 18 Mass. App. Ct. 471 (1984), the fourteen-day period may only be directory and not mandatory.

14.3.4 Publish Public Hearing Notices

The hearing authority (PB) must give notice of the public hearing. Notice of the public hearing must be published in a newspaper of general circulation in the municipality once in each of two successive weeks. The first publication cannot be less than fourteen days before the day of the hearing. (Do not count the day of the hearing in the fourteen days.) Notices of the public hearing do not have to be published in a newspaper a full week apart, but must be published in separate calendar weeks which are successive.

In addition to newspaper publication, the same notice must be posted in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of the public hearing, and copies of the notice must also be sent by mail, postage prepaid, to:

- the State Department of Community Affairs (DHCD)
- the Berkshire Regional Planning Commission (BRPC),
- the Planning Boards of all abutting cities and towns and,

· if the zoning by-law provides for notification of nonresident property owners when there is a change within a district, then notice must be sent to any such property owner who files an annual request for notice with the municipal clerk no later than January first each year and pays any required fees. The Department of Community Affairs (DHCD), Berkshire Regional Planning Commission (BRPC), Planning Boards of abutting municipalities and certain nonresident property owners may waive rights to notice prior to legislative action on a zoning proposal. ***This page in printed form may not be the latest issue. Verify latest issue online.*** Page 38 of 51

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The public hearing notice must contain the following information:

- the time, date and place of the public hearing;
- the subject matter of the public hearing sufficient for identification; and
- the place where the text and maps may be inspected. Useful Info: Record the dates on which the notice is posted in the town hall and mailed to the required parties. Clip the public notices from the newspaper ensuring that the date of publication is included. You will need this information when submitting the adopted zoning amendment to the Attorney General's office for approval.

14.3.5 Hold a Public Hearing No zoning proposal may be adopted without a public hearing. The purpose of the public hearing

is to give interested persons a chance to express their views and opinions.

The Planning Board must hold a public hearing within sixty-five days after the zoning proposal has been submitted to the Planning Board by the Board of Selectmen.

Useful Info: A typical format for a public hearing on a proposal to amend a local zoning by-law is as follows:

- Chairman opens the meeting and then opens the public hearing.
- Initiator of the proposal to amend the zoning by-law presents the proposal to the Planning Board.
- Attendees provide comments to the Planning Board.
- Chairman closes the public hearing.
- Planning board members discuss the proposal at the meeting and formulate a

report to the legislative body (see step 6 below). 14.3.6 **Prepare a Report for the Legislative Body** Following the public hearing, the Planning Board is allowed the opportunity to submit a report with recommendations to the Town Meeting (referred to as the Legislative Body). The report of the Planning Board typically contains a recommendation to either accept the proposal, reject the proposal or accept the proposal with changes. If the Planning Board fails to do so within twenty- one days after the hearing, the Town Meeting may proceed in the absence of such a report. Commonly asked questions: ***This page in printed form may not be the latest issue. Verify latest issue online.*** Page 39 of 51

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1. After a Planning Board has held a public hearing on a proposed zoning proposal, how much can it change the original proposal, when making a recommendation to the Town Meeting, without holding a new hearing with a new publication of notice?
2. How far can a Town Meeting go in amending the original proposal?

Relevant General Laws regarding answers to the above questions:

- The answers to the above two questions revolve around the statutory requirements found in Chapter 39 of the General Laws, which deals with the issuance and contents of a town meeting warrant, and Chapter 40A, which requires notice and a public hearing by the Planning Board prior to legislative action on a zoning proposal.
- General Rules – The Town meeting does have the flexibility to make amendments to a zoning proposal. Obviously, if the identity of the zoning proposal is utterly changed then the Planning Board must hold a new public hearing. As has been noted by the court, a new notice, hearing and opportunity to report by the Planning Board will be required if the amendment to the zoning proposal:
 - changes the identity or substantial character of the original zoning proposal;
 - fundamentally departs from the original proposal; or
 - radically differs from the original proposal.
- Rule of Thumb – Perhaps a good rule of thumb to remember is whether a reasonable person could have foreseen the final action from reading the initial notice. 14.3.7 **Vote to Adopt the Proposal by the Legislative Body** After receipt of the Planning Board's report or after the lapse of the twenty-one day

period without such report, the Town Meeting may adopt, amend and adopt, or reject the zoning proposal. The required votes to adopt or change a zoning by-law is a two-thirds vote of a Town Meeting.

· If the town meeting fails to vote to adopt the zoning proposal within six months after the hearing by the Planning Board, no action can be taken on that proposal until after a subsequent notice, another public hearing and report by the Planning Board.

· If a Town acts unfavorably on a zoning proposal, such zoning proposal cannot be considered by the Town Meeting within two years from the date of the unfavorable action unless the adoption of the zoning proposal is recommended in the final report of the Planning Board. Useful Info: One common misconception is that a zoning amendment defeated by the legislative body cannot be re-introduced within two years of the date of its defeat. The truth is that a zoning ***This page in printed form may not be the latest issue. Verify latest issue online.*** Page 40 of 51

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amendment defeated by the legislative body can be re-introduced within two years of the date of its defeat with the consent of the PB.

14.3.8 Submit the Adopted Amendment to the Attorney General’s Office for Review/Disposition

In accordance with M.G.L. c. 40 s. 32, the town clerk must submit certified copies of the zoning amendment along with adequate proof that the procedural requirements of M.G.L. c. 40A s. 5 have been met. A statement must also be sent which explains the proposal. This statement may be prepared by the PB.

Note: If the Town Clerk fails to submit the zoning proposal to the Attorney General within 30 days after the final adjournment of town meeting, the Board of Selectmen may submit it within 15 days thereafter.

The Attorney General has 90 days to review the zoning by-law and can either accept, accept with changes or reject the zoning amendment.

· Chapter 40, Section 32, MGL also authorizes the Attorney General to waive defects in the procedure of adoption or amendment of any zoning law relating to the form or content of the notice of the Planning Board hearing or to the manner or dates that the notice is mailed, posted or published.

- Section 32 7 establishes the requirements that must be followed when the Attorney General elects to grant a waiver and the specific duties that must be performed by the town clerk.

14.3.9 Post the approved Zoning Amendment

Upon acceptance of the zoning amendment by the Attorney General, the town clerk is responsible for posting, publishing, or delivering the zoning amendment in accordance with M.G.L. c. 40 s. 32. The Town must publish the proposal in a bulletin or pamphlet and post it, or publish the proposal in a newspaper pursuant to Chapter 40, Section 32, MGL.

If the zoning amendment is rejected by the Attorney General it never becomes law and the local zoning by-law in effect prior to the town meeting remains in effect.

14.4 RECORDS KEPT

A true copy of the latest effective zoning by-law must be kept on file and available for inspection in the office of the municipal clerk.

All zoning by-laws adopted by a Town must be forwarded by the Town Clerk to the Attorney General.

14.5 DEFINITIONS

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Public Hearing – A public hearing is a formal period of time within a public meeting where the public is invited to speak and provide input on a specific issue.

M.G.L. – Massachusetts General Laws

Legislative Body – town voters at an annual or special town meeting **14.6**

REFERENCES/ADDITIONAL RESOURCES

14.6.1 **References** M.G.L c. 40A, s. 5, Adoption or change of zoning ordinances or by-laws; procedure – link:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section5>

M.G.L. c. 40, s. 32, Validation of By-Laws; procedure – link:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section32>

14.6.2 **Additional Resources**

BPRC Planning Board Resource Book dated 2015, section on Zoning Amendments – link:

http://berkshireplanning.org/images/uploads/documents/Planning_Board_Resource_Book_-_Final_06_02_15.pdf

Adopting and Amending Zoning Bylaws, Donald J. Schmidt, November 2009 – link:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/adoptingamending.pdf>

Handbook of Massachusetts Land Use & Planning Law, Mark Bobrowski, 2011, 3rd edition, Chapter 3, Wolters Kluwer Law & Business.

The Zoning Act – Annotated, Massachusetts Department of Housing & Community Development, August 2010 – link:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/zoningact.pdf>

Tips on Drafting Bylaws, Bob Ritchie, Citizens Planner Training Collaborative – link:

<http://masscptc.org/documents/core-documents/bylaw-writing.html>

Exhibit 2:

M E M O R A N D U M

To: Members of the Planning Board
From: Katherine Keenum
Date: May 13, 2019
Topic: Procedures for a Zoning By-Law Change

At our last meeting, Rick suggested that we look at Section 14 of his draft of a procedural manual. He certainly pulled together a lot of material, and he is quite right that it would be useful to have in writing the steps for making a change to the *Zoning By-Law*.

Nevertheless, it seems to me a short section added to the Practical Guide that John Hanson prepared in 2015 could zero in the Planning Board's role in the process, and that's all we need. Below is a draft to illustrate what I mean (yup, it's subject to revision!).

Planning Board's Role in a Zoning By-Law Change

A new provision or a change to existing language in the *Richmond Zoning By-Law* may be initiated by:

- Board of Selectmen
- Planning Board
- Board of Appeals
- An individual whose land would be affected by the proposal
- Ten or more registered voters
- A Regional Planning Agency

If the proposal originates outside the Planning Board, it is submitted to the Board of Selectmen. The Select Board must then refer it to the Planning Board within fourteen (14) days of receipt.

The Planning Board must hold a public hearing within sixty-five (65) days of receipt of a completed proposal from outside. When the Planning Board itself develops a by-law change, it schedules a public hearing when members agree the draft is ready. Minor adjustments to its own proposal may be made by the Board as a result of public testimony.

After the hearing, the Planning Board prepares a report to the Board of Selectmen with recommendations on placing a new by-law or by-law amendment as an Article on the Warrant for a Town Meeting.