

# RULES AND REGULATIONS



## OF THE TOWN OF PALMER PLANNING BOARD

(Adopted 8-27-01)

(Revised 5-19-03)

(Revised 07-21-08)

# Table of Contents

## Introduction

### **Article 1. Planning Board Membership**

Section 1.1	Absences without informing The Chair
Section 1.2	Appointment Procedures for Ad-Hoc Committee Members and Employees
Section 1.3	Reappointment
Section 1.4	Resignation
Section 1.5	Termination
Section 1.6	Vacancy

### **Article 2. Officers**

Section 2.1	Election of Officers
Section 2.2	Chair
Section 2.3	Vice-Chair
Section 2.4	Clerk

### **Article 3. Pre-meeting Requirements**

Section 3.1	Posting Public Meeting Notice & Reserving a Meeting Room Spaces
Section 3.2	Available Meeting Rooms

### **Article 4. Conducting A Meeting**

Section 4.1	Open Meeting Law
Section 4.2	Basic Requirements of the Open Meeting Law
Section 4.3	Executive Session
Section 4.4	Minutes and Records of the Planning Board
Section 4.5	Tape Recording by Observers

### **Article 5. Voting and Quorum**

Section 5.1	Special Permit and Site Plan Approval
Section 5.2	Zoning Amendments
Section 5.3	Subdivision Approval
Section 5.4	Regular Meeting
Section 5.5	Rule of Necessity

**Article 6.**

**Public Hearing**

- Section 6.1 Public Hearing on Proposed Rules and Regulations
- Section 6.2 Public Hearing on Proposed Zoning Ordinance, By-law or Amendment
- Section 6.3 Public Hearing for Special Permit and Site Plan Approval
- Section 6.4** Public Hearing for a Definitive Subdivision Plan
- Section 6.5 Suggested Public Hearing Procedures

**Article 7.**

**Reports**

- Section 7.1 Annual Report

**Article 8.**

**Official Files & Records**

- Section 8.1 Planning Board Records
- Section 8.2 Access to Public Records
- Section 8.3 Public Records of the Planning Board
- Section 8.4 “Active” Public Records of the Planning Board
- Section 8.5 List of Public Records Maintained by the Planning Board Office
- Section 8.6 Requirements and Summary of the Public Records Law
- Section 8.7 Requesting a Public Record
- Section 8.8 Responding to a Public Record Request
- Section 8.9 Exemptions from the Public Record Law Requirements

**Article 9.**

**Special Permit and Site Plan Approval**

- Section 9.1 Special Permit
- Section 9.2 Application for Special Permit
- Section 9.3 Receipt of Application for Special Permit
- Section 9.4 Site Plan Approval
- Section 9.5 Application for Site Plan Approval
- Section 9.6 Contents of Plan
- Section 9.7 Requests for Waivers
- Section 9.8 Receipt of Application for Site Plan Approval
- Section 9.9 Who May File and Application for Special Permit and/or Site Plan Approval
- Section 9.10 Withdrawal of Application
- Section 9.11 Repetitive Petitions
- Section 9.12 Lapse of Special Permit

**Article 10.**

**Rules and Regulations**

- Section 10.1 Adoption and Amendment

**Article 11. Earth Removal Regulations**

- Section 11.1 Definitions
- Section 11.2 Purpose
- Section 11.3 Application and Fees
- Section 11.4 Permit
- Section 11.5 Notice of Application for Special Permit; Notice of Special Permit Issuance
- Section 11.6 Failure of Permittee to Conform with Approved Operating Plan
- Section 11.7 Operating Plan Requirements
- Section 11.8 Special Conditions
- Section 11.9 Recommended Bond Form
- Section 11.10 Hold Harmless Agreement

**Article 12. Application Review Fee**

- Section 12.1 Intent
- Section 12.2 Professional Expertise/Consultants
- Section 12.3 Establishment of Special Account
- Section 12.4 Option I
- Section 12.5 Option II
- Section 12.6 Use of Funds
- Section 12.7 Method of Appeal

# **Planning Board Rules and Regulations**

## **Introduction**

The purpose of this set of Rules and Regulations is to assist Board and Committee members and members of the public to better understand the procedures and requirements of the Palmer Planning Board. These Rules and Regulations blend the directions and requirements that are found in state and local laws, town charter and the zoning ordinance of the Town of Palmer. In cases where the Massachusetts General Laws are cited, the reader may want to refer to the Massachusetts General Laws to determine if any changes have been made. The Planning Board will be diligent in keeping these regulations revised and up to date, but changes in the Massachusetts General Laws will supercede these regulations.

These Rules and Regulations are adopted by the Palmer Planning Board under the authority of and in compliance with the General Laws of the Commonwealth of Massachusetts and the zoning ordinance of the Town of Palmer.

## **Article 1. Planning Board Membership**

Planning Board members are elected officers. The Planning Board consists of five board members who are elected to serve five-year terms. Any registered voter who qualifies under the General Laws may obtain nomination papers from the Town Clerk if he/she desires to enter an election for town office (c. § C10-2). The annual town elections are held on the third Monday in April, unless that day is a legal holiday, in which case the elections shall be held the following day (c. § C10-1).

### **Section 1.1 Absences Without Informing The Chair**

A member of the Planning Board must inform the Planning Board chair and/or the Planning Board office if they will be absent from a Planning Board meeting.

### **Section 1.2 Appointment Procedures for Ad-Hoc Committee Members and Employees**

Once the Planning Board has made a decision to appoint a member to an ad-hoc committee or to appoint an individual as an employee to the department, the Town Council shall be notified in writing. The Planning Board makes recommendations for appointments, but the Town Council must make these appointments. Persons appointed to any position in town government may be removed for cause before their terms expire by the appointing officer or board (c. § C12-1). All appointees shall be notified in writing once appointed.

If an *Appointee* accepts the offer to participate on a Town board, the appointee shall be responsible to:

Appear at the office of the Town Clerk as soon as practicable after receiving notification appointment to a Town board and be sworn to the faithful performance of his/her duties.

### **Section 1.3 Reappointment**

Reappointments are not automatically issued. An ad-hoc committee member must reapply at the end of his/her term if he/she desires and is eligible to serve again.

### **Section 1.4 Resignation**

An ad-hoc or advisory committee member who is no longer able to serve should resign promptly so that the vacancy may be filled. A written resignation needs to be submitted to the chair of the board and to the appointing authority. The resignation letter shall then be filed with the Town Clerk.

### **Section 1.5 Termination**

Any non-elected member of an ad-hoc or advisory committee to the Planning Board may be removed by a recommendation of the Planning Board to the appointing authority (Town Council) for good cause, in accordance with the following:

Procedure:

A written notice of the intent to remove and a statement of the reasons therefore shall be delivered by registered mail to the last known address of the member sought to be removed and a carbon copy shall be delivered to the office of the Town Council.

Within fourteen days of delivery of the notice, the member may request a public hearing before the Planning Board.

If the member fails to request a public hearing, then he/she shall be discharged forthwith.

Such member may be represented by counsel at the hearing, and shall be entitled to present evidence, to call witnesses, and to examine any witness appearing at such hearing.

Within ten days after the public hearing is adjourned, the Planning Board may, by a majority vote, submit a letter to the Town Council recommending that they remove the member for good cause.

Nothing in this section shall be constructed as granting a right to such a hearing when a member who has been appointed to a fixed term is not reappointed when his or her original term expires.

**Section 1.6 Vacancy**

The Chair of the Planning Board shall notify the Town Council in writing when a vacancy occurs on the Town board. The Planning Board and the Town Council shall try to find a replacement as soon as possible for the vacancy.

**Article 2. Officers**

**Section 2.1 Election of Officers**

The Planning Board shall annually elect a Chair and other necessary officers.

**Section 2.2 Chair**

The Chair presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the Chair's signature. The Chair has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon. The Chair is also responsible for ensuring that the provisions of the open meeting law are met. A Town board, through a vote of the majority, may extend additional authority to the Chair.

### **Section 2.3 Vice-Chair**

The Vice-Chair acts for the Chair whenever the latter is absent from meetings and performs other necessary duties.

### **Section 2.4 Clerk**

The Clerk is responsible for the following duties of the Town board:

- Signing the Planning Board minutes once approved.
- Endorsing any Subdivision Approval Not Required Plans (SANR) that have been approved by the Planning Board.

The Clerk's signature shall be affixed to all permits approved by the Planning Board. A stamp bearing the signature of the Clerk shall be kept in a secure location in the Planning Board office for this purpose. Whenever the stamp is used, the employee utilizing the stamp shall initial next to the stamped signature.

## **Article 3. Pre-Meeting Requirements**

Unless otherwise stated, the requirements and procedures identified in this handbook apply to all types of Planning Board meetings including: special meetings, workshops, emergency meetings, ad-hoc and advisory committee meetings, and public hearings. A public meeting occurs at any time a quorum of the Planning Board (or ad-hoc or advisory committee) members get together to discuss or consider any public business or policy over which the board or committee has some jurisdiction or advisory power.

### **Section 3.1 Posting Public Meeting Notice & Reserving Meeting Room Space**

At least forty-eight hours before any meeting of the Planning Board is to be held the meeting shall be posted with the Town Clerk. (MGL.c39§23B)

### **Section 3.2 Available Meeting Rooms**

Meetings must be held in approved meeting rooms within the Town-owned buildings. This provision shall not prohibit on-site inspection when necessary for the proper conduct of Town business. The employee or Board member posting the meeting shall be responsible for reserving a meeting room in the Town Administration Building through the office of the Town Council. If a larger meeting space is required or if a Town Administration Building Meeting Room is not available that employee or Board member may secure a meeting room in the Library, School or other appropriate town building.

## **Article 4. Conducting A Meeting**

### **Section 4.1 Open Meeting Law**

The Massachusetts Open Meeting Law requires that all meetings of elected or appointed boards, committees or subcommittees be open to the public except for the nine specific situations (listed below) where Executive Session is required. The law does not apply to chance meetings or social occasions; however, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The law does not apply to administrative meetings or to advise on administrative matters.

### **Section 4.2 Basic Requirements of the Open Meeting Law**

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except under those circumstances listed below.

(MGL.c39§23B)

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by the circumstances listed below. (MGL.c39§23B)

No votes taken in open session shall be by secret ballot. (MGL.c39§23B)

Except in emergency, a notice of every meeting of any governmental body shall be filed with the Town Clerk at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

The notice shall be printed in easily readable type and shall contain the date, time, and place of such meeting.

### **Section 4.3 Executive Session**

Executive Session is a meeting that is closed to the public for one of the nine purposes listed below:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

- (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:
- (a) to be present at such executive session during discussions or considerations which involve that individual.
  - (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
  - (c) to speak in his own behalf.
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- (4) To discuss the deployment of security personnel or devices.
- (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- (6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.
- (7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.
- (8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.
- (9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section. (MGL c39§23B)

The following required procedures must be followed:

The Town board shall first convene in an open session for which an agenda has been posted.

A motion is made to enter into an Executive Session and the Chair has cited the purpose for an Executive Session.

A majority of members have voted to go into Executive Session and the vote of each member is recorded on a roll call vote and entered into the minutes.

The Chair states before the Executive Session whether or not the governmental body will reconvene after the Executive Session. (MGL.c39§23B)

All votes taken in Executive Sessions shall be recorded roll call votes and shall become a part of the record of said executive session.

#### **Section 4.4 Minutes and Records of the Planning Board M.G.L. c.39§23B**

The Planning Board is required to maintain accurate records of its meetings referred to as “minutes”. All minutes shall be approved by a majority vote of the Planning Board. All “original copies” minutes shall be signed by the Clerk of the Planning Board and shall be promptly filed in the minute books in the Planning Board office.

Each set of minutes must include the following:

- a) The date and time of the meeting.
- b) The location of the meeting.
- c) The names of members who are present.
- d) Names of additional participants of the meeting.
- e) An “exact record” of motions, votes and official actions taken.
- f) The subjects that were discussed.
- g) Summaries of discussion to aid in understanding decisions and/or providing factual information that may be useful to the board or other persons reading the minutes.

Minutes may also include or have attached to:

- a) Assignments
- b) Supporting materials, letters, requests and reports.

The minutes need not be verbatim transcript of all that was said at the meeting. Tape recordings may not be used as permanent record of meetings. Written minutes must be prepared with the information outlined above.

#### **Section 4.5 Tape Recording by Observers**

A meeting of the Planning Board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, or by means of videotape equipment fixed in one or more designated locations determined by the Planning Board except when a meeting is held in executive session, provided that in such recording there is no active interference with the conduct of the meeting. (MGL.c39§23B)

## **Article 5. Voting and Quorum**

### **Section 5.1 Special Permit and Site Plan Approval**

In the Town of Palmer, the Planning Board is the Special Permit Granting Authority. Action on a special permit shall require a vote to issue of at least four members of a five member Planning Board. (MGL. c40A§9)

### **Section 5.2 Zoning Amendments**

The majority of the entire membership of the Planning Board should concur on a report regarding a proposed adoption or amendment of a zoning by-law or ordinance. No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of a Town Meeting. (MGL c40A§5)

### **Section 5.3 Subdivision Approval**

Subdivision Approval requires approval by the majority of the entire membership of the Planning Board. (MGL c41§81)

### **Section 5.4 Regular Meeting**

A quorum for a meeting of the Planning Board shall be a majority of the entire membership or three of five members. No action of the Planning Board shall be valid and binding unless taken or ratified by an affirmative vote of the majority of the members attending the meeting.

### **Section 5.5 Rule of Necessity**

If a member of a town or city board has a conflict of interest, that member will be disqualified from acting on that board matter. Under certain circumstances, the members of the Planning Board may invoke the “Rule of Necessity” to allow disqualified members to act. The rule of Necessity provides that a board may invoke this rule for a member(s) who would be disqualified from participation on a specific Town board action, (e.g. because of a conflict of interest to participate because of lack of a quorum needed to take action. The Rule of Necessity is not a law written and passed by the Legislature. Rather, the Rule of Necessity was developed because judges applied it in their court decisions.

The Rule of Necessity works in the following way:

1. It can only be used if a board is unable to act on a matter because it lacks the number of members required to take a valid official vote, solely because members are disqualified from acting.
2. The Rule of Necessity should be invoked by one or more of the otherwise disqualified members, upon advice from town or city counsel or the State Ethics Commission.
3. If it is proper for the Rule of Necessity to be used, it should be clearly indicated in the minutes of the meeting that the board was unable to obtain a quorum due to disqualification of members and, as a last resort, that all those disqualified may now participate under the

authority of the Rule of Necessity. Each disqualified member who wishes to participate under the Rule of Necessity must first disclose publicly the facts that created the conflict. It should be noted, however, that invoking the Rule of Necessity does not require all previously disqualified members to participate; it merely permits their participation. The Rule of Necessity may only be used as a last resort.

4. Every effort must be made to find another board capable under the law of acting in place of the board that could not obtain a quorum. (State Ethics Commission Fact Sheet #5)

## **Article 6. Public Hearing**

A Public Hearing is a process of collecting information that pertains to the pros and cons of an idea, motion, or proposed action from individuals. It is a tradition that Public Hearings provide each individual who desires to speak an opportunity to voice his/her opinions. It is very important that the Chair of the Planning Board states clearly how the public hearing will be conducted and stay with the described process. Also, the Planning Board shall not accept as testimony, evidence or attestation, nor cause to be read into the public record or minutes of any meeting, any correspondence in which an author fails to self-identify him/herself or list his/her place of residence. This is not to exclude the right of the author to have the board withhold the name and/or address upon request.

### **Section 6.1 Public Hearings on Proposed Rules and Regulations.**

Procedural steps for a Public Hearing for Planning Board Rules and Regulations:

A Planning Board shall adopt and may amend from time to time, reasonable rules and regulations relative to subdivision control or with any other provision of a statute ordinance or bylaw within the town.

A Public Hearing must be held on the proposed rules and regulations.

The Notice of the Public Hearing shall include:

- Date, time and place of hearing; and
- The subject matter of the hearing.

The Notice of the Public Hearing shall be:

Published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the public hearing should not be counted in the 14 days.

Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

After the Public Hearing, the Planning Board shall by a majority vote of the entire membership of the Board vote to approve, modify or disapprove such regulations.

If the Planning Board approves such regulations a true copy shall be filed with the office of the Town Clerk and a true copy shall be kept on file in the office of the Town Clerk.

The Planning Board shall transmit a certified copy of any rules and regulations and any amendments thereto to the Register of Deeds and the Recorder of the Land Court. No rules and regulations or amendments thereto shall become effective until certified copies have been transmitted. (MGL c.81Q)

**Section 6.2 Public Hearings on proposed zoning ordinance, bylaw or amendment thereto.**

Procedural Steps for the Adoption of Zoning Ordinance, Bylaw or Amendment thereto:

The proposed ordinance, bylaw or amendment is submitted to the Town Council. Such proposal may be submitted by:

- Town Council;
- Board of Appeals;
- Individual owning land to be affected by change or adoption;
- Registered voters pursuant to Section 10 of Chapter 39 MGL;
- Planning Board;
- Regional Planning Agency;
- Others, if so provided by the Palmer Municipal Charter.

Within fourteen (14) days of receipt, the Town Council shall submit the zoning proposal to the Planning Board for review, public hearing thereon and report. (MGL c40A §5)

Notice of the public hearing shall be given and the notice of the public hearing shall be:  
Published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the public hearing should not be counted in the 14 days.

Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

The notice shall be mailed to the Pioneer Valley Planning Commission, the Planning Boards of all-abutting towns, and the Department of Housing and Community Development by certified mail prior to the hearing.

The Notice of the Public Hearing shall include:

- The time, date and place of the hearing;
- The subject matter, sufficient for identification;
- The place where text and maps may be inspected.

Within sixty-five (65) days after the zoning proposal is submitted to the Planning Board by the Town Council, the Planning Board shall hold its Public Hearing.

Within twenty-one (21) days after the Public Hearing, the Planning Board shall submit its final report with recommendations to the Town Council. The report may be written or oral. A report is not legally required if 21 days has passed between the Planning Board Public Hearing and the Town Council vote.

The Town Council shall take action on the zoning proposal within six (6) months of the Planning Board Public Hearing. If more than six months have passed, the Planning Board must hold a new Public Hearing before Town Council may lawfully vote on the proposal. (MGL c40A§5)

### **Section 6.3 Public Hearing for Special Permit and Site Plan Approval.**

Procedural steps for a Public Hearing for a Special Permit and/or Site Plan Approval:

Applicant files a special permit in accordance with the filing requirements specified in this regulation and the Town of Palmer Zoning Ordinance.

A Special Permit and/or Site Plan Approval may not be issued until a Public Hearing is held. The Public Hearing must be held within sixty-five (65) days from the date the application is filed.

The Notice of the Public Hearing shall include:

- The name of the applicant;
- A description of the area or premises including street address, if any, or other adequate identification of the location;
- Date, time and place of hearing;
- The subject matter of the hearing; and
- The nature of the action requested.

The Notice of the Public Hearing shall be:

Published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the public hearing should not be counted in the 14 days.

Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

The notice shall be mailed postage pre-paid to the applicant, abutters within 300' of the property line including abutters in another town and across a public or private street or way, and the Planning Board of all abutting towns. The notice shall also be mailed to other individuals, boards or agencies for review if required by the zoning ordinance.

Within ninety-days (90) or any extended time following the date of the public hearing, the Special Permit Granting Authority shall take final action.

If the Special Permit Granting Authority fails to take final action within the ninety-day (90) or extended time limit, the special permit shall be deemed granted.

After the decision has been made the Special Permit Granting Authority and/or their designee (employees) shall file a copy of the decision with the Town Clerk within fourteen (14) days from the date of decision by the Special Permit Granting Authority.

A copy of the decision shall be maintained in the files of the office of the Planning Board and a copy shall be mailed to the applicant and any other person that so requested a copy at the Public Hearing. (MGL c. 40A§9)

#### **Section 6.4 Public Hearing for a Definitive Subdivision Plan.**

##### Procedural steps for a public hearing for a definitive subdivision plan.

Editors Note: This list is not an all-inclusive list of the steps involved in a subdivision approval. Be sure to consult Chapter 233 – Subdivision Regulations of the Town of Palmer and MGL Chapter 81 for complete information.

Applicant submits a definitive subdivision plan in accordance with the filing requirements specified in this regulation and the Town of Palmer Subdivision Regulation – Chapter 233.

Action may not be taken on a Definitive Subdivision Plan until a Public Hearing is held.

The Planning Board reviews the plans and submits the plans for review to other departments as specified in the Town of Palmer Subdivision Regulation. The Planning Board also sends notice of Public Hearing at the expense of the applicant. The Notice of the Public Hearing shall include:

The name of the applicant;  
A description of the area or premises including street address, if any, or other adequate identification of the location;  
Date, time and place of hearing;  
The subject matter of the hearing; and  
The nature of the action requested.

The Notice of the Public Hearing shall be:

Published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the public hearing should not be counted in the 14 days.

Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

The notice shall be mailed postage pre-paid to the applicant, abutters within 300' of the property line including abutters in another town and across a public or private street or way, and the Planning Board of all abutting towns. The notice shall also be mailed to other individuals, boards or agencies for review if required by the zoning ordinance.

Within the time periods specified in the Town of Palmer Subdivision Regulation, other Town Departments must report to the Planning Board.

The Planning Board holds the Public Hearing on the Definitive Subdivision Plan. It is preferable to have reports of the other departments prior to holding the Public Hearing, however, the Planning Board will hold the Public Hearing in the time frames allowed by the MGL.

After the Public Hearing the Planning Board will make their decision. This decision must be made within ninety-days (90) in the case where a Preliminary Plan has been filed or within one hundred thirty five (135) days where a Preliminary Plan has not been filed. The decision of the Planning Board will be to:

Approve the plan if it complies with the subdivision control law, the rules and regulations of the Planning Board and the recommendations of the Board of Health; or,  
Modify and approve the plan if it does not so comply; or,  
Disapprove the plan, stating in detail wherein the plan does not conform to the rules and regulations of the Planning Board or the recommendations of the Board of Health. Such disapproval shall be revoked if the plan is amended so that it conforms to the rules and regulations or recommendations. After a Public Hearing the Planning Board shall approve the amended plan.

If the Planning Board fails to take final action within the specified time periods, or further time as mutually agreed upon, the plan shall be deemed approved.

After the decision has been made the Planning Board and/or their designee shall file a copy of the decision with the Town Clerk within the specified time periods.

A copy of the decision shall be maintained in the files of the office of the Planning Board and a copy shall be mailed to the applicant and any other person that so requested a copy at the Public Hearing. (MGL c.81)

### **Section 6.5 Suggested Public Hearing Procedures**

The Chair will open the hearing by identifying the purpose of the Hearing.

The Planning Board Principal Clerk or other designee will read the Public Hearing notice aloud.

The Chair will explain the rules to be followed during the Hearing.

Hearing Format:

Proponents speak  
Questions: Public  
Questions: Members of the Planning Board

Opponents speak  
Questions: Public  
Questions: Members of the Planning Board

Recess will be considered if requested by the proponent of a project:  
Proponents: Concluding Statements/Rebuttal  
Opponents: Concluding Statements/Rebuttal

No questions will be permitted until after the speaker has finished the presentation. Questions will be accepted first from the public and then from members of the Planning Board. All public questions will be addressed through the Chair. All speakers will identify themselves to the Chair, state their questions, and specify to whom they are addressed. Any disagreement with answers is restricted to rebuttal statements.

## **Article 7. Reports**

### **Section 7.1 Annual reports**

The Planning Board shall submit to the Town Manager an annual report of activities for inclusion in the Annual Reports of the Town. The report shall be submitted on or before a date specified by the Town Manager.

## **Article 8. Official Files & Records**

### **Section 8.1 Planning Board Records.**

The Massachusetts Public Records Law (MGL.C4§7(26)) provides right of access to public records, broadly defined to include all documentary materials except eleven specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. The minutes, informational data, memoranda and circulating materials of any town board are mostly all public information. Appendix B of this handbook contains the text of the Massachusetts Public Record Law. The Town board should consult with the Town Clerk if questions arise or a request made under the freedom of information occurs.

Every person having custody of any public record shall at reasonable times and without reasonable delay, permit the requested record to be inspected and examined by any person. A custodian of a public record shall within 10 days following receipt of a request for inspection or a copy of a public record shall comply with such request. Please know that the law requires acting on a request within a reasonable time within a maximum of 10 days.

### **Section 8.2 Access to Public Records.**

To meet the intent of the Public Records Law the following set of protocols are designed to guide the Planning Board and staff in providing public access to municipal records.

### **Section 8.3 Public Records of the Planning Board.**

The individual seeking a public record relating to the Planning Board shall make the request to the Planning Board office.

The Planning Board staff will verify that the Planning Board is actually the custodian of the record being requested.

The staff of the Planning Board office shall make arrangements with the requester for the opportunity to inspect and/or receive copies of the requested materials.

#### **Section 8.4 “Active” Public Records of the Planning Board.**

The individual seeking a public record relating to the Planning Board shall phone or visit the Planning Board office in person to request to review the public records.

The Planning Board staff shall make arrangements with the requestor for the opportunity to inspect and/or receive copies of the requested materials.

#### **Section 8.5 Public Records Maintained by the Planning Board office.**

The following is a list of some of the Public Records kept by the Planning Board office.

- Special Permits
- Subdivision Plans
- Subdivision Approval Not Required Plans
- Planning Board Minutes
- Master Plan
- Official Map
- Zoning Map
- Overlay Maps
- GIS Data
- Rules and Regulations
- Zoning Ordinance
- Subdivision Regulations
- Earth Removal Regulations
- Zoning Amendments

#### **Section 8.6 Requirements and Summary of the Public Records Law**

Access to Public Records: The Massachusetts Public Records Law provides that any person has an absolute right of access to public information. The right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.

Public Records Defined: The Massachusetts General Laws broadly define “public records” to include all documentary materials or data, regardless of physical form or characteristics, which are made or received by any officer or employee of any Massachusetts governmental entity. As a result, all photographs, papers and electronic storage media of which a governmental officer and employee is the “custodian” constitute “public record”. There are eleven narrowly construed exceptions to this broad definition of “public record”, please review the exemptions section.

## **Section 8.7 Requesting a Public Record**

Requests for public records may be made oral or written and may be made in person or through mail, FAX, E-mail, and other means of communication. A requester is not required to specifically identify a particular record. Any request that provides the custodian with a reasonable description of the desired information is sufficient. The custodians are expected to use their superior knowledge of the records within their custody to assist the requester in obtaining the desired information.

## **Section 8.8 Responding to a Public Record Request**

All requests must receive a response as soon as practicable, without unreasonable delay and always within ten days. The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for the withholding of the requested materials. The legal basis must include a citation to the statutory exemption upon which the custodian relies and must also explain why the exemption applies. A denial must also advise the requester of their rights to seek redress through the administrative process provided by the Office of the Supervisor of Public Records.

The Public Records Law only applies to information that is in the custody of a governmental entity at the time the request is received. There is no obligation to create a record for a requestor.

Inquiries into a requester's status or motivation for seeking information are expressly prohibited. Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a lawsuit against the holder of the records, must be honored in accordance with the Public Records Law.

## **Section 8.9 Exemptions to the Public Record Law Requirements**

Summary of "public records" that are exempted from the requirements of the Public Records Law: Contact the Town Clerk for detailed description of each exemption.)

Withholding from disclosure those documents, which are specifically or by implication exempted from disclosure by statute.

Related solely to internal personnel rules and practices of the government unit, provided, however that such records shall be withheld only to the extent that the proper performance of necessary governmental functions requires such withholding.

Personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal property.

Inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.

Allows the withholding of "notebooks and other materials prepared by an employee of the Commonwealth which are personal to him/her and not maintained as part of the files of the

government unit. (The application of this exemption is limited to records that are work-related but can be characterized as personal to an employee.)

Investigatory materials necessarily compiled out of the public view by law enforcement or any other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing government policy and upon a promise of confidentiality; but this clause shall not apply to information submitted as required by law or as condition of receiving a government contract or benefit.

Proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of bids or proposals to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to decision to enter into negotiations with or award contract to, a particular person.

Appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisals has been terminated; or (3) the time within which to commence such litigation has expired.

The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred forty or any firearms identification cards issued pursuant to said chapter and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns, or ammunition therefore, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.

(This exemption was repealed by the legislature.)

Withholding from disclosure test questions and answers, scoring keys and sheets, and examination data used to administer a licensing examination; provide, however, that such materials are used to administer another examination.

## **Article 9. Special Permits and Site Plan Approval**

### **Section 9.1 Special Permits.**

Specific types of uses are only allowed in specific districts by Special Permit. Please refer to the Palmer Zoning Ordinance to determine if a Special Permit is required for a proposed use.

### **Section 9.2 Application.**

An application for a Special Permit shall be made to the Town Clerk and the Planning Board office on the official forms (as may be amended from time to time) of the Planning Board.

An application for a Special Permit must be accompanied by the appropriate filing fee and any necessary application review fees required (see the fee schedule at the end of this regulation and see the Application Review Fee section of these Rules and Regulations).

An application for a Special Permit must be accompanied by a certified list of abutters obtained from the Palmer Board of Assessors office.

An application for a Special Permit must be accompanied by four sets of plans and all supporting information.

An application for a Special Permit must be accompanied by appropriate documentation to demonstrate the following:

The use requested is listed in the Table of Use Regulations as a special permit in the district for which application is made or is so designated elsewhere in this ordinance.

The requested use will be harmonious with the appropriate and orderly development of the zoning district in which it is proposed to be located and will be harmonious with the visual character of the neighborhood in which it is proposed.

The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety, or the general welfare.

Any special regulations for the use as set forth in Article XV – Special Permit and Exceptions are fulfilled.

The requested use will not unduly impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals, aesthetic qualities of the adjacent area and the neighborhood, or general welfare. The use shall be in harmony with the general purpose and intent of the ordinance.

The suggested use shall not significantly deteriorate any natural resource or natural resource area within the Town.

The application and proposed project shall employ adequate methods to protect adjacent areas from detrimental or offensive uses on the site by provision of adequate surface water drainage; buffers against light, sight, sound, dust and vibration; and preservation of light and air.

The application and proposed project shall ensure that there will be protection of environmental features on the site and in adjacent areas (Palmer Zoning Ordinance Article V Section 171.28 Special Permits).

The application shall also include any other information as required by the appropriate sections of these Rules and Regulations and the Town of Palmer Zoning Ordinance.

Applications for earth removal operations shall comply with the provisions of the Rules and Regulations for the Development, Operation and Closeout of “Earth Removal” Operations in addition to these requirements and the requirements of Site Plan Approval (Section 9.4).

Where Site Plan Approval is required for the proposed use, which forms the basis of the Special Permit application, the applicant shall also file the appropriate information and meet the requirements of Site Plan Approval (Section 9.4). These Public Hearings shall be held concurrently, but separate decisions will be reached for each. Information from one hearing or application may be used by the Planning Board to make its determination on any other concurrently filed application.

### **Section 9.3 Receipt of Application. (Amended 5-19-03)**

An application will not be considered filed unless the application or request, in the format prescribed by the Planning Board, is (1) actually delivered by hand or by mail service to the Planning Board at the Town Administration Building and (2) accompanied by all of the supporting materials or documentation and fees required by statute, these Rules and Regulations and the Zoning Ordinance of the Town of Palmer. Upon receipt of an application the Planning Board, staff of the Planning Board, or a designee will check it for completeness and accuracy.

If a determination is made that an application is incomplete it will be returned to the applicant with a listing of missing information. If the application is returned because it is incomplete, the applicant may either withdraw the application by notice to the Board or resubmit the application with all of the required information. No additional filing fee will be required for resubmitting the application with the complete information. However, the filing fee is non-refundable if the application is withdrawn. If the application is not resubmitted within 30 days, it will be deemed withdrawn for all purposes. If the applicant does not choose to withdraw the application, but resubmits it without the requested information or asks the Planning Board to process it on the information submitted, the Planning Board may deny the application simply because of incomplete information.

The Planning Board may, in its discretion, waive any requirement that the applicant submit information required by these Rules and Regulations and may waive a requirement to submit information required by the zoning ordinance, where the ordinance gives the Board that discretion. The Board’s decision to waive such a requirement will be based on its conclusion that it does not need the information to determine compliance with the substantive requirements of the applicable law. Conversely, the Planning Board may require other information or documentation as it deems necessary to ensure that the proposal meets the substantive requirements, purposes and intent of these Rules and Regulations, the Zoning Ordinance, G.L. c 40A, G.L. c. 41, or any other applicable law or regulation of the Commonwealth or the United States and/or other applicable ordinance or rules and regulations of the Town of Palmer.

#### **Section 9.4 Site Plan Approval.**

Certain uses within the Town of Palmer require Site Plan Approval. Please refer to the Palmer Zoning Ordinance to determine if Site Plan Approval is required for a proposed use.

#### **Section 9.5 Application.**

An application for a Site Plan Approval shall be made to the Town Clerk and the Planning Board office on the official forms (as may be amended from time to time) of the Planning Board.

An application for a Site Plan Approval must be accompanied by the appropriate filing fee and any necessary application review fees required (see the fee schedule at the end of this regulation and see the Application Review Fee section of these Rules and Regulations).

An application for Site Plan Approval must be accompanied by a certified list of abutters obtained from the Palmer Board of Assessors office.

An application for a Site Plan Approval must be accompanied by four sets of plans, building elevations and all supporting information.

All applications shall include plans of the property prepared by a land surveyor registered in the Commonwealth of Massachusetts.

All plans shall be prepared, signed and sealed by a Massachusetts registered engineer, architect or landscape architect, whichever is appropriate.

An application for a Site Plan Approval must be accompanied by appropriate documentation to demonstrate the following:

That the subject and adjoining premises are protected against serious detriment by provision for the safe carrying and discharge of surface water drainage, sound and sight buffers, and that the development of the site will preserve sensitive environmental features such as steep slopes, wetlands and large rock outcroppings and will attempt to preserve public scenic views or historically significant features as well as preservation of light and air;

That there are provisions for convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveways openings in relation to traffic, access by emergency vehicles, and to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;

That all proposed pedestrian access ways do not create traffic hazards and are: adequate, but not excessive in number; adequate in width, grade, alignment, and visibility; adequate distance from street corners and other access ways; and are adequately designed for other safety considerations;

That there is the provision of an adequate amount of, and safe arrangement of off-street parking and loading spaces in relation to the proposed uses of the premises to prevent on-street and off-street traffic congestion;

That there is a relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and will be in harmony with the surrounding neighborhood; and that there is compliance with other requirements of the ordinance; and that the general landscaping of the site complies with the purpose and intent of this ordinance; that existing trees are preserved to the maximum extent possible; that parking, storage, refuse and storage areas are suitably screened during all seasons from the view of adjacent residential areas and public rights-of-way;

That lighting of the site shall be adequate at ground level for the protection and safety of the public in regard to pedestrian and vehicular circulation; that the glare from the installation of outdoor lights and illuminated signs is properly shielded from the view of adjacent property and public rights-of-way;

That all utility systems are suitably located, adequately designed and properly installed to serve the proposed uses, and to protect the property from adverse pollution;

Mitigation of adverse impacts on the Town's resources including the effect on the water supply and distribution system, sewage collection and treatment systems, fire protection, and streets.

i) General conformance with the intent of the ordinance as it pertains to the zoning district.

The Planning Board may require such appropriate conditions, limitations, and safeguards, which it feels, are necessary to assure the project meets the criteria of the above.

Applications for earth removal operations shall comply with the provisions of the Rules and Regulations for the Development, Operation and Closeout of "Earth Removal" Operations in addition to these requirements and the Special Permit requirements (Section 9.1).

Where a Special Permit is required for the proposed use that forms the basis of the Site Plan Approval application, the applicant shall also file the appropriate information and meet the requirements of Special Permit (Section 9.1). These Public Hearings shall be held concurrently, but separate decisions will be reached for each. Information from the hearing or application may be used by the Planning Board to make its determination on any other concurrently filed application.

### **Section 9.6 Contents of Plan.**

All plans shall contain the following information:

#### **General Information:**

Name and address of applicant and owner of record as listed on the Town's tax rolls.

If the applicant is not the owner of record, the latter shall also sign the application.

Date, north arrow, and numerical and graphical scale on map;

A written description of the proposed use or uses;

A table or chart indicating the proposed number or amount and types of uses, lot area lot width, yards, building height, lot coverage, floor area, parking spaces, landscaping and open spaces as they are required.

## **II. Location Map:**

An accurate scale map at a scale of 1" = 1,000' shall be submitted showing the subject property and all property and streets within 1,000'.

Location, width and purpose of all existing and proposed easements and rights-of-way on the property.

## **III. Buildings and Uses:**

Location, dimensions, area, height and setbacks of all existing and proposed buildings, signs, fences, and walls.

Location of all existing and proposed uses and facilities such as swimming pools, lighting, tanks, refuse containers, etc.

## **Parking, Loading and Circulation:**

Location, arrangement and dimensions of automobile parking spaces, aisles, vehicular drives, fire lanes, entrances, exists and ramps.

Location, arrangement and dimensions of loading and unloading areas.

Location and dimensions of the pedestrian walkways, entrances and exits.

Estimated peak hour traffic volumes generated by the proposed use in relation to existing volumes and projected future conditions.

## **Signs and Lighting:**

Location, size, height, orientation and design of all signs.

Location, size, height, orientation and design of any outdoor lighting.

## **Utilities:**

Location and design of all existing and proposed sanitary sewer, storm drainage, water supply facilities and refuse collection areas as well as other underground and above ground

utilities. All utilities shall be placed underground unless the applicant can substantiate that such underground placement is impractical.

All refuse containers shall be screened from view from the street, and wherever possible shall be located at the rear of the property.

**Topographic Map:**

The site plan map shall illustrate the existing and proposed conditions of the property including existing and proposed contours at intervals of five feet or at an interval as needed to show detail as required by sound engineering practices, referred to USGS MSL datum, and the location of all existing wooded area, watercourses, wetlands and other significant features and, where appropriate, the boundary of the flood hazard area, water supply protection area or other overlay district areas.

**Landscaping Plan:**

The landscaping plan shall illustrate the existing and proposed landscape development of the property, including the location, general layout, type and size of buffer or landscape area, plant material, fencing, screening devices, decorative paving or other materials proposed.

**Other Information:**

Other information as may be necessary to determine compliance with the provisions of the zoning ordinance.

Any hazardous materials and wastes associated with the proposed use as listed by the US Environmental Protection Agency.

All abutters shall be noted on the plan.

**Section 9.7 Waivers.**

Upon request, the Planning Board may, at its discretion, waive the submission by the applicant of any of the required information. All waivers must be requested in writing at the time of application; however, waivers will not be decided until the Public Hearing. If the waiver is not granted then all parties will agree to continue the hearing to allow sufficient time for the applicant to submit the required information (Palmer Zoning Ordinance, Article V, Section 171.29).

**Section 9.8 Receipt of Application. (Amended 5-19-03)**

An application will not be considered filed unless the application or request, in the format prescribed by the Planning Board, is (1) actually delivered by hand or by mail service to the Planning Board at the Town Administration Building and (2) accompanied by all of the supporting materials or documentation and fees required by statute, these Rules and Regulations and the zoning ordinance of the Town of Palmer. Upon receipt of an

application the Planning Board, staff of the Planning Board, or a designee will check it for completeness and accuracy.

If a determination is made that an application is incomplete it will be returned to the applicant with a listing of missing information. If the application is returned because it is incomplete, the applicant may either withdraw the application by notice to the Board or resubmit the application with all of the required information. No additional filing fee will be required for resubmitting the application with the complete information. However, the filing fee is non-refundable if the application is withdrawn. If the application is not resubmitted within 30 days, it will be deemed withdrawn for all purposes. If the applicant does not choose to withdraw the application, but resubmits it without the requested information or asks the Planning Board to process it on the information submitted, the Planning Board may deny the application simply because of incomplete information.

The Planning Board may, in its discretion, waive any requirement that the applicant submit information required by these Rules and Regulations and may waive a requirement to submit information required by the zoning ordinance, where the ordinance gives the Board that discretion. The Board's decision to waive such a requirement will be based on its conclusion that it does not need the information to determine compliance with the substantive requirements of the applicable law. Conversely, the Planning Board may require other information or documentation as it deems necessary to ensure that the proposal meets the substantive requirements, purposes and intent of these Rules and Regulations, the zoning ordinance, G.L. c 40A, G.L. c. 41, or any other applicable law or regulation of the Commonwealth or the United States and/or other applicable ordinance or rules and regulations of the Town of Palmer.

### **Section 9.9 Who May File an Application for Special Permit and/or Site Plan Approval.**

If the applicant is a party other than the record owner, the application must be co-signed by all of the record owners. An attorney may sign the application when acting as the agent for the owner of the property.

### **Section 9.10 Withdrawal of Application.**

An application may be withdrawn without prejudice when requested in writing by the applicant prior to publication of the public hearing notice. Once the notice has been published however, a withdrawal without prejudice may be permitted only with the approval of the Planning Board. (M.G.L. c.40A §16)

### **Section 9.11 Repetitive Petitions.**

No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and

material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered. (M.G.L. c.40A §16)

### **Section 9.12 Lapse of Special Permit**

The Palmer Zoning Ordinance provides that a special permit granted shall lapse within one year if as substantial use has not commenced in one year, or in the case of construction, if construction has not begun. The Planning Board may make exception for good cause.

## **Article 10. Adoption of Rules and Regulations**

The Planning Board shall adopt and from time to time amend rules relative to the issuance of special permit and procedures and related matters, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits. A copy of all rules and regulations adopted by the Planning Board shall be filed in the Office of the Town Clerk and made available for review by any person who requests such information.



**TOWN OF PALMER  
PLANNING BOARD**

**RULES AND REGULATIONS FOR THE DEVELOPMENT,  
OPERATION AND CLOSEOUT OF "EARTH REMOVAL"  
OPERATIONS**

These Rules and Regulations were originally adopted by the Town of Palmer Planning Board on September 15, 1980. These Rules and Regulations were amended on the following dates:

February 24, 1997  
August 27, 2001

**Section 11.1      Definitions:**

**“application”** Shall mean written request filed with the Planning Board for issuance of a special permit; it shall include the application fee, operating plans and a list of abutters within 300 feet of any point on the perimeter of the proposed site.

**“earth products excavation operations”** Earth products excavation operations shall include the removal of sand, gravel, loam, sod or other earth materials from the deposits from any tract of land. Rock quarry operations shall be prohibited within the Town of Palmer (Amended 8-27-01).

**“operating acreage”** Shall mean the maximum number of acres which have been or will be stripped of topsoil and/or vegetation and/or which have not been graded and replanted in conjunction with the approved closeout plan.

**“operating plans”** Shall mean a series of topographic plans showing the existing, interim and close-out contours, drainage schemes, etc. as a defined hereinafter.

**“total acreage”** Shall mean the total number of acres within the property lines of the proposed site.

## **Section 11.2 Purpose:**

These regulations were written with careful thought and reasonable consideration to the character of this community. These regulations are adopted pursuant to the authority granted by Chapter 40A of the M.G.L. These regulations are enacted for the purpose of : lessening congestion in the streets; conserving health; securing safety from fire, flood, panic, and other dangers; providing adequate light and air; conserving the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; encouraging appropriate uses of land throughout the Town; and preserving and increasing amenities by the promulgation of regulations to fulfill said objectives. In addition to the above, these regulations have been established for the purpose of promoting the health, safety and overall aesthetic quality of life for the inhabitants of the Town by effecting uniform regulations for all earth removal operations (Amended 8-27-01).

## **Section 11.3 Applications and Fees:**

- a.) All persons seeking approval for an earth removal operation shall file an application in conformance with these Rules and Regulations as well as all other applicable regulations and zoning ordinance. See Section 9 for information regarding special permit and site plan approval applications.
- b.) All applications for the issuance or re-issuance of a special permit shall be accompanied by a certified check in the amount of \$100.00 to cover the Planning Board's preliminary expenses (Amended 8-27-01).
- c.) The applicant will be responsible for payment of the advertising costs for all legal notices published.
- d.) A fee of \$100.00 per operating acre (as defined in this regulation) must be paid at the time of application. Also required will be a Twelve Hundred Dollar (\$1200.00) annual inspection fee.
- e.) The applicant shall pay an application review fee for review of the application by a consulting firm chosen by the Planning Board. Further information regarding these fees can be found in the "Application Review Fee" portion of the Planning Board Rules and Regulations. This fee only needs to be submitted on the year in which a new operating plan is being reviewed (i.e. in the first year of a two or three year plan) (Amended 8-27-01).
- f.) No permit shall take effect until all fees have been paid by the applicant.
- g.) All plans shall be prepared, signed and sealed by a Massachusetts registered engineer. It shall be the responsibility of the applicant to pay all fees and expenses related to the development of the plans.

**Section 11.4 Permit.**

No earth removal operation shall be conducted without a covenant having been consummated between the Town and the applicant and a special permit for the same having been issued by the Planning Board. The special permit shall expire one year from the date of issuance of the permit. All permits are subject to the exceptions, enforcement and restrictions section of these Rules and Regulations. The Planning Board reserves the right to deny the issuance of any special permit if, in its judgment, the earth removal operator has not developed or has failed to conform to the approved operating plan (Amended 8-27-01).

**Section 11.5 Notice of Application for Special Permit; Notice of Special Permit Issuance.**

Planning Board shall give fourteen (14) days prior notice to the applicant and abutters within three hundred feet (300') of any point of the perimeter property line of any Public Hearing during which an application for an earth removal special permit shall be considered and discussed. Said notice shall be published in a newspaper of general circulation in the Town (Amended 8-27-01).

**Section 11.6 Failure of Permittee to Conform with Approved Operating Plan.**

If a permittee fails to comply within thirty (30) days of written notice from the Planning Board of any deviation from the approved operating plan, the Planning Board may take such action as is necessary to utilize the bond posted by the applicant to correct the deviations.

**Section 11.7 Operating Plan Requirements. (Four (4) Sets of Plans are Required)**

The applicant may choose to submit a one-year, two-year, or three-year plan. A multi-year plan must indicate all work (including removal and restoration work and any other improvements or changes) and the year that work is to be accomplished. Provided that work continues in the manner indicated on the plan submitted, no new plan will be required until an applicant moves beyond the scope of work shown on that plan. The time period of a multi-year plan may be changed by approval of the Planning Board (i.e. work needs to progress faster or slower than indicated on the plan submitted, provided that the scope of work does not change) (Amended 8-27-01). All plans must include the following:

- a.) A plan indicating the property line of the parcel or parcels under consideration drawn on a scale of approximately 1" = 200' or smaller as appropriate, which has been prepared by a Registered Land Surveyor registered in the Commonwealth of Massachusetts.

- b.) A topographic plan showing the contours of the overall site as they currently exist upon phasing out operation of any portion of the site or upon ultimate closeout of the site shall be furnished.
- c.) An effort shall be made to identify and/or differentiate naturally wooded areas from pasture or otherwise denuded land.
- d.) All building structures, existing or proposed, as well as neighboring structures within 150' of the proposed operating area, shall be shown and suitably differentiated.
- e.) A sufficient number of "interim plans" showing the proposed work areas throughout the life of the earth removal operation shall be developed. An effort shall be made to project the approximate time frames when an area will be phased out and the next one opened.
- f.) The maximum slope on any operating phase shall not exceed 3:1; the maximum slope on phase-out shall not exceed 4:1.
- g.) Provisions shall be made to ensure that all run-off from the site is collected and conveyed via drainage channels to a properly sized siltation pond. It is the intent of this requirement to minimize siltation of natural waterways within the Town.
- h.) The operation shall meet the requirements of the Department of Environmental Protection Stormwater Management Policy. Retention ponds may be required by the Board.
- i.) Sub-surface borings or test pits to a depth of at least five (5) feet below the ultimately anticipated operating level shall be made. Sub-surface borings shall be made during the high ground water period of the year – April and May, unless monitoring wells will be installed, in which case the borings may be performed at any time of the year. If test pits will be done, they may be done at any time of the year provided they are conducted in accordance with 310 CMR 15. Results of these tests, including a detailed log of soil types, ground water, etc. shall be furnished. On large tracts of land, a minimum of at least one test per acre will be required. In smaller tracts, the Planning Board reserves the right to require more extensive subsurface exploration.
- j.) No earth removal operation shall be conducted within a distance of fifty (50) feet of the boundary of any tract of land upon which earth removal is to be carried out, within fifty (50) feet of a public way, and not within one hundred fifty (150) feet of any building.
- k.) In residential areas, fencing, as may be required by the Planning Board shall be furnished.
- l.) All suitable topsoil that exists at the beginning of the earth removal operation shall be held in reserve. At the time of phase-out a minimum thickness of 3" fertile topsoil shall be placed over all faces to support growth of vegetation. Plantings of a

suitable type, as determined by the Planning Board and the Conservation Commission, shall be furnished and maintained upon the phase out of any portion of the site to effectively control wind and water erosion.

- m.) Natural organic dust palliatives shall be applied to all non hardened surfaced roads used for the vehicular ingress or egress to any tract of land upon which earth removal is conducted and to all regularly traveled roads within any such tract of land. Dust palliatives shall also be applied to temporary non-operational areas that are stripped as well as completed areas not yet topsoiled (Amended 8-27-01).

## **Section 11.8 Special Conditions (This section added 8-27-01):**

### **11.8.1 Noise Limitations:**

- a.) All earth removal operations in the Town of Palmer shall be subject to the provisions of 310 CMR 7.10 – Noise Control Regulation and the Department of Environmental Protection – Noise Level Policy for interpretation of this regulation.

### **11.8.2 Buffer Requirements:**

- a.) Intent. The buffer requirement is intended to be used to provide extensive screening of both visual and noise impacts as needed to protect abutting sensitive uses, such as residential uses, and where it is desirable and practical to separate a use by distance as well as sight-obscuring materials.

- b.) Requirements. Where sufficient (at least 50' of undisturbed wooded area) natural vegetation exists as determined by the Planning Board and/or a designated agent to provide a dust, sight and sound barrier between earth removal operations and neighboring properties, no additional plantings will be required. In cases where 50' of undisturbed wooded area does not exist, or in cases where the Planning Board determines that the wooded area is not sufficient due to the sparse nature of the vegetation to provide an adequate buffer, the following buffer requirements shall be adhered to:

The applicant shall install an earthen berm at least fifty-feet from the property line and in an area suitable to provide a buffer between the active operations and adjacent properties. The berm shall be between 4 and 6 feet high. Shrubs and evergreen trees shall be planted on top of the berm to assure an overall screen to protect adjacent properties from dust, noise and visual pollution. In addition, one tree is required per 30 lineal feet of berm or as appropriate to provide a tree canopy over the landscaped area. Ground cover plants must fully cover the remainder of the landscaped area.

- c.) Plan Required. It is the applicant's responsibility to provide a landscaping plan to show that the landscaping plan and materials proposed will comply with these regulations and that they will serve the intended purpose.

d.) Alternate Plan. In certain situations the landscaping requirements outlined here may be impractical or impossible to achieve due to size or location of the parcel or topography. In these circumstances the applicant/developer may present a plan to the Planning Board showing an alternate buffer plan that will be compatible with surrounding areas and achieve the desired buffer results. It shall be the responsibility of the applicant/developer to show why they cannot comply with the standards and the Planning Board shall have the final discretion on approval or dis-approval of the proposed buffer plan.

e.) Installation and Maintenance. All Plant materials must be installed to current nursery industry standards. Plant materials must be properly supported to ensure survival. The maintenance of the buffer area is the ongoing responsibility of the property owner. Required buffers must be continuously maintained in a healthy manner. Plants that die must be replaced in kind. The Zoning Enforcement Officer may seek revocation of permit, court orders, and/or fines if the buffer has not been maintained in an appropriate manner.

### **11.8.3 General.**

a.) An earth products excavation operation will only be permitted on those lots considered by the Planning Board to have suitable access onto roads of sufficient width and capacity to support maximum projected loads.

b.) No permit for an earth products excavation operation shall be issued if such an operation will, in the opinion of the Planning Board, cause any of the following: (1) endanger the public health and safety, (2) constitute a nuisance, (3) result in clear detriment to the normal use of adjacent property by reason of noise, dust or vibration, (4) result in traffic hazards in residential areas or excessive congestion on, or physical damage to, public roads, and/or (5) unacceptable depletion of natural resources other than the earth products proposed for excavation. In addition, no such operation shall be permitted in the Water Supply Protection District if such operation will lower the level of the water table, interfere with the natural flow pattern of any watercourse, or reduce the flood storage capacity of any watercourse.

c.) Any earth products excavation operation is subject to special permit and site plan approval as well as all requirements of the Palmer Zoning Ordinance and specifically Article XV Special Permit and Exception Conditions, Section 171-73 –Earth Products Excavation Operations as adopted and as may be amended from time to time.

### **11.8.4 Crushing.**

a.) On site crushing will not be allowed in any residential district except under the following circumstances, and only when all of the following can be met:

- ◆ Crushing will only be allowed as a use incidental to earth removal;
- ◆ Crushing will only be allowed at closeout where such activity is necessary to allow the removal of material and or debris from the site;

- ◆ The Planning Board shall have the authority to place limits on the hours and days of operation and duration of time such activity will be allowed;
- ◆ Crushing will only be allowed by special permit when the applicant can demonstrate that there is a need for such activity in conjunction with closeout of the entire gravel operation or a portion of the operation.

#### **11.8.5 Screening.**

- a.) On site screening will not be allowed in any residential district except under the following circumstances, and only when all of the following can be met:
- ◆ Screening will only be allowed as a use incidental to earth removal;
  - ◆ The Planning Board shall have the authority to place limits on the hours and days of operation and duration of time such activity will be allowed;
  - ◆ Screening will only be allowed when it is requested and approved as part of the special permit for earth removal and when the applicant can demonstrate that there is a need for such activity in conjunction with the operation.

#### **11.8.6 Operating Hours.**

Earth removal operations may only be conducted during the following hours:

- a.) Weekdays – Monday through Friday, 7:30 a.m. to 4:00 p.m.;
- b.) Saturdays – 8:00a.m. to 12:00 Noon;
- c.) No work is allowed on Sunday or the following holidays: Christmas, Thanksgiving, New Years, Fourth of July, Labor Day and Memorial Day.

Earth removal operations during prohibited times or days may be authorized by the issuance of a special exception by the Planning Board.

#### **11.8.7 Duration of Permit (Section added 8-27-01).**

- a.) All earth removal permits are valid for one year from the date of issue unless revoked sooner. It shall be the responsibility of the applicant to apply for renewal of the earth removal permit in advance of the expiration of the permit so that the permit does not lapse. No operation of any kind shall take place on a site where the permit has expired. The Planning Board shall hold a public hearing for renewal of a permit within sixty-five days of receipt of a complete application for renewal (For further information regarding receipt of an application for special permit, please see Planning Board Rules and Regulations, Section 9.3).

#### **11.8.8 Right to Enter Property (Section added 8-27-01).**

The applicant shall be offered a form to consent to inspections by the Planning Board and/or their authorized agents to inspect the premises, review the site conditions, and/or to investigate any complaints.

**11.8.9 Penalties (Section added 8-27-01).**

When a complaint is logged with the Planning Board Office, or when a violation of conditions of the earth removal permit occurs, the Planning Board shall determine the seriousness of the infraction and the penalty involved. Generally, a minor infraction such as a one-time complaint about dust (for example) will involve a visit to the site by a Planning Board member and/or their authorized agent to determine the validity of the complaint. If the permit holder is found to be in non-compliance with a condition of the permit and/or these rules and regulations, he/she will be asked to correct the situation immediately. Failure/refusal to correct the situation will result in a meeting with the permit holder and the Board to discuss the situation. Similarly, repeat violations will not be tolerated. Any more than three (3) complaints in one thirty-day (30) period will result in the permit holder being required to attend a meeting with the Planning Board and the complainant (if the complainant is known and cares to participate in the process) to discuss the situation. If two (2) such meetings are held within one (1) permit year, the Board will hold a Public Hearing to consider revocation of the permit. Refusal to comply with conditions without good cause will result in a Public Hearing to consider revocation of the permit after any one (1) such refusal. All violations of conditions and/or earth removal regulations shall be subject to the Violation and Prosecution of Violation sections of the Palmer Zoning Ordinance, as well as any other processes, procedures and mechanisms that may be adopted and from time to time amended by the Town of Palmer. All permits issued are revocable for violations of the terms and conditions of the permit, these regulations or other applicable rules and regulations, ordinances or bylaws.

**11.8.10 Permit Revocation.**

The Planning Board, may at its discretion hold a public hearing with notice to all interested parties to consider revocation of a permit for violations of the conditions of the permit or for violations of these rules and regulations and any other applicable rules and regulations or bylaws. The Planning Board shall give the permittee fourteen (14) days written notice of any hearing to consider revocation of a special permit.

**11.8.11 Restraining Order:**

The Planning Board may bring suit in the name of the Town of Palmer to restrain any violation of or compliance with the provisions of these regulations.

**11.8.12 Exceptions:**

**A. Basic**

**Exemptions.** The removal of earth material in any of the following operations shall be exempt from this section:

- (a) The removal of less than five hundred (500) cubic yards of material in the aggregate in any year from any one lot.
- (b) The transfer of material from one part of a lot to another part of the same lot.

- (c) The removal of material necessarily excavated in connection with lawful construction of a building, structure, street, driveway, sidewalk, path or other appurtenance provided the quantity of material removed does not exceed that actually displaced by the portion of such building, structure, street, driveway, sidewalk, path or other appurtenances below finished grade.
- (d) Non-Commercial earth products excavation as described in the Palmer Zoning Ordinance Article XV, Section 171.73 (C) shall conform to the requirements set forth in that section.
- (e) Any project undertaken by the Town of Palmer either directly or by its authorized agents.  
(Amended 8-27-01)

### **B. Special**

Upon special application and after showing that the enforcement of these regulations will create undue hardship, the Planning Board may grant an exception to any provision of these regulations upon finding that such an exception will not result in a depreciation of surrounding property or degradation of the general aesthetic quality of the community.

#### **11.8.13 Letter of Credit or Bond:**

Prior to the issuance of an earth removal permit, the permittee shall issue an irrevocable letter of credit from a bona fide bank or a performance bond (on a form recommended by the \*SPGA, a copy attached) to the Town from a surety company licensed to operate in Massachusetts, in the amount of at least Three Thousand Dollars (\$3,000) for each operating acre of said portion of land which will be operated or otherwise having open face during the succeeding year (Amended 8-27-01).

\*SPGA – Special Permit Granting Authority

#### **11.8.14 Hold Harmless:**

All applicants are required to provide the Town of Palmer with a Hold Harmless Agreement along with a Certificate of Insurance, naming the Town of Palmer as an additional insured, for bodily injury and property damage in an amount to be specified in the covenant, subject to a minimum of \$500,000 single limit.

#### **11.8.15. Other Approvals:**

Notwithstanding any of the foregoing Rules & Regulations, the applicant shall comply with all other applicable Local, State and Federal Laws, regulations, rules, and guidelines.

## RECOMMENDED BOND FORM

KNOW BY ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ called the Principal and the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, called the Surety, are holden and stand firmly bound to the Town of Palmer, called the Obligee in the full and just sum of \_\_\_\_\_ Dollars for the payment whereof said Principal and Surety bind themselves, their successors and their heirs, executors and administrators, jointly and severally by these presents.

WHEREAS, the Special Permit Granting Authority of said Town has granted to the Principal to remove gravel or fill from the property of \_\_\_\_\_ located at \_\_\_\_\_.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the said Principal shall faithfully observe the provisions of the Zoning By-Laws of the Town of Palmer, Town Ordinances, the Special Permit Granting Authority Rules & Regulations governing the issuance of this permit and the provisions of the covenant between the Principal (applicant) and the Town of Palmer, then this obligation shall be null and void; otherwise to remain in full force and effect.

Liability under this bond shall terminate as of the \_\_\_\_\_, as to any acts subsequent thereto, unless said bond is continued in force from year to year by the issuance of a Continuation Certificate by the Surety.

The Surety may cancel this bond at any time by filing with the Obligee thirty (30) days written notice sent by Certified Mail, Return Receipt Requested, addressed to the Secretary of the Special Permit Granting Authority, of its desire to be relieved of liability. The Surety shall not be discharged from any liability accrued under this bond, or which shall accrue hereunder before the expiration of the thirty (30) day period.

IN WITNESS WHEREOF, the said Principal and Surety have caused these presents to be signed and their seals to be affixed hereto this \_\_\_\_\_ day \_\_\_\_\_.

\_\_\_\_\_

**APPENDIX II  
HOLD HARMLESS AGREEMENT**

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
between \_\_\_\_\_, hereinafter referred to as the Applicant  
and the Planning Board of the Town of Palmer, hereinafter referred to as the Board.

Now therefore in consideration of, and as an inducement for, the Board granting special  
permit to \_\_\_\_\_. The Applicant agrees as  
follows:

In the event of any action, seeking any form of Judgment including money damages or  
injunction relief, is commenced naming the Town of Palmer or any of its agents Boards,  
Commissioners or Departments as defendant the Applicant shall at the Town's option either assume  
the defense of said action at the Applicant's own expense or deposit with the Town a sum sufficient  
in the Town's opinion to cover the Town's expense in defending said action.

In the event said action results in any order that the Town pay any sum as damages or  
otherwise, the Applicant shall pay over to the Town said sum forthwith.

In the event said action results in the Town being required to take any action or perform any  
work or incur any expense, the Applicant shall forthwith pay to the Town a sum sufficient to cover  
the cost of said action, work or expense forthwith.

In the event the Applicant fails to pay any sum or take any action required of it under this  
agreement, the special permit granted shall immediately terminate.

Witness our Hands and Seals the day and year first above written.

\_\_\_\_\_

Witness:

\_\_\_\_\_ By \_\_\_\_\_

Witness:

\_\_\_\_\_ THE PALMER PLANNING BOARD

By \_\_\_\_\_

## **Article 12. Town of Palmer Regulation – Application Review Fees – Special Municipal Account**

### **Planning Board**

(Subdivision Control – G.L., C. 41, S 81Q)

(Special Permit – G.L., C. 40A, S.9)

1. INTENT
2. PROFESSIONAL EXPERTISE/CONSULTANTS
3. ESTABLISHMENT OF SPECIAL ACCOUNT
4. USE OF FUNDS
5. METHOD OF APPEAL
6. FEE STRUCTURE

### **REGULATION**

#### **Section 12.1 Intent.**

When reviewing an application for a special permit or subdivision approval, the Board may determine that the assistance of outside professional expertise and/or consultants is warranted due to the size, scale, or complexity of a proposed project or because of a project's potential impacts.

The Board may require that applicant's pay a "review fee" consisting of the reasonable costs incurred by the Board for employment of outside professional expertise and/or consultants engaged by the Board to assist in the review of an application.

#### **Section 12.2 Professional Expertise/Consultants.**

In hiring outside professional expertise and/or consultants, the Board may engage engineers, planners, lawyers, urban designers, regional planning agencies or other appropriate professionals who are qualified and capable of assisting the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, By-Laws and regulations.

All consultants selected by the Board must meet minimum qualifications consisting of:

- a. an education degree in, or related to the field at issue, from a recognized public or private college or university,
- or
- b. three or more years of practice in the field at issue or related field.

The selection made by the Board shall be recorded with the office of the Town Clerk within five (5) days of the Board's final selection (s).

**Section 12.3 Establishment of Special Account.**

Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose.

The applicant shall follow one of the following two options with regard to payment of the application fees:

**Section 12.4 Option I**

At the time of application submittal to the Town of Palmer, the applicant shall pay all applicable filing fees plus a review fee, the amount of which shall be dependant upon the type of development proposed. Such fees shall be as follows (amended 2-24-97):

**PRELIMINARY SUBDIVISION PLANS**

- a. 1-5 lots: \$1,000.00
- b. 6-15 lots: \$2,000.00
- c. 16-25 lots: \$3,500.00
- d. 26-50 lots: \$5,000.00
- e. 51 or more lots: \$7,500.00

**DEFINITIVE SUBDIVISION PLANS**

- a. 1-5 lots: \$2,000.00
- b. 6-15 lots: \$4,000.00
- c. 16-25 lots: \$7,000.00
- d. 26-50 lots: \$10,000.00
- e. 51 or more lots: \$15,000.00

**SPECIAL PERMIT AND OTHER APPLICATIONS**

- a. Earth removal, auto junkyard, lumber yard and other predominantly exterior operations: \$5,000.00
- b. Others:
  - 1) Enclosed gross floor area 5000 square feet or less: \$1,500.00
  - 2) Enclosed gross floor area 5001-15000 square feet: \$3,000.00
  - 3) Enclosed gross floor area 15001-30000 square feet: \$6,000.00
  - 4) Enclosed gross floor area 30001-50000 square feet: \$10,000.00
  - 5) Enclosed gross floor area 50001 square feet or more: \$15,000.00

## **Section 12.5 Option II**

The applicant shall pay all applicable filing fees at the time of submittal of the application to the Town of Palmer. The town of Palmer shall then submit copies of the application, plans, and all other supporting information to the consultant or consultants within three (3) working days of receipt of such information from the applicant. The consultant or consultants shall then calculate an additional fee known as the review fee, and submit such fee in writing to the Town of Palmer within five (5) working days of receipt of all application information. The Town of Palmer shall then inform the applicant of the review fee within two (2) working days of receipt of fee in writing, and shall request payment in full. The applicant shall be responsible for payment of \$200.00 for the consultants initial review time associated with determination of review fees, whether or not the applicant chooses to continue with the application procedure. This fee is to be paid at the time of submittal of the application. (amended 9-16-91)

If review funds charged are insufficient to cover the costs of outside professional expertise and/or consultant review, the Board may require the applicant to pay an additional review fee to cover these costs provided that these costs are reasonable and directly related to this project undergoing review.

Expenditures from this special account may be made at the direction of the planning Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or project's for which a fee has been, or will be, collected from the applicant.

Failure of an applicant to pay a review fee shall be considered as an incomplete application and therefore not allow the application to go forward.

## **Section 12.6 Use of Funds**

Review fees may only be spent for services rendered in connection with the specific project for which they are collected. These services shall include but not necessarily be limited to: project reviews, document reviews, and project related inspections. Accrued interest may also be spent for this purpose.

If the outside consultant review begins and expenses are generated prior to the filing of an administrative appeal, all such expenses, up to the time of appeal, shall be paid out of the special account for that particular project.

At the completion of the Board's review of the proposed project, or at a time determined at the submission of the application, any excess amount in that account including interest attributable to a specific project, shall be repaid to the applicant of the applicant's successor in interest.

A final report of the status of said account shall be made available to the applicant of the applicant's successor in interest.

For the purpose of this regulation, any person or entity claiming to be the applicant's successor in interest shall provide the Board with documentation that legally establishes this succession in interest.

**Section 12.7 Method of Appeal.**

Any applicant may make an administrative appeal from the selection of the outside professional expert and/or consultant to the Town Manager.

The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications.

Any applicant aggrieved by a selection of an outside consultant may appeal to the Town Manager provided that such appeal is entered within seven days after such selection has been made as recorded in the office of the Town Clerk. An appeal will not be consigned valid unless it is formally filed with the Office of the Town Clerk and a copy is given to the Town Manager.

The applicant should notify the Board of its intentions to seek a waiver at the earliest possible time in the review and consultant selection process. If the applicant fails to sign and/or file a formal waiver of appeal, this action will then be viewed as an intention to appeal on part of the project applicants. Failure to inform the Board of such intention of appeal may result in the delay of the start-up of the Town outside review services.

In acting on an administrative appeal, the Town Manager may determine that:

- a. a conflict of interest does exist, and/or the consultant does not meet the minimum qualifications, therefore the Board must select another consultant.
- b. a conflict of interest does not exist and/or the consultant does meet the minimum qualifications, therefore the selection made by the Board stands.

The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal, beginning from the date of filing such appeal.

In the event that no decision is made within thirty (30) days following the filing of the appeal, the selection made by the Board shall stand.