

**HOUSE . . . . . No. 2112**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Garrett J. Bradley***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act standardizing zoning appeals processes.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/20/2011</i>

**HOUSE . . . . . No. 2112**

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2112) of Garrett J. Bradley relative to the production and preservation of affordable housing in the Commonwealth. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1188 OF 2009-2010.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act standardizing zoning appeals processes.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 20 of chapter 40B of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by striking out, in line 31, the words “board of zoning  
3 appeals” and inserting in place thereof the following words:— planning board established under  
4 section 70 of chapter 41.

5 SECTION 2. Chapter 40B of the General Laws, as so appearing, is hereby amended by  
6 striking out sections 21, 22 and 23 and inserting in place thereof the following 3 sections:—

7 Section 21. Any public agency or nonprofit organization or limited dividend organization  
8 proposing to build low or moderate income housing under the provisions of sections 20 to 23 of  
9 this chapter shall file a single application with the city or town clerk for a “comprehensive  
10 permit” and a copy of said application, including the date and time of filing certified by the city

11 or town clerk, shall be filed forthwith by the petitioner with the planning board. The planning  
12 board shall hold a public hearing, for which notice has been given as provided in section 11 of  
13 chapter 40A, on any application for a comprehensive permit within 65 days from the date of  
14 filing such application; provided however that a city council having more than 5 members  
15 designated to act upon such application may appoint a committee of such council to hold the  
16 public hearing. The planning board shall forthwith notify each such local board, as applicable, of  
17 the filing of such application by sending a copy thereof to such local boards for their  
18 recommendations. The planning board shall request the appearance at said hearing of such  
19 representatives of said local boards as are deemed necessary or helpful in making its decision  
20 upon such application and shall have the same power to issue permits or approvals as any local  
21 board or official who would otherwise act with respect to such application, including but not  
22 limited to the power to attach to said permit or approval conditions and requirements with  
23 respect to height, site plan, size or shape, or building materials as are consistent with the terms of  
24 this section. The planning board, in making its decision on said application, shall take into  
25 consideration the recommendations of the local boards and shall have the authority to use the  
26 testimony of consultants. The planning board shall adopt rules, not inconsistent with the  
27 purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a  
28 copy of said rules with the city or town clerk. The provisions of section 11 of chapter 40A shall  
29 apply to all such hearings. The decision of the planning board shall be made within 90 days  
30 following the date of such public hearing. The required time limits for a public hearing and said  
31 action may be extended by written agreement between the petitioner and the planning board. A  
32 copy of such agreement shall be filed in the office of the city or town clerk. A comprehensive  
33 permit issued by a planning board shall require a two-thirds vote of boards with more than 5

34 members, a vote of at least 4 members of a 5 member board, and a unanimous vote of a 3  
35 member board.

36           If the complaint is filed by someone other than the original applicant or appellant, such  
37 original applicant or appellant and all members of the planning board shall be named as parties  
38 defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of  
39 process, the plaintiff shall within 14 days after the filing of the complaint, send written notice  
40 thereof, with a copy of the complaint by delivery or certified mail to all defendants including the  
41 members of the planning board and shall within 21 days after the entry of the complaint file with  
42 the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed  
43 within such time the complaint shall be dismissed. No answer shall be required but an answer  
44 may be filed and notice of such filing with a copy of the answer and an affidavit of such notice  
45 given to all parties as provided above within 7 days after the filing of the answer. Other persons  
46 may be permitted to intervene, upon motion. The clerk of the court shall give notice of the  
47 hearing as in other cases without jury, to all parties whether or not they have appeared. The court  
48 shall hear all evidence pertinent to the authority of the planning board and determine the facts,  
49 and, upon the facts as so determined, annul such decision if found to exceed the authority of such  
50 planning board or make such other decree as justice and equity may require. The foregoing  
51 remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice  
52 by publication, mailing or posting as required by this chapter, and the validity of any action shall  
53 not be questioned for matters relating to defects in procedure or of notice in any other  
54 proceedings except with respect to such publication, mailing or posting and then only by a  
55 proceeding commenced within 90 days after the decision has been filed in the office of the city

56 or town clerk, but the parties shall have all rights of appeal and exception as in other equity  
57 cases.

58 Failure by the planning board to take final action within said 90 days or extended time, if  
59 applicable, shall be deemed to be a grant of the comprehensive permit. The applicant who seeks  
60 such approval by reason of the failure of the planning board to act within such time prescribed,  
61 shall notify the city or town clerk, in writing within 14 days from the expiration of said 90 days  
62 or extended time, if applicable, of such approval and that notice has been sent by the applicant to  
63 parties in interest. The applicant shall send such notice to parties in interest by mail and each  
64 such notice shall specify that appeals, if any, shall be made pursuant to section 17 of chapter 40A  
65 and shall be filed within 20 days after the date the city or town clerk received such written notice  
66 from the applicant that the planning board failed to act within the time prescribed. After the  
67 expiration of 20 days without notice of appeal pursuant to said section 17, or, if appeal has been  
68 taken, after receipt of certified records of the court in which such appeal is adjudicated,  
69 indicating that such approval has become final, the city or town clerk shall issue a certificate  
70 stating the date of approval, the fact that the planning board failed to take final action and that  
71 the approval resulting from such failure has become final, and such certificate shall be forwarded  
72 to the applicant. The planning board shall cause to be made a detailed record of its proceedings,  
73 indicating the vote of each member upon each question, or if absent or failing to vote, indicating  
74 such fact, and setting forth clearly the reason for its decision and of its official actions, copies of  
75 all of which shall be filed within 14 days in the office of the city or town clerk and shall be  
76 deemed a public record, and notice of the decision shall be mailed forthwith to the applicant or  
77 appellant, to the parties in interest designated in section 11 and to every person present at the  
78 hearing who requested that notice be sent to him and stated the address to which such notice was

79 to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to said  
80 section 17 and shall be filed within 20 days after the date of filing of such notice in the office of  
81 the city or town clerk.

82 Zoning ordinances or by-laws shall provide that a comprehensive permit granted under  
83 this section shall lapse within a specified period of time, not more than 2 years, which shall not  
84 include such time required to pursue or await the determination of an appeal referred to in said  
85 section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except  
86 for good cause or, in the case of permit for construction, if construction has not begun by such  
87 date except for good cause.

88 Section 22. In accordance with section 11 of chapter 40A, in all cases where notice of a  
89 public hearing is required, notice shall be given by publication in a newspaper of general  
90 circulation in the city or town once in each of 2 successive weeks, the first publication to be not  
91 less than 14 days before the day of the hearing and by posting such notice in a conspicuous place  
92 in the city or town hall for a period of not less than 14 days before the day of such hearing. In all  
93 cases where notice to individuals or specific boards or other agencies is required, notice shall be  
94 sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the  
95 petitioner, abutters, owners of land directly opposite on any public or private street or way, and  
96 abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the  
97 most recent applicable tax list, notwithstanding that the land of any such owner is located in  
98 another city or town, the planning board of the city or town, and the planning board of every  
99 abutting city or town. The assessors maintaining any applicable tax list shall certify to the  
100 planning board the names and addresses of parties in interest and such certification shall be  
101 conclusive for all purposes. The planning board may accept a waiver of notice from, or an

102 affidavit of actual notice to any party in interest or, in his stead, any successor owner of record  
103 who may not have received a notice by mail, and may order special notice to any such person,  
104 giving not less than 5 nor more than 10 additional days to reply.

105 Publications and notices required by this section shall contain the name of the applicant, a  
106 description of the area or premises, street address, if any, or other adequate identification of the  
107 location, of the area or premises which is the subject of the application, the date, time and place  
108 of the public hearing, the subject matter of the hearing, and the nature of action or relief  
109 requested if any. No such hearing shall be held on any day on which a state or municipal  
110 election, caucus or primary is held in such city or town.

111 Upon the granting of a comprehensive permit, or any extension, modification or renewal  
112 thereof, the planning board shall issue to the applicant a copy of its decision, certified by the  
113 planning board, containing the name and address of the applicant, identifying the land affected,  
114 setting forth compliance with the statutory requirements for the issuance of such permit and  
115 certifying that copies of the decision and all plans referred to in the decision have been filed with  
116 the city or town clerk. No comprehensive permit, or any extension, modification or renewal  
117 thereof, shall take effect until a copy of the decision bearing the certification of the city or town  
118 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town  
119 clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed  
120 or denied, and if it is a comprehensive permit which has been approved by reason of the failure  
121 of the planning board to act thereon within the time prescribed, a copy of the application for the  
122 comprehensive permit accompanied by the certification of the city or town clerk stating the fact  
123 that the planning board failed to act within the time prescribed and no appeal has been filed and  
124 that the grant of the application resulting from such failure to act has become final or that if an

125 appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for  
126 the county and district in which the land is located and indexed in the grantor index under the  
127 name of the owner of record or is recorded and noted on the owner's certificate of title. The fee  
128 for recording or registering shall be paid by the owner or applicant.

129         Section 23. Any person aggrieved by a decision of the planning board or by the failure of  
130 the planning board to take final action concerning any appeal or application within the required  
131 time whether or not previously a party to the proceeding, or any municipal officer or board may  
132 appeal to the land court department, the superior court department in which the land concerned is  
133 situated or, if the land is situated in Hampden county, either to said superior court department or  
134 to the division of the housing court department for said county, or if the land is situated in a  
135 county, region or area served by a division of the housing court department either to said  
136 superior court department or to the division of said housing court department for said county,  
137 region or area, or to the division of the district court department within whose jurisdiction the  
138 land is situated except in Hampden county, by bringing an action within 20 days after the  
139 decision has been filed in the office of the city or town clerk. If said appeal is made to said  
140 division of the district court department, any party shall have the right to file a claim for trial of  
141 said appeal in the superior court department within 25 days after service on the appeal is  
142 completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action  
143 with a copy of the complaint shall be given to such city or town clerk so as to be received within  
144 such 20 days. The complaint shall allege that the decision exceeds the authority of the board or  
145 authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be  
146 annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing  
147 the date of filing thereof, certified by the city or town clerk with whom the decision was filed.



148           A city or town may provide any officer or board of such city or town with independent  
149 legal counsel for appealing, as provided in this section, a decision of a planning board and for  
150 taking such other subsequent action as parties are authorized to take.

151           Costs shall not be allowed against the planning board unless it shall appear to the court  
152 that the planning board in making the decision appealed from, acted with gross negligence, in  
153 bad faith or with malice.

154           Costs shall not be allowed against the party appealing from the decision of the planning  
155 board unless it shall appear to the court that said appellant or appellants acted in bad faith or with  
156 malice in making the appeal to the court.

157           The court shall require non municipal plaintiffs to post a surety or cash bond in a sum of  
158 not less than \$2,000 nor more than \$15,000 to secure the payment of such costs in appeals of  
159 decisions approving comprehensive permits.

160           All issues in any proceeding under this section shall have precedence over all other civil  
161 actions and proceedings.