

Mashpee Planning Board Public Hearing and Meeting Procedures

Adopted January 21, 2004

Updated June 15, 2005

General Procedural Guidelines

Notice of any meeting shall be filed with the Town Clerk and must be publicly posted in the office of the Town Clerk or on the principal official bulletin board of the Town at least 48 hours prior to the meeting in conformance with the Commonwealth of Massachusetts' Open Meeting Law. The Board's agenda should also be posted.

If it becomes necessary to adjourn or extend a meeting to another time, these same notice requirements apply to the adjourned or extended meeting.

No meeting or hearing may be opened without a quorum of the Board present (or 4 members for a Special Permit hearing) except for the purpose of continuing the meeting or hearing to a future date due to lack of a quorum.

All meetings, public hearings and executive sessions shall be held in conformance with the Commonwealth of Massachusetts' Open Meeting Law.

It should be remembered that "telephone meetings" (discussion by telephone among members of a governmental body on an issue of public business within the jurisdiction of the body) are a violation of the Open Meeting Law. This is true even if individual telephone conversations occur in serial fashion.

Except when a meeting is held in executive session, any person in attendance may record the meeting with a tape recorder or any other method of sonic reproduction, so long as no active interference with the conduct of the meeting arises as a result of the recording. Except when a meeting is held in executive session, any person attending the meeting may videotape the meeting from one or more fixed locations determined by the Chair, so long as there is no active interference with the meeting.

To be placed on an agenda, any requests and associated materials shall be submitted to the Board, through the Mashpee Planning Department, at least 7 working days prior to a Board meeting. Exceptions may be made for filing of "Approval Not Required" plans or for any other items authorized prior to the meeting by the Chair, or at the meeting by a quorum (3 members) of the Board. Public hearings will only be scheduled by vote of the Board at a posted meeting.

Board meetings will not continue past 11 p.m. unless voted by a quorum (3 members) of the Board.

All persons testifying before the Board should address the Board members only. Discussions between persons testifying before the Board and non-Board members should only occur as authorized by and through the Chair. All other persons shall be silent at the request of the Chair. If a person persists in disorderly behavior during a meeting after warning from the Chair, the Chair may order him or her to withdraw from the meeting. If the disorderly person does not withdraw, the Chair may order a constable or another person to remove the offender and confine him or her in some convenient place until the meeting is adjourned.

No signs may be displayed in the meeting room during the Board's meetings.

Public Hearing Guidelines

Notice of any public hearing must be mailed to all parties in interest as specified in the applicable statute, by-law or Board regulation or to those parties specified by the Board for hearings regarding items not covered by said statutes, by-laws or regulations, be submitted to the Town Clerk for posting on the Town's principal bulletin board and be published in a newspaper in general circulation in the Town of Mashpee as required by the applicable statute.

The Chair should strive for balance in all public hearings, providing the applicant and other proponents, and opponents an equal opportunity to speak. For example, unless otherwise determined by the Board, the Chair may allocate public hearing time as follows: 1/2 hour for the applicant and other proponents, 1/4 hour (or more) to entertain questions from members of the Board; 1/4 hour for staff report; 1/2 hour for those in opposition; and 1/2 hour for final comments. These time allocations will vary depending on the size and complexity of the project.

Continued hearings may be held at the discretion of the Board and should be held when additional information and/or negotiations are necessary. The Chair should allow only new information to be presented at subsequent hearings and provide all interested persons with an opportunity to rebut information presented. Hearings should be continued as needed until all information is presented and issues requiring negotiation are resolved. In certain cases, although not required by law, it may be appropriate to provide additional notice to abutters, as in a case where a hearing is opened only for procedural reasons and substantive testimony is expected to begin at a later date, or when there will be an extensive period of time until the continued public hearing.

During the public hearing it is appropriate to explore areas in which conditions might be needed. During the public hearing Board members should:

- a) Be careful to avoid the appearance of partiality.
- b) Be careful to avoid negotiation of final conditions too early in the process.

Negotiation of specific conditions is likely premature at the beginning of the public hearing process. Conditions should be negotiated after substantial testimony is received and it is clear exactly what the impacts from the proposed development are likely to be. Mitigation must be based upon the actual impacts of a proposed development. If mitigation takes the form of a financial contribution, the financial contribution shall be the estimated full or proportional share of the cost of mitigating such impacts.

Board members should refrain from making statements about their ultimate decision until after the hearing and record are closed.

Ex Parte Communications

Board members should not have direct contact with applicants or their representatives outside of the public meeting or hearing process. If contacted by an applicant or representative, one should explain that such communications may only occur during a public meeting or hearing. Mailings received by Board members directly from applicants or representatives should not be opened or read, but should be forwarded to staff for distribution to the Board at the next public meeting or hearing dealing with the application.

Processing Multiple Requests

When an applicant is seeking more than one determination from the Board (i.e. a Cluster Subdivision Special Permit and a Definitive Subdivision Plan Approval), the Board may hold a "mini hearing" on each request. Before addressing each request, the Chair should state the criteria for making a determination on such a request.

Public Hearing Procedure

1. Open hearing, noting time each individual hearing is begun, and noting what date each hearing was originally opened if applicable.
2. At the opening of the initial session of the public hearing, read the applicable hearing notice out loud. Remind members of the audience to identify themselves before speaking to the Board.
3. Ask the staff to report regarding any procedural or application deficiencies.
4. Reference for the record the receipt of written materials submitted for the record.
5. Invite the Applicant or his or her representative to address the Board and present their case.
6. Invite Board members to question the applicant.
7. Ask the staff for its report on the project.
8. Invite Board members to question the staff.
9. Invite any public officials in the audience to make comments.
10. Invite other interested persons in the audience, beginning with proponents and then opponents, to make comments. Provide an opportunity for rebuttal.
11. The Chair may read or summarize letters and other written materials submitted for the record.
12. Ask the applicant and the staff for final comments.
13. Entertain and act on a motion (incl. continuing the hearing to a later date).

Receiving Testimony

1. Identify speaker - People speaking to the Board should always identify themselves before speaking.
2. Credentials - Anyone intending to testify about a matter of a technical nature may be required by the Board to provide, verbally or in writing, the credentials qualifying them to make such technical statements. (For example, a lawyer is not necessarily qualified to make a technical determination about a traffic impact issue. If the attorney is speaking about a technical issue based upon a report prepared by someone else, then you may inquire as to the qualifications of the preparer.) This is particularly important during the applicant's testimony. Abutters should not be required to state their qualifications for impressions or opinions expressed about a project.

3. Time for presentation - Provide the applicant with enough time to state his or her case. The Board may encourage an applicant to "pick up the pace" of a presentation.
4. Requiring some testimony in written form - So many people may show up to speak about a project that they cannot all be heard within a reasonable amount of time. In this case, the Chair may limit each speaker to a specified amount of time (i.e. 5 or 2 minutes) and require that further testimony from those speakers be submitted in writing. Allow each interested person to speak, even if only briefly. When speakers cannot make all of their comments within the allotted time, provide the address and time frame (final date and time) for submission of further written testimony. Written testimony should be sent to: Mashpee Planning Board, 16 Great Neck Road North, Mashpee, MA 02649.

Recessing, Continuing or Closing the Hearing or Record

1. Recessing the public hearing - At any point in the public hearing, the Chair may recess the public hearing, conduct other Board business, and then re-open the public hearing.
2. Continuations - A continued hearing must always be continued to a date, time and place certain. This may include continuation to a later time during the same meeting when, for example, another posted hearing is due to be opened or a presenter whose testimony, in the opinion of the Chair, is important to the hearing, cannot be in attendance until later in the hearing. Check with staff for future meeting dates and available times. Staff will provide an update on any discussions between the staff and the applicant or others which have taken place since the last public hearing or any relevant materials received.
3. Closing the hearing and/or record - The Board shall provide an opportunity for applicants, public officials and other interested persons to address the Board during the public hearing process. Once the Board is satisfied that all relevant testimony has been received, it may close the hearing and the record, or may close only the hearing and hold the record open for any specific information that it has requested the applicant, the staff or another party to provide for the record. It should be noted that the statutory timeframe for the filing of the Board's decision with the Town Clerk will begin upon closure of the hearing, and not of the record, so it may be appropriate to keep the hearing open, rather than the record only, in order to ensure that all necessary information is received prior to the Board's decision and that sufficient time remains to file the decision in a timely manner.
4. After the close of the Board's hearing and written record, no new evidence should be considered, with the exception of specific information or materials required by the Board prior to its decision on the application, or prior to signature of the plan or special permit or as a condition of the Board's decision on the project. Information which is the basis for discussions with the applicant must be in the public record.

Motions

The Chair may entertain motions made by other Board members sitting on the application. After a second, the Chair should open the floor for discussion by the Board members and, if requested, staff. After discussion, the Chair should call for a vote, with the vote of each member to be identified for the record.

Sample Motion to Continue the Hearing:

"I move to continue this hearing until (date) at (time) at (place) for the purpose of accepting further testimony on this application."

Sample Motion to Close a Hearing:

"I move to close this hearing."

Sample Motion to Close a Hearing but leave the record open:

"I move to close this hearing but to leave the record open until (date) at (time) for the purpose of accepting additional written information on (a particular issue)."

Preparing and Adopting Decisions and Certificates of Action

After the hearing and record are closed or, for applications not involving a public hearing, when the Board begins discussion of its decision, only Board members who are eligible to vote on the application should discuss the Board's decision and any newly received information that was required by the Board to be submitted prior to its decision. (Non-voting members may comment through the close of the public hearing, or prior to the Board's discussion of its decision on an application not involving a public hearing.) If there is disputed factual testimony or conflicting expert opinions, Board members should state which testimony they found to be more credible (case law requires credibility determinations to be made by the decision makers who actually hear the testimony). The Board may solicit technical assistance from the staff in preparing its decision or Certificate of Action.

Whenever possible the Board should vote on a decision or draft decision on the same date that the hearing and record are closed, including any proposed conditions. For Special Permits, the Board should then direct staff to prepare a written decision document for final approval at a subsequent meeting. (The Board may also direct staff earlier in the process to prepare initial drafts of a proposed decision.) For subdivision approvals and other matters, the Board may vote on a final decision and conditions and direct staff to prepare a written decision or Certificate of Action for filing with the Town Clerk. The Board may require that said decision or Certificate be reviewed and signed by the Chair or another Board member before filing, or authorize the Town Planner to file the decision or Certificate on their behalf.

The Board's decision, or its Certificate of Action regarding decisions under the Subdivision Control Law, must be filed with the Town Clerk prior to any deadline established by statute or by-law. As an alternative, the applicant may request, in writing, an extension of the time required for filing of the Board's decision on a Definitive Subdivision Plan, or the applicant and Board may enter into a written agreement extending the time for filing the Board's decision on a Special Permit application. In either case, the extension must be for a specified number of days or to a specified date and must be approved by the Board with the same plurality required for the decision regarding which the filing period is being extended. Notice of any such extension must be filed forthwith with the Town Clerk. No such extension of time is permissible for a Preliminary Subdivision Plan or an "Approval Not Required " (ANR) plan.

Upon filing of the Board's decision or Certificate of Action, notice must then be sent to all parties in interest as specified in the applicable statute, by-law or Board regulation.