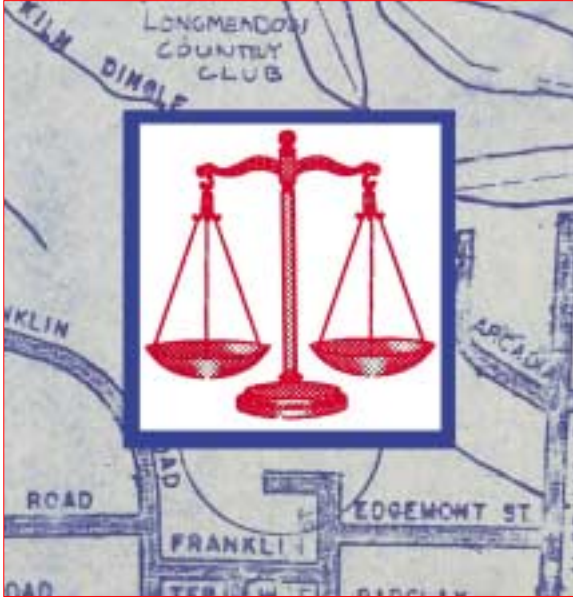


LEGAL BASIS OF PLANNING AND ZONING



Federal Enabling Laws

Planning entered the legal realm in the 1920s with two important federal acts prepared by the U.S. Department of Commerce: the Standard State Zoning Enabling Act of 1922 and the Standard City Planning Enabling Act of 1928. Even though the Planning Act was not enacted yet, the Zoning Enabling Act contained language that a zoning ordinance be prepared “in accordance with a comprehensive plan.” Many states have incorporated similar language in their own zoning acts.

Zoning was upheld as constitutional and within the government’s police powers with the U.S. Supreme Court’s 1926 decision in *Village of Euclid v. Ambler Realty Co.* Since then, the limits of zoning and planning have been further refined through federal and state case law.

Massachusetts Law

The legal basis for master planning in Massachusetts comes from Chapter 41, Section 81D of the General Laws of Massachusetts. This act creates the requirement for a community Master Plan “to provide a basis for decision making regarding the long-term physical development of the municipality.”

The Planning Board is charged with the creation of the Master Plan to include the following elements:

- goals and policies
- land use
- housing
- economic development
- natural resources
- open space and recreation
- services and facilities
- circulation
- implementation

Public participation plays an important role in the process, as the law requires an “interactive public process” to determine the goals and policies.

Master plans are generally implemented through a town's land use regulatory powers such as zoning. Under Massachusetts General Laws, land use regulatory powers are granted to the towns through the Zoning Act, Chapter 40A, and the Subdivision Control Act, Chapter 41 Section 81K (see below). Therefore, even though there is no legal tie between the planning and zoning in the current Massachusetts laws, understanding the legal limitations of land use regulations is important in understanding the limits of your Master Plan.

Regional planning agencies (RPAs), under Massachusetts General Laws Chapter 40B Sections 1 through 8, are established through the initiative of a group of municipalities to establish a regional district. RPAs are authorized to prepare region-wide planning documents and review local plans for consistency with the regional plan. The RPAs also provide general assistance to the municipal planning boards within the region.

Massachusetts Zoning Act (Ch. 40a)

The Massachusetts Zoning Act, enacted in 1975, provides for the creation of zoning bylaws/ordinances by the municipalities of the commonwealth under their police powers to protect the health, safety, and general welfare of the community. The law places certain limitations on the powers of zoning related to uses such as agriculture, horticulture, floriculture, viticulture, day care facilities, educational and religious institutions, public service corporations, and congregate living facilities for the disabled. The Zoning Act also includes provisions for zoning enforcement, procedures for special permits, variances and appeals, and public notification requirements.

Zoning generally consists of a map delineating distinct districts and text, which describes the use, dimensional, and supporting regulations governing development. The zoning text may also include administrative information related to review and permit requirements. In general, zoning may control the type and density of development, but it cannot be so restrictive that it prevents the land from being used.

The Zoning Act also includes provisions for:

- zoning map requirements
- procedures for adoption and amendment of zoning bylaws
- exemptions for pre-existing non-conforming uses, structures and lots
- zoning enforcement
- the basis for zoning appeals
- special permit procedures, including provisions for cluster developments, planned unit developments, shared elderly housing and adult uses
- variance procedures
- public hearing procedures
- board of appeals powers, membership, rules and procedures for appeals
- appointment of a zoning administrator



The Massachusetts Subdivision Control Act (Ch. 41)

The Subdivision Control Act, MGL Chapter 41 Section 81K, enacted in 1953, governs the subdivision of a parcel or parcels of land into more than one building lot. Under Massachusetts's law, land may legally be divided through an Approval-Not-Required (ANR) Plan or through a Definitive Subdivision Plan. An ANR Plan may create a lot if the new lot complies with the lot size and frontage requirements of the zoning. A subdivision is required for the construction of a new road, which will create legal frontage for new building lots.

The Subdivision Control Law also includes provisions for:

- planning board approval of subdivision plans
- endorsement of ANR plans (plans not requiring approval under Subdivision Control Law)
- procedures for establishing planning board rules and regulations
- submission of preliminary and definitive plans
- procedures for approval, modification, or disapproval of plans, and appeals of decisions

Many towns have subdivision rules and regulations which set the minimum design and construction standards for new roadways. These rules and regulations address such issues as:

- street location, width, alignment, grades, surfacing and construction and intersection standards
- utility (sewer, water, electric, cable, internet, telephone) and drainage standards
- sidewalk, bikepath and curbing standards
- open space, plantings, and street tree requirements
- preliminary and definitive plan submission and approval procedures and contents
- easements and restrictions requirements

The Subdivision Control Act is tied into the Zoning Act by provisions for zoning freezes. The Zoning Act, Chapter 40a, section 6, provides protection for ANR lots approved in accordance with Chapter 41, section 81P, from increases in certain zoning dimensional requirements for a period of five years. The same zoning act section provides protection for certain approved definitive subdivision plans from zoning changes for a period of eight years.