



# *City of Marlborough*

## *Planning Board*

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### PLANNING BOARD

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## MEMO

Date: April 10, 2023  
To: Record  
From: Marlborough Planning Board  
Re: Public Hearing Process Elements

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### 1. Recessing, Continuing or Closing the Hearing or Record

- a. Recessing the public hearing - At any point in the public hearing, the Chair may recess the public hearing, conduct other Board business, and then re-open the public hearing.
- b. Continuations - A continued hearing should always be continued to a date, time and place certain. This may include continuation to a later time during the same meeting when, for example, another posted hearing is due to be opened or a presenter whose testimony, in the opinion of the Chair, is important to the hearing, cannot be in attendance until later in the hearing.
- c. Closing the hearing and/or record - The Board shall provide an opportunity for applicants, public officials and other interested persons to address the Board during the public hearing process.

Once the Board is satisfied that all relevant testimony has been received, it may close the hearing and the record, or may close only the hearing and hold the record open for any specific information that it has requested the applicant, applicable City Departments or Boards, or another party to provide for the record.

*It should be noted that the statutory timeframe for the filing of the Board's decision with the City Clerk will begin upon closure of the hearing, and not of the record, so it may be appropriate to keep the hearing open, rather than the record only, in order to ensure that all necessary information is received prior to the Board's decision and that sufficient time remains to file the decision in a timely manner.*

- d. After the close of the Board's hearing and written record, no new evidence should be considered, except for specific information or materials required by the Board prior to its decision on the application, or prior to signature of the plan or special permit or as a condition of the Board's decision on the project. Information which is the basis for discussions with the applicant must be in the public record.

## 2. Motions

The Chair may entertain motions made by other Board members sitting on the application. After a second, the Chair should open the floor for discussion by the Board members.

After discussion, the Chair should call for a vote, with the vote of each member to be identified for the record.

Sample Motion to Continue the Hearing:

- "I move to continue this hearing until (date) at (time) at (place) for the purpose of accepting further testimony on this application."
- Sample Motion to Close a Hearing:
- "I move to close this hearing."
- Sample Motion to Close a Hearing but leave the record open:
- "I move to close this hearing but to leave the record open until (date) at (time) for the purpose of accepting additional written information on (a particular issue)."

## 3. Preparing and Adopting Decisions and Certificates of Action or Vote

After the hearing and record are closed or, for applications not involving a public hearing, when the Board begins discussion of its decision, only Board members who are eligible to vote on the application should discuss the Board's decision and any newly received information that was required by the Board to be submitted prior to its decision.

Any Board member not at, or having viewed the video recording of, an applicant presentation and/or any required Public Hearing would be a non-voting member during Board deliberations. Non-voting members may comment prior to the Board's discussion of its decision on an application.

If there is disputed factual testimony or conflicting expert opinions, Board members should state which testimony they found to be more credible (case law requires credibility determinations to be made by the decision makers who actually hear the testimony).

The Board may solicit technical assistance in preparing its decision or Certificate of Vote.

Whenever possible the Board should vote on a decision or draft decision on the same date that the hearing and record are closed, including any proposed conditions.

For Special Permits, the Board should then request the Applicant to prepare a written decision document for final approval at a subsequent meeting. (The Board may also request the Applicant earlier in the process to prepare initial drafts of a proposed decision.)

For subdivision approvals and other matters, the Board may vote on a final decision and conditions and direct staff to prepare a written decision or Certificate of Vote for filing with the City Clerk. The Board may require that said decision or Certificate be reviewed and signed by the Chair or another Board member before filing.

The Board's decision, or its Certificate of Vote regarding decisions under the Subdivision Control Law, must be filed with the City Clerk prior to any deadline established by statute or by-law.

As an alternative, the applicant may request, in writing, an extension of the time required for filing of the Board's decision on a Definitive Subdivision Plan, or the applicant and Board may enter into a written agreement extending the time for filing the Board's decision on a Special Permit application.

In either case, the extension must be for a specified number of days or to a specified date and must be approved by the Board with the same plurality required for the decision regarding which the filing period is being extended. Notice of any such extension must be filed forthwith with the City Clerk.

*No such extension of time is permissible for a Preliminary Subdivision Plan or an "Approval Not Required" (ANR) plan.*

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

The procedures outlined in this memorandum shall be interpreted consistently with, and shall not modify, the Planning Board Rules and Regulations, any City Ordinance and any other applicable local, state, or federal laws.



Sean N. Fay  
Chairperson