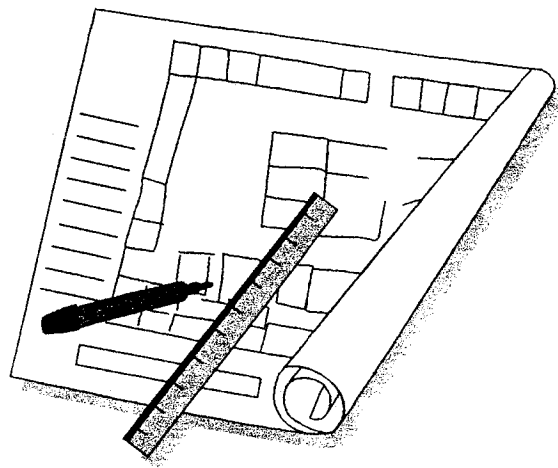
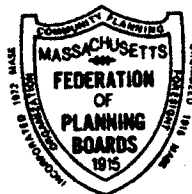


SUBDIVISION CONTROL GUIDEBOOK



Published by
Massachusetts Federation of Planning and
Appeals Boards, Inc.



PREFACE

The purpose of the Subdivision Control Guidebook is to assist planning boards and others interested in carrying out the subdivision control law, M.G.L., ch. 41, §§ 81K-81GG. Each section begins with the law and annotations. The annotations are not part of the statute and are included in each section simply to assist in locating certain provisions of the law. Next, the legislative history is provided, followed by permissible actions under the statute, related case law, and some cautionary notes. The related cases are provided for informational purposes to assist in locating a case. However, the summaries provided should not be substituted for the full reading of the actual case. If applicable, sample forms will be included after the cautionary notes. Many of the forms included in the Subdivision Control Guidebook are revisions of forms that were previously included in the original version and subsequently amended versions of the "Planner's Handbook." Over the years, the titles of some of these forms have taken on their own meanings. For example, most people know that Form A is for an Approval Not Required Plan. Because of the historical meaning of the form titles, even though such titles have no meaning in law, most of the titles have been retained in the forms contained in this Subdivision Control Guidebook. Finally, important links to useful websites are included at the end of most sections, and at the end of some sections are references to related sections of the Subdivision Control Guidebook and to other publications.

The goals of this publication are as follows:

- to assist local officials with their regulatory obligations;
- to provide local officials with a better understanding of their authority and responsibilities in the land development process;
- to facilitate revision of local regulations that comply with current legislation and reflect present trends in land development; and
- to influence future development in an equitable and uniform fashion.

This 2002 revision has been compiled by Attorney Carol A. Rolf with assistance from members of the Board of Directors of the Massachusetts Federation of Planning and Appeals Boards. Special thanks to Donald Schmidt, Principal Land Use Planner, of the Department of Housing and Community Development, for reviewing and commenting on the draft.

Whenever a question of legal interpretation arises, the Federation strongly advises that local legal counsel be consulted.

Copies of this Guidebook and other publications may be obtained from the Massachusetts Federation of Planning and Appeals Boards. At the time of publication, the cost per copy is \$20.00, which is subject to change. Contact the executive secretary at (508) 754-3068.

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SECTION 81K.

THE SUBDIVISION CONTROL LAW



THE LAW

Sections eighty-one K to eighty-one GG, inclusive, shall be designated and may be known as "the subdivision control law". This designation shall, when apt, include corresponding provisions of earlier laws.

ANNOTATIONS*

Sections that make up the subdivision control law

* The annotations are not part of the statute and are included simply to assist in locating certain provisions of the law.

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

RELATED CASE LAW**

** The related cases are provided for informational purposes to assist in locating a case. The summaries provided should not be substituted for the full reading of the actual case.

📖 *Bowker v. City of Worcester*, 334 Mass. 422, 136 N.E. 208 (1957) (slum clearance statute does not incorporate subdivision control law).

📖 *Castle Estates, Inc. v. Park and Planning Bd. of Medfield*, 344 Mass. 329, 182 N.E.2d 540 (1962) (legislature intended that planning board, under subdivision control law, would ensure compliance with subdivision rules and regulations, which could require compliance with zoning bylaw or ordinance).

📖 *Constanza & Bertolino, Inc. v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (subdivision control law is a comprehensive statutory scheme that protects the public safety, convenience, and welfare).

📖 *Gates v. Planning Bd. of Dighton*, 48 Mass. App. Ct. 394, 722 N.E.2d 477, review denied, 726 N.E.2d 414 (2000) (principal purpose of subdivision control is to ensure adequate and safe access to all lots).

📖 *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (subdivision control law does not extend to control of structural aspects of proposed buildings).

📖 *Mahoney v. Board of Appeals of Winchester*, 316 Mass. 228, 316 N.E.2d 606, appeal dismissed, 420 U.S. 903 (1974) (in issuing approval for comprehensive permit, zoning board of appeals did not violate equal protection in ignoring provisions of subdivision control law).

📖 *Nantucket Land Council, Inc. v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

📖 *Sullivan v. Planning Bd. of Action*, 38 Mass. App. Ct. 918, 645 N.E.2d 703 (1995) (subdivision control law is a comprehensive statutory scheme that protects the public safety, convenience, and welfare).

CAUTIONARY NOTES

⚡ The subdivision control law provides a comprehensive statutory scheme that must be viewed in its entirety.

⚡ The planning board's purpose under the subdivision control law is to ensure compliance with its rules and regulations that must provide regulations for adequate and safe access to all lots in subdivisions.

LINKS

🔑 http://www.umass.edu/masscptc/bylaws/Ridgeline_W.html (model provisions available from CPTC)

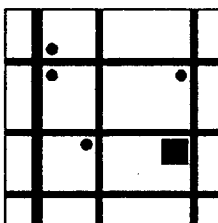
🔑 <http://www.socialaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)

🔑 <http://www.massapa.org/> (Mass. American Planning Association resources with links to other sites)

🔑 <http://www.state.ma.us/> (links to Mass. law and other state agencies such as DHCD)

SECTION 81L.

DEFINITIONS



THE LAW

In construing the subdivision control law, the following words shall have the following meaning, unless a contrary intention clearly appears:-

"Applicant" shall include an owner or his agent or representative, or his assigns.

"Certified by [or endorsed by] a planning board", as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board.

"Drainage", shall mean the control of surface water within the tract of land to be subdivided.

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Municipal service" shall mean public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

ANNOTATIONS

Applicant is owner or representative

Certified by or endorsed by means by a majority of the members of the planning board as constituted

Planning board may name person to endorse plans, as long as name of such person is recorded with registry of deeds and land court

Drainage is the control of surface water

A lot is a buildable parcel of land in one ownership

Municipal services might include water, sewerage, gas, and electricity

<p>"Planning board" shall mean a planning board established under section eighty-one A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section eighty-one N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.</p>	<p><i>Planning board includes a planning board under section 81A, a board of selectmen acting as a planning board, or a board of survey</i></p>
<p>"Preliminary plan" shall mean a plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing (a) the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan"; (b) the names of the record owner and the applicant and the name of the designer, engineer or surveyor; (c) the names of all abutters, as determined from the most recent local tax list; (d) the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner; (e) the proposed system of drainage, including adjacent existing natural waterways, in a general manner; (f) the approximate boundary lines of proposed lots, with approximate areas and dimensions; (g) the names, approximate location and widths of adjacent streets; (h) and the topography of the land in a general manner.</p>	<p><i>Requirements for a preliminary plan</i></p>
<p>"Recorded" shall mean recorded in the registry of deeds of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the recorder of the land court.</p>	<p><i>Recorded means recorded at the applicable registry of deeds or registered with land court</i></p>
<p>"Register of deeds" shall mean the register of deeds of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the recorder of the land court.</p>	<p><i>Register of deeds shall be the register for the county or district in which the land in question is located</i></p>
<p>"Registered mail" shall mean registered or certified mail.</p>	<p><i>Registered mail includes certified mail</i></p>

"Registry of deeds" shall mean the registry of deeds of the county or district in which the land in question is situated, and, when appropriate, shall include the land court.

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

"Subdivision control" shall mean the power of regulating the subdivision of land granted by the subdivision control law.

Registry of deeds shall be the registry for the county or district in which the land in question is located

Subdivision shall mean the division of a tract of land into two or more lots or a resubdivision

The division of land into two or more lots with frontage located on a public way; a way shown on an approved subdivision plan; or a pre-existing way deemed adequate by the planning board for access shall not constitute a subdivision

The lot frontage required for lots shown on approval not required plans shall be the frontage required by zoning or at least 20 feet if there is no frontage requirement

Lots may be changed in size and shape without subdivision approval if the required frontage is maintained

Dividing a tract of land into separate lots where each lot will contain two or more buildings which pre-existed subdivision control is not a subdivision

Subdivision control permits regulation of subdivisions

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1955, c. 411, § 2; St. 1956, c. 282; St. 1957, c. 138, § 1; St. 1957, c. 163; St. 1958, c. 206, § 1; St. 1961, c. 331; St. 1963, c. 580; St. 1965, c. 61; St. 1979, c. 534.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ An applicant for approval of a subdivision plan or for an endorsement that a plan does not require subdivision approval should be defined in the planning board's rules and regulations and proof of applicant status may be required.

The statutory definition of applicant includes:

- 1) The owner of the land or tract or a person holding an option to purchase the tract of land (define whether the buyer on a purchase and sales agreement, who is an equitable owner, will qualify as an owner);
- 2) The owner's agent or representative (the rules and regulations should require the owner's signature on an application or other document appointing another as the owner's agent or representative, e.g. appointment of a surveyor, professional engineer, attorney, or other person); or
- 3) The owner's assigns (the rules and regulations should require the owner's signature on the application or other document assigning the owner's rights to file a plan with the planning board and take all actions necessary to process the plan to another person or entity).

☛ When taking a favorable action under the subdivision control law, the planning board must have a favorable vote by a majority of the members of the planning board as constituted. For example a five member board requires three favorable votes, a seven member board requires four favorable votes, a nine member board requires five favorable votes, etc.

☛ The planning board may vote to name a person to certify or endorse plans and other instruments to be recorded on its behalf, as long as the Board still votes on any plan submitted to it for approval or endorsement. In order to allow another individual to certify or endorse plans and other instruments, the planning board must send written notice to the register of deeds and recorder of land court signed by a majority of the members of the planning board of the person so named. This person might be the municipal planner or the chair or clerk of the planning board. Unless another person is named to make the board's certification or endorsement on plans and instruments to be recorded then a majority of the planning board as constituted must make such endorsement or certification.

☛ The planning board may adopt rules and regulations that control surface water drainage within the tract of land to be subdivided. The board of health may also be involved in drainage regulation, as may be the board involved in municipal drainage improvements.

☛ A lot is considered to have the following characteristics:

- 1) it is an area of land in one ownership (abutting parcels in the same ownership may need to be combined to create a lot);

- 2) the area of land has definite boundaries; and
- 3) the area of land is used or is available for use as the site of one or more buildings, in other words a building permit has been or could be issued to allow building on the area of land.

➤ Municipal services include the following types of public utilities furnished by the city or town:

- 1) water;
- 2) sewerage;
- 3) gas; and
- 4) electricity.

In some instances, the municipality may work with a private utility company in providing municipal services, such as electricity.

➤ Under the subdivision control law, a planning board could include the following:

- 1) a planning board appointed or elected as set forth under M.G.L., ch. 41, § 81A;
- 2) a board of selectmen that is acting as a planning board under M.G.L., ch. 41, § 81A; or
- 3) a board of survey that has the powers of subdivision control by accepting the subdivision control law, or as established under corresponding provisions of earlier laws, or as established by special law.

➤ A preliminary plan, which is a plan of a proposed subdivision or resubdivision, is required to meet specific requirements under the subdivision control law. These requirements should also be provided for in the planning board's rules and regulations and may be further defined in the rules and regulations. A preliminary plan shall:

- 1) be drawn on tracing paper or a print shall be made;
- 2) provide the subdivision name, boundaries, north point, date, scale, legend, and a title "Preliminary Plan";
- 3) specify the names of the record owner, the applicant, and the name of the designer, engineer, or surveyor (or all three);
- 4) provide the names of all abutters, as determined from the most recent local tax list;
- 5) show all existing and proposed lines of streets, ways, easements, and public areas within the subdivision (these are to be shown in a general manner, which should be further defined in the board's rules and regulations);
- 6) show the proposed system of drainage, including adjacent existing natural waterways (these are to be shown in a general manner, which should be further defined in the board's rules and regulations);
- 7) show the approximate boundary lines of proposed lots and provide the approximate areas and dimensions for each lot;

- 8) show the approximate location and widths of adjacent streets and provide their names; and
- 9) show the topography of the land (the topography is to be shown in a general manner, which should be further defined in the board's rules and regulations, for example, by specifying the required contour interval).

NOTE: A preliminary plan that complies substantially with the definition of a preliminary plan as defined in the statute (ch. 41) will give the land shown on the plan the benefit of the zoning protection found in M.G.L., ch. 40A, § 6.

☛ Recorded means recorded at the registry of deeds for the county or district in which the land in question is located or registered with the land court.

☛ Register of deeds is a person and shall include the register of deeds for the county or district in which the land in question is located and also includes the recorder of land court, when registered land is involved.

☛ Registry of deeds is a place and shall be the registry of deeds for the county or district in which the land in question is located, and also includes the land court, when registered land is involved.

☛ Whenever the subdivision control law requires "registered mail" it shall permit mailing by registered or certified mail.

☛ A subdivision under the subdivision control law means the division of a tract of land into two or more lots or a resubdivision. Certain plans do not require subdivision approval and should be endorsed as plans that do not require subdivision approval. The following shall not constitute a subdivision that requires subdivision approval:

- 1) The division of land into two or more lots with required frontage located on one of the following types of ways:
 - a) a public way;
 - b) a way certified by the city or town clerk as maintained as a public way (based on case law this must still be a public way);
 - c) a way shown on an approved subdivision plan;
 - d) a way that was in existence prior to subdivision control which the planning board determines is adequate to provide for the needs of vehicular traffic in relation to the proposed use of land served by the proposed way and to enable installation of municipal services to serve the land and buildings erected or to be erected on the land because the way has the following:
 - i) sufficient width;
 - ii) suitable grades; and
 - iii) adequate construction.
- 2) Any conveyance or other instrument that results in adding to or taking land away from a lot or changing the size and shape of a lot so long as the required frontage for the lot is retained; or
- 3) Dividing a tract of land that has two or more buildings standing on it into separate lots on which one of such buildings remains standing,

but only if the tract of land and the buildings existed before the municipality adopted subdivision control. Case law requires the buildings to be substantial, for example, more than a small shed. No frontage is required for such lots, and such a division may result in numerous lots that are nonconforming under zoning.

- The required frontage for lots that do not constitute subdivisions is the frontage required by local zoning for a lot on which a building could be erected, or if there is no frontage requirement specified, then at least 20 feet.
- The power to regulate the subdivision of land is granted by the subdivision control law.

RELATED CASE LAW

📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (planning board may waive frontage requirements as set forth in the zoning bylaw or ordinance or may waive the 20 foot requirement of section 81L of the subdivision control law; however, such waiver does not eliminate the need to comply with zoning and possibly obtain a frontage variance).

📖 *Batchelder v. Planning Bd. of Yarmouth*, 31 Mass. App. Ct. 104, 575 N.E.2d 366, review denied, 411 Mass. 1101, 579 N.E.2d 1360 (1991) (applicant who filed claim for adverse possession was not yet owner of land who had right to file subdivision for approval).

📖 *Bloom v. Planning Bd. of Brookline*, 346 Mass. 278, 191 N.E.2d 684 (1963) (plan showing a large lot that complied with zoning and a smaller lot or parcel that was too small for building thereon is not a subdivision under the subdivision control law definition of subdivision, and it was proper to issue a building permit on the larger lot without subdivision approval).

📖 *Carson v. Zoning Board of Appeals of Lexington*, 321 Mass. 649 (1947) (person holding option to purchase real property qualifies as owner for purposes of subdivision control law).

📖 *Casagrande v. Town Clerk of Harvard*, 377 Mass. 703, 387 N.E.2d 571 (1979) (for purposes of allowing endorsement of an approval not required plan, city or town clerk must certify that private way is maintained and used as a public way).

📖 *Citgo Petroleum Corp. v. Planning Bd. of Braintree*, 23 Mass. App. Ct. 425, 508 N.E.2d 284 (1987) (exclusion permitting division of land into separate lots with buildings thereon, if such buildings existed before adoption of the subdivision control law in municipality, did not include buildings that were not substantial).

📖 *Costanza & Bertolino, Inc. v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (where original conditional approval of subdivision had expired because of failure to construct ways and install municipal services within two years, planning board did not exceed authority in refusing to endorse subsequent plan as approval not required).

📖 *Corcoran v. Planning Bd. of Sudbury*, 406 Mass. 248, 547 N.E.2d 911 (1989) (division of land into six lots was subdivision, as there was not direct access to buildable portion of all lots, as direct access to some of the lots required the crossing of wetlands, which crossing had not yet been approved by the conservation commission, and actual access was proposed as a common driveway).

📖 *Cricanes v. Planning Bd. of Dracut*, 39 Mass. App. Ct. 264, 654 N.E.2d 1204, review denied, 421 Mass. 1107, 657 N.E.2d 1273 (1995) (all lots shown on an approval not required plan are subject to other regulatory provisions, such as zoning; an owner may note on a plan that a particular lot or parcel is not intended for purposes of building thereon, and lack of sufficient frontage as to such parcel does not permit planning board to deny endorsement of approval not required).

📖 *Dolan v. Board of Appeals of Chatham*, 359 Mass. 699, 270 N.E.2d 917 (1971) (subdivision control law is applied to subdivisions, which consist of the division of land into lots which require new ways to provide access to such lots).


📖 *Gates v. Planning Bd. of Dighton*, 48 Mass. App. Ct. 394, 722 N.E.2d 477, review denied, 726 N.E.2d 414 (2000) (planning board's responsibility in considering plans submitted for approval not required is to determine if the lots shown on the plan have the required frontage and issues of whether the lot is buildable or of public health are for determination by other agencies; planning board may refuse to endorse a plan as approval not required despite technical compliance with frontage where access to lots is nonexistent or illusory because it must cross wetlands and actual access will be through extension of an existing private way; planning board should endorse plan as approval not required where access "could be better, but (is) manageable").


📖 *Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 383 N.E.2d 1123 (1978) (even though lots technically met frontage requirements, some lots had necks so long that connected buildable portion of lot to public way, that access to the buildable portion was practically inaccessible, and thus approval of a subdivision plan was required).


📖 *Goldman v. Planning Bd. of Burlington*, 347 Mass. 320, 197 N.E.2d 789 (1964) (endorsing a plan as approval not required is not the same as approval of a subdivision).


📖 *Gordon v. Zoning Bd. of Appeals of Lee*, 22 Mass. App. Ct. 343, 494 N.E.2d 14, review denied, 398 Mass. 1103, 497 N.E.2d 1096 (1986) (sale of frontage land was a subdivision, as it left some lots without frontage on a public way or subdivision way).


📖 *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (all conditions of approval must be endorsed on the plan or be set forth in a separate instrument referred to on the plan in order to be binding, and subdivision control law does not extend to conditions concerning structural aspects of buildings).


 *Hahn v. Planning Bd. of Stoughton*, 24 Mass. App. Ct. 553, 511 N.E.2d 20, review denied, 400 Mass. 1106, 513 N.E.2d 1289 (1987) (even though town had easement on property, developer of proposed subdivision was proper applicant).


 *Haynes v. Grasso*, 353 Mass. 731, 234 N.E.2d 877 (1968) (division of tract into two lots subject to a zoning exception was not a subdivision requiring subdivision approval).


 *Hrenchuk v. Planning Bd. of Walpole*, 8 Mass. App. Ct. 949, 397 N.E.2d 1292 (1979) (frontage on a limited access highway is not acceptable frontage for lots shown on an approval not required plan).


 *Landgraf Associates v. Building Commissioner of Springfield*, 4 Mass. App. Ct. 840, 354 N.E.2d 887 (1976) (lot that had frontage on a public way could still be included as part of a subdivision in which all other lots had frontage on a proposed subdivision way).


 *Malaguti v. Planning Bd. of Wellesley*, 3 Mass. App. Ct. 797, 339 N.E.2d 246 (1975) (court found that not every proposed building lot had frontage on a public way or a way adequate for vehicular traffic and thus planning board properly refused to endorse plan as approval not required).


 *Paul Livoli, Inc. v. Planning Bd. of Marlborough*, 347 Mass. 330, 197 N.E.2d 785 (1964) (discussing contents of proper preliminary plan; land shown on a plan that complies with statutory requirements for a preliminary plan will gain the benefit of the zoning protection in M.G.L., ch. 40A, § 6).


 *Rettig v. Planning Bd. of Rowley*, 332 Mass. 476, 126 N.E.2d 104 (1955) (planning board was authorized to refuse to endorse plan as approval not required where access was not adequate for all lots and where proposal was to provide one or more new ways for vehicular access to some of the lots).

 *Sequin v. Planning Bd. of Upton*, 33 Mass. App. Ct. 374, 600 N.E.2d 185 (1992) (plan to divide lot into two lots, where one lot did not have adequate frontage required by zoning, required approval by planning board in addition to variance in order to be buildable).

 *Smalley v. Planning Bd. of Harwich*, 10 Mass. App. Ct. 599, 410 N.E.2d 1219 (1980) (plan showing lots with adequate frontage that do not comply with other zoning requirements is still a plan that does not require subdivision approval).

 *Toothaker v. Planning Bd. of Billerica*, 346 Mass. 436, 193 N.E.2d 582 (1963) (division of land into over 1800 lots was a subdivision, except with respect to those lots conveyed before the subdivision control law was adopted in the municipality).

 *Vassalotti v. Board of Appeals of Sudbury*, 348 Mass. 658, 204 N.E.2d 924 (1965) (three-lot tract in common ownership was to be treated as one lot for purposes of zoning and subdivision control).

 *Waldor Realty v. Planning Bd. of Westborough*, 354 Mass. 639, 241 N.E.2d 843 (1968) (because plan showing lots abutting public way with each lot meeting required frontage requirements did not show a subdivision, planning board should have endorsed plan as approval not required).

CAUTIONARY NOTES

✓ Any vote by the planning board that is not a favorable vote by a majority of the planning board members as the board is constituted is considered an unfavorable vote.

✓ The planning board MAY NOT have another person endorse plans or other instruments on its behalf until it completes the followings:

- 1) votes by a majority of all members of the planning board as constituted on the person who may endorse plans on its behalf;
- 2) notifies the register of deeds in writing concerning the person named to act on its behalf; and
- 3) notifies the recorded of land court in writing concerning the person named to act on its behalf.

✓ Before another person may endorse a plan or other instrument on behalf of the planning board, the planning board must vote on the plan or other request for action under the subdivision control law.

✓ A planning board must endorse a plan as not requiring subdivision approval even if it shows a division into a lot as defined under the subdivision control law and a parcel, as long as the lot meets the frontage requirements and is located on one of the requisite ways that exempts it from filing a subdivision.

✓ A planning board should provide language in its rules and regulations concerning preliminary plan requirements, including further definition of such statutory language as "in a general manner."

✓ The planning board may waive the frontage requirement for lots, but such waiver does not waive the frontage requirement as set forth under zoning and a variance may still be necessary.

✓ In considering an approval not required plan, a planning board may only determine if the lots have adequate frontage as required by zoning or at least 20 feet and may not refuse to endorse a plan as approval not required because a lot does not meet other zoning requirements such as area or setbacks.

✓ In acting on an approval not required plan, the planning board may refuse to endorse a plan as approval not required even though there is technical compliance with frontage if the access to the buildable portion of a lot is illusory and or nonexistent due to substantial wetlands; frontage on a limited access highway; or long, narrow and twisting driveways which are not accessible by emergency vehicles.



**SAMPLE STATEMENT TO REGISTER OF DEEDS AND
RECORDER OF LAND COURT NAMING PERSON TO ACT ON
BOARD'S BEHALF**

TO: Register of Deeds of _____ County and Recorder of
Land Court
FROM: Planning board (or other board with subdivision control powers)
of the (city/town name)
DATE:
RE: Naming of person authorized to certify or endorse plan or other
instrument to be recorded on behalf of the planning board (or
other board with subdivision control powers)





A majority of the members of the planning board of
_____ (name of city or town) on _____ (date)
voted to name _____ (person named) to
act on behalf of the planning board in certifying or endorsing plans and other
instruments that are required or authorized by the subdivision control law to
be recorded with the registry of deeds or registered with the land court.

Planning Board of the city/town of _____
(MUST BE SIGNED BY A MAJORITY OF THE MEMBERS OF THE BOARD AS
CONSTITUTED)

LINKS

-  <http://www.landlaw.com> (lower court cases available from landlaw)
-  <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

REFERENCES

-  Subdivision Control Guidebook, Section 81P
-  Subdivision Control Guidebook, Section 81Q
-  Subdivision Control Guidebook, Section 81S
-  Subdivision Control Guidebook, Section 81U

SECTION 81M.

PURPOSE OF THE SUBDIVISION CONTROL LAW



THE LAW

The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. Such powers may also be exercised with due regard for the policy of the commonwealth to encourage the use of solar energy and protect the access to direct sunlight of solar energy systems. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the

ANNOTATIONS

Subdivision control law to protect the safety, convenience, and welfare of municipal inhabitants

Subdivision control law to regulate the laying out and construction of private ways and ensure sanitary conditions in subdivisions

Subdivision control law to be exercised in order to provide:

- *ways that are safe and convenient*
- *lessen congestion in ways*
- *reduce danger to life and limb in operation of motor vehicles*
- *secure safety in case of fire and emergencies*
- *ensure compliance with applicable zoning*
- *secure provision of adequate utilities and municipal services*
- *coordinate ways throughout municipality*
- *encourage solar energy systems*

recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

Any subdivision plan that conforms to board of health recommendations and planning board rules and regulations should be approved

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1957, c. 265; St. 1969, c. 884, § 2; St. 1985, c. 637, § 8.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ The subdivision control law is an enabling statute that allows cities and towns to exercise their police power to regulate subdivisions in order to protect the safety, convenience, and welfare of the municipal inhabitants. To achieve these goals, the subdivision control law permits planning boards to regulate the laying out and construction of the private ways in subdivisions that provide access to the lots in the subdivision. In addition, the planning board is to adopt regulations to ensure sanitary conditions in subdivisions, and if compensation is paid it may also require public parks and open areas within subdivisions.

➤ Section 81M lists the purposes of the subdivision control law. A planning board or subdivision control board of appeals when acting on subdivisions or exercising other powers under the subdivision control law must consider these purposes. For example, planning boards should consider such purposes when drafting its rules and regulations, which must be reasonable. The purposes include:

- 1) providing for adequate access to all lots in a subdivision by ways that are safe and convenient for travel;
- 2) lessening congestion in subdivision ways and adjacent public ways;
- 3) reducing danger to life and limb in the operation of motor vehicles on subdivision ways;
- 4) securing safety in the case of fire, flood, panic, and other emergencies;
- 5) ensuring compliance with applicable municipal zoning (although not required by the subdivision control law, a regulation should be adopted to require such compliance);
- 6) securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, street lighting, and other similar municipal equipment and services where necessary in a subdivision (some of these services may also be provided by private utility companies or others);

- 7) coordinating ways in a subdivision with each other, with ways in neighboring subdivisions, and with public ways in the municipality (this purpose allows for road stubs that connect to land not yet subdivided); and
 - 8) encouraging the use of solar energy and protecting access to direct sunlight of solar energy systems (this purpose is optional, as the planning board and subdivision control board of appeals are not mandated to exercise their powers with this purpose in mind).
- The planning board must approve all subdivision plans that comply with the board of health recommendations and the board's reasonable subdivision rules and regulations.
 - The planning board may waive its rules and regulations as set forth under section 81R of the subdivision control law when it deems such waiver advisable.

RELATED CASE LAW

📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (frontage requirement under subdivision control law is to ensure adequate access to lots and to provide for the installation of utilities and municipal services to serve the lots).

📖 *Baker v. Planning Bd. of Framingham*, 353 Mass. 141, 228 N.E.2d 831 (1967) (planning board should have approved plan that met its rules and regulations, complied with zoning, and was approved by the board of health; planning board may not disapprove plan because town would be deprived from continuing to use owner's land as water storage area).

📖 *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 671 N.E.2d 1233 (1996) (even though subdivision rules and regulations did not specifically require compliance with zoning, the purpose of the regulations addressed general purposes of zoning requirements and was sufficient to allow disapproval for noncompliance with zoning).

📖 *Canter v. Planning Board of Westborough*, 4 Mass. App. Ct. 306, 347 N.E.2d 691 (1976) (regulation of inadequate access outside a subdivision is not precluded by cases that prohibit a planning board from disapproving a subdivision due to inadequacies of utilities and municipal services outside the subdivision; a planning board may not disapprove a subdivision plan that does not violate the board's rules and regulations and the requirements of the board of health; a planning board's rules and regulations must be reasonably definite so that applicants know what standards will be required and what procedures will be applied to them; planning board may disapprove a subdivision plan that violates zoning).

📖 *Caruso v. Pastan*, 1 Mass. App. Ct. 28, 294 N.E.2d 501 (1973) (allowing zoning board of appeals to require a bond to guarantee construction of a sewer connection in a planned unit development that was not considered by the planning board or board of health).

☞ *Caruso v. Planning Board of Revere*, 354 Mass. 569, 238 N.E.2d 872 (1968) (planning board properly considered adequate provisions for sewerage, drainage, and other requirements in approving a subdivision).

☞ *Castle Estates v. Park and Planning Bd. of Medfield*, 344 Mass. 329, 182 N.E.2d 540 (1962) (legislature intended that planning board, under subdivision control law, would adopt subdivision rules and regulations and ensure compliance with such rules and regulations, which should require compliance with the municipal zoning bylaw or ordinance; in order to consider water supply and drainage conditions, planning board must have applicable provisions in its rules and regulations and such requirements must be permitted by subdivision control law).

☞ *Costanza & Bertolino v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (subdivision control law is a comprehensive statutory scheme that protects the safety, convenience, and welfare of the municipal inhabitants).

☞ *Dolan v. Board of Appeals of Chatham*, 359 Mass. 699, 270 N.E.2d 917 (1971) (subdivision control law protects the public health and welfare by regulating the layout and construction of ways and ensuring sanitary conditions in subdivisions).

☞ *Doliner v. Planning Bd. of Millis*, 349 Mass. 691, 212 N.E.2d 460 (1965) (discussing effect of legislative change on plans being processed under the subdivision control law prior to such change; planning board should ensure compliance with its rules and regulations and the municipal zoning bylaw or ordinance).

☞ *Fairbairn v. Planning Bd. of Barnstable*, 5 Mass. App. Ct. 171, 360 N.E.2d 668 (1977) (upon filing plan with board of health, developer may request a hearing before the board of health in writing; such hearing must be afforded developer if plan is disapproved or conditions are imposed that developer does not accept; developer must be provided with all material on which the board of health intends to rely; planning board must either disapprove subdivision plan disapproved by the board of health or modify plan in such a way that it conforms to the board of health recommendations; planning board may not deny approval because of alleged pollution of adjacent wetlands from surface water run-off; at time of subdivision approval board of health may not require approval of individual lots under state sanitary code, but may require planning board to condition approval of subdivision on no dwelling being built on a lot until disposal works construction permit is obtained from the board of health; planning board may not disapprove plan because of concerns with sewage disposal, as that consideration is vested solely in the board of health).

☞ *Federline v. Planning Bd. of Beverly*, 33 Mass. App. Ct. 65, 596 N.E.2d 1028, review denied, 413 Mass. 1105, 600 N.E.2d 171 (1992) (planning board could consider length of adjacent dead-end public way on proposed streets in subdivision in regards to safety of residents).

📖 *Francesconi v. Planning Board of Wakefield*, 345 Mass. 390, 187 N.E.2d 807 (1963) (because of meager planning board record, court reversed subdivision disapproval to permit planning board to develop additional facts, as planning board's rule on dead-end streets resulted in seven acre lot for only one dwelling house).

📖 *Gates v. Planning Bd. of Dighton*, 48 Mass. App. Ct. 394, 722 N.E.2d 477, review denied, 726 N.E.2d 414 (2000) (planning board may refuse to endorse a plan as approval not required despite technical compliance with frontage where access to lots is nonexistent or illusory because it must cross wetlands and actual access will be through extension of an existing private way; planning board should endorse plan as approval not required where access "could be better but (is) manageable").

📖 *Gattozzi v. Director of Inspection Services of Melrose*, 6 Mass. App. Ct. 816, 376 N.E.2d 1266 (1978) (endorsement of plan as approval not required gives lots no standing under zoning and has no bearing on compliance with zoning requirements).

📖 *Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 383 N.E.2d 1123 (1978) (even though lots technically met frontage requirements, some lots had necks so long that connected buildable portion of lot to public way, that access to the buildable portion was practically inaccessible, and thus approval of a subdivision plan was required).

📖 *Glacier Sand & Stone Co. v. Board of Appeals of Westwood*, 362 Mass. 239, 285 N.E.2d 411 (1972) (planning board's function is to ensure adequate access to lots and sanitary conditions in subdivisions and to secure safety in use of public and subdivision ways, while board of appeals applies standards other than those established by the planning board).

📖 *Gordon v. Robinson Homes*, 342 Mass. 529, 174 N.E.2d 381 (1961) (planning board has primary responsibility in carrying out the subdivision control law and the purposes of such law).

📖 *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (court did not uphold board of appeals denial of building permits with respect to zoning requirements concerning distance between parking area and main entrance to dwelling units).

📖 *Hamilton v. Planning Bd. of Lexington*, 4 Mass. App. Ct. 802, 345 N.E.2d 906 (1976) (planning board could disapprove plan for inadequate drainage that did not correct flooding problem).

📖 *Hutchinson v. Planning Bd. of Hingham*, 23 Mass. App. Ct. 416, 502 N.E.2d 572 (1987) (access under subdivision control law is adequate if it is of sufficient width and is suitable to provide access for motor vehicles and emergency vehicles, such as fire equipment).

📖 *Independence Park v. Board of Health of Barnstable*, 403 Mass. 477, 530 N.E.2d 1235 (1988) (planning board may not approve subdivision plan that does not comply with board of health recommendations).

☞ *K. Hovnanian at Taunton, Inc. v. Planning Bd. of Taunton*, 32 Mass. App. Ct. 480, 590 N.E.2d 1172, *review denied*, 413 Mass. 1103, 597 N.E.2d 1371 (1992) (planning board could disapprove plan because developer failed to provide required statement from sewer supervisor indicating that all necessary arrangements were made to allow interconnection of subdivision sewer system with municipal system).

☞ *Kelleher v. Board of Selectmen of Pembroke*, 1 Mass. App. Ct. 174, 294 N.E.2d 512 (1973) (planning board and board of health, not selectmen, are to consider stability of soil for sanitary disposal and drainage system in connection with review of industrial park subdivision).

☞ *Kuklinska v. Planning Bd. of Wakefield*, 357 Mass. 123, 256 N.E.2d 601 (1970) (court was required to make own finding as to whether the planning board had complied with its requirement providing for projection of streets in proposed subdivisions into adjoining property).

☞ *Loring Hills Developers Trust v. Planning Bd. of Salem*, 374 Mass. 343, 372 N.E.2d 775 (1978) (planning board may not approve a plan which receives an adverse recommendation from the board of health; board of appeals may not override an adverse board of health recommendation).

☞ *MP Corp. v. Planning Bd. of Leominster*, 27 Mass. App. Ct. 812, 545 N.E.2d 44 (1989) (planning board had no jurisdiction over pre-existing hazardous waste at subdivision site, as this was under purview of DEQE).

☞ *Mac-Rich Realty Const. v. Planning Bd. of Southborough*, 4 Mass. App. Ct. 79, 341 N.E.2d 916 (1976) (in acting on a proposed subdivision, planning board should consider the purposes of subdivision control, as such purposes relate to the subdivision in question; planning board must approve subdivision plan which complies with board of health recommendations and the board's reasonable rules and regulations).

☞ *Mahoney v. Board of Appeals of Winchester*, 366 Mass. 228, 316 N.E.2d 606, *appeal dismissed*, 420 U.S. 903 (1974) (chapter 40B, which provides for low and moderate income housing, allows zoning board of appeals to override requirements for subdivisions and the subdivision control law).

☞ *McCarthy v. Board of Appeals of Ashland*, 354 Mass. 660, 241 N.E.2d 840 (1968) (planning board could not limit use of lot to single-family where zoning permitted multi-family use).

☞ *McDavitt v. Planning Bd. of Winchester*, 5 Mass. App. Ct. 827, 362 N.E.2d 1211 (1977) (in order to ensure adequate access and protect the public safety, convenience, and welfare, planning board could properly require streets to be continuous, connect with each other and with ways in adjacent subdivisions, and be in alignment with each other).

☞ *Nahigian v. Town of Lexington*, 32 Mass. App. Ct. 517, 591 N.E.2d 1095 (1992) (planning board may disapprove a subdivision plan that does not comply with a clearly stated requirement in the board's regulations).

📖 *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

📖 *North Landers Corp. v. Planning Bd. of Falmouth*, 382 Mass. 432, 416 N.E.2d 934 (1981) (in determining adequate access, planning board may consider factors pertaining to safety, accessibility, or increased traffic on a public way adjacent to a proposed subdivision, as a purpose of the subdivision control law is to lessen congestion in adjacent public ways).

📖 *Patelle v. Planning Bd. of Woburn*, 6 Mass. App. Ct. 951, 383 N.E.2d 94, *appeal after remand*, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1985) (subdivision control law primarily benefits inhabitants of municipality).

📖 *Rattner v. Planning Bd. of W. Tisbury*, 45 Mass. App. Ct. 8, 695 N.E.2d 669 (1998) (abutter had right to appeal as planning board should consider impact of subdivision on roads outside subdivision with respect to safety, accessibility, and traffic based on its regulations and the purposes of the subdivision control law, and abutter provided evidence of impact of increased traffic on outside road providing access to the subdivision).

📖 *Rettig v. Planning Bd. of Rowley*, 332 Mass. 476, 126 N.E.2d 104 (1955) (approval of plan as a subdivision was required as existing ways were not adequate for vehicular access to lots shown on the plan).


📖 *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40, 196 N.E.2d 209 (1964) (planning board may consider adequate system of water pipes for proposed subdivision).

📖 *Sansoucy v. Planning Bd. of Worcester*, 355 Mass. 647, 246 N.E.2d 811 (1969) (planning board may set forth requirements for the installation of utilities in subdivision ways by regulated utilities).

📖 *Sparks v. Planning Bd. of Westborough*, 2 Mass. App. 745, 321 N.E.2d 666 (1974) (a planning board's rules and regulations must be reasonably definite so that applicants know what standards will be required and what procedures will be applied to them; plan that showed road and drive that individually did not exceed 600 foot length requirement and did not provide access to more than 12 lots did not violate planning board rules and regulations even though together the road and drive did exceed the requirements).

📖 *Sullivan v. Planning Bd. of Acton*, 38 Mass. App. Ct. 918, 645 N.E.2d 703 (1995) (planning board could require as a condition of approval the dedication of an easement to permit an additional lane of traffic for access to the subdivision without compensation that would be required if the dedication were for a park or open space).





📖 *Town of Stoneham v. Savelo*, 341 Mass. 456, 170 N.E.2d 417 (1960) (one of main purposes of the subdivision control law is to provide adequate access from public ways to lots within a subdivision).

 *United Reis Homes v. Planning Bd. of Natick*, 359 Mass. 621, 279 N.E.2d 402 (1971) (planning board may incorporate board of health recommendations related to drainage as reasonable conditions of subdivision approval; board of health may require bond of developer to cover cost of work to correct lot drainage problems).



CAUTIONARY NOTES

- ✎ The planning board **MAY NOT** disapprove a subdivision plan that *does not* violate the board's rules and regulations and the requirements of the board of health.
- ✎ Although not required, the planning board should require in its rules and regulations that subdivisions *comply with the city or town zoning ordinance or bylaw*.
- ✎ A planning board may *not* exercise authority that is *outside the purposes of the subdivision control law*.

LINKS

-  http://www.umass.edu/masscptc/bylaws/Ridgeline_W.html (model provisions available from CPTC)
-  <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)
-  <http://www.massapa.org/> (Mass. American Planning Association resources with links to other sites)
-  <http://www.state.ma.us/> (links to Mass. law and other state agencies such as DHCD)

REFERENCES

-  Subdivision Control Guidebook, Section 81Q
-  Subdivision Control Guidebook, Section 81U

SECTION 81N.

ACCEPTANCE OF THE SUBDIVISION CONTROL LAW



THE LAW

Except as provided in section eighty-one EE, the subdivision control law shall be in effect in every city, except Boston, and every town, which prior to the first day of January, nineteen hundred and fifty-four, established a planning board as defined in section eighty-one L, or which after said date establishes a planning board under section eighty-one A unless such city or town by vote of its city council or town meeting at the time of establishment of such board shall vote not to accept the provisions of the subdivision control law. Any such city or town which shall have voted not to accept such provisions may thereafter accept such provisions in the manner provided in section four of chapter four, and any city or town having a board of survey, however established, may accept such provisions in such manner, and the subdivision control law shall be similarly in effect in such cities and towns. In any city or town which has not established a planning board under section eighty-one A, but which has a board of survey, however established, and has prior to the first day of January, nineteen hundred and fifty-four, accepted corresponding provisions of the subdivision control law, or shall after said date accept the provisions of the subdivision control law in such manner, the board of survey shall have all the powers and be subject to all the duties of a planning board relating to subdivision control. In every city and town in which the subdivision control law is in effect the provisions of sections eighty-one K to eighty-one GG, as the same may from time to time be in force, shall, notwithstanding any contrary or inconsistent provision of any general or special law, apply in such city or town irrespective of whether the

ANNOTATIONS

Subdivision control law is in effect in any city, except Boston, or town that established a planning board under section 81L prior to January 1, 1954, or which establishes a planning board after January 1, 1954 under section 81A

A city or town may establish a planning board, but vote not to accept the subdivision control law

Any city or town with a board of survey may accept the subdivision control law and the board of survey shall have all of the powers and duties of a planning board under subdivision control

board having such powers is established under section eighty-one A or under any other general or special law. The subdivision control law, however, shall not become effective in any city or town in which it was not in effect on the first day of January, nineteen hundred and fifty-four, until the planning board of such city or town shall have notified the register of deeds and the recorder of the land court that the city or town has accepted the provisions of the subdivision control law and that the planning board has adopted its rules and regulations as provided in section eighty-one Q and shall have furnished the said register and recorder with a copy of the vote of the city council or town meeting under which the provisions of the subdivision control law were accepted in such city or town, certified by the city or town clerk, and a copy of such rules and regulations certified by said clerk.

Planning board must notify register of deeds and recorder of land court that the city or town has accepted the subdivision control law and the board has adopted rules and regulations

Certified copy of vote accepting subdivision control law and certified copy of rules and regulations must be furnished to register and recorder

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1957, c. 146; St. 1959, c. 144.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- A city or town may have established a planning board under section 81L of M.G.L. chapter 41 prior to January 1, 1954.
- The subdivision control law, M.G.L. chapter 41, sections 81K-81GG, shall be in effect in any city or town that had established a section 81L planning board prior to January 1, 1954.
- A city or town may establish a planning board under section 81A of M.G.L. chapter 41 and accept the subdivision control law, M.G.L. chapter 41, sections 81K-81GG, by vote of city council or town meeting or through a special statute.
- A city or town may establish a planning board under section 81A of M.G.L. chapter 41 and not accept the subdivision control law.
- A board of survey established before January 1, 1954, that had subdivision control powers, may continue to exercise such powers and shall be subject to the duties of a planning board with respect to subdivision control.
- A city or town with a board of survey established before January 1, 1954, that had subdivision control powers, may accept the subdivision control law, M.G.L. chapter 41, sections 81K-81GG, after January 1, 1954 and the board of survey shall have the powers and be subject to the duties of a planning board with respect to subdivision control.

RELATED CASE LAW

There is no related case law under this section.

CAUTIONARY NOTES

✓ The subdivision control law is *not* in effect in the city of Boston.

✓ Before the subdivision control law becomes effective in a city or town in which it was not in effect on January 1, 1954, the planning board must notify the register of deeds and recorder of the land court that:

- the city or town has accepted the subdivision control law and
- the planning board has adopted its subdivision control rules and regulations

and must provide the register and recorder with:

- a copy of the vote of the city council or town meeting under which the subdivision control law was accepted in the city or town, certified by the city or town clerk, and
- a copy of the subdivision control rules and regulations, certified by the city or town clerk.

**SAMPLE NOTICE TO REGISTER OF DEEDS AND RECORDER
OF LAND COURT**

TO: Register of Deeds or Recorder of Land Court of _____
County
FROM: Planning board (or other board with subdivision control powers)
of the (city/town name)
DATE:
RE: Adoption of subdivision control law

In the opinion of the planning board (or other board with subdivision control powers), the subdivision control law became effective in the city/town of _____ on (date of city council or town meeting vote accepting the subdivision control law or date of special statute establishing subdivision control in the city or town).

A copy of the vote of the (city council/town meeting), certified by the city/town clerk, is hereby transmitted together with a copy of the board's subdivision control rules and regulations, certified by the city/town clerk.

NOTE: If subdivision control was established by a special statute, the last paragraph might read as follows:

Subdivision control became effective in the city/town of _____ through a special statute, M.G.L. _____. The board hereby transmits a copy of its subdivision control rules and regulations, certified by the city/town clerk.

Planning Board of the city/town of _____

SECTION 81O.

FILING PLANS



THE LAW

No person shall make a subdivision of any land in any city or town in which the subdivision control law is in effect unless he has first submitted to the planning board of such city or town for its approval a plan of such proposed subdivision, showing the lots into which such land is to be divided and the ways already existing or which are to be provided by him for furnishing access to such lots, and the planning board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided in section eighty-one W; but the number, shape and size of the lots shown on a plan so approved may, from time to time, be changed without action by the board, provided every lot so changed still has frontage on a public way or way shown on a plan approved in accordance with the subdivision control law of at least such distance, if any, as is than required by ordinance or by-law of said city or town for erection of a building on such lot, and if no distance is so required, has frontage of at least twenty feet.

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board, care of the city or town clerk. If so mailed, the date of receipt shall be the date of submission of the plan.

ANNOTATIONS

No subdivision of land into lots is permitted in a city or town until a subdivision plan is submitted to and approved by the planning board

After approval of a plan the location and width of ways shall not be changed unless the plan is amended

The number, shape, and size of lots may be changed without amendment of a subdivision plan, as long as the lots have frontage on a public or subdivision way of such distance as required for erection of a building on the lot, or at least 20 feet

A plan is submitted when delivered at a meeting of the board or sent by registered mail to the board in care of the city or town clerk

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1963, c. 804; St. 1994, c. 169.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ If the subdivision control law is in effect in a city or town, land may not be subdivided into lots until a plan of the subdivision is submitted to the planning board for approval.

☛ A subdivision plan submitted to the planning board for approval shall show:

- 1) The lots into which the land is being divided;
- 2) Existing ways providing access to the lots;
- 3) All proposed ways providing access to the lots

☛ A plan is submitted to the planning board for approval by:

- 1) Delivering the plan to the planning board at a meeting of the board (in many cities and towns it has become an acceptable practice, based on the board's rules and regulations, for plans to be delivered to the planning board at the planning board office, as long as the city or town clerk is given notice of filing of such plan);
or
- 2) Mailing the plan by registered mail to the planning board in care of the city or town clerk. If the plan is mailed, the date of receipt is considered the date of submission.

☛ Once the planning board has approved a plan, it may not be changed, except as follows:

- 1) The planning board may approve an amendment to the plan in accordance with section 81W of the subdivision control law in order to change the width and location of ways shown on the plan;
- 2) The number, shape, and size of lots shown on the approved subdivision plan may be changed without planning board action, as long as the lots:
 - a. Have frontage on a public way or a way shown on an approved subdivision plan and
 - b. Have frontage equal to the distance required in an ordinance or by-law for the erection of a building on any lot so changed, or if there is no frontage requirement have at least 20 feet of frontage.

RELATED CASE LAW

📖 *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 671 N.E.2d 1233 (1996) (planning board regulations must be comprehensive and definite enough to give advance notice of what standards and procedures will be applied).

📖 *Chira v. Planning Bd. of Tisbury*, 3 Mass. App. Ct. 433, 333 N.E.2d 204 (1975) (rejection of plan on basis that developer never intended to implement the plan exceeded the planning board's authority).

📖 *Cullen v. Planning Bd. of Hadley*, 4 Mass. App. Ct. 842, 355 N.E.2d 490 (1976) (when subdivision is approved due to constructive grant for failure of timely action by the planning board, any appeal must be brought within 20 days after the date of the constructive grant, so that third parties may rely on notice of action or absence thereof).

📖 *Garabedian v. Water and Sewerage Bd. of Medfield*, 359 Mass. 404, 269 N.E.2d 275 (1971) (water and sewage board did not have duty to furnish water to subdivision into mains as shown on the approved subdivision plan, as it was up to the planning board and developer to ascertain the requirements of the water and sewage board before the subdivision plan was approved).

📖 *Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 383 N.E.2d 1123 (1978) (even though lots technically met frontage requirements, some lots had necks so long that connected buildable portion of lot to public way, that access to the buildable portion was practically inaccessible, and thus approval of a subdivision plan was required).

📖 *Hamilton v. Planning Bd. of Beverly*, 35 Mass. App. Ct. 386, 620 N.E.2d 44 (1993) (when planning board limits number of lots in approved subdivision, it must note such limitation on the plan).

📖 *M. DeMatteo Const. Co. v. Board of Appeals of Hingham*, 3 Mass. App. Ct. 446, 334 N.E.2d 51 (1975) (despite approval of subdivision plan, applicant may not excavate in accordance with such plan until complying with earth removal bylaw).

📖 *Patelle v. Planning Bd. of Woburn*, 6 Mass. App. Ct. 951, 383 N.E.2d 94, *appeal after remand*, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1978) (based on facts of case, failure of condition of subdivision approval resulted in automatic rescission).

📖 *Rettig v. Planning Bd. of Rowley*, 332 Mass. 476, 126 N.E.2d 104 (1955) (planning board should require approval of subdivision where one of four ways was inadequate to provide access to lots and did not exist at the time subdivision control was adopted in municipality).

📖 *Sequin v. Planning Bd. of Upton*, 33 Mass. App. Ct. 374, 600 N.E.2d 185 (1992) (plan to divide lot into two lots, where one lot did not have adequate frontage required by zoning, required approval by planning board in addition to variance in order to be buildable).

📖 *Ward & Johnson, Inc. v. Planning Bd. of Whitman*, 343 Mass. 466, 179 N.E.2d 331 (1962) (subdivision plan was subject to zoning in effect at time preliminary plan was filed).

📖 *Wheatley v. Planning Bd. of Hingham*, 7 Mass. App. Ct. 435, 388 N.E.2d 315, *appeal after remand*, 10 Mass. App. Ct. 884, 409 N.E.2d 247 (1979) (failure of approved plan to show all lots into which developers intended to subdivide did not invalidate lots shown on the approved plan).

CAUTIONARY NOTES

✓ In a municipality that has adopted the subdivision control law, land may not be divided into lots without planning board approval.

✓ The city or town clerk must be notified of all plan submissions in order to keep track of the time for purposes of determining whether there is a constructive grant for failure of the planning board to take timely action.

✓ Ways shown on an approved subdivision may not be changed without subsequent planning board approval, while lots in a subdivision that conform to frontage requirements may be changed without further planning board action.

LINKS

🔗 <http://www.sociallaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

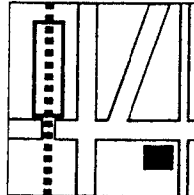
REFERENCES

📁 Subdivision Control Guidebook, Section 81S (application for submission of preliminary subdivision plan)

📁 Subdivision Control Guidebook, Section 81T (application for submission of definitive subdivision plan)

SECTION 81P.

APPROVAL OF PLANS NOT SUBJECT TO THE SUBDIVISION CONTROL LAW



THE LAW

Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within twenty-one days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section eighty-one BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within twenty-one days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall

ANNOTATIONS

A person may submit a plan to the planning board for a determination that subdivision approval is not required

No public hearing required for such determination

If no approval is required, the planning board shall endorse the plan with the words "approval under the subdivision control law is not required"

If the planning board determines that approval is required, it shall within 21 days of submittal give written notice of such determination to the city or town clerk and to the person submitting the plan

Applicant may file subdivision plan or appeal determination

Failure to act results in constructive endorsement

forthwith make such endorsement on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The endorsement under this section may include a statement of the reason approval is not required.

If the planning board fails to act within 21 days, the city or town clerk shall issue a certificate providing that approval is not required

The planning board shall notify the register of deeds and the recorder of land court in writing of the name of any person authorized to endorse plans after the board has voted

The planning board may list reasons why approval is not required

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1955, c. 411, §§ 1, 2; St. 1957, c. 293 §§ 1, 2; St. 1960, c. 197; St. 1961, c. 332; St. 1963, c. 363, § 1; St. 1987 c. 122.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ When a person wants to record a plan in a city or town in which the subdivision control law is in effect, that person must obtain a determination from the planning board that the plan does not show a subdivision that requires subdivision approval.

☛ In making its determination, the planning board is not required to hold a public hearing, but it must make its decision at a public meeting in accordance with the open meeting law.

☛ In making its determination, the planning board may take the following actions:

- 1) Determine that the plan does not require subdivision approval and endorse the plan with the words "approval under the subdivision control law not required";
- 2) Determine that the plan does not require subdivision approval and endorse the plan with the words "approval under the subdivision control law not required" and include reasons why approval is not required such as an indication that all lots meet frontage requirements, but all lots may not meet other zoning requirements; or

- 3) Determine that the plan does require subdivision approval and notify the city or town clerk and person submitting the plan of the determination within 21 days after the plan is submitted.

➤ After making its determination and within 21 days of plan submission, the planning board must notify the city or town clerk and the person submitting the plan if subdivision approval is required in order to avoid constructive endorsement that approval under the subdivision control law is not required.

➤ The planning board may allow a specific person, such as a planning director, to endorse all plans under this section of law. To exercise this option, the planning board must submit the name of such person in writing to the applicable registry of deeds and the recorder of land court.

IMPORTANT NOTE: The planning board must still make a determination and vote on each plan as a board. The person permitted to endorse the plans has no authority to make a determination that approval under the subdivision control law is not required.

➤ The planning board shall deliver an endorsed plan to the person submitting the plan. If the city or town clerk issues a certificate that deems the plan not to require subdivision approval because the planning board failed to act in a timely manner, the city or town clerk shall deliver the plan and certificate to the person submitting the plan.


➤ If the planning board determines that subdivision approval is required, the person submitting the plan has two options:


- 1) Submit a subdivision plan that comports with the subdivision control law and the planning board's subdivision rules and regulations or
- 2) Appeal the planning board's determination as set forth under section 81-BB of the subdivision control law.


RELATED CASE LAW


📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (planning board may waive frontage requirements as set forth in the zoning bylaw or ordinance or may waive the 20 foot requirement of section 81L of the subdivision control law; however, such waiver does not eliminate the need to comply with zoning and possibly obtain a frontage variance).


📖 *Bisson v. Planning Bd. of Dover*, 43 Mass. App. Ct. 504, 684 N.E.2d 7, review denied, 426 Mass. 1103, 687 N.E.2d 642 (1997) (planning board's endorsement of an approval not required plan is ministerial in nature even though it may result in a zoning freeze and allow use of land in a manner that will no longer be permitted; approval not required endorsement concerns only whether a plan shows a subdivision and does not constitute compliance with zoning or other requirements).


 *Bloom v. Planning Bd. of Brookline*, 346 Mass. 278, 191 N.E.2d 684 (1963) (planning board must endorse a plan as approval not required if it shows a large lot that complies with frontage and a smaller parcel on which it is noted that it is not a building lot; a majority of planning board members must make approval not required determinations, even when another person endorses the plans as approval not required).


 *Cape Ann Land Development v. City of Gloucester*, 371 Mass. 19, 353 N.E.2d 645, *appeal after remand*, 374 Mass. 825, 373 N.E.2d 218 (1976) (even though zoning changed to prohibit a shopping center, the land shown on a plan that received a constructive endorsement for failure of timely action by the planning board is protected from such use change for three years, and the owner may obtain a special permit for a shopping center subject to current dimensional and intensity requirements).


 *Carey v. Planning Bd. of Revere*, 335 Mass. 740, 139 N.E.2d 920 (1956) (planning board may ratify chairman's endorsement of a plan that approval is not required).

 *Cassani v. Planning Bd. of Hull*, 1 Mass. App. Ct. 451, 300 N.E.2d 746 (1973) (endorsement by planning board or person appointed to make endorsement of an approval not required plan is conclusive on the planning board and may not be rescinded, even if such endorsement is constructive because the planning board failed to take timely action on the plan).

 *Constanza & Bertolino v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (planning board could refuse to endorse a plan as approval not required, where approval of prior subdivision plan had expired due to failure to complete construction within two years).

 *Corcoran v. Planning Bd. of Sudbury*, 406 Mass. 248, 547 N.E.2d 911 (1989) (despite existence of wetlands on some, but not all lots, the planning board was required to endorse the plan approval not required, as each lot had access to a public way).

 *Cricones v. Planning Bd. of Dracut*, 39 Mass. App. Ct. 264, 654 N.E.2d 1204, *review denied*, 421 Mass. 1107, 657 N.E.2d 1273 (1995) (all lots shown on an approval not required plan are subject to other regulatory provisions, such as zoning; an owner may note on a plan that a particular lot or parcel is not intended for purposes of building thereon, and lack of sufficient frontage as to such parcel does not permit planning board to deny endorsement of approval not required plan).

 *Devine v. Town Clerk of Plymouth*, 3 Mass. App. Ct. 747, 327 N.E.2d 898 (1975) (approval not required plan may result in constructive endorsement if the plan is returned to the engineer submitting the plan without giving valid reasons for such return).

📖 *Duhaime v. Planning Bd. of Medway*, 12 Mass. App. Ct. 907, 422 N.E.2d 790 (1981) (lot created before the municipality had zoning, which is not in common ownership and has at least 5,000 square feet of area and 50 feet of frontage, is protected as a grandfathered lot and is entitled to endorsement if shown on a plan submitted under section 81-P).

📖 *Gates v. Planning Bd. of Dighton*, 48 Mass. App. Ct. 394, 722 N.E.2d 477, *review denied*, 726 N.E.2d 414 (2000) (planning board may refuse to endorse a plan as approval not required despite technical compliance with frontage where access to lots is nonexistent or illusory because it must cross wetlands and actual access will be through extension of an existing private way; planning board should endorse plan as approval not required where access "could be better but (is) manageable").

📖 *Gallitano v. Board of Survey and Planning of Waltham*, 10 Mass. App. Ct. 269, 407 N.E.2d 359 (1980) (planning board required to endorse plan that complied with 20 foot frontage requirement of the subdivision control law as approval not required, even though access to municipal services was difficult for some lots).

📖 *Gattozzi v. Director of Inspect. Servs. of Melrose*, 6 Mass. App. Ct. 889, 376 N.E.2d 1266 (1978) (endorsement of a plan as approval not required under the subdivision control law does not ensure compliance with zoning).

📖 *Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 383 N.E.2d 1123 (1978) (although lots technically met frontage requirements, planning board may refuse approval not required endorsement if access to lots is illusory and not available to emergency vehicles).

📖 *Giovannucci v. Board of Appeals of Plainville*, 4 Mass. App. Ct. 239, 344 N.E.2d 913 (1976) (approval not required zoning freeze is not available to commonly owned substandard lots that are required to be combined to meet current zoning before a building permit may be issued).

📖 *Goldman v. Planning Bd. of Burlington*, 347 Mass. 320, 197 N.E.2d 789 (1964) (a plan endorsed as not requiring subdivision approval is not a plan approved by the planning board as specified under section 81L of the subdivision control law, and thus such frontage may not constitute adequate frontage for obtaining a subsequent approval not required endorsement).

📖 *Hamilton v. Planning Bd. of Beverly*, 35 Mass. App. Ct. 386, 620 N.E.2d 44 (1993) (approval not required endorsement is a ministerial act and does not ensure compliance with zoning or subdivision requirements and does not waive prior conditions of approved subdivision).

📖 *Hobbs Brook Farm Property Co. Ltd. Partnership v. Planning Bd. of Lincoln*, 48 Mass. App. Ct. 403, 721 N.E.2d 398, *review denied*, 726 N.E.2d 414 (2000) (planning board may not refuse endorsement of an approval not required plan where frontage is on a state highway and owner has not yet obtained curb cut permits, even though planning board believes access is unsafe and dangerous because traffic on state route is heavy and access may be limited due to proposed guardrails and barriers to be erected along the state route).

- ☞ *Hrenchuk v. Planning Bd. of Walpole*, 8 Mass. App. Ct. 949, 397 N.E.2d 1292 (1979) (a limited access highway does not provide adequate frontage for purposes of an approval not required plan).
- ☞ *Hutchinson v. Planning Bd. of Hingham*, 23 Mass. App. Ct. 416, 502 N.E.2d 572 (1987) (planning board required to endorse plan as approval not required as there was adequate access for all vehicles on a public way that was narrow, but was similar in width to nearby ways).
- ☞ *Jaxtimer v. Planning Bd. of Nantucket*, 38 Mass. App. Ct. 23, 643 N.E.2d 1064, *review denied*, 419 Mass. 1108, 646 N.E.2d 1071 (1995) (although lots may have frontage on approved roadway, actual street must exist to provide access for fire trucks and emergency vehicles).
- ☞ *J & R Inv. V. City Clerk of New Bedford*, 28 Mass. App. Ct. 1, 545 N.E.2d 1173 (1989) (confusing votes by planning board resulted in constructive endorsement of approval not required plan).
- ☞ *Kelley v. Planning Bd. of Dennis*, 6 Mass. App. Ct. 24, 372 N.E.2d 275 (1978) (planning board must give adequate notice to person submitting plan, as to when the plan will be considered).
- ☞ *Lee v. Board of Appeals of Harwich*, 11 Mass. App. Ct. 148, 414 N.E.2d 619 (1981) (endorsement of or refusal to endorse approval not required plans is subject to judicial review).
- ☞ *Linhares v. Medeiros*, 14 Mass. App. Ct. 927, 436 N.E.2d 1233 (1982) (even though planning board finds adequate access on a dirt road for the first lot, it is not required to find adequate access for subsequent lots on the dirt road and may require subdivision approval).
- ☞ *Long Pond Estates, Ltd. V. Planning Bd. of Sturbridge*, 406 Mass. 253, 547 N.E.2d 914 (1989) (even though lots were subject to periodic flooding and way providing access was within a flood easement, emergency vehicles still had adequate access to the lots by other means and planning board was required to endorse plan as approval not required).
- ☞ *Long v. Board of Appeals of Falmouth*, 32 Mass. App. Ct. 232, 588 N.E.2d 692, *review denied*, 412 Mass. 1104, 592 N.E.2d 751 (1992) (owner may submit plan for approval not required endorsement even though intent is not to record plan, but to obtain three year zoning freeze for use).
- ☞ *Lynch v. Planning Bd. of Groton*, 4 Mass. App. Ct. 781, 341 N.E.2d 925 (1976) (planning board may not attempt to require subdivision approval when it fails to act in a timely manner on an approval not required plan).
- ☞ *Malaguti v. Planning Bd. of Wellesley*, 3 Mass. App. Ct. 797, 339 N.E.2d 246 (1975) (detailed reasons for refusing to endorse a plan as not requiring subdivision approval are not required).
- ☞ *McCaffrey v. Board of Appeals of Ipswich*, 4 Mass. App. Ct. 109, 343 N.E.2d 154 (1976) (filing of a plan for approval not required endorsement does not require simultaneous filing of plan with board of health).

☞ *Perry v. Building Inspector of Nantucket*, 15 Mass. App. Ct. 144, 444 N.E.2d 389, review denied, 388 Mass. 1103, 447 N.E.2d 670 (1983) (planning board should not endorse a plan as approval not required even though frontage is on a public right-of-way, if the street was never constructed; although the use of land on an endorsed approval not required plan is not subject to a zoning change, such land and the uses thereon are subject to changed dimensional and intensity requirements, unless they qualify for the common lot protections of M.G.L., ch. 40A, § 6; an approval not required plan must show boundaries and frontage for lots and parcels from which lots are divided off before the planning board must endorse a plan as approval not required).

☞ *Poulos v. Planning Bd. of Braintree*, 413 Mass. 359, 597 N.E.2d 417 (1992) (in making approval not required determination, the planning board must look at actual access and frontage on a way and not right of access to a way; if existing guardrail blocks access, planning board does not have to endorse plan as approval not required).

☞ *Rayco v. Board of Selectmen of Raynham*, 368 Mass. 385, 331 N.E.2d 910 (1975) (discusses approval not required zoning freeze for uses under earlier state zoning law).

☞ *Richard v. Planning Bd. of Acushnet*, 10 Mass. App. Ct. 216, 406 N.E.2d 728 (1980) (once a developer has provided a performance guarantee for an approved subdivision plan, the planning board must endorse approval not required on any changes to lots shown on such plan that still front on the subdivision ways and have frontage as required by zoning or at least 20 feet of frontage if there is no zoning requirement; however, endorsement may be denied if 18 years after subdivision plan approval none of the streets have been built and lot is now 25 feet below grade of abutting land due to use of land for gravel excavation).

☞ *Russell Management v. Nantucket Conservation Foundation*, 3 Mass. App. Ct. 782, 334 N.E.2d 649 (1975) (abutting landowner prohibited from contradicting certificate by municipal clerk accompanying plan filed with land court that approval was deemed not to be required because of failure of planning board to act in a timely manner).

☞ *Schafer v. Zoning Agent of Bellingham*, 351 Mass. 651, 223 N.E.2d 398 (1967) (addressing town clerk's certificate).

☞ *Smalley v. Planning Bd. of Harwich*, 10 Mass. App. Ct. 599, 410 N.E.2d 1219 (1980) (in considering an approval not required plan, planning board's only consideration is whether the access is adequate such that it does not require subdivision approval, even if the board does not otherwise approve of a proposal).

☞ *SMI Investors v. Planning Bd. of Tisbury*, 18 Mass. App. Ct. 408, 466 N.E.2d 525 (1984) (developer may not use approval not required process to eliminate prior condition of subdivision approval; to eliminate a condition, a new subdivision plan must be filed with the planning board).

📖 *Spalke v. Town of Plymouth*, 7 Mass. App. Ct. 683, (1979) (ocean is not a public way that can provide access for an approval not required plan).

📖 *Sturdy v. Planning Bd. of Hingham*, 32 Mass. App. Ct. 72, 586 N.E.2d 11 (1992) (a planning board may not refuse to endorse an approval not required plan, even though frontage is on a deficient public way, unless such frontage is "illusory in fact" (does not exist)).

📖 *Stefanick v. Planning Bd. of Uxbridge*, 39 Mass. App. Ct. 418, 657 N.E.2d 475, 422 Mass. 1104, 661 N.E.2d 935 (1995) (judicial review of planning board's decision that subdivision control approval was not required, where no statutory right of review exists, is in the nature of certiorari).

📖 *Valcourt v. Zoning Bd. of Appeals of Swansea*, 48 Mass. App. Ct. 124, 718 N.E.2d 389, review denied, 430 Mass. 1114, 723 N.E.2d 34 (1999) (endorsement of a plan as approval not required under the subdivision control law does not constitute approval under zoning).

📖 *Waldor Realty Corp. v. Planning Bd. of Westborough*, 354 Mass. 639, 241 N.E.2d 843 (1968) (a plan that shows lots on both sides of a public way that meet the dimensional requirements for frontage is entitled to endorsement that approval is not required).

📖 *Wolk v. Planning Bd. of Stoughton*, 4 Mass. App. Ct. 812, 347 N.E.2d 700 (1976) (although the use of land shown on an endorsed approval not required plan is protected from zoning changes for three years, when a preliminary subdivision plan is filed, the zoning then in effect, and not the use protected under the ANR freeze, is what applies).

CAUTIONARY NOTES

✍ The planning board must make its determination within 21 days after submission of the plan, and if it determines that subdivision approval is required, the board must notify the city or town clerk and the person submitting the plan in writing within the 21 days in order to avoid constructive endorsement.

✍ If the planning board fails to act within 21 days or fails to notify the city or town clerk and the person submitting the plan in writing within the 21 days that subdivision approval is required, it shall be deemed that the plan submitted does not require subdivision approval.

✍ If it is deemed that a plan does not require subdivision approval because the planning board fails to act in a timely manner or fails to give timely notice, the planning board shall endorse the plan with words indicating that the plan does not require subdivision approval.

✍ If the planning board fails to endorse a plan as not requiring subdivision approval, then the city or town clerk shall issue a certificate that states that it is deemed that subdivision approval is not required because the planning board failed to act within 21 days after submission of the plan.

SAMPLE ENDORSEMENT AND REASONS FOR ENDORSEMENT:

ENDORSEMENT UNDER SECTION 81P

"Approval under the subdivision control law not required."

ALTERNATIVE ENDORSEMENT UNDER SECTION 81P

- "Approval not required under the subdivision control law."
- Or words of similar import

REASONS FOR ENDORSEMENT UNDER SECTION 81P

- "The planning board finds that all of the lots shown on the plan have the frontage required for endorsement that the plan does not require approval under the subdivision control law, but the planning board makes no determination concerning compliance with zoning or other land use requirements."
- The planning board finds that all of the lots shown on the plan have the frontage required for endorsement on a way, which the planning board deems as adequate to serve the lots as shown thereon, and that based on such frontage the plan does not require approval under the subdivision control law; but the planning board makes no determination concerning compliance with zoning or other land use requirements."
- "The planning board finds that lots (insert lot #s or notations), as shown on the plan, have the frontage required for endorsement that the plan does not require approval under the subdivision control law, and notes that the plan shows parcels of land that do not meet such frontage requirements and are shown on the plan as 'not a buildable lot.'"
- "The planning board's endorsement of this plan should not be deemed as a determination of conformance with zoning."
- The planning board's endorsement of this plan is not an endorsement for purposes of zoning or for purposes of other land use controls."
- The planning board's endorsement of this plan does not guarantee that a building or other necessary permit will be issued for any lot shown on this plan."
- "No determination of compliance with zoning requirements has been made or is intended."

SAMPLE VOTES CONCERNING DETERMINATIONS UNDER SECTION 81P:

NOTE: To avoid constructive endorsement under this section, the planning board must file the original vote with the city or town clerk and send a copy of the vote to the person who submitted the plan within 21 days after the plan is submitted.

"The planning board has determined that approval under the subdivision control law is required because"

Possible options regarding frontage:

- "all of the lots shown on the plan do not meet the minimum frontage requirements set forth under zoning as"
 - "the lots do not meet the minimum dimensional frontage required by zoning." or
 - *(where there is no zoning requirement for frontage)* "the lots do not have a minimum frontage of 20 feet."

Possible options concerning way on which frontage is located:

- "all of the lots shown on the plan are not located on"
 - "a public way."
 - "a way certified by the city or town clerk as being maintained and used as a public way."
 - "a way shown on a plan previously approved and endorsed by the planning board under the subdivision control law."
 - "a way pre-existing the adoption of the subdivision control law in the city or town that the planning board has found to have adequate width, grade, and construction to provide vehicular access to a lot for its intended purposes and to permit the installation of municipal services to serve the lot and any buildings thereon."

Possible sub-options concerning way on which frontage is located:

- "Frontage is illusory and access does not exist due to:"
 - "wetlands blocking access across the entire frontage without possibility of access to a public way."
 - "frontage on a limited access highway (or on the ocean)."
 - "existing guardrail along frontage, which prohibits direct access to the main buildable area of the lots and requires access to the lots through another means (common driveway, right-of-way)."
 - "the way providing frontage and access has never been constructed on the ground." or
- "There is not adequate access to the lots for emergency vehicles."

CAUTION: Although there is case law that has upheld the above reasons for making a determination that subdivision approval is required because of illusory access, they are in very limited cases and should be used with caution to avoid possible litigation.

NOTE: All determinations that subdivision approval is required must be voted upon by the planning board and a majority of the planning board must agree and sign the decision to be filed with the city or town clerk and notice of decision to be mailed to the person submitting the plan within 21 days after plan submittal.

SAMPLE APPLICATION FOR APPROVAL NOT REQUIRED PLAN:

**FORM A
APPLICATION FOR ENDORSEMENT OF APPROVAL NOT REQUIRED PLAN**

APPLICANT—

Applicant's Name: _____

Applicant's address: _____

Applicant's phone #: _____

THE PLAN —

Title of plan: _____

Drawn by: _____

P.E.'s or surveyor's registration #: _____

Date of plan: _____

OWNER —

If the applicant and owner are not the same person, the following must be completed:

Owner's name: _____

Owner's address: _____

Owner's phone #: _____

The owner hereby appoints _____ (name of person appointed) to act as agent for purposes of submitting and processing this application for endorsement of an approval not required plan.

Date: _____

Owner's signature _____

TITLE TO THE PROPERTY —

The owner's title to the land that is the subject matter of this application is

derived from deed/will/other of _____,

dated _____, and recorded in _____

Registry of Deeds, Volume _____, Page _____

Or as Land Court Certificate of Title No. _____

registered in _____ District, Volume _____, Page _____

ASSESSOR'S RECORDS –

The land shown on the plan is shown on Map _____, Lot _____ of the

Assessor's records and has an address of _____

FRONTAGE REQUIREMENTS –

The land is zoned _____

The frontage required under zoning is _____ feet

Frontage is located on _____ (name of way), which is
(check on appropriate line):

_____ A public way

_____ A way certified by the city/town clerk as being maintained and used as a public way

_____ A way shown on a subdivision plan entitled : _____
and previously endorsed as an approved plan by the planning board on

_____ A way in existence before adoption of the subdivision control law in the city/town that has adequate width, grade, and construction to provide vehicular access to the lot(s) for their intended purpose of _____ and to permit the installation of municipal services to serve the lot(s) and any buildings thereon because:
(provide support below)

Signature of applicant

Received by city/town clerk

Date: _____

Filing fee paid: \$ _____

Signature of city/town clerk

SAMPLE DETERMINATION FOR APPROVAL NOT REQUIRED PLAN:

NOTICE OF DETERMINATION

Date: _____

Applicant
Applicant's address

City/Town Clerk
City/Town of _____
Address, Massachusetts

RE: Title of plan:
Date of plan:
Drawn by:

With respect to the above-captioned plan for endorsement that approval is not required submitted to the planning board of the city/town of _____ by _____ on _____, the planning board hereby certifies that at an open meeting duly noticed and held on _____ it voted as follows:

_____ To endorse the plan approval under the subdivision control law not required

_____ To endorse the plan approval under the subdivision control law not required because (insert reasons for endorsement)

_____ To require approval of the plan under the subdivision control law, because the plan shows a subdivision for the following reasons:

Planning Board

**SAMPLE CERTIFICATION BY THE CITY OR TOWN CLERK FOR
FAILURE OF THE PLANNING BOARD TO TAKE TIMELY ACTION OR
FILE A NEGATIVE DETERMINATION WITHIN 21 DAYS AND ENDORSE
A PLAN AS APPROVAL NOT REQUIRED:**

The accompanying plan entitled: _____

and dated: _____, by _____
(P.E. or surveyor signing the plan)

for land owned by: _____

was filed with the city/town clerk on _____. The planning
(date of filing)

board did not file a notice of determination under M.G.L. ch. 41, § 81P
within 21 days after the date of filing of the plan.

As city/town clerk of the city/town of _____,
(name of city of town)

I hereby certify that due to the failure of the planning board to act within the
requisite 21 days, the planning board shall be deemed to have determined that
approval under the subdivision control law is not required.

Date: _____
City/Town Clerk

LINKS

- 🔑 <http://www.landlaw.com> (lower court cases addressing ANR plans and other resources available from landlaw)
- 🔑 <http://www.socialaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)

REFERENCES

- 📁 [The ANR Handbook](#) (available from the Department of Housing and Community Development)
- 📁 [The Zoning Guidebook](#) (available from the Massachusetts Federation of Planning and Appeals Boards)
- 📁 [Subdivision Control Guidebook](#), Section 81L

SECTION 81Q.

ADOPTION OF THE PLANNING BOARD'S RULES AND REGULATIONS



THE LAW

After a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, a planning board shall adopt, and, in the same manner, may, from time to time, amend, reasonable rules and regulations relative to subdivision control not inconsistent with the subdivision control law or with any other provisions of a statute or of any valid ordinance or by-law of the city or town. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the procedure for the submission and approval thereof, and shall be such as to enable the person submitting the plan to comply with the requirements of the register of deeds for the recording of the same, and to assure the board of a copy for its files; and shall set forth the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein, which requirements shall be established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M. Such rules

ANNOTATIONS

Public hearing required to adopt rules and regulations with notice indicating time, place, and subject matter to be published in a newspaper in each of two consecutive weeks, with first notice no less than 14 days before the day of the hearing or if no newspaper posted in city or town hall at least 14 days before the day of the hearing

Rules and regulations may prescribe:

- *plan requirements*
- *procedures for submission and approval*

Rules and regulations shall set forth design and construction requirements for:

- *proposed ways*
- *municipal services*

<p>and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board.</p> <p>In establishing such requirements regarding ways, due regard shall be paid to the prospective character of different subdivisions, whether open residence, dense residence, business or industrial, and the prospective amount of travel upon the various ways therein, and to adjustment of the requirements accordingly; provided, however, that in no case shall a city or town establish rules or regulations regarding the laying out, construction, alteration, or maintenance of ways within a particular subdivision which exceed the standards and criteria commonly applied by that city or town to the laying out, construction, alteration, or maintenance of its publicly financed ways located in similarly zoned districts within such city or town. Such rules and regulations may set forth a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way. Any easement in any turnaround shown on a plan approved under the subdivision control law which arises after January first, nineteen hundred and sixty, other than an easement appurtenant to a lot abutting the turnaround, shall terminate upon the approval and recording of a plan showing extension of said way, except in such portion of said turnaround as is included in said extension, and the recording of a certificate by the planning board of the construction of such extension. Such rules and regulations may set forth a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services, as may be specified in such rules and regulations, and may set forth a requirement that poles and any associated overhead structures, of a design approved by the planning board, be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting. The rules and regulations may encourage the use of solar energy systems and protect to the extent feasible the access to direct sunlight of solar energy systems. Such rules and regulations may include standards for the orientation of new streets, lots and buildings; building set back requirements from</p>	<p><i>Rules may not require referral of plan to another board before plan is submitted to planning board</i></p> <p><i>Rules for design and construction of ways shall not exceed commonly applied municipal standards for public ways</i></p> <p><i>Rules and regulations may require a turnaround at the end of a dead-end street</i></p> <p><i>Any easement for a turnaround, which shall no longer be required, shall terminate upon approval and recording of a plan showing extension of the way</i></p> <p><i>Rules and regulations may require:</i></p> <ul style="list-style-type: none"> • <i>underground utilities</i> • <i>police and fire alarm boxes on poles</i> • <i>street lighting</i> <p><i>Rules and regulations may encourage use of solar energy systems and require:</i></p> <ul style="list-style-type: none"> • <i>standards for street orientation</i> • <i>building setbacks</i> • <i>limitations on vegetation</i> • <i>restrictive covenants to protect solar access</i>
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property lines; limitations on the type, height and placement, of vegetation; and restrictive covenants protecting solar access not inconsistent with existing local ordinances or by-laws. Except in so far as it may require compliance with the requirements of existing zoning ordinances or by-laws, no rule or regulation shall relate to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or shall be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof. The rules and regulations may, however, provide that not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the city or town, without the consent of the planning board, and that such consent may be conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town. A copy certified by such clerk of any such rules and regulations, or any amendment thereof, adopted after the first day of January, nineteen hundred and fifty-four shall be transmitted forthwith by such planning board to the register of deeds and recorder of the land court. Once a definitive plan has been submitted to a planning board, and written notice has been given to the city or town clerk pursuant to section eighty-one T and until final action has been taken thereon by the planning board or the time for such action prescribed by section eighty-one

Rules and regulations may require compliance with local zoning, but may not regulate the size, shape, width, frontage or use of lots within a subdivision or the buildings to be constructed on the lots

Rules and regulations may not require that land within subdivision be dedicated to, conveyed, or released for a public purpose, such as a public way, park, or playground without compensation to the owner

Rules and regulations may require that not more than one building shall be provided on a lot for dwelling purposes without consent of the planning board, which consent shall be conditional upon providing adequate access

The office of the planning board and the city or town clerk shall have a true copy of the rules and regulations and all amendments thereto available for inspection

A copy of the rules and regulations and all amendments thereto shall be certified by the city or town clerk as a true copy and be transmitted by the planning board to the registry of deeds and land court

U has elapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan. When a preliminary plan referred to in section eighty-one S has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, such preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

Definitive plan governed by the rules and regulations in effect when the plan is properly filed and until final action on the plan

If a preliminary plan is filed, such plan and a definitive plan evolved from the preliminary plan and filed within 7 months of the date the preliminary plan is filed shall be governed by the rules and regulations in effect when the preliminary is properly filed

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1955, c. 370; St. 1956, c. 307; St. 1957, c. 139; St. 1958, c. 206, § 3; St. 1959, c. 410; St. 1960, c. 196; St. 1960, c. 417; St. 1965, c. 64; St. 1969, c. 884, § 3; St. 1981, c. 459; St. 1985, c. 637, § 9; St. 1992, c. 133, § 372; St. 1996, c. 450, § 98.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- ☛ Once a municipality accepts subdivision control, the planning board shall adopt reasonable subdivision rules and regulations that are not inconsistent with any statutes and that carry out the purposes of the subdivision control law.
- ☛ The planning board shall hold a public hearing before it adopts subdivision rules or regulations or amends such regulations.
- ☛ When the planning board holds a public hearing to adopt or amend subdivision rules and regulations it must give a notice of the hearing that specifies the following:
 - 1) time;
 - 2) date;
 - 3) place; and
 - 4) subject matter of the hearing, sufficient for identification. The planning board must provide sufficient detail so a person is able to decide whether to attend the hearing.

☛ The planning board must advertise the public hearing to adopt or amend subdivision rules and regulations as follows:

- 1) by publishing the notice in a newspaper of general circulation in the municipality (this does not include a weekly flyer) once in each of two consecutive weeks, such that the first notice of the hearing is published at least 14 days before the day of the hearing (the day of the hearing may not be counted in the 14 days, e.g., a Wednesday hearing requires the first publication to take place two Wednesdays before the Wednesday hearing); or
- 2) if there is no newspaper of general circulation in the municipality, by posting a notice of the public hearing in a conspicuous place in the city or town hall at least 14 days before the day of the hearing.

☛ The planning board's rules and regulations shall set forth:

- 1) design and construction requirements for ways proposed within the subdivision, including:
 - a) location;
 - b) construction;
 - c) width; and
 - d) grades;

NOTE: These requirements may not exceed those commonly applied by the municipality for laying out, constructing, altering, or maintaining its own public ways in similarly zoned areas of the city or town (in many municipalities the city or town uses the subdivision standards in constructing public ways);

- 2) design and construction requirements for the installation of municipal services to serve the subdivision;

☛ In setting forth its requirements for the proposed ways in the subdivision, the planning board shall pay due regard to the character of different subdivisions and the expected amount of travel on the ways within the subdivision. Various types of subdivisions might include the following:

- 1) open residence;
- 2) dense residence;
- 3) business; or
- 4) industrial.

☛ The planning board's rules and regulations may:

- 1) prescribe plan requirements, including:
 - a) size;
 - b) form;
 - c) contents;
 - d) style; and
 - e) number of copies (including review copies for other boards and a copy for the planning board's file);

NOTE: These requirements should be such that a person submitting the plan will be able to comply with the requirements of the register of deeds for recording a plan.

- 2) prescribe procedures for submission and approval of a plan;
 - 3) require a turnaround at the end of a dead-end street. Once the subdivision plan showing a through street in place of the dead-end street is approved by the planning board, the plan is recorded at the registry of deeds or registered with land court, and a certificate of construction is recorded by the planning board at the registry of deeds or registered with land court, any easement required for the turnaround after January 1, 1960, that is no longer necessary for the through street, shall terminate;
 - 4) require underground distribution systems for utility services, including:
 - a) electrical;
 - b) telephone; and
 - c) other (cable);
 - 5) require fire and police alarm boxes and similar municipal equipment on poles and associated overhead structures with the design to be approved by the planning board;
 - 6) require street lighting;
 - 7) encourage the use of solar energy systems and protect access to direct sunlight by:
 - a) setting standards for orientation of streets, lots, and buildings;
 - b) setting standards for building setbacks (this is not a zoning standard, but is simply to protect direct access to sunlight for solar energy systems);
 - c) limiting type, height, and placement of vegetation; and
 - d) providing restrictive covenants not inconsistent with existing local ordinances or bylaws to protect solar access;
 - 8) require compliance with the existing zoning bylaw or ordinance; and
 - 9) require that not more than one building designed or available for use as a dwelling shall be erected, placed, or converted on a lot for dwelling purposes without consent of the planning board. The planning board's consent shall be conditioned on the provision of adequate access as required by the subdivision control law to serve a lot with more than one dwelling unit.
- ☛ The planning board's rules and regulations shall not:
- 1) require referral of the subdivision plan to another board or person before the plan is submitted to the planning board;
 - 2) regulate the size, shape, width, frontage, or use of lots within a subdivision;
 - 3) regulate the buildings to be constructed on lots within a subdivision;
 - 4) be inconsistent with the regulations and requirements of any other municipal board, as long as such board is acting within its jurisdiction and not exceeding its authority;

- 5) require that land within the subdivision be dedicated to a public use or conveyed or released to the municipality, county, commonwealth, or other governmental entity for any public purpose, not limited to:

- a) public ways;
- b) public parks; or
- c) public playgrounds

without just compensation to the owner;

NOTE: The planning board may also not impose such a requirement as a condition of approval unless there is just compensation to the owner.

☛ The planning board's rules and regulations and all amendments to the rules and regulations shall not be in effect until properly filed and recorded, as follows:

- 1) A true copy shall be kept on file and be available for inspection by the public in the following offices:
 - a) city or town clerk's (usually available for purchase also in this office) and
 - b) planning board's;
- 2) After January 1, 1954, a copy that has been certified by the city or town clerk as a true copy shall be transmitted immediately after adoption by the planning board to:
 - a) the applicable registry of deeds and
 - b) land court.

☛ A definitive subdivision plan that is properly filed, as required by the subdivision control law and the planning board's rules and regulations, shall be governed throughout the approval process by the subdivision rules and regulations in effect when:

- 1) The preliminary plan is properly filed with written notice to the city or town clerk, so long as the definitive plan evolved from the preliminary plan is properly filed within 7 months after the preliminary plan is filed; and
- 2) The definitive plan is properly filed with written notice to the city or town clerk.

RELATED CASE LAW

📖 *Aronson v. Town of Sharon*, 346 Mass. 598, 195 N.E.2d 341 (1964)
(individual property owner is not responsible for providing public recreational areas unless provided with compensation).

📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (purpose of preventing planning board from regulating size, shape, width, frontage or use of lots within a subdivision, except to require compliance with existing zoning, is to preclude planning board from imposing frontage requirements that are more stringent than zoning requirements; planning board could not approve plan that did not comply with frontage requirements).

☞ *Canter v. Planning Board of Westborough*, 7 Mass. App. Ct. 805, 390 N.E.2d 1128 (1979) (planning board could disapprove plan that showed only one sidewalk with a 6 inch gravel base, while the board's regulations required a sidewalk on both sides of the street with a 10 inch gravel base; a regulation that requires setting aside of open space in accordance with the municipal master plan is invalid if there is no municipal master plan, as such a regulation does not make clear the standard that will be applied; planning board's regulation that provided for pedestrian ways "normally" called for was sufficiently definite to allow case-by-case review by the board; planning board's requirement concerning distance of residential street to primary street intersection was valid despite lack of master plan, as master plan would have simply provided examples of various types of streets and regulation was therefore sufficiently definite; planning board may not consider access to subdivision and traffic conditions outside subdivision if it does not have a rule or regulation pertaining to this issue).

☞ *Canter v. Planning Board of Westborough*, 4 Mass. App. Ct. 306, 347 N.E.2d 691 (1976) (planning board may not disapprove a plan that does not violate the board's rules and regulations or the requirements of the board of health, but it may disapprove a plan that does not comply with zoning).

☞ *Castle Estates v. Park and Planning Bd. of Medfield*, 344 Mass. 329, 182 N.E.2d 540 (1962) (legislature intended that planning board, under subdivision control law, would ensure compliance with subdivision rules and regulations, which could require compliance with zoning bylaw or ordinance; the subdivision control law in existence in 1962 did not provide a basis for imposing drainage and water supply conditions on a subdivision; planning board's regulations must be comprehensive, reasonably definite, and drafted so that owners may know what is required and the procedures that will be applied).

☞ *Chira v. Planning Bd. of Tisbury*, 3 Mass. App. Ct. 433, 333 N.E.2d 204 (1975) (regulations that required opinions, such as "attractiveness of street layout" and "maximum livability and amenity" are invalid as they do not apprise applicants of the standards required to obtain approval).

☞ *Curtin v. Board of Survey and Planning of Waltham*, 15 Mass. App. Ct. 978 (1983) (planning board may waive its rules and regulations; otherwise, planning board must require compliance with its regulations, including a regulation that requires projection of ways and extension of utilities to adjacent property not yet subdivided).

☞ *Doliner v. Planning Bd. of Millis*, 343 Mass. 1, 175 N.E.2d 919 (1961) (planning board should ensure compliance of subdivision plan with its rules and regulations and with local zoning; planning board's rules and regulations adopted after plan is filed for approval do not apply to plan).

📖 *Ellen M. Gifford Sheltering Home Corp. v. Board of Appeals of Wayland*, 349 Mass. 292, 208 N.E.2d 207 (1965) (condition that not more than one dwelling is permitted on a lot because the way is inadequate does not permit construction of other non-dwellings on the same lot where a dwelling is constructed, such as a sheltering home for cats).

📖 *Francesconi v. Planning Board of Wakefield*, 345 Mass. 390, 187 N.E.2d 807 (1963) (planning board's regulation that permanent dead-end street not exceed 500 feet, unless the planning board believes a greater length is necessitated by topography, was valid, but because board's record was meager the court allowed the board to develop it further).

📖 *Garabedian v. Water and Sewerage Bd. of Medfield*, 359 Mass. 404, 269 N.E.2d 275 (1971) (water and sewage board did not have duty to furnish water to subdivision into mains as shown on the approved subdivision plan, as under the rules and regulations of the planning board, it was up to the planning board and developer to ascertain the requirements of the water and sewage board before the subdivision plan was approved).

📖 *Loring Hills Developers Trust v. Planning Bd. of Salem*, 374 Mass. 343, 372 N.E.2d 775 (1978) (although planning board may not regulate the size, shape, width, frontage or use of lots within a subdivision, the planning board and board of health may inquire into such information).

📖 *Lyman v. Planning Board of Winchester*, 352 Mass. 209, 224 N.E.2d 493 (1967) (planning board's waiver of its regulations requiring projection of ways and municipal improvements to adjoining lots was proper where such projection would not benefit adjoining land that would obtain access from another direction).

📖 *MP Corp. v. Planning Bd. of Leominster*, 27 Mass. App. Ct. 812, 545 N.E.2d 44 (1989) (proposed road in shopping center that had dead-end, but which connected to adjoining lot, complied with planning board's rules and regulations concerning dead-end street easement and connection to adjoining lot).

📖 *Mac-Rich Realty Const. v. Planning Bd. of Southborough*, 4 Mass. App. Ct. 79, 341 N.E.2d 916 (1976) (planning board's regulation that a berm was required was sufficient to inform developer that some type of berm was required, and the planning board could therefore require bituminous concrete berms; planning board's regulations gave adequate notice that a right-of-way greater than 40 feet wide could be required and a paved way greater than 24 feet wide could be required).

📖 *McCarthy v. Board of Appeals of Ashland*, 354 Mass. 660, 241 N.E.2d 840 (1968) (planning board could not limit use of lot to single-family where zoning permitted multi-family use).

📖 *McDavitt v. Planning Bd. of Winchester*, 2 Mass. App. Ct. 806, 308 N.E.2d 786 (1974) (planning board properly disapproved a plan that had dead-end street instead of a way that connected to existing street in the abutting subdivision, as its regulations required that streets be continuous and in alignment with existing streets as far as practicable).

📖 *Miles v. Planning Bd. of Millbury*, 26 Mass. App. Ct. 317, 526 N.E.2d 1313 (1988), *reversed*, 404 Mass. 489, 536 N.E.2d 328 (1989) (discussing standards for subdivision roads in excess of municipality's standards and rejecting 1970 municipal standard as being applicable to a post-1982 subdivision; road construction standards of the commonwealth are not relevant in determining whether planning board's road construction standards are in excess of municipal standards, as town is bound by its own specifications for construction of its municipally-financed roads; construction standards for commercial ways in a municipality is not relevant to standards for a residential subdivision; standards for reconstruction of an existing street are not relevant to construction of a new way in a subdivision; utilities are inextricably linked to ways and planning board's requirements for providing utilities in a subdivision may not exceed municipal standards; planning board could not require underground utilities, concrete sidewalks, and slope granite curbing in a subdivision, as its municipal standards did not impose such requirements).

📖 *Nahigian v. Town of Lexington*, 32 Mass. App. Ct. 517, 591 N.E.2d 1095 (1992) (planning board could disapprove a subdivision plan that does not comply with a clearly stated requirement in the board's regulations, despite the fact that many of the regulations were confusing).

📖 *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

📖 *North Landers Corp. v. Planning Bd. of Falmouth*, 382 Mass. 432, 416 N.E.2d 934 (1981) (planning board's rules and regulations must be comprehensive, reasonably definite, and carefully drafted, so that applicants know in advance what they must comply with in order to obtain subdivision approval; the planning board may adopt a rule to regulate access to the subdivision in order to lessen congestion in adjacent public ways).

📖 *Patelle v. Planning Bd. of Woburn*, 6 Mass. App. Ct. 951, 383 N.E.2d 94, *appeal after remand*, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1985) (planning board must approve a subdivision that complies with the board's rules and regulations and is approved by the board of health).

📖 *Paul Livoli, Inc. v. Planning Bd. of Marlborough*, 347 Mass. 330, 197 N.E.2d 785 (1964) (discussing application of subdivision regulations and zoning in effect when preliminary plan is filed and throughout action on definite plan, so long as definitive plan is filed within 7 months of filing preliminary plan).

📖 *Pieper v. Planning Bd. of Southborough*, 340 Mass. 157, 163 N.E.2d 14 (1969) (town could not delay a subdivision indefinitely while it prepared studies for its town master plan).

📖 *Rattner v. Planning Bd. of W. Tisbury*, 45 Mass. App. Ct. 8, 695 N.E.2d 669 (1998) (planning board may adopt a regulation that requires adequate access within subdivision and in adjacent public ways).

📖 *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40, 196 N.E.2d 209 (1964) (planning board's regulation which required developer to arrange for utilities, including water, for every lot before submitting plan to planning board for approval did not violate provision that prohibits referral of a plan to another board before submission to the planning board).

📖 *Sansoucy v. Planning Bd. of Worcester*, 355 Mass. 647, 246 N.E.2d 811 (1969) (planning board may set forth in its rules and regulations requirements for the installation of underground utilities in subdivision ways by regulated utilities; planning board may waive requirement for underground utilities).

📖 *Selectmen of Ayer v. Planning Bd. of Ayer*, 3 Mass. App. Ct. 545, 336 N.E.2d 388 (1975) (planning board's regulation may limit number of dwellings on a particular lot, but it may not limit use to single-family when multi-family is permitted by zoning).

📖 *SMI Investors v. Planning Bd. of Tisbury*, 18 Mass. App. Ct. 408, 466 N.E.2d 525 (1984) (planning board may consider lot layout, which is generally a zoning matter, when such layout affects matters under the planning board's control such as construction of ways and installation of utilities).

📖 *Sparks v. Planning Bd. of Westborough*, 2 Mass. App. 745, 321 N.E.2d 666 (1974) (plan that showed road and drive that individually did not exceed 600 foot length requirement and did not provide access to more than 12 lots did not violate planning board's rules and regulations even though together the road and drive did exceed the requirements).

📖 *Sullivan v. Planning Bd. of Acton*, 38 Mass. App. Ct. 918, 645 N.E.2d 703 (1995) (planning board may not impose conditions that are beyond the control of the subdivider).

📖 *Vitale v. Planning Bd. of Newburyport*, 10 Mass. App. Ct. 483, 409 N.E.2d 237 (1980) (planning board may adopt a regulation that prevents adverse impact of a subdivision drainage system on the surrounding area outside the subdivision).

📖 *Young v. Planning Bd. of Chilmark*, 402 Mass. 841, 525 N.E.2d 654 (1988) (planning board may not condition its approval on conveyance of land within the subdivision for a public purpose).

CAUTIONARY NOTES

✎ The planning board must hold a duly noticed public hearing before adopting or amending subdivision rules and regulations. Failure to hold the hearing will result in ineffective regulations.

✎ The planning board must immediately after adoption transmit to the applicable registry of deeds and to the land court a certified copy of its rules and regulations and any amendments to the rules and regulations. The planning board's rules and regulations and all amendments to the rules and regulations shall not be in effect until properly filed and recorded.

✓ The planning board is cautioned to ensure that its rules and regulations do not violate any of the prohibitive provisions of section 81Q, in that its rules and regulations SHALL NOT:

- Require referral of the plan to another board or official before submission to the planning board. The planning board's regulations may require the applicant to make arrangements for utilities before submission to the board.*
- Regulate the size, shape, width, frontage, or use of lots within a subdivision, except to require compliance with zoning, and shall not regulate building construction, which is addressed under the building code. The planning board could adopt solar energy system regulations that address building placement to ensure access to sunlight.*
- Adopt a regulation that conflicts with another board's or official's regulations or oversteps the planning board's authority under the subdivision control law by attempting to regulate something outside the board's jurisdiction.*
- Require by regulation that a subdivider dedicate, release, or convey any property right to a governmental entity for public purposes, unless just compensation is provided as required by the constitution.*

SAMPLE DOCUMENTS
PUBLIC HEARING NOTICE

**PUBLIC HEARING NOTICE FOR ADOPTION/AMENDMENT OF SUBDIVISION
RULES AND REGULATIONS
CITY/TOWN PLANNING BOARD**

As required by M.G.L., ch. 41, § 81Q, the planning board of the city/town
of _____ will hold a public hearing on the following day
_____ and date _____ at _____ P.M.
at the city/town hall (or other place) to consider adopting/amending subdivision
control rules and regulations as follows:

(describe the subject matter of the proposal in sufficient detail for
identification; what is being added, repealed, or amended)

A copy of the text may be reviewed at the planning board office at
_____ on weekdays between the hours of 9:00
A.M. to 4:00 P.M.

Any person who is interested or wishes to be heard on the proposed
adoption/amendment of the subdivision rules and regulations should appear on
the date, time, and place designated for the hearing.

Chairman/Clerk of the planning board

SUBDIVISION RULES AND REGULATIONS

Rules and regulations should be tailored to the municipality's needs and the requirements that the city or town imposes on road construction and municipal service installation as required by law.

A typical Table of Contents for Subdivision Rules and Regulations might include the following:

- I. INTRODUCTION – This section could include the date on which the city or town accepted subdivision control and the dates of amendments.
- II. PURPOSE – This provision could be taken directly from section 81M of the subdivision control law. Because the subdivision control law is an enabling statute and not a home rule statute (as is zoning), strict adherence to what is and is not permitted by section 81Q is required.

SAMPLE

The purpose of these subdivision rules and regulations is to protect the safety, convenience, and welfare of the inhabitants of the city/town of _____ by:

- *regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways through:*
 - *providing adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel;*
 - *lessening congestion in such ways and in the adjacent public ways;*
 - *coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions;*
 - *reducing danger to life and limb in the operation of motor vehicles;*
 - *securing safety in the case of fire, flood, panic and other emergencies; and*
 - *providing for underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision;*
- *ensuring sanitary conditions in subdivisions through securing adequate provision for water, sewerage, and drainage;*
- *ensuring compliance with the applicable zoning ordinances or by-laws;*
- *ensuring parks and open areas, but only after payment of just compensation; and*
- *encouraging the use of solar energy by protecting the access to direct sunlight of solar energy systems.*

III. DEFINITIONS -- The definitions can be taken from section 81L of the subdivision control law with additional definitions added as necessary.

IV. APPROVAL NOT REQUIRED PLANS

- a. Qualified Ways
- b. Adequate Frontage
- c. Submission and Process for Determination by Planning Board
Application -- Appendix -- FORM A (Sample under section 81P)

V. PRELIMINARY PLANS

- a. Required Filing for Non-Residential Subdivision
- b. The Plan -- The planning board should adopt the language similar to the definition for preliminary plan under section 81L and provide modifications as necessary

SAMPLE

A preliminary plan shall be drawn on tracing paper and shall provide the following information:

(a) the subdivision name, boundaries, north point, date, scale (minimum 1" = 100'), legend and title "Preliminary Plan";

(b) the names of the record owner and the applicant and the name of the designer, engineer or surveyor;

(c) the names of all abutters, as determined from the most recent local tax list;

(d) the existing and proposed lines of streets, ways, sidewalks, easements and any public areas within the subdivision including basic engineering information and right-of-way and pavement widths that comply with the design requirements for subdivisions as set forth in these regulations;

(e) the proposed system of drainage, including adjacent existing natural waterways and including 100 year storm calculations;

(f) the approximate boundary lines of proposed lots, with approximate areas and dimensions;

(g) the names, approximate location and widths of adjacent streets;

(h) and the topography at a minimum 100 foot contour interval.

The applicant shall file a copy of the preliminary plan with the board of health for review and shall submit _____ copies of the plan with the planning board for distribution to other boards and officers for reviews.

- c. Process for Review by Planning Board and Board of Health
Application – Appendix – FORM B (sample under section 81S)

VI. DEFINITIVE SUBDIVISION PLAN

- a. The Plan
 - 1. size
 - 2. form
 - 3. contents
 - 4. style
 - 5. number of copies
- b. Compliance with Zoning
- c. Submission and Process for Review by Planning Board, Board of Health, and other Boards and Officers
Application – Appendix – FORM C (sample under section 81U)
- d. Public Hearing – See sample public hearing notice under section 81U
- e. Waivers – See sample waiver language under section 81R
- f. Security for Performance of Construction of Ways and Installation of Municipal Services – See sample security documents under section 81U
- g. Recording Plan and Related Documents

VII. DESIGN STANDARDS – These standards may not be greater than those required by the municipality for roads in similarly zoned districts

- a. Streets
 - 1. Location and Alignment
 - 2. Coordination with Surrounding Ways
 - 3. Width
 - 4. Grade
 - 5. Dead-end Streets and Turnarounds (Easements)
 - 6. Curbs
- b. Sidewalks
 - 1. Location and Alignment
 - 2. Number
 - 3. Width
 - 4. Grade
- c. Municipal Services
 - 1. Drainage
 - 2. Water Supply (if public)
 - 3. Sewerage (if public)
- d. Miscellaneous
 - 1. Underground Utilities
 - 2. Fire Hydrants
 - 3. Fire and Police Alarm Systems
 - 4. Street Lights
 - 5. Sediment and Erosion Control

6. Vegetation and Protection of Natural Features
7. Solar Energy Protection
8. Open Space
9. No More Than One Dwelling Per Lot

VIII. CONSTRUCTION STANDARDS

1. Streets
2. Curbs
3. Sidewalks
4. Drainage
5. Water Supply (if public)
6. Sewerage (if public)
7. Underground Utilities
8. Fire Hydrants
9. Fire and Police Alarm Systems
10. Street Lights
11. Sediment and Erosion Control
12. Vegetation and Protection of Natural Features

IX. MONITORING OF CONSTRUCTION

1. Streets
2. Curbs
3. Sidewalks
4. Drainage
5. Water Supply (if public)
6. Sewerage (if public)
7. Underground Utilities
8. Fire Hydrants
9. Fire and Police Alarm Systems
10. Street Lights
11. Sediment and Erosion Control
12. Vegetation and Protection of Natural Features

X. COMPLETION OF WORK AND RELEASE -- See sample release document under section 81U

XI. AMENDMENT, MODIFICATION, OR RESCISSION OF APPROVAL OR CHANGE IN PLAN -- See sample language under section 81W

LINKS

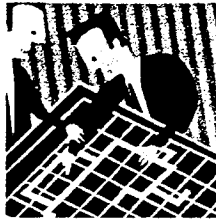
- 🔑 <http://www.umass.edu/masscptc/> (Citizen Planner Training web site – this site has links to other planning sites and sample language)
- 🔑 <http://www.massapa.org/> (Mass. American Planning Association resources with links to other sites)
- 🔑 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)
- 🔑 <http://www.epa.gov/owow/nps/ordinance/> (environmental protection agency that has some sample ordinances)
- 🔑 Links to Regional Planning Agencies with Web Sites (some of these agencies have sample language for regulations):
 - Berkshire Regional Planning Commission
<http://www.berkshireplanning.org/>
 - Cape Cod Commission
<http://www.cape.com/mcccom/>
 - Central Massachusetts Regional Planning Commission
<http://www.cmrpc.org>
 - Franklin Regional Council of Governments
<http://www.frcog.org>
 - Massachusetts Area Planning Council
<http://www.mapc.org/>
 - Merrimack Valley Planning Commission
<http://www.mvpc.org>
 - Montachusett Regional Planning Commission
<http://www.mrpc.org/>
 - Old Colony Planning Council
<http://www.ocpcrpa.org/>
 - Pioneer Valley Planning Commission
<http://www.pvpc.org>
 - Southeastern Regional Planning & Economic Development District
<http://www.srpedd.org/>
- 🔑 <http://www.sociallaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)

REFERENCES

- 📁 [Subdivision Control Guidebook](#), Section 81P
- 📁 [Subdivision Control Guidebook](#), Section 81R
- 📁 [Subdivision Control Guidebook](#), Section 81S
- 📁 [Subdivision Control Guidebook](#), Section 81U

SECTION 81R.

WAIVER OF PLANNING BOARD'S RULES AND REGULATIONS



THE LAW

A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified and in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be a part of the plan.

ANNOTATIONS

Waiver of rules and regulations must be in the public interest and not inconsistent with intent of subdivision control

Planning Board may limit the lots on which buildings may be erected and number of buildings erected on a lot

All conditions must be set forth on the plan or in a separate instrument

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1955, c. 411, § 1.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ Planning board may waive strict compliance with its rules and regulations and with the frontage or access requirements specified in the subdivision control law.

➤ In order to waive its regulations or frontage or access requirements, the planning board must make two findings:

- 1) That the waiver is in the public interest and
- 2) That the waiver is not inconsistent with the intent and purpose of the subdivision control law.

➤ Planning Board may approve a plan that does not show adequate ways by limiting:

- 1) the lots upon which buildings may be erected;
- 2) the number of buildings that may be erected on particular lots; and
- 3) the length of time that particular buildings may be maintained on such lots.

➤ The planning board shall set forth all conditions of waiver granted and all conditions limiting lots and building erection, even though access is inadequate, in one of two ways:

- 1) by endorsing the conditions on the plan to which they relate or
- 2) by setting forth the conditions in a separate instrument attached to and referenced on the plan to which they relate.

➤ All conditions of approval must be set forth on the plan or in a separate instrument referred to on the plan to be effective.

RELATED CASE LAW

📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (planning board may waive frontage requirements as set forth in the zoning bylaw or ordinance or may waive the 20 foot requirement of section 81L of the subdivision control law; however, such waiver does not eliminate the need to comply with zoning and possibly obtain a frontage variance).

📖 *Batchelder v. Planning Bd. of Yarmouth*, 31 Mass. App. Ct. 104, 575 N.E.2d 366, review denied, 411 Mass. 1101, 579 N.E.2d 1360 (1991) (it was not in the public interest and was inconsistent with the subdivision control law for the planning board to waive the requirement that the owner participate as applicant in the proceedings).

📖 *Canter v. Planning Board of Westborough*, 7 Mass. App. Ct. 805, 390 N.E.2d 1128 (1979) (planning board could properly deny waiver of sidewalk requirement and then deny approval of subdivision plan for non-compliance with the board's regulations).

📖 *Caruso v. Planning Board of Revere*, 354 Mass. 569, 238 N.E.2d 872 (1968) (planning board properly waived regulation that proposed ways must be aligned with existing ways where it was not practical to make such alignment).

📖 *Curtin v. Board of Survey and Planning of Waltham*, 15 Mass. App. Ct. 978, 447 N.E.2d 15 (1983) (board must make findings before granting a waiver).

📖 *Ellen M. Gifford Sheltering Home Corp. v. Board of Appeals of Wayland*, 349 Mass. 292, 208 N.E.2d 207 (1965) (condition that not more than one dwelling is permitted on a lot because the way is inadequate does not permit construction of other non-dwellings on the lot).

📖 *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (all conditions of approval must be endorsed on the plan or set forth in a separate instrument referred to on the plan in order to be binding).

📖 *Lyman v. Planning Board of Winchester*, 352 Mass. 209, 224 N.E.2d 493 (1967) (planning board's waiver of its regulations was proper where under unusual circumstances it was unreasonable to apply them).

📖 *M. DeMatteo Const. Co. v. Board of Appeals of Hingham*, 3 Mass. App. Ct. 446, 334 N.E.2d 51 (1975) (condition may not be enforced unless it is endorsed on the plan or set forth in a separate instrument referred to on the plan).

📖 *Mac-Rich Realty Const., Inc. v. Planning Bd. of Southborough*, 4 Mass. App. 79, 341 N.E.2d 916 (1976) (planning board did not abuse its discretion in denying waiver to extend dead-end street beyond 500 feet).

📖 *McLaughlin v. Board of Selectmen of Amherst*, 38 Mass. App. 162, 646 N.E.2d 418, *review granted*, 420 Mass. 1102, 648 N.E.2d 1285, *affirmed*, 422 Mass. 359, 664 N.E.2d 786 (1995) (value of property in eminent domain taking did not increase as owner failed to prove reasonable probability that waivers for subdivision approval would have been granted).

📖 *Meyer v. Planning Bd. of Westport*, 29 Mass. App. Ct. 167, 558 N.E.2d 994, *review denied*, 408 Mass. 1104, 562 N.E.2d 90 (1990) (although it is a good practice, the planning board is not required to list in writing the regulations it is waiving, so long as the record contains evidence of conscious deviation, such as approval of overlong dead-end street that violates regulations).

📖 *Silva v. Planning Bd. of Somerset*, 34 Mass. App. Ct. 339, 611 N.E.2d 257 (1993) (planning board may not waive condition of a variance made by the zoning board of appeals).

📖 *Sparks v. Planning Bd. of Westborough*, 2 Mass. App. 745, 321 N.E.2d 666 (1974) (plan that showed road and drive that individually did not exceed 600 foot length requirement and did not provide access to more than 12 lots did not violate planning board rules and regulations even though together the road and drive did exceed the requirements).

📖 *Wheatley v. Planning Bd. of Hingham*, 7 Mass. App. Ct. 435, 388 N.E.2d 315, *appeal after remand*, 10 Mass. App. Ct. 884, 409 N.E.2d 247 (1979) (planning board could properly waive the requirement for plan of proposed topography of the subdivision, as such plan was not intended to bind the developer to grade the subdivision as shown on the plan and thus it was in the public interest and not inconsistent with the subdivision control law, but planning board's failure to expressly require water pipes, fire hydrants, and telephone lines was not a waiver of these requirements, as such waiver would be inconsistent with the subdivision control law).

☐ *Windsor v. Planning Bd. of Wayland*, 26 Mass. App. Ct. 650, 531 N.E.2d 272 (1988) (planning board does not have to make written findings to support waivers).

CAUTIONARY NOTES

✓ The planning board may not waive zoning requirements or conditions made by other boards.

✓ The planning board must make findings before waiving its regulations. However, although it is good practice to do so, such findings and a listing of the subdivision regulations waived are not required to be in writing, if it is clear from the planning board's record what was being waived.

✓ All conditions of approval and any waivers of subdivision rules and regulations must be set forth on the plan to which the conditions or waivers apply or must be set forth in a separate instrument referenced on the plan or they will not apply.

✓ If the planning board is waiving frontage requirements under the subdivision control law or under its regulations, this does not mean that zoning has been complied with. Before building on a lot, an applicant may need to seek a frontage variance under zoning. Moreover, the fact that a frontage variance has been granted under zoning does not ensure a waiver under this section of the subdivision control law, as the findings are not the same.

SAMPLE VOTES

☐ **VOTE TO WAIVE RULES AND REGULATIONS:**

The planning board finds that it is in the public interest and not inconsistent with the intent and purpose of the subdivision control law to waive strict compliance with (section (s) waived of its rules and regulations) to permit (explanation of waiver, e.g., one sidewalk instead of two), on the basis that (findings for waiver e.g., there is only one sidewalk with which the subdivision sidewalk will connect).

☐ **VOTE TO WAIVE FRONTAGE OR ACCESS REQUIREMENTS**

The planning board finds that it is in the public interest and not inconsistent with the intent and purpose of the subdivision control law to waive the following frontage and access requirements (specify frontage and access requirements, usually frontage required under zoning or 20 feet if no zoning) for lot(s) (identify the lot or lots to which the waiver applies) on the basis that (findings for waiver e.g., there is adequate access and frontage to serve the lot in question in a safe manner). This waiver does not waive any zoning requirements concerning frontage or access, but is strictly a waiver of requirements under the subdivision control law.

☐ VOTE TO LIMIT BUILDING ON INADEQUATE WAYS

The planning board finds that (name of way or ways) is not adequate to serve all the lot(s) proposed in (name of subdivision), and thus it conditions its approval on the following (select the conditions needed):

- 1) Lot(s) (name lots) may not be built upon until the way is deemed adequate by the planning board.
- 2) No more than (#) (dwellings, other buildings, etc.) may be erected on lot(s) (name lots) until the way is deemed adequate by the planning board.
- 3) The following buildings (name buildings) may not be maintained on lot(s) (name lots) for longer than (provide a time limit) without further consent by the planning board to the access provided.

NOTE: Any vote must be endorsed on the plan to which it applies or be set forth in a separate instrument that is referenced on the plan in order to make it enforceable.

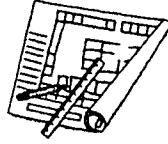
LINKS

🔗 <http://www.landlaw.com> (lower court cases addressing waivers and other resources available from landlaw)

🔗 <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81S.

PRELIMINARY PLAN



THE LAW

In the case of a subdivision showing lots in a residential zone, any person, before submitting his definitive plan for approval, may submit to the planning board and to the board of health, a preliminary plan, and shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such plan.

In the case of a nonresidential subdivision, any person before submitting his definitive plan for approval shall submit to the planning board and the board of health, a preliminary plan, and shall give notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such plan.

In either case, if the notice is given by delivery, the city or town clerk shall, if requested, give a written receipt therefor. Within forty-five days after submission of a preliminary plan, each board shall notify the applicant and the clerk of the city or town, by certified mail, either that the plan has been approved, or that the plan has been approved with modifications suggested by the board or agreed upon by the person submitting the plan, or that the plan has been disapproved and in the case of disapproval, the board shall state in detail its reasons therefor. The planning board shall notify the city or town clerk of its approval or disapproval, as the case may be. Except as is otherwise provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a preliminary plan, and no register or* deeds shall record a preliminary plan.

* as adopted, should probably be "of"

ANNOTATIONS

Optional for applicant of residential subdivision to submit preliminary plan to planning board and board of health before submitting definitive plan

Mandatory for applicant of non-residential subdivision to submit preliminary plan to planning board and board of health before submitting definitive plan

Written notice of plan submission to be given to city or town clerk by delivery or by prepaid registered mail.

Planning board to notify applicant and clerk by certified mail of its decision on the preliminary plan

If plan is disapproved, reasons for disapproval must be stated in detail

Preliminary plan may not be recorded by register of deeds

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1957, c. 138, § 2; St. 1958, c. 206, § 2; St. 1959, c. 189; St. 1963, c. 206; St. 1964, c. 105, § 1; St. 1986, c. 699, § 1.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- An applicant for a residential subdivision **MAY** submit a preliminary subdivision plan to the planning board and board of health for consideration before submitting a definitive subdivision plan for approval.
- An applicant for a non-residential subdivision **SHALL** submit a preliminary subdivision plan to the planning board and board of health for consideration before submitting a definitive subdivision plan for approval.
- An applicant must provide to the city or town clerk a written notice by delivery or registered mail, postage prepaid, that a preliminary plan has been submitted to the planning board and board of health.
- If requested, the city or town clerk shall provide the applicant with a written receipt of notice of submission of a preliminary plan.
- A preliminary plan is submitted to the planning board by:
 - 1) Delivering the plan to the planning board at a meeting of the board (in many cities and towns it has become an acceptable practice, based on the board's rules and regulations, for plans to be delivered to the planning board at the planning board office, as long as the city or town clerk is given notice of filing of such plan); or
 - 2) Mailing the plan by registered mail, postage prepaid, to the planning board in care of the city or town clerk. If the plan is mailed, the date of receipt is considered the date of submission.
- A preliminary plan, followed within seven months by a definitive plan, is governed by the zoning in effect and the subdivision rules and regulations in effect when the plan was submitted.
- The planning board should have rules and regulations that address the required contents of a preliminary plan.
- The planning board is required to act on a preliminary plan within 45 days after submission, without public hearing, but there is no penalty, such as constructive grant of approval of the preliminary plan, for failure of the planning board to take timely action.
- In acting on a preliminary plan, the planning board may take the following actions:
 - 1) Approve the plan;
 - 2) Approve the plan with modifications; or
 - 3) Disapprove the plan and provide detailed reasons for the disapproval so that the applicant can make the definitive plan conform to the planning board's requirements in order to obtain approval.
- The planning board must notify the city and town clerk and the applicant by certified mail of its decision within 45 days after the plan was submitted.

- A decision on a preliminary plan MAY NOT be appealed under section 81BB of the subdivision control law. The applicant must revise any disapproved plan to conform to the reasons for disapproval.
- The register of deeds MAY NOT record a preliminary plan.

RELATED CASE LAW

- 📖 *Chira v. Planning Bd. of Tisbury*, 3 Mass. App. Ct. 433, 333 N.E.2d 204 (1975) (definitive subdivision plan was subject to zoning in effect at the time of submission of the preliminary plan).
- 📖 *Francesconi v. Planning Board of Wakefield*, 345 Mass. 390, 187 N.E.2d 807 (1963) (because of meager planning board record, court reversed subdivision disapproval to permit planning board to develop additional facts; dead-end street approved in a subdivision remains dead-end unless there is connection to a way in a future abutting subdivision).
- 📖 *Independence Park v. Board of Health of Barnstable*, 403 Mass. 477, 530 N.E.2d 1235 (1988) (planning board cannot approve subdivision plan that does not comply with board of health recommendation).
- 📖 *Mac-Rich Realty Const., Inc. v. Planning Bd. of Southborough*, 4 Mass. App. 79, 341 N.E.2d 916 (1976) (in reviewing a subdivision plan, planning board should look to factors set forth under section 81M of the subdivision control law and may require some sidewalks in a subdivision without abusing its discretion; developer has no right to appeal the decision on a preliminary plan).
- 📖 *McCaffrey v. Board of Appeals of Ipswich*, 4 Mass. App. Ct. 109, 343 N.E.2d 154 (1976) (preliminary and definitive subdivision plans must be submitted to the board of health for recommendation, but a plan that does not require subdivision approval does not need to be submitted to the board of health).
- 📖 *Paul Livoli, Inc. v. Planning Bd. of Marlborough*, 347 Mass. 330, 197 N.E.2d 785 (1964) (definitive subdivision plan is subject to zoning in effect at time of filing preliminary plan, if the definitive plan is filed in a timely manner after submission of the preliminary plan; planning board may not refuse to accept definitive plan because it denied preliminary plan and failure to act on definitive plan in a timely manner leads to constructive approval; developer has no right to appeal the decision on a preliminary plan).
- 📖 *Roland Lavoie Construction Co. v. Building Inspector of Ludlow*, 346 Mass. 274, 191 N.E.2d 697 (1963) (filing preliminary subdivision plan with planning board, despite failure to file with board of health, makes lots shown on such plan subject to zoning at time of filing in accordance with statutory zoning freeze).

CAUTIONARY NOTES

- ✓ There is no penalty for failure of the planning board to take timely action on a preliminary plan.
- ✓ The planning board must provide in detail its reasons for disapproving a preliminary plan so that the applicant knows what needs to be revised in the plan in order to obtain subsequent approval of the definitive plan.
- ✓ The planning board is to notify the city/town clerk and the applicant of its decision by certified mail. In practice, the applicant should be notified by certified mail, but most boards notify the clerk by delivery of the decision to the clerk's office.
- ✓ Even if the applicant fails to file the preliminary plan with the board of health, the zoning that applies to the plan is still the zoning in effect when the preliminary plan was filed, as long as the definitive subdivision plan is filed within seven months after filing the preliminary plan.

SAMPLE APPLICATION FOR PRELIMINARY SUBDIVISION PLAN:

FORM B

APPLICATION FOR APPROVAL OF PRELIMINARY SUBDIVISION PLAN
(Optional for residential subdivisions; mandatory for non-residential subdivisions)

APPLICANT—

Applicant's Name: _____

Applicant's address: _____

Applicant's phone #: _____

THE PLAN —

Title of plan: _____

Drawn by: _____

P.E.'s or surveyor's registration #: _____

Date of plan: _____

OWNER —

If the applicant and owner are not the same person, the following must be completed:

Owner's name: _____

Owner's address: _____

Owner's phone #: _____

The owner hereby appoints _____ (name of person appointed) to act as agent for purposes of submitting and processing this application for a preliminary subdivision plan.

Date: _____

Owner's signature _____

TITLE TO THE PROPERTY —

The owner's title to the land that is the subject matter of this application is

derived from deed/will/other of _____,

dated _____, and recorded in _____

Registry of Deeds, Volume _____, Page _____

Or as Land Court Certificate of Title No. _____

registered in _____ District, Volume _____, Page _____

ASSESSOR'S RECORDS –

The land shown on the plan is shown on Map _____, Lot _____ of the
Assessor's records and has an address of _____.

ZONING REQUIREMENTS –

The land is zoned _____.

The frontage required under zoning is _____ feet.

The lot area required under zoning is _____ square feet.

PLAN PROPOSAL –

This is a _____ residential _____ non-residential subdivision. (check one)

The plan shows land located at _____.

The plan shows the division of _____ acres of land into _____ lots,
intended for building thereon, numbered _____, and
_____ parcels not intended for building thereon.

The plan shows the following existing ways (public ways, ways previously approved in a
subdivision, way existing at the time the subdivision control law was adopted that the
planning board has deemed adequate for access) that are being proposed as lot
frontage:

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

The plan shows the following proposed ways that are being proposed as lot frontage:

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

(add additional sheet(s) if necessary)

I hereby certify that a copy of this plan has been filed with the board of health.

Signature of applicant

Received by board of health:

Date: _____

Signature of board of health representative

Received by city/town clerk

Date: _____

Filing fee paid: \$ _____

Signature of city/town clerk

CERTIFICATE OF DECISION ON PRELIMINARY PLAN

Date: _____

Applicant

Applicant's address

SENT BY CERTIFIED MAIL:

City/Town Clerk

City/Town of _____

Address, Massachusetts

RE: Title of plan:

Date of plan:

Drawn by:

With respect to the above-captioned preliminary subdivision plan submitted to the planning board of the city/town of _____ by _____ on _____, the planning board hereby certifies that at an open meeting duly noticed and held on _____ it voted as follows:


_____ To approve the preliminary plan


_____ To approve the preliminary plan with the following modifications:

_____ To disapprove the preliminary plan based on the following detailed reasons:

Planning Board


LINKS

 <http://www.sociallaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)

REFERENCES

 Subdivision Control Guidebook, Section 81U

 Zoning Guidebook (Zoning freezes under section 6 of chapter 40A)

SECTION 81T.

NOTICE OF SUBMISSION OF PLAN



THE LAW

Every person submitting a definitive plan of land to the planning board of a city or town for its approval or for a determination that approval is not required shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the city or town clerk as true, unless the contrary is made to appear. Before approval, modification and approval, or disapproval of the definitive plan is given, a public hearing shall be held by the planning board, notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant by advertisement in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan as appearing on the most recent tax list.

ANNOTATIONS

Any person submitting a subdivision plan or a plan for which approval is not required to the planning board shall file a written notice of such submission with the city or town clerk by delivery or by registered mail

The notice shall sufficiently describe the land for identification; the date submitted; and the name and address of the owner

Before acting on a definitive subdivision plan, the planning board shall hold a public hearing

The public hearing notice shall indicate the time, place, and subject matter and shall be published in a newspaper in each of two consecutive weeks, with first notice no less than 14 days before the day of the hearing or if no newspaper posted in city or town hall at least 14 days before the day of the hearing and by mailing notice to the applicant and abutters

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1957, c. 122; St. 1960, c. 266, § 1; St. 1962, c. 207, § 1; St. 1963, c. 363, § 2.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- Any person who submits one of the following plans to the planning board must file a written notice of such submission with the city or town clerk, who will keep track of the time in order to determine if there is a constructive approval:
 - 1) a definitive subdivision plan; and
 - 2) a plan submitted for a determination that subdivision approval is not required.
- The written notice of submission given to the city or town clerk shall include the following information, which the clerk shall take as true unless the contrary is made to appear:
 - 1) the date of plan submission to the planning board;
 - 2) a description of the land to which the plan relates so that the land can be identified; and
 - 3) the name and address of the owner of the land.
- The written notice of submission shall be given to the city or town clerk in one of two ways:
 - 1) by delivery (if requested, the clerk shall provide a written receipt of delivery to the person who delivers the notice); or
 - 2) by registered or certified mail, postage prepaid.
- The planning board shall hold a public hearing before it may approve, approve with modifications, or disapprove a definitive subdivision plan.
- When the planning board holds a public hearing on a definitive plan it must give a notice of the hearing that specifies the following:
 - 1) time;
 - 2) date;
 - 3) place; and
 - 4) subject matter of the hearing, sufficient for identification. The planning board must provide sufficient detail so a person is able to decide whether to attend the hearing.
- The planning board must advertise the public hearing concerning the definitive plan, at the expense of the applicant, as follows:
 - 1) by publishing the notice in a newspaper of general circulation in the municipality (this does not include a weekly flyer) once in each of two consecutive weeks, such that the first notice of the hearing is published at least 14 days before the day of the hearing (the day of the hearing may not be counted in the 14 days, e.g., a Wednesday hearing requires the first publication to take place two Wednesdays before the Wednesday hearing); or

- 2) if there is no newspaper of general circulation in the municipality, by posting a notice of the public hearing in a conspicuous place in the city or town hall at least 14 days before the day of the hearing; and
- 3) by mailing a copy of the notice to the applicant and all owners of land that abut the land shown on the plan, as such owner's names and addresses appear on the most recent tax list.

RELATED CASE LAW

📖 *City of Medford v. DeFilippo*, 347 Mass. 327, 197 N.E.2d 794 (1964) (evidence supported finding that subdivision way was to be open and not closed to traffic).

📖 *Devine v. Town Clerk of Plymouth*, 3 Mass. App. Ct. 747, 327 N.E.2d 898 (1975) (discussing court's right to disregard conflicting evidence).

📖 *Doliner v. Planning Bd. of Millis*, 343 Mass. 1, 175 N.E.2d 919 (1961) (letter from planning board disapproving application was final action of planning board; case was remanded to planning board to hold public hearing before it could deny approval).

📖 *Korkuch v. Planning Bd. of Eastham*, 26 Mass. App. Ct. 307, 526 N.E.2d 1301 (1988) (applicant was not entitled to endorsement that approval was not required for failure to give notice to municipal clerk that plan had been filed with the planning board).

📖 *Marino v. Board of Appeals of Beverly*, 2 Mass. App. Ct. 859, 311 N.E.2d 580 (1974) (neither building official nor zoning board of appeals may give relief from subdivision plan condition prohibiting construction and grant building permit, even if condition was invalidly imposed, as only relief available is to appeal decision under Section 81BB of the subdivision control law).

📖 *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

📖 *Patelle v. Planning Bd. of Woburn*, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1985) (discussing adequacy of hearing notice, which must indicate purpose of hearing and describe land sufficiently for purposes of identification).

📖 *Pieper v. Planning Bd. of Southborough*, 340 Mass. 157, 163 N.E.2d 14 (1969) (planning board must hold public hearing before taking any action on a subdivision plan under the subdivision control law, including disapproval of the plan).

📖 *Strand v. Planning Bd. of Sudbury*, 5 Mass. App. Ct. 18, 358 N.E.2d 842 (1977), *appeal after remand*, 7 Mass. App. Ct. 935, 390 N.E.2d 1141 (1977) (modification of subdivision approval requires notice and public hearing, even if modification is on remand from court; court's consideration of plan on appeal is to determine if it conforms to planning board's rules and regulations).

☐ *Vitale v. Planning Bd. of Newburyport*, 10 Mass. App. Ct. 483, 409 N.E.2d 237 (1980) (developer was entitled to a hearing before the board of health to rebut data relied on by board of health in recommending denial of approval).

☐ *Young v. Planning Bd. of Chilmark*, 402 Mass. 841, 525 N.E.2d 654 (1988) (planning board's failure to give notice and hold public hearing made rescission of approval ineffective).

CAUTIONARY NOTES

✓ Without the written notice to the city or town clerk that a plan has been filed, the time for acting upon such plan does not start and the applicant will not be able to claim constructive grant of approval or determination that approval is not required.

✓ Planning board's failure to hold a public hearing will result in an ineffective decision. The planning board must hold a public hearing before taking any of the following actions:

- approval of a definitive subdivision plan;
- approval with modifications of a definitive subdivision plan;
- disapproval of a definitive subdivision plan;
- amendment, modification, or rescission of approval of a definitive subdivision plan as provided in section 81W;
- requiring a change in an approved plan as provided in section 81W; or
- any action ordered by the court on remand.

✓ The applicant is required to pay for the costs of the public hearing. The planning board should make this a requirement of its rules and regulations.

✓ The planning board must provide sufficient information concerning the subject matter of the hearing so all interested parties are able to understand what is at issue and make a determination whether to attend and participate in the hearing.

✓ When giving notice, the planning board should obtain the names of the abutters so that the information is correct and complete.

✓ The newspaper in which the planning board advertises does not need to be published as the city or town newspaper, but must simply be a newspaper that is generally sold in or delivered to persons within the city or town.

✓ The planning board must be sure to give at least a 14 day notice of the hearing. The day of the hearing may not be counted in the 14 days, as the day of the hearing must be the day after the end of the 14 days.

✓ Although not expressly required by the subdivision control law, it is a good practice to mail the notice of public hearing to the applicant and the abutters by certified mail at least 14 days before the day of the hearing.

SAMPLE DOCUMENTS
NOTICE OF PLAN SUBMISSION

NOTICE OF PLAN SUBMISSION

Date: _____

To:
City/Town Clerk
City/Town of _____
Address, Massachusetts

From:
Owner
Owner's address

Re:
Title of plan:
Date of plan:
Drawn by:

The above-named owner of land located at _____,
described as _____,
and shown on the above-captioned approval not required/definitive subdivision
plan hereby gives notice that such plan was submitted to the planning board on
the following date: _____.

Notice given by:

_____ delivery
_____ certified mail #
_____ registered mail #

Signature of owner

Received by city/town clerk

Date: _____

Filing fee paid: \$ _____

Signature of city/town clerk

PUBLIC HEARING NOTICE

**PUBLIC HEARING NOTICE FOR CONSIDERATION OF DEFINITIVE
SUBDIVISION PLAN
CITY/TOWN PLANNING BOARD**

As required by M.G.L., ch. 41, §§ 81T and 81U, the planning board of the
city/town of _____ will hold a public hearing on the following day
_____ and date _____ at _____ P.M.
at the city/town hall (or other place) to consider the application of
_____ with an address of _____ for
approval of a definitive subdivision plan entitled: _____,
located or described as: _____,
showing a/an open residence/dense residence/business/industrial subdivision of
land owned by: _____, of _____,
plan prepared by: _____,
dated: _____, and showing _____ proposed lots.

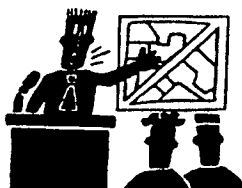
A copy of the plan and application may be reviewed at the planning board
office located at _____ on weekdays between the
hours of 9:00 A.M. and 4:00 P.M. (or such other time as desired).

Any person who is interested or wishes to be heard on the proposed
definitive subdivision plan should appear on the date, time, and place designated
for the hearing.

Chairman/Clerk of the planning board

SECTION 81U.

DEFINITIVE SUBDIVISION PLAN DECISIONS



THE LAW

When a definitive plan of a subdivision is submitted to the planning board, as provided in section eighty-one O, a copy thereof shall also be filed with the board of health or board or officer having like powers and duties. Such health board or officer shall, within forty-five days after the plan is so filed, report to the planning board in writing, approval or disapproval of said plan, and, in the event of disapproval, shall make specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and where possible, shall make recommendations for the adjustments thereof. Failure of such board or officer to report shall be deemed approval by such board or officer. Such health board or officer shall send a copy of such report, if any, to the person who submitted said plan. When the definitive plan shows that no public or community sewer is to be installed to serve any lot thereon, approval by a board of health or officer shall not be treated as, nor deemed to be approval of a permit for the construction and use on any lot of an individual sewage system; and approval of a definitive plan for a subdivision by a board of health or officer shall not be treated as, nor deemed to be, an application for a permit to construct or use an individual sewage system on any lot contained therein.

After the hearing required by section eighty-one T and after the report of said health board or officer or

ANNOTATIONS

When a definitive plan is filed with the planning board, a copy shall be filed with the board of health

The board of health shall have 45 days to report to the planning board its approval or disapproval of the plan and specify the areas that cannot be built upon with reasons therefor and recommendations

Failure of the board of health to report in 45 days shall be deemed approval

The board of health shall send a copy of the report to the applicant

Approval by the board of health shall not be deemed approval of individual sewage systems or an application for such systems

After the public hearing and a lapse of 45 days with or without a board of health report, the planning board

lapse of forty-five days without such report, the planning board shall approve, or, if such plan does not comply with the subdivision control law or the rules and regulations of the planning board or the recommendations of the health board or officer, shall modify and approve or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail wherein the plan does not conform to the rules and regulations of the planning board or the recommendations of the health board or officer and shall revoke its disapproval and approve a plan which, as amended conforms to such rules and regulations or recommendations. The planning board shall file a certificate of its action with the city or town clerk, a copy of which shall be recorded by him in a book kept for the purpose, and shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application.

If the report of the board of health or board or officer having like powers and duties shall so require, the approval by the planning board shall be on condition that no building or structure shall be built or placed upon the areas designated without consent by such board of health or officer. In the event approval by the board of health or board or officer having like powers and duties is by failure to make a report, the planning board shall note on the plan that health approval is by failure to report.

In the case of a nonresidential subdivision where a preliminary plan has been duly submitted and acted upon or where forty-five days has elapsed since submission of the said preliminary plan, and then a definitive plan is submitted, the failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action regarding the definitive plan submitted by an applicant within ninety days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

may approve a plan that complies with its rules and regulations and the recommendations of the board of health

If the plan does not comply with its rules and regulations and the board of health recommendations, the planning board may modify and approve the plan or disapprove the plan and state in detail the reasons for the disapproval

Planning board shall notify city or town clerk of its action and send a notice to the applicant by registered or certified mail

If required by the board of health, the planning board shall adopt as a condition of approval that no building or structure shall be built without board of health consent

Failure of the board of health to report shall be noted on the plan

Failure of the planning board to take final action or file its action with the city or town clerk on a non-residential subdivision within 90 days of plan submission shall be deemed approval

Any extensions of time for final action shall be filed with the city or town clerk

In the case of a subdivision showing lots in a residential zone, where a preliminary plan has been acted upon by the planning board or where at least forty-five days has elapsed since submission of the preliminary plan, an applicant may file a definitive plan. The failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action on the definitive plan within ninety days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

In the case of a subdivision showing lots in a residential zone, where no preliminary plan has been submitted and acted upon or where forty-five days has not elapsed since submission of such preliminary plan, and a definitive plan is submitted, the failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action regarding the definitive plan submitted by an applicant within one hundred thirty-five days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

Before endorsement of its approval of a plan, a planning board shall require that the construction of ways and the installation of municipal services be secured by one, or in part by one and in part by another, of the methods described in the following clauses (1), (2), (3) and (4) which method or combination of methods may be selected and from time to time varied by the applicant:

(1) By a proper bond, sufficient in the opinion of the planning board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the applicant specify the time within which such

Failure of the planning board to take final action or file its action with the city or town clerk on a residential subdivision within 90 days of plan submission, when the plan is preceded by a preliminary plan, shall be deemed approval

Any extensions of time for final action shall be filed with the city or town clerk

Failure of the planning board to take final action or file its action with the city or town clerk on a residential subdivision within 135 days of plan submission, when the plan is not preceded by a preliminary plan, shall be deemed approval

Any extensions of time for final action shall be filed with the city or town clerk

Before endorsing its approval, the planning board shall require security for construction of ways and installation of municipal services, the type of which is to be selected by the applicant

When a bond is selected, it should be sufficient in the opinion of the planning board to secure construction

Planning board may require applicant to specify time for completion of construction

<p>construction shall be completed.</p> <p>(2) By a deposit of money or negotiable securities, sufficient in the opinion of the planning board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the applicant specify the time within which such construction shall be completed.</p> <p>(3) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the planning board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed.</p> <p>(4) By delivery to the planning board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the planning board and otherwise due the applicant, to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various</p>	<p><i>When a deposit or negotiable security is selected, it should be sufficient in the opinion of the planning board to secure construction</i></p> <p><i>Planning board may require applicant to specify time for completion of construction</i></p> <p><i>When a covenant is selected it shall run with the land and no lot may be built upon or conveyed, except by mortgage, until the ways and services are provided to serve the lot</i></p> <p><i>A mortgagee who acquires title to the premises by foreclosure may sell any lot subject to the covenant</i></p> <p><i>Nothing shall prohibit conveyance of the entire or remaining parcel, subject to the covenant</i></p> <p><i>A deed that violates the covenant is voidable by a grantee 3 years from conveyance</i></p> <p><i>When a three-party agreement is selected, the lender shall retain funds sufficient in the opinion of the planning board to secure construction</i></p> <p><i>The agreement shall provide for a schedule of disbursements to be made upon completion of various stages of construction</i></p>
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stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

Any covenant given under the preceding paragraph and any condition required by the health board or officer shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

The penal sum of any such bond held under clause (1) or any deposit held under clause (2) or any amount of funds retained pursuant to an agreement under clause (4) shall bear a direct and reasonable relationship to the expected cost including the effects of inflation, necessary to complete the subject work. Such amount or amounts shall from time to time be reduced so that the amount bonded, deposited or retained continues to reflect the actual expected cost of work remaining to be completed.

Upon the completion of the construction of ways and the installation of municipal services in accordance with the rules and regulations of the planning board, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the city or town clerk and the planning board a written statement that the said construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance with said rules and regulations, such statement to contain the address of the applicant. If the planning board determines that said construction or installation has been completed, it shall release the interest of the town in such bond and return the bond or the deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, which may be recorded. If the board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the clerk of the city or town the details wherein said construction or installation fails to comply with its rules and

Any funds not disbursed shall be available for completion of the subdivision

Covenants and conditions of the board of health shall be inscribed on the plan or set forth in a separate document referred to on the plan

The penal sum of any security shall bear a direct and reasonable relationship to the expected cost to complete construction, including an inflationary factor, and shall from time to time be reduced

The applicant shall send a written request by registered mail to the planning board and city or town clerk requesting release from a security when all required construction is completed

If the planning board determines that construction is complete it shall release the security by an instrument that could be recorded and return all funds to the applicant, or the planning board shall retain the security if it determines that construction is not complete and specify in a written notice to the applicant and city or town clerk what construction is incomplete

regulations and upon failure so to do within forty-five days after the receipt by said clerk of said statement all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

Any such bond may be enforced and any such deposit may be applied by the planning board for the benefit of such city or town, as provided in section eighty-one Y, upon failure of the performance for which any such bond or deposit was given to the extent of the reasonable cost to such city or town of completing such construction and installation.

In any town which accepts the provisions of this paragraph, the proceeds of any such bond or deposit shall be made available to the town for expenditure to meet the cost and expenses of the municipality in completing the work as specified in the approved plan. If such proceeds do not exceed one hundred thousand dollars, the expenditure may be made without specific appropriation under section fifty-three of chapter forty-four; provided, however, that such expenditure is approved by the board of selectmen. The provisions of this paragraph shall not apply to cities or to towns having town councils.

Before approval of a plan by a planning board, said board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so determined said board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

If the planning board fails to act upon such request within 45 days after receipt by the city or town clerk of the request, then all securities shall be terminated and covenants shall become void and the city or town clerk shall return all funds to the applicant and issue a certificate which may be recorded

Any security may be applied by the planning board for the benefit of the city or town to pay the reasonable cost to complete construction

If a town accepts the provisions of this paragraph, the proceeds of a bond or deposit shall be made available for completing construction

If the proceeds exceed \$100,000 the expenditure may be made without appropriation under M.G.L., ch. 54, § 53, as long as approved by the board of selectmen

Before approving a plan, the planning board may require that the plan show reasonable parks, playgrounds, or open space and that no building be erected on such land for 3 years without planning board approval

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; St. 1955, c. 324; St. 1958, c. 377, § 1; St. 1960, c. 153; St. 1960, c. 266, § 2; St. 1963, c. 299; St. 1963, c. 581; St. 1964, c. 105, § 2; St. 1965, c. 62; St. 1967, c. 567; St. 1972, c. 749, §§ 1, 2; St. 1978, c. 422, §§ 1, 2; St. 1981, c. 421, §§ 1 to 3; St. 1986, c. 699, § 2; St. 1987, c. 236; St. 1988, c. 245; St. 1990, c. 177, § 125.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ When a definitive plan is filed with the planning board, the applicant must also file a copy of the plan with the board of health or the board or officer who carries out board of health powers [hereinafter "board of health"], so that such board can review the plan and make a recommendation to the planning board with respect to the matters under the board of health's jurisdiction. In making its written report and recommendation to the planning board and submitting a copy to the applicant, the board of health may:

- 1) approve the plan, which shall not be deemed approval of individual sewage systems on lots or treated as an application to construct such systems;
- 2) approve the plan with conditions;
- 3) disapprove the plan and make specific findings as to which, if any, areas shown on the plan cannot be used for building sites without injury to the public health. In case of disapproval, the board of health must state reasons for the disapproval and make recommendations for possible adjustments that could result in approval. If requested by the applicant, the board of health should hold a public hearing on the plan; or
- 4) fail to act on the plan within 45 days from receipt of the plan, in which case the plan is deemed approved.

➤ The planning board is required to make specific notations on its approved definitive plan or in a separate document referred to on the plan concerning the report and recommendations by the board of health, including the following:

- 1) a board of health condition that no individual sewage systems may be constructed on an individual lot without future board of health approval;
- 2) a board of health condition that no building or structure shall be built or placed upon an area designated without consent by the board of health; or
- 3) that approval by the board of health is due to failure of the board to take action on the plan within 45 days after the plan was filed.

➤ After holding its public hearing and after receiving the board of health report or 45 days have elapsed without receipt of the report, the planning board may approve, approve with modifications, or disapprove a definitive subdivision plan as follows:

- 1) If the plan complies with the subdivision control law, the planning board's rules and regulations, and the recommendations of the board of health, the plan shall be approved, although the board may approve the plan with conditions;
- 2) If the plan does not comply with the subdivision control law, the planning board's rules and regulations, and the recommendations of the board of health, but with modifications it can be brought into compliance, the plan should be approved with such modifications; or
- 3) If the plan does not comply with the subdivision control law, the planning board's rules and regulations, and the recommendations of the board of health, the plan should be disapproved, and the planning board must state in detail the reasons for its disapproval including the rules and regulations or board of health recommendations that were not complied with so that the applicant can revise the plan and resubmit it to the planning board and board of health for approval. If the resubmitted plan conforms to the planning board's rules and regulations and the board of health recommendations, then the disapproval shall be revoked and the plan shall be approved.

☛ The planning board must take timely final action. Final action includes filing a certificate with the city or town clerk concerning the vote taken by the planning board on a plan and notifying the applicant at the address provided in the application of the board's decision by registered or certified mail, postage prepaid. The clerk shall record the certificate in a book kept for the purpose of determining if there has been constructive approval of a subdivision plan for failure of the planning board to take timely action.

☛ The time for taking final action by the planning board, in order to avoid constructive approval, is as follows:

- 1) If the plan is for a non-residential subdivision, a preliminary plan was required, and the planning board must take final action on the definitive plan within 90 days after a decision on the preliminary plan or lapse of 45 days after filing the plan without a decision;
- 2) If the plan is for a residential subdivision, a preliminary plan was not required, but if a preliminary plan was filed, the planning board must take final action on the definitive plan within 90 days after a decision on the preliminary plan or lapse of 45 days after filing the plan without a decision; or
- 3) If the plan is for a residential subdivision, a preliminary plan was not required, and if a preliminary plan was not filed, the planning board must take final action on the definitive plan within 135 days after the definitive plan was filed.

☛ The time for taking final action on any definitive plan may be extended by agreement of the planning board and applicant by specifying such extended time for final action in writing and notifying the city or town clerk of the extended time. Any agreement to extend the time for final action shall change the time for acting on the plan as set forth above.

☛ After the planning board has approved a plan, but before it endorses its approval on the plan, it must require security to ensure that the subdivision ways will be constructed and the municipal services will be installed in accordance with the approved plan. There are four types of securities, which the applicant may choose from. The applicant may select more than one type of security at a time. The planning board may make specific requirements concerning each type of security. The four types of security that could be selected by an applicant include the following:

- 1) **A PROPER BOND.** The planning board shall determine if the type and amount of the bond are sufficient to secure performance of the construction of ways and installation of municipal services for all lots within the subdivision. The planning board may require the applicant to specify the time for completion of construction of ways and installation of municipal services. The planning board should prepare an agreement in which all requirements, including the time for completion, are set forth.
- 2) **A DEPOSIT OF MONEY OR NEGOTIABLE SECURITIES.** The planning board shall determine if the type and amount of the deposit are sufficient to secure performance of the construction of ways and installation of municipal services for all lots within the subdivision. The planning board may require the applicant to specify the time for completion of construction of ways and installation of municipal services. The planning board should prepare an agreement in which all requirements, including the time for completion, are set forth.
- 3) **A COVENANT.** The covenant should be set forth on the plan or referred to on the plan and set forth in a separate document, shall run with the land, and shall be recorded at the applicable registry of deeds or land court. The covenant shall prohibit construction of buildings on any lot or conveyance of a lot until such time as ways are constructed and municipal services are installed to serve the lot, and the planning board releases the lot from the covenant against building. The planning board may specify the time of completion, including a provision for automatic rescission if the developer fails to complete the subdivision by such date.

- 4) **A THREE-PARTY AGREEMENT BETWEEN THE MUNICIPALITY, THE DEVELOPER, AND THE DEVELOPER'S LENDER.** The three party agreement is executed after a first mortgage is recorded that covers all or a portion of the premises shown on the plan. The lender is required under such an agreement to retain advances due to the applicant. The planning board shall determine if the amount of the advance or advances retained are sufficient to secure performance of the construction of ways and installation of municipal services for all lots within the subdivision. The three-party agreement must set forth a schedule of disbursements which may be made by the lender to the applicant upon completion of various stages of the construction and installation as approved and released by the planning board. The agreement must also state that if the work is not completed as set forth in the agreement, then the lender must make all undisbursed funds available to the municipality for completion of the construction and installation.

☛ The amount of a monetary security such as a bond, deposit, or retention of funds in a three-party agreement, must bear a direct and reasonable relationship to the expected cost of completing the required construction work in the subdivision. The planning board is required to reduce the amount bonded, deposited or retained from time to time in order to reflect the actual expected cost to complete the work required by the plan. The planning board may always add an inflationary factor to the amount held to ensure sufficient funds in the case of delay or other problems that may arise. Most planning boards have a regulation that requires the municipal engineer to set the amount of the security or that requires the applicant to pay for a consulting engineer to determine and set the amount of the security, including an inflationary factor.

☛ Having a covenant as security does not preclude certain types of conveyances, but if a conveyance is made in violation of a covenant, such conveyance is voidable by the grantee no later than 3 years from the date of the deed. The types of conveyances that are permitted despite the existence of a covenant include:

- 1) conveyance of the entire tract subject to the covenant or those lots still subject to the covenant to a mortgagee. If the mortgagee or any other person obtains title to the land by foreclosure or by other means, the lots shall remain subject to the covenant and may only be conveyed subject to the covenant that precludes construction on the lots; or
- 2) conveyance of the entire tract subject to the covenant or those lots still subject to the covenant by a single deed to another party.

☛ Once all ways in a subdivision have been constructed and all municipal services have been installed in accordance with the plan and the planning board's rules and regulations, or upon completion of partial construction or installation, the applicant may make a written request by prepaid registered mail to the planning board and the city or town clerk to release all or a portion of a monetary security or release a lot or lots from the covenant against building because of completion of such work.

☛ The planning board has 45 days to determine if such release is appropriate and may:

- 1) decide to release the municipality's interest in the monetary security and return the funds being held in full or in part to the person who furnished the funds or release a lot or lots from the covenant against building because the construction and installation have been completed as required. The planning board shall send (certified mail is recommended) a certificate of release that is acknowledged and that could be recorded at the applicable registry of deeds or land court to the applicant at the address provided in the request and shall notify the city or town clerk of such release;
- 2) decide not to release the monetary security or not to release a lot or lots from the covenant against building because the construction and installation has not been completed as required. The planning board shall notify the applicant in writing at the address provided in the request of its determination and specify in detail wherein the construction of ways and installation of municipal services does not comply with the planning board's rules and regulations and shall notify the city or town clerk of such determination. The notice to the applicant and city or town clerk is to be by registered or certified mail; or
- 3) fail to make a determination within the 45 days, in which case all obligations under a monetary security shall cease and terminate and all covenants shall become void. In such a case, the city or town clerk shall release the security or lot or lots from the covenant and return the funds and send a certificate of release, duly acknowledged, that could be recorded at the applicable registry of deeds or land court to the applicant at the address provided in the request.

☛ If construction of ways and installation of municipal services are not completed as required by the planning board's rules and regulations, the approved plan approved, and any conditions of approval, then the funds from a monetary security may be enforced and applied by the planning board to complete such construction and installation. Certain restrictions may prevent direct expenditure of the funds. These restrictions are not limited to:

- 1) the funds may only be enforced and applied to the extent of the reasonable cost to the city or town to complete the construction and installation; and
- 2) in towns only, if it accepts the paragraph of the subdivision control law under section 81U that permits expenditure of \$100,000 without appropriation under M.G.L., ch. 54, § 53, such expenditure of funds may not be made without approval by the board of selectmen. If this paragraph is not accepted on a town, then no expenditure may be made without an appropriation by town meeting.

➤ Although a planning board may require as a condition of approval that a reasonable portion of land in a subdivision in comparison to the total land in the subdivision be set aside for a park, playground, or open space for 3 years after the plan is approved, such prohibition against building on the land set aside may not continue after expiration of the 3 years unless just compensation is paid as required by the constitution for taking land for a public purpose.

RELATED CASE LAW


📖 *Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 429 N.E.2d 355, review denied, 385 Mass. 1101, 440 N.E.2d 1173 (1981) (disapproval of subdivision plan may be based on non-compliance with planning board's rules and regulations, recommendations of the board of health, or the provisions of the subdivision control law; plaintiff has burden to prove that planning board's action was improper).


📖 *Baker v. Planning Bd. of Framingham*, 353 Mass. 141, 228 N.E.2d 831 (1967) (a plan that complies with the planning board's rules and regulations, local zoning, and the recommendations of the board of health should be approved; planning board may not disapprove a plan so that it can continue to use owner's land as municipal water storage area).


📖 *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 671 N.E.2d 1233 (1996) (although planning board's rules and regulations did not specifically require compliance with zoning, because such regulations addressed general purposes of zoning, this was sufficiently definite to require compliance of the subdivision with zoning and authorized disapproval by the planning board for noncompliance with such zoning).


📖 *Bigham v. Planning Bd. of North Reading*, 362 Mass. 860, 285 N.E.2d 408 (1972) (planning board's extension of time to complete subdivision waived condition that required completion of construction in 2 years).


📖 *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (purpose of subdivision control law is to set up orderly procedure for review of subdivisions within stated times, including notice of actions in offices of record within stated times, such as constructive approval by municipal clerk due to failure of planning board to take timely action so that aggrieved party can appeal).


 *Campanelli, Inc. v. Planning Bd. of Ipswich*, 358 Mass. 798, 261 N.E.2d 65 (1970) (landowner may agree to conditions of approval that may not have been authorized by subdivision control law, and planning board may rely on such acceptance).


 *Canter v. Planning Board of Westborough*, 7 Mass. App. Ct. 805, 390 N.E.2d 1128 (1979) (planning board could disapprove plan that showed only one sidewalk with a 6 inch gravel base, while the board's regulations required a sidewalk on both sides of the street with a 10 inch gravel base).


 *Canter v. Planning Board of Westborough*, 4 Mass. App. Ct. 306, 347 N.E.2d 691 (1976) (planning board may disapprove a subdivision plan that violates zoning, even if it does not violate any subdivision regulation; planning board may not disapprove a plan because it would create dangerous traffic conditions in adjacent public ways unless it has a rule or regulation that addresses this aspect).


 *Castle Estates v. Park and Planning Bd. of Medfield*, 344 Mass. 329, 182 N.E.2d 540 (1962) (planning board may not impose water supply and drainage requirements on a plan where it did not specify in its rules and regulations what ways and utilities were required).


 *City of Medford v. DeFilippo*, 347 Mass. 327, 197 N.E.2d 794 (1964) (evidence supported finding that subdivision way was to be open and not closed to traffic).

 *Costanza & Bertolino, Inc. v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (planning board may include in its covenant that approval would be automatically rescinded if ways are not constructed or municipal services installed within two years).

 *Couter v. Planning Bd. of Westborough*, 4 Mass. App. Ct. 306, 347 N.E.2d 691 (1976) (a planning board may not disapprove a plan that does not violate its rules and regulations or the requirements of the board of health).

 *Crocker v. Martha's Vineyard Com'n*, 407 Mass. 77, 551 N.E.2d 527 (1990) (time within which planning board is to take final action is tolled while Commission reviews regional impact application; Commission's approval is required before plan can be constructively approved for failure of planning board to take timely final action).

 *Curtin v. Board of Survey and Planning of Waltham*, 15 Mass. App. Ct. 978 (1983) (planning board must follow its own rules and regulations and make projection of streets and utility systems into adjoining property, unless the planning board decides to waive the regulation).

 *Daley Const. v. Planning Bd. of Randolph*, 340 Mass. 149, 163 N.E.2d 27 (1960) (planning board cannot disapprove town subdivision plan that was approved by town officers and boards, had adequate water pipe layout, and otherwise complied with town requirements on basis that it would accentuate existing town water shortage).

📖 *Doebelin v. Tinkham Dev.*, 7 Mass. App. Ct., 389 N.E.2d 1044 (1979) (a plan that is disapproved and subsequently amended must still receive approval of the planning board and is subject to all requirements of the subdivision control law; amendments to plan concerning drainage must be reviewed by board of health, as such drainage matters are under the purview of the board of health).

📖 *Doliner v. Planning Bd. of Millis*, 343 Mass. 1, 175 N.E.2d 919 (1961) (plan submitted after town meeting vote on zoning, but before attorney general approval of zoning, was subject to the zoning adopted by town meeting subject to permission to resubmit the plan if the attorney general did not approve the zoning; planning board's letter indicating intention to disapprove plan constituted final action by the board).

📖 *Fairbairn v. Planning Bd. of Barnstable*, 5 Mass. App. Ct. 171, 360 N.E.2d 668 (1977) (planning board may not approve a plan which does not comply with the recommendations of the board of health, as the planning board's only options are to disapprove the plan or approve it with modifications so that it conforms to the board of health recommendations; board of health must act in reasonable manner in reviewing and reporting on subdivision plan; board of health recommendation is adjudicatory and board of health must provide developer with hearing on request before submitting an adverse report to the planning board; planning board may not deny approval of a plan because sewage disposal systems are not satisfactory, as such a determination is under the jurisdiction of the board of health; at time of definitive plan approval it is premature for the board of health to deny approval because of on-site sewage disposal systems on individual lots, but the board of health may require a condition that before building on a lot a disposal works construction permit must be issued for such on-site system; planning board may not disapprove a plan for inadequate water supply for fighting a fire unless it has a regulation that makes such a requirement; planning board may not disapprove plan due to potential pollution of adjacent wetlands from surface water run-off unless town engineering department disapproved design of storm drains and related improvements; planning board may not disapprove plan because it will result in a dangerous intersection, unless it has a regulation and evidence that it intends to lessen congestion in adjacent subdivision with public ways in the town; person objecting to planning board's decision has burden of proving the planning board exceeded its authority; in deciding an appeal of a planning board's decision, court is to hold a hearing de novo, find relevant facts, review the reasons stated by the planning board for disapproval of the plan, and determine whether the reasons for disapproval are valid; on appeal issue concerning board of health's recommendations must be separately raised in the nature of a writ of certiorari and board of health must be made a party to the appeal before court can consider board of health decision).

☞ *Falcone v. Planning Bd. of Stoughton*, 14 Mass. App. Ct. 950, 437 N.E.2d 531, review denied, 387 Mass. 1102, 440 N.E.2d 1177 (1982) (court treated conditional approval as disapproval, as it required submission of a revised plan and made revised plan subject to further planning board review).

☞ *Freeman v. Planning Bd. of W. Boylston*, 419 Mass. 548, 646 N.E.2d 139, certiorari denied, 516 U.S. 931 (1995) (despite court order to review drainage on remand, planning board could also review intersection in order to protect public safety before approving subdivision plan).

☞ *Garabedian v. Water and Sewerage Bd. of Medfield*, 359 Mass. 404, 269 N.E.2d 275 (1971) (water and sewage board did not have duty to furnish water to subdivision into mains as shown on the approved subdivision plan, as it was up to the planning board and developer to ascertain the requirements of the water and sewage board before the subdivision plan was approved).

☞ *Gordon v. Robinson Homes*, 342 Mass. 529, 174 N.E.2d 381 (1961) (planning board has primary responsibility in carrying out the subdivision control law; bond may not be privately enforced by lot owners).

☞ *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (all conditions of approval must be endorsed on the plan or be set forth in a separate instrument referred to on the plan in order to be binding).

☞ *Hamilton v. Planning Bd. of Lexington*, 4 Mass. App. Ct. 802, 345 N.E.2d 906 (1976) (planning board may disapprove plan because of inadequate drainage to address flooding problem; court may disregard portion of testimony of witness who is not board member or party to the case).

☞ *Independence Park v. Board of Health of Barnstable*, 403 Mass. 477, 530 N.E.2d 1235 (1988) (planning board may not approve subdivision plan that does not comply with recommendation of the board of health; recommendation by the board of health may not contradict its regulations; M.G.L. ch. 111, § 127P provides that land shown on a subdivision plan shall be governed by the board of health regulations and the state environmental code in effect when the plan is first submitted; court provides full de novo review on appeal and considers conditions of board of health recommendations).

☞ *Kay-Vee Realty v. Town Clerk of Ludlow*, 355 Mass. 165, 243 N.E.2d 813 (1969) (although subdivision was constructively approved for failure of the planning board to take timely action, because it simply sent letter to applicant and failed to file decision with town clerk, the planning board could also amend, modify, or rescind the constructive approval).

☞ *Loring Hills Developers Trust v. Planning Bd. of Salem*, 374 Mass. 343, 372 N.E.2d 775 (1978) (planning board may not override adverse report of board of health in making its decision on a subdivision plan; board of health's recommendations are part of planning board's decision, but on appeal issue concerning board of health's recommendations must be separately raised and board of health must be made a party to the appeal).

Lyman v. Planning Board of Winchester, 352 Mass. 209, 224 N.E.2d 493 (1967) (planning board's waiver of its regulations was proper where under unusual circumstances it was unreasonable to require extension of roads, water lines, and sewers to boundary of adjoining undeveloped land, as access to adjoining land would come from another direction).

Mac-Rich Realty Const. v. Planning Bd. of Southborough, 4 Mass. App. Ct. 79, 341 N.E.2d 916 (1976) (planning board may not disapprove a plan which conforms to its rules and regulations and board of health recommendations, even if the board has community concerns with respect to adverse impact of the subdivision on traffic problems or municipal services; person objecting to planning board's decision to disapprove plan has burden of proving the planning board exceeded its authority).

Malaguti v. Planning Bd. of Wellesley, 3 Mass. App. Ct. 797, 339 N.E.2d 246 (1975) (planning board is not required to give detailed reasons when it refuses to endorse plan as approval not required).

Marino v. Board of Appeals of Beverly, 2 Mass. App. Ct. 859, 311 N.E.2d 580 (1974) (neither building official nor zoning board of appeals may give relief from subdivision plan condition prohibiting construction and grant building permit, even if condition was invalidly imposed, as only relief available is to appeal decision under Section 81BB of the subdivision control law).

Marlborough Sav. Bank v. City of Marlborough, 45 Mass. App. Ct. 250, 697 N.E.2d 143 (1998) (requirement for security to complete subdivision is to protect public interest and not to confer benefit on private entity; bank that acquired title to remaining lots in a subdivision via a deed in lieu of foreclosure could not force city to complete subdivision ways and municipal services in a subdivision in which all security had been released).

Massachusetts Broken Stone Co. v. Planning Bd. of Weston, 45 Mass. App. Ct. 738 (1998) (without a rule and regulation, a planning board may not disapprove a plan because it will have an impact on the surrounding area).

McDavitt v. Planning Bd. of Winchester, 2 Mass. App. Ct. 806, 308 N.E.2d 786 (1974) (planning board properly disapproved a plan that had dead-end street instead of a way that connected to existing street in the abutting subdivision, as its regulations required that streets be continuous and in alignment with existing streets as far as practicable).

McElderry v. Planning Bd. of Nantucket, 431 Mass. 722, 729 N.E.2d 1090 (2000) (planning board's action on a definitive subdivision plan requires a hearing, and such proceeding is quasi judicial in nature; approval of a subdivision must be by a majority of all members, as a majority of a quorum is not sufficient; landowner did not waive right to continue appeal by resubmitting plan to planning board in order to attempt settlement of matter).

- ☐ *M. DeMatteo Const. Co. v. Board of Appeals of Hingham*, 3 Mass. App. Ct. 446, 334 N.E.2d 51 (1975) (even if subdivision plan is approved, applicant may not excavate until complying with earth removal requirements under zoning; a condition of approval may not be relied on unless it is endorsed on the plan or set forth in a separate document referred to on the plan).
- ☐ *Meyer v. Planning Bd. of Westport*, 29 Mass. App. Ct. 167, 558 N.E.2d 994, review denied, 408 Mass. 1104, 562 N.E.2d 90 (1990) (failure of board of health to make timely report to the planning board results in constructive approval by the board of health).
- ☐ *MP Corp. v. Planning Bd. of Leominster*, 27 Mass. App. Ct. 812, 545 N.E.2d 44 (1989) (planning board cannot deny approval of plan for commercial-retail development because of traffic concerns, when the board had no regulations which addressed the traffic concerns; board of health was deemed to have approved plan by failing to make a report to the planning board within 45 days of receipt of the plan).
- ☐ *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).
- ☐ *North Landers Corp. v. Planning Bd. of Falmouth*, 382 Mass. 432, 416 N.E.2d 934 (1981) (the planning board had regulations that permitted it to consider adequacy of access within the development to a public way and inadequacy of access of the public way to the subdivision, but it must define the terms "adequacy of access" and "inadequacy of access" and give detailed reasons wherein a plan fails to meet the regulations before it can rely on them as reasons for disapproval).
- ☐ *Patelle v. Planning Bd. of Woburn*, 6 Mass. App. Ct. 951, 383 N.E.2d 94 (1978), appeal after remand, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1985) (a planning board may not disapprove a plan which complies with its rules and regulations and has been approved by the board of health; failure of a condition of approval will result in automatic rescission of the approval; applicant had right to resubmit an amended plan previously disapproved and seek revocation of such disapproval, but planning board was required to hold a public hearing on such amended plan).
- ☐ *Paul Livoli, Inc. v. Planning Bd. of Marlborough*, 347 Mass. 330, 197 N.E.2d 785 (1964) (planning board's refusal to accept submission of a definitive plan because it denied preliminary plan and failure to act in a timely manner on such definitive plan could result in constructive approval of the plan).
- ☐ *Pieper v. Planning Bd. of Southborough*, 340 Mass. 157, 163 N.E.2d 14 (1960) (applicant is entitled to a hearing after submission of plan and before planning board takes final action on plan; developer who did not wait for board to cure its informalities before filing appeal could not contend that board did not take final action).

📖 *Pierce v. Crawley*, 4 Mass. App. Ct. 866, 358 N.E.2d 452 (1976) (individual planning board members did not act in bad faith or maliciously in releasing all lots from covenant and all funds deposited with town where none of plaintiffs had rights in original securities).

📖 *Pierce v. Town Clerk of Rochester*, 3 Mass. App. Ct. 728, 325 N.E.2d 300 (1975) (planning board's letter that no action would be taken on a plan was not a disapproval and thus the plan was constructively approved for failure of the planning board to take timely final action).

📖 *Pinecrest v. Planning Bd. of Billerica*, 350 Mass. 336, 214 N.E.2d 868 (1966) (plan was not constructively approved due to failure of planning board to give applicant notice of decision by registered mail, as board properly filed decision with municipal clerk, thus setting up 20 day appeal period).

📖 *R.C. Management Corp. v. Planning Bd. of Southbridge*, 31 Mass. App. Ct. 510, 580 N.E.2d 1045, *review denied*, 411 Mass. 1105, 586 N.E.2d 10 (1991) (although planning board initially treated plan as a subdivision, board could deny approval because the plan did not show a subdivision).

📖 *Richard v. Planning Bd. of Acushnet*, 10 Mass. App. Ct. 216, 406 N.E.2d 728 (1980) (the requirement for security to ensure construction of ways and installation of municipal services is mandatory; if security has been filed and landowner files plan for approval not required to change some lots within the subdivision that comply with subdivision control law, plan should be endorsed).

📖 *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40, 196 N.E.2d 209 (1964) (it is reasonable for planning board to consider adequate system of water pipes in approving a subdivision plan).

📖 *Schafer v. Zoning Agent of Bellingham*, 351 Mass. 651, 223 N.E.2d 398 (1967) (town clerk's certificate was not conclusive concerning engineer's note placed on the plan).

📖 *Sealund Sisters, Inc. v. Planning Bd. of Weymouth*, 45 Mass. App. Ct. 738 (1998) (the effect of the construction process of a subdivision, such as blasting, may not be a reason for disapproval of a plan unless the planning board has adopted a rule and regulation to that effect).

📖 *Selectmen of Ayer v. Planning Bd. of Ayer*, 3 Mass. App. Ct. 545, 336 N.E.2d 388 (1975) (a plan should be approved unless it conflicts with the planning board's rules and regulations or recommendations of the board of health; failure of the planning board to take any action on an application for approval of a definitive plan results in constructive approval; burden of proving that subdivision was improperly approved is on those appealing board's decision).

the 6 months made within 30 days of recording; planning board may rescind constructive approval in order to obtain security for completion of construction).

☞ *Strand v. Planning Bd. of Sudbury*, 5 Mass. App. Ct. 18, 358 N.E.2d 842 (1977), *appeal after remand*, 7 Mass. App. Ct. 935, 390 N.E.2d 1141 (1977) (when the court orders modification of a plan, the plan must still be reviewed by the board of health and the planning board must hold another hearing on the plan; person objecting to planning board's decision has burden of proving the planning board exceeded its authority; judge's role on appeal is to determine if plan conformed to planning board's rules and regulations and recommendations of the board of health, and if it did, the planning board did not exceed its authority in approving the plan).

☞ *Sullivan v. Planning Bd. of Acton*, 38 Mass. App. Ct. 918, 645 N.E.2d 703 (1995) (planning board's disapproval of plan must be based on rules and regulations that are comprehensive, reasonably definite, and carefully drafted; planning board could not condition approval on widening of state highway and providing traffic signal, as property owner had no control over such action governed by the state; planning board had no authority to prohibit curb cuts on a state highway, as such approval lies exclusively with the state Department of Public Works).

☞ *Toothaker v. Planning Bd. of Billerica*, 346 Mass. 436, 193 N.E.2d 582 (1963) (except as to lots separately owned at the time the municipality accepted subdivision control, the planning board could disregard prior plan and impose any lawful conditions required by the subdivision control law and its rules and regulations).

☞ *Town of Stoneham v. Savello*, 341 Mass. 456, 170 N.E.2d 417 (1960) (applicant agreed to and was required to provide drainage, water, sewer structures, and improvements to a private way that connected the subdivision to a public way and planning board was not required to determine if applicant had any rights of entry in such private way before approving the subdivision plan; planning board can use bond to complete work on private way for which subdivider had contracted).

☞ *United Reis Homes v. Planning Bd. of Natick*, 359 Mass. 621, 279 N.E.2d 402 (1971) (planning board may incorporate into its decision conditions recommended by the board of health related to drainage, such as a requirement for a bond; planning board's condition that stagnant water pockets be filled and brook be piped to prevent public health problems was reasonable).

☞ *Vitale v. Planning Bd. of Newburyport*, 10 Mass. App. Ct. 483, 409 N.E.2d 237 (1980) (developer was entitled to notice from the board of health before approval can be rescinded).

☞ *Waldor Realty v. Planning Bd. of Westborough*, 354 Mass. 639, 241 N.E.2d 843 (1968) (owner could file a revised plan on a portion of the previous plan which the planning board had disapproved).

☐ *Ward & Johnson, Inc. v. Planning Bd. of Whitman*, 343 Mass. 466, 179 N.E.2d 331 (1962) (subdivision plan was subject to zoning in effect at time preliminary plan was filed).

☐ *Wheatley v. Planning Bd. of Hingham*, 7 Mass. App. Ct. 435, 388 N.E.2d 315, *appeal after remand*, 10 Mass. App. Ct. 884, 409 N.E.2d 247 (1979) (planning board can require installation of utility services by private company in subdivision ways to comply with its rules and regulations).

☐ *Windsor v. Planning Bd. of Wayland*, 26 Mass. App. Ct. 650, 531 N.E.2d 272 (1988) (once a plan is constructively approved, because date for final action had passed without the planning board filing its decisions with the city or town clerk, any subsequent action by the planning board to approve or disapprove the plan is a nullity).

☐ *Zaltman v. Town Clerk of Stoneham*, 5 Mass. App. Ct. 248, 362 N.E.2d 215 (1977) (plan was constructively approved for failure of planning board to file decision with town clerk within required time period; although plan was constructively approved, planning board could amend, modify, or rescind approval under section 81W).

CAUTIONARY NOTES

✓ Once a subdivision plan is filed (including a preliminary plan followed in 7 months by a definitive plan) it is governed by the planning board rules and regulations in effect on the date of filing pursuant to M.G.L. ch. 41, § 81Q; by the board of health regulations and state environmental code in effect on the date of filing pursuant to M.G.L. ch. III, § 127P; and by the zoning in effect (even if not yet approved by the attorney general) on the date of filing pursuant to M.G.L. ch. 40A, § 6.

✓ A planning board MAY NOT disapprove a plan that complies with its rules and regulations and the board of health recommendations, and the planning board may not override the board of health recommendations, and thus may not approve a plan that does not comply with such recommendations.

✓ A planning board MAY NOT disapprove a plan on the basis of a reason that is not supported by its rules and regulations or the recommendations of the board of health.

✓ If a planning board disapproves a plan, it must give detailed reasons as to the rules and regulations or board of health recommendations that have not been complied with in order that the applicant will know how to revise the plan in order to refile the plan for approval.

✓ Although a planning board may consider adequacy of access and traffic conditions on public ways adjacent to a subdivision and which may be adversely affected by the subdivision, such consideration must be supported by a rule or regulation of the planning board or it will be invalid as a reason for disapproval.

✓ A planning board **MAY NOT** disapprove a plan or impose a condition on the basis of the following:

- Inadequate onsite sewage disposal systems on each lot (this reason is premature at the subdivision stage, as a disposal works permits will be issued after the subdivision is approved);
- Municipal water shortage, when the water pipe layout was approved by municipal officials, because it complied with town requirements;
- Potential pollution of adjacent wetlands from surface runoff, unless storm drain system is inadequate; or
- Requiring the widening of a state highway and providing a traffic signal on a state highway, which is under state jurisdiction;

✓ A planning board and a board of health must follow their own rules and regulations in approving or making recommendations on a definitive subdivision plan, unless the board decides to waive such rules and regulations.

✓ All conditions of approval to be enforceable must be endorsed on the plan or set forth in a separate instrument referred to on the plan.

✓ A planning board must require some type of security for ensuring construction of ways and installation of municipal services before it endorses its approval on the plan, and private persons have no right to enforce the bond, such as a lender who obtained title to the property through foreclosure, as such enforcement may only be by the municipality.

✓ A planning board may amend, modify, or rescind approval of a constructively approved plan in accordance with section 81W of the subdivision control law in order to obtain security for construction of ways and installation of municipal services.

✓ Upon completion of construction of ways and installation of municipal services, a planning board may not refuse to release a security unless it provides the applicant with detailed reasons wherein the construction and installation do not conform to the planning board's approval and the board's rules and regulations.

✓ In taking any favorable action concerning a definitive subdivision plan, a majority of the members of the planning board as constituted, not as present and voting, must vote to take the favorable action.

✓ A planning board's final action on a definitive subdivision plan includes filing the action with the municipal clerk and mailing a copy of the action to the applicant by registered or certified mail within specific time limits. Failure to properly take final action results in constructive approval of the subdivision.

SAMPLE APPLICATION FOR DEFINITIVE SUBDIVISION PLAN:

**FORM C
APPLICATION FOR APPROVAL OF DEFINITIVE SUBDIVISION PLAN**

APPLICANT—

Applicant's name: _____

Applicant's address: _____

Applicant's phone #: _____

THE PLAN —

Title of plan: _____

Drawn by: _____

P.E.'s or surveyor's registration #: _____

Date of plan: _____

OWNER —

If the applicant and owner are not the same person, the following must be completed:

Owner's name: _____

Owner's address: _____

Owner's phone #: _____

The owner hereby appoints _____ (name of person appointed) to act as agent for purposes of submitting and processing this application for a definitive subdivision plan.

Date: _____

Owner's signature _____

TITLE TO THE PROPERTY —

The owner's title to the land that is the subject matter of this application is

derived from deed/will/other of _____,

dated _____, and recorded in _____

Registry of Deeds, Volume _____, Page _____

Or as Land Court Certificate of Title No. _____

registered in _____ District, Volume _____, Page _____

ASSESSOR'S RECORDS –

The land shown the plan is located on Map _____, Lot _____ of the

Assessor's records and has an address of _____.

PRELIMINARY PLAN –

A preliminary plan _____ was _____ was not filed for this definitive subdivision plan.

If filed, the date of filing of the preliminary plan was _____.

The preliminary plan was:

_____ approved

_____ approved with the following modifications: _____

_____ disapproved for the following reasons: _____

ZONING REQUIREMENTS –

NOTE: If a preliminary plan was filed, followed within 7 months by a definitive plan, the zoning specified below should be the zoning in effect at the time the preliminary plan was filed.

The land is zoned _____.

The frontage required under zoning is _____ feet.

The lot area required under zoning is _____ square feet.

PLAN PROPOSAL –

This is a(n) _____ open residential _____ dense residential
_____ business _____ industrial (check one) subdivision.

The plan shows land located at _____.

The plan shows the division of _____ acres of land into _____ lots,
intended for building thereon, numbered _____, and
_____ parcels not intended for building thereon.

The plan shows the following existing ways (public ways, ways previously approved in a subdivision, ways existing at the time the subdivision control law was adopted that the planning board has deemed adequate for access) that are being proposed as lot frontage:

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

The plan shows the following proposed ways that are being constructed to provide lot frontage:

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

_____, frontage for lot(s) _____

(add additional sheet(s) if necessary)

I hereby certify that a copy of this plan has been filed with the board of health.

Signature of applicant

Date

Received by board of health:

Date: _____

Signature of board of health representative

Received by city/town clerk

Date: _____

Filing fee paid: \$ _____

Signature of city/town clerk

SAMPLE DECISION

CERTIFICATE OF DECISION ON DEFINITIVE SUBDIVISION PLAN

Date: _____

Applicant

Applicant's address

SENT BY CERTIFIED MAIL:

City/Town Clerk

City/Town of _____

Address, Massachusetts

RE: Title of plan:

Date of plan:

Drawn by:

Location of land subdivided:

Number of proposed lots:

With respect to the above-captioned definitive subdivision plan submitted to the planning board of the city/town of _____ by _____ on _____, the planning board hereby certifies that:

1. it held a public hearing on this plan duly noticed on _____
2. the board of health:
 - a. _____ approved the plan
 - b. _____ approved the plan with the following conditions as to where buildings or structures may be built or placed without further consent from the board of health:

 - c. _____ disapproved the plan
 - d. _____ failed to report on the plan, which shall be deemed approval
3. the planning board at an open meeting duly noticed and held on _____ voted as follows:

After finding that it was in the public interest and not inconsistent with the intent and purpose of the subdivision control law, the planning board waived strict compliance with the following provisions of its rules and regulations in accordance with section 81R of the Subdivision Control Law:

_____ To approve the definitive subdivision plan

_____ To approve the definitive subdivision plan with the following modifications:

_____ To disapprove the definitive subdivision plan, because it failed to comply with the planning board's rules and regulations and/or the recommendations of the board of health in the following respects:

The planning board adopted the following conditions of approval, which have been _____ endorsed on the plan/ _____ set forth in a separate instrument referenced on the plan:

1. The lots upon which buildings may not be erected are:
2. The number of buildings that may be erected on the following lots are:
3. The length of time for which the following buildings may be maintained on the following lots without further consent by the planning board with respect to access are:
4. The additional conditions adopted by the planning board to further the purposes of the Subdivision Control Law are:

This decision is subject to appeal in accordance with M.G.L. ch. 41, § 81BB within 20 days after this decision is filed with the city/town clerk.

This approval is subject to the applicant providing an adequate performance guarantee to ensure the construction of ways and installation of municipal services for this subdivision. Failure to provide such performance guarantee may result in rescission of approval.

Planning Board

**SAMPLE CERTIFICATION BY THE CITY OR TOWN CLERK FOR
FAILURE OF THE PLANNING BOARD TO TAKE TIMELY FINAL ACTION
ON A DEFINITIVE SUBDIVISION PLAN:**

CERTIFICATE OF CONSTRUCTIVE APPROVAL

The accompanying plan entitled: _____

and dated: _____, by _____
(P.E. or surveyor signing the plan)

for land owned by: _____

was filed with the city/town clerk on _____
(date of filing)

The planning board did not take timely final action and did not file a decision with the city/town clerk concerning the plan as required under M.G.L. ch. 41, § 81U.

As city/town clerk of the city/town of _____,
(name of city of town)

I hereby certify that due to the failure of the planning board to take timely final action on said plan and failure to file a copy of its decision with the city/town clerk as required by M.G.L. ch. 41, § 81U, that the plan shall be deemed approved.

This constructive approval is subject to appeal in accordance with M.G.L. ch. 41, § 81BB within 20 days after the date of this certification by me.

This constructive approval is subject to the applicant providing an adequate performance guarantee with the planning board to ensure the construction of ways and installation of municipal services for this subdivision. Failure to provide such performance guarantee may result in rescission of this constructive approval by the planning board.

Date: _____
City/Town Clerk

Cc: Planning Board

SAMPLE DESIGNER'S CERTIFICATE:

**Form D
DESIGNER'S CERTIFICATE**

Date: _____

Planning Board
City/Town of _____
Address, Massachusetts

RE: Title of plan:
Date of plan:
Drawn by:
Location of land subdivided:
Number of proposed lots:

I hereby certify that the above-captioned definitive subdivision plan and any accompanying data prepared by me are true and correct to the accuracy required by the subdivision rules and regulations applicable to said plan and as required by the rules of the Massachusetts Registries of Deeds.

My source(s) of information about the location of boundaries shown on said plan were one or more of the following:

1. Deed from _____ to _____
dated _____ and recorded in the _____
county registry of deeds, in book _____, page _____.

2. Other deeds and plans, as follows: _____

3. Oral information furnished by: _____

4. Actual measurements on the ground from a starting point established by: _____

5. Other sources: _____

Signed: _____
(Registered Land Surveyor)

SEAL
Registration #: _____

Signed: _____
(Registered Professional Engineer)

SEAL
Registration #: _____

SAMPLE COVENANT:

**Form F
COVENANT**

This Covenant is entered into this _____ day of _____, 2____ by and between the city/town of _____, a Massachusetts municipal corporation, acting through its Planning Board, with an address of _____, Massachusetts [hereinafter "planning board"] and _____ (record owner of the parcel of land shown on an approved definitive subdivision plan and including an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan), with an address of _____ [hereinafter "owner"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after a duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a COVENANT;

WHEREAS, the planning board has determined that the form of the covenant is sufficient to secure the construction of ways and installation of municipal services in the subdivision;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the planning board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this covenant; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this covenant and any amendments thereto; and the following additional documents

_____ [hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this covenant.

SECTION 2. EFFECTIVE DATE

This covenant shall be effective upon its execution, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan and this covenant by the planning board at the _____ at the expense of the owner.

SECTION 3. RUNS WITH THE LAND

This covenant shall run with the land and shall be binding on all subsequent parties who have any title, interest, or rights in and to the parcel of land subdivided, or a portion thereof. This covenant shall operate as a restriction upon the land until released.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner from this covenant and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board and shall be recorded or registered at the _____ by the planning board at the owner's expense.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner from this covenant as to those lots that are adequately served by the ways and municipal services so constructed, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method of performance guarantee as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board and shall be recorded or registered at the _____ by the planning board at the owner's expense.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this covenant or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

SECTION 5. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER

a. The owner shall not convey or transfer title to any lot within this subdivision, except as otherwise provided in this covenant, until completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the planning board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.

b. The owner shall not build upon any lot within this subdivision, except as otherwise provided in this covenant, until the completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the owner provides the board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the board.

c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.

d. The owner agrees and understands that failure to complete construction of the ways and installation of the municipal services by the agreed-upon date shall result in automatic rescission of approval of the definitive subdivision plan by the planning board. The planning board shall forthwith carry out the rescission as provided in M.G.L., ch. 41, § 81W.

e. The owner agrees and understands that the planning board will not release this covenant in full, unless another method of security is provided, or until the ways and municipal services have been deemed by the board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

f. No provision of this covenant shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method or methods chosen for securing the construction of ways and the installation of municipal services as sufficient.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of such owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

h. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of such mortgagee or mortgagees. At the time of executing this covenant, the mortgagee(s) of this subdivision is/are _____ whose address is/are _____

_____.

The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

i. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan; this covenant, upon its execution; and any certificates of release of this covenant, or portions thereof, at the _____; and the owner further agrees to pay the costs of such recordings.

SECTION 6. MORTGAGEES AND SUCCEEDING OWNERS

Nothing in this covenant shall preclude the owner from mortgaging the entire parcel of land, or a portion thereof, which constitutes this subdivision. If the mortgagee acquires title to the entire parcel of land, or a portion thereof, shown on the approved definitive subdivision plan, through foreclosure or by other means, such as accepting a deed in lieu of foreclosure, then the mortgagee and any succeeding owner of the land transferred by the mortgagee may sell any lot, subject to that portion of this covenant which provides that no lot shall be built upon until the ways are constructed and the municipal services are installed to serve such lot. Said mortgagee and any succeeding owner shall be subject to all other applicable provisions of this covenant and any amendments thereto.

SECTION 7. CONVEYANCE OF LAND OR LOTS SUBJECT TO COVENANT

Nothing in this covenant shall preclude the owner from conveying by a single deed, the entire parcel of land shown on the approved definitive subdivision plan, or all lots not previously released from the terms of this covenant by the board, so long as the deed provides that the land conveyed is subject to this covenant, and any amendments thereto, with proper reference to the book and page where this covenant, and any amendments thereto, are recorded or registered at the _____. A deed of any part of the subdivision in violation of this covenant, or any amendments thereto, shall be voidable by the grantee prior to the release of this covenant no later than three years from the date of such deed.

SECTION 8. BINDING EFFECT

This covenant, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner.

SECTION 9. USE OF TERMINOLOGY

Use of the term "owner" in this covenant is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this covenant and any amendments thereon. Use of the term "planning board or board" in this covenant is for convenience only and may include agents or representatives of the planning board.

SECTION 10. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this covenant, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this covenant.

SECTION 11. AMENDMENTS

This covenant may be amended, in writing, by agreement of all of the parties to this covenant.

SECTION 12. GOVERNING LAW

This covenant, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 13. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this covenant is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this covenant is true and complete; and we, the parties to this covenant, set our hands and seals to this covenant on the date(s) written below.

We, the owner and his/her spouse, as far as necessary, hereby release all rights of dower, curtesy, or homestead, or any other interests that we may have in the parcel of land that constitutes the subdivision.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, owner, or person duly authorized to execute this covenant on behalf of the owner, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

OWNER'S SPOUSE

Signature of Owner's Spouse

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
and acknowledged the execution of the foregoing instrument to be his/her free act and
deed for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____

and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,
the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this covenant, hereby consents to execution of this covenant by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this covenant and agrees that the mortgage shall be subordinate to the covenant, which covenant shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this covenant on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE AGREEMENT FOR DEPOSIT OF MONEY:

FORM G

AGREEMENT TO SECURE PERFORMANCE BY A DEPOSIT OF MONEY

This Agreement is entered into this ____ day of _____, 2__ by and between the city/town of _____, a Massachusetts municipal corporation, acting through its planning board, with an address of _____, Massachusetts [hereinafter "planning board"] and _____, with an address of _____ (this should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after a duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a DEPOSIT OF MONEY in the penal sum of _____ dollars;

WHEREAS, the planning board has determined that the deposit of money is sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid deposit of money in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the planning board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this agreement and any amendments thereto; and the following additional documents

[hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this agreement.

SECTION 2. EFFECTIVE DATE

This agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the _____ at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner from this agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner from this agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

d. The planning board shall notify the treasurer for the city/town of _____ of any release of the deposit of money that secures this agreement in full or in part. Upon receipt of a release, the treasurer shall forthwith return the deposit of money, or portion thereof, together with accrued interest, if any, to the owner. The owner shall be obligated to pay all income taxes on any accrued interest.

e. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this agreement, the planning board may apply the penal sum of the deposit of money held by the treasurer of the city/town of _____, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the deposit of money, together with accrued interest, if any, that is not applied as set forth above, shall be returned to the owner upon completion of the construction of ways and installation of municipal services by the city/town of _____. The owner shall be obligated to pay all income taxes on any accrued interest.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER

a. The owner shall secure this obligation by depositing with the treasurer of the city/town of _____, a deposit of money to be held by the treasurer in a subdivision escrow account in the name of the city/town of _____ in the amount of _____ for the purpose of securing construction of ways and installation of municipal services in the subdivision.

b. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.

c. The owner agrees and understands that failure to complete construction of the ways and installation of the municipal services by the agreed-upon date shall result in automatic rescission of approval of the definitive subdivision plan by the planning board. The planning board shall forthwith carry out the rescission as provided in M.G.L., ch. 41, § 81W.

d. The owner agrees and understands that the planning board will not release this agreement in full, unless another method of security is provided, or until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

e. No provision of this agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.

f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____

The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

h. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instruments required to be recorded under the approval instruments at the _____ and at the expense of the owner.

SECTION 5. BINDING EFFECT

This agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner.

SECTION 6. USE OF TERMINOLOGY

Use of the term "owner" in this agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this agreement and any amendments thereon. Use of the term "planning board or board" in this agreement is for convenience only and may include agents or representatives of the planning board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this agreement, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this agreement.

SECTION 8. AMENDMENTS

This agreement may be amended, in writing, by agreement of all of the parties to this agreement.

SECTION 9. GOVERNING LAW

This agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this agreement is true and complete; and we, the parties to this agreement, set our hands and seals to this agreement on the date(s) first written below.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
owner, or person duly authorized to execute this agreement on behalf of the owner, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____

and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,
the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE SURETY AGREEMENT:

**FORM H
SURETY AGREEMENT FOR A BOND**

This Surety Agreement is entered into this ____ day of _____, 2__ by and between the city/town of _____, a Massachusetts municipal corporation, acting through its planning board, with an address of _____; _____, with an address of _____ (this should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"]; and _____ (this is the surety or bonding company), a corporation duly organized and existing under the laws of the state of _____, licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of _____ [hereinafter "surety"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a SURETY BOND in the penal sum of _____ dollars;

WHEREAS, the board has determined that the form of the surety bond is sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid surety bond in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this surety agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this surety agreement and any amendments thereto; and the following additional documents

[hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this surety agreement.

SECTION 2. EFFECTIVE DATE

This surety agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the _____ at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner and surety from this surety agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner and surety from this surety agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this surety agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

d. The planning board shall notify the treasurer for the city/town of _____ of any release of the bond that secures this surety agreement in full or in part. Upon receipt of a release, the treasurer shall forthwith return the bond to the surety.

e. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this surety agreement, the planning board may apply the bond held by the treasurer of the city/town of _____, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the bond that is not applied as set forth above, shall be returned to the surety upon completion of the construction of ways and installation of municipal services by the city/town of _____.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER AND SURETY

a. The surety, or owner on behalf of the surety, shall deliver a surety bond with the treasurer of the city/town of _____, in the amount of _____ for the purpose of securing construction of ways and installation of municipal services in the subdivision.

b. The surety agrees to and is obligated to notify the planning board of any lapse in the bond. Failure of the security company to provide such notice or any lapse of the surety bond shall result in automatic rescission of approval of the subdivision. Any issuance of a new bond by the surety shall require execution of a new surety agreement.

c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.

d. The owner and surety agree and understand that the planning board will not release this surety bond in full, unless another method of security is provided, until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

e. No provision of this surety agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.

f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this surety agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____

The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

h. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instruments required to be recorded under the approval instruments at the _____ and at the expense of the owner.

SECTION 5. BINDING EFFECT

This surety agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner. This surety agreement shall also be binding on the surety, its agents, representatives, successors, and assigns. The liability of the owner and surety to the city/town of _____ shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the terms "owner" and "surety" in this surety agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this surety agreement and any amendments thereon. Use of the term "planning board or board" in this covenant is for convenience only and may include agents or representatives of the planning board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this surety agreement, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this surety agreement.

SECTION 8. AMENDMENTS

This surety agreement may be amended, in writing, by agreement of all of the parties to this agreement.

SECTION 9. GOVERNING LAW

This surety agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this surety agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this surety agreement is true and complete; and we, the parties to this surety agreement, set our hands and seals to this agreement on the date(s) written below.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
owner, or person duly authorized to execute this surety agreement on behalf of the owner,
and acknowledged the execution of the foregoing instrument to be his/her free act and
deed for the purposes provided therein.

Notary Public

My commission expires: _____

SURETY COMPANY NAME

Signature of Surety Company Rep.

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
representative of the surety, who is a person duly authorized to execute this surety
agreement on behalf of the surety, and acknowledged the execution of the foregoing
instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named

and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,
the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE AGREEMENT FOR DEPOSIT OF NEGOTIABLE SECURITIES:

FORM I

**AGREEMENT TO SECURE PERFORMANCE BY A DEPOSIT OF
NEGOTIABLE SECURITIES (BONDS, STOCKS, PUBLIC SECURITIES)**

This Agreement is entered into this _____ day of _____, 2____ by and between the city/town of _____, a Massachusetts municipal corporation, acting through its planning board, with an address of _____, Massachusetts [hereinafter "planning board"] and _____, with an address of _____ (this should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after a duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a DEPOSIT OF NEGOTIABLE SECURITIES in the penal sum of _____ dollars;

WHEREAS, the planning board has determined that the deposit of negotiable securities is sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid deposit of negotiable securities in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the planning board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this agreement and any amendments thereto; and the following additional documents

_____ [hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this agreement.

SECTION 2. EFFECTIVE DATE

This agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the _____ at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner from this agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner from this agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

d. The planning board shall notify the treasurer for the city/town of _____ of any release of the deposit of negotiable securities that secures this agreement in full or in part. Upon receipt of a release, the treasurer shall forthwith return the negotiable securities, or portion thereof, by execution of an appropriate instrument, to the owner. The owner shall be obligated to pay all taxes on any dividends or capital gains.

e. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this agreement, the planning board may negotiate the negotiable securities held by the treasurer of the city/town of _____ and apply the penal sum gained from such negotiation, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the negotiable securities, or proceeds from negotiation, that are not applied as set forth above, shall be returned to the owner upon completion of the construction of ways and installation of municipal services by the city/town of _____. The owner shall be obligated to pay all income taxes on any dividends or capital gains.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER

a. The owner shall secure this obligation by depositing with the treasurer of the city/town of _____, an instrument or instruments, properly executed, that transfers the securities to the city/town of _____, which shall be held by the treasurer in the name of the city/town of _____ in the amount of _____ for the purpose of securing construction of ways and installation of municipal services in the subdivision. In addition, the owner shall deposit with said treasurer proof that the transfer records of the issuing entity have been updated to indicate that the city/town of _____ is currently holding said securities for the purpose of securing construction of ways and installation of municipal services in the subdivision and, if necessary, may exercise all rights of ownership, including sale of said securities. If necessary, a new stock certificate or other instrument shall be prepared and deposited with the treasurer. Said certificate or instrument of transfer shall be free from encumbrances, shall be issued in the name of the planning board of the city/town of _____, and shall express on its face that it is held as collateral security to ensure the construction of ways and installation of municipal services in the subdivision.

b. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.

c. The owner agrees and understands that failure to complete construction of the ways and installation of the municipal services by the agreed-upon date shall result in automatic rescission of approval of the definitive subdivision plan by the planning board. The planning board shall forthwith carry out the rescission as provided in M.G.L., ch. 41, § 81W.

d. The owner agrees and understands that the planning board will not release this agreement in full, unless another method of security is provided, or until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

e. No provision of this agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.

f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____

The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

h. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instruments required to be recorded under the approval instruments at the _____ and at the expense of the owner.

SECTION 5. BINDING EFFECT

This agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner.

SECTION 6. USE OF TERMINOLOGY

Use of the term "owner" in this agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this agreement and any amendments thereon. Use of the term "planning board or board" in this agreement is for convenience only and may include agents or representatives of the planning board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this agreement, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this agreement.

SECTION 8. AMENDMENTS

This agreement may be amended, in writing, by agreement of all of the parties to this agreement.

SECTION 9. GOVERNING LAW

This agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this agreement is true and complete; and we, the parties to this agreement, set our hands and seals to this agreement on the date(s) first written below.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, owner, or person duly authorized to execute this agreement on behalf of the owner, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

Planning Board Member

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____

and acknowledged the execution of the foregoing instrument to be their free acts and deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,

the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE AGREEMENT FOR BANK PASSBOOK:

FORM J
AGREEMENT TO SECURE PERFORMANCE BY A BANK PASSBOOK

This Agreement is entered into this _____ day of _____, 2____ by and between the city/town of _____, a Massachusetts municipal corporation, acting through its planning board, with an address of _____; _____, with an address of _____ (this should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"]; and _____ (this is the bank who holds the account for the passbook), a corporation duly organized and existing under the laws of the state of _____, licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of _____ [hereinafter "bank"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____) of the construction of ways and installation of municipal services in the subdivision by means of a DEPOSIT OF MONEY REPRESENTED BY A BANK PASSBOOK, number _____, in the penal sum of _____ dollars;

WHEREAS, the board has determined that the form of the bank passbook and the accompanying order to the bank to pay the city/town of _____ is sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid deposit of money represented by the bank passbook in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this agreement and any amendments thereto; and the following additional documents

_____ [hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this surety agreement.

SECTION 2. EFFECTIVE DATE

This agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the _____ at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner and surety from this agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner and bank from this agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

d. The planning board shall notify the treasurer for the city/town of _____ of any release of the bank passbook that secures this agreement in full or in part. Upon receipt of a release, the treasurer shall forthwith return the bank passbook and the accompanying order to pay to the owner.

e. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this agreement, the planning board may apply the funds on deposit in the account represented by the aforesaid bank passbook and order drawn thereon, held by the treasurer of the city/town of _____, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval instruments. Any portion of the funds that is not applied as set forth above, shall be returned to the owner upon completion of the construction of ways and installation of municipal services by the city/town of _____.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER AND BANK

a. The owner shall deliver a bank passbook with an order drawn on the bank, payable to the planning board of the city/town of _____ to the treasurer of the said city/town, in the amount of _____ for the purpose of securing construction of ways and installation of municipal services in the subdivision.

b. The bank agrees to and is obligated to prevent any withdrawal from the aforesaid bank passbook, except by the planning board of the city/town of _____, as set forth in this agreement. Failure of the bank to ensure that no withdrawals are made except to the city/town of _____ as set forth in this agreement shall result in automatic rescission of approval of the subdivision.

c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.

d. The owner and bank agree and understand that the planning board will not release the aforesaid bank passbook in full, unless another method of security is provided, until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.

e. No provision of this agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.

f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this surety agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____

The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

h. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instruments required to be recorded under the approval instruments at the _____ and at the expense of the owner.

SECTION 5. BINDING EFFECT

This agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner. This agreement shall also be binding on the bank, its agents, representatives, successors, and assigns. The liability of the owner and bank to the city/town of _____ shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the terms "owner" and "bank" in this agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this agreement and any amendments thereon. Use of the term "planning board or board" in this covenant is for convenience only and may include agents or representatives of the planning board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____

Address of representative: _____

Tel. #: Days _____ Evenings _____

Relationship of representative to owner: _____

In executing this agreement, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this agreement.

SECTION 8. AMENDMENTS

This agreement may be amended, in writing, by agreement of all of the parties to this agreement.

SECTION 9. GOVERNING LAW

This agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this agreement is true and complete; and we, the parties to this agreement, set our hands and seals to this agreement on the date(s) written below.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
owner, or person duly authorized to execute this agreement on behalf of the owner, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

BANK

Signature of Bank Representative

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
person duly authorized to execute this agreement on behalf of the bank, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named

and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,
the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE THREE-PARTY LENDER'S AGREEMENT:

**FORM K
LENDER'S AGREEMENT**

This Lender's Agreement is entered into this _____ day of _____, 2____ by and among the city/town of _____, a Massachusetts municipal corporation, acting through its planning board, with an address of _____; _____, with an address of _____ (this should be the record owner of the parcel of land shown on an approved definitive subdivision plan and includes an equitable owner or purchaser on a purchase and sales agreement for the entire parcel or portion of the parcel of land shown on the approved definitive subdivision plan) [hereinafter "owner"]; and _____ (this should be the name of the bank holding a first mortgage on the subdivided parcel of land), a corporation duly organized and existing under the laws of the state of _____, and licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of _____ [hereinafter "lender"].

PREAMBLE

WHEREAS, on _____, based on the owner's application dated _____, and after duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing _____ lots, which is entitled: _____ by: _____ to be recorded or registered at the _____;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at _____ [hereinafter "subdivision"] and further described in a deed or deeds dated _____ and recorded at the _____ in Book(s) _____, Page(s) _____; or is registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of municipal services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan;

WHEREAS, the owner has decided to secure all/a portion (described as _____)

of the construction of ways and installation of municipal services in the subdivision by means of a LENDER'S AGREEMENT in which the owner has agreed that the lender may retain funds from the principal sum otherwise due the owner with respect to the first mortgage on the subdivided parcel of land in the amount of _____ dollars (this amount should not exceed \$100,000.00 for any one lender, as bank deposits are only insured up to \$100,000.00);

WHEREAS, the board has determined that the form of the lender's agreement and that the lender and funds to be retained by the lender are sufficient in form and amount to secure the construction of ways and installation of municipal services in the subdivision and hereby accepts the aforesaid method of securing performance in the amount specified;

WHEREAS, the owner's construction of ways and installation of municipal services within the subdivision are subject to the requirements of M.G.L., ch. 41, §§ 81K-81GG (The Subdivision Control Law); the board's Subdivision Rules and Regulations applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval and all conditions of approval of this subdivision as set forth in the Appendix attached to and made an enforceable part of this lender's agreement; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this lender's agreement and any amendments thereto; and the following additional documents

_____ [hereinafter "approval instruments"];

NOW THEREFOR, for and in consideration of the mutual promises set forth below, and after good and valuable consideration, the parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this surety agreement.

SECTION 2. EFFECTIVE DATE

This lender's agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the _____ at the expense of the owner.

SECTION 3. OBLIGATIONS, DUTIES, AND RIGHTS OF THE PLANNING BOARD

a. Upon completion of the construction of ways and installation of municipal services in accordance with the approved instruments, the planning board shall release the owner and surety from this lender's agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.

b. Upon construction of a portion of the ways and installation of a portion of the municipal services in accordance with the approval instruments, the planning board may release the owner and the lender from this lender's agreement, in full or in part, so long as the construction of ways and installation of municipal services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, § 81U. A certificate of release shall be executed by a majority of the members of the planning board.

c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this lender's agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, § 81W.

d. The parties to this lender's agreement, agree to the following construction schedule, which shall also be considered the schedule for releases by the board and disbursements by the lender to the owner of funds being retained as security:

<u>Stage of construction or installation to be completed</u>	<u>Sum to be disbursed by lender</u>	<u>Sum to be retained by lender</u>	<u>Date when stage of construction or installation to be completed</u>
--	--	---	--

e. The planning board shall notify the lender and the treasurer for the city/town of _____ of any release of all or a portion of the security that secures this agreement in full or in part. Upon receipt of a release, the lender agrees to immediately release and disburse such funds to the owner.

f. If the owner fails to complete the construction of ways and installation of municipal services as provided by the approval instruments, and within the time provided in this lender's agreement, the lender agrees to pay over to the city/town of _____ forthwith, the funds it is retaining as security, and the planning board may apply the said funds, in whole or in part, for the benefit of the said city/town to the extent of the reasonable costs to the said city/town to complete the construction of ways and installation of municipal services as provided in the approval

instruments. Any portion of the funds that is not applied as set forth above, shall be returned to the lender upon completion of the construction of ways and installation of municipal services by the city/town of _____, and the lender agrees to disburse such excess funds to the owner.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER AND LENDER

- a. The lender agrees to retain the principal sum of money specified in this lender's agreement, due to the owner on the basis of a first mortgage granted by the owner to the lender on the subdivided parcel of land. The lender agrees not to disburse any funds it is retaining to the owner until such time as it receives a written release from the planning board. The lender agrees that it will remain liable to the city/town of _____ for any funds disbursed in breach of this lender's agreement, including payment of any legal costs incurred by the city/town of _____ to rectify the breach.
- b. The lender agrees to and is obligated to notify the planning board of any change in the first mortgage granted by the owner to the lender. Failure of the lender to provide such notice or any lapse or release of the first portion shall result in automatic rescission of approval of the subdivision. Any grant of a subsequent first mortgage shall require execution of a new lender's agreement.
- c. The owner shall complete construction of the ways and installation of the municipal services for this subdivision no later than _____.
- d. The owner and lender agree and understand that the planning board will not release this lender's agreement in full, unless another method of security is provided, until the ways and municipal services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a _____ period of time prior to said release.
- e. No provision of this lender's agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41, § 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of municipal services as sufficient.
- f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.

g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgagee or mortgagees of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this surety agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____

The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

h. The owner appoints the planning board as its agent to record or register the approved and endorsed definitive subdivision plan and any other instruments required to be recorded under the approval instruments at the _____ and at the expense of the owner.

i. The owner shall have the right to take any tax deductions for payments of interest on any note secured by the first mortgage that also secures this lender's agreement.

SECTION 5. BINDING EFFECT

This lender's agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner. This lender's agreement shall also be binding on the lender, its agents, representatives, successors, and assigns. The liability of the owner and lender to the city/town of _____ shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the terms "owner" and "lender" in this lender's agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this lender's agreement and any amendments thereon. Use of the term "planning board or board" in this covenant is for convenience only and may include agents or representatives of the planning board.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
owner, or person duly authorized to execute this covenant on behalf of the owner, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

OWNER'S SPOUSE

Signature of Owner's Spouse

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
and acknowledged the execution of the foregoing instrument to be his/her free act and
deed for the purposes provided therein.

Notary Public

My commission expires: _____

LENDER

Signature of Lender's Representative

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
person duly authorized to execute this lender's agreement on behalf of the lender, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

PLANNING BOARD

Planning Board Member Date

Witness

Planning Board Member Date

Witness

Planning Board Member Date

Witness

Planning Board Member Date

Witness

Planning Board Member Date

Witness

Planning Board Member Date

Witness

Planning Board Member Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____

and acknowledged the execution of the foregoing instrument to be their free acts and
deeds for the purposes provided therein.

Notary Public

My commission expires: _____

ASSENT OF MORTGAGEE

_____, of _____,
the mortgagee of the parcel of land, or a portion thereof, constituting this subdivision at the time of execution of this agreement, hereby consents to execution of this agreement by the owner, who is the mortgagor of the parcel of land subject to a certain mortgage deed dated _____ and recorded at the _____ in Book _____, Page _____; or registered in _____ as Document No. _____, and noted on certificate of title No. _____, in Registration Book _____, Page _____. The mortgagee also agrees to hold the mortgage subject to this agreement and agrees that the mortgage shall be subordinate to the agreement, which agreement shall have the same status, force, and effect as through executed and recorded prior to the conveyance of the mortgage deed by the mortgagor-owner to the mortgagee.

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, person duly authorized to execute this agreement on behalf of the mortgagee, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

APPENDIX

(Conditions of approval of the definitive subdivision plan)

SAMPLE DEED TO CONVEY EASEMENTS AND UTILITIES:

**FORM L
EASEMENT AND UTILITIES DEED**

KNOW ALL MEN BY THESE PRESENTS, that _____
(owner), with an address of _____
hereby grants, transfers, and delivers unto the city/town of _____,
with an address of _____,
_____ county, Commonwealth of Massachusetts, the following:

A. The perpetual rights and easements to construct, inspect, remove, replace, operate and forever maintain (1) a sanitary sewer or sewers with any manholes, pipes, conduits, and other appurtenances; (2) pipes, conduits, and their appurtenances for the conveyance of water; and (3) a covered surface and ground water drain or drains with any manholes, pipes, conduits and their appurtenances, and to do all other acts incidental to the foregoing, including the right to pass along and over the land upon which said utilities are located for the aforesaid purposes.

B. The perpetual rights and easement to use for _____
(describe the use or purpose) the following parcel of land situated on
_____ (street) in said _____
(city/town) and bounded and described as follows:

(description)

The grantor warrants that the aforesaid easements are free and clear of all liens or encumbrances, that he/she/it has good title to transfer the same, and that he will defend the same against claims of all persons.

For grantor's title, see deed from _____ dated
_____, _____, and recorded in _____ District
Registry of Deeds, Book _____, Page _____, or Certificate of Title No.
_____ registered in _____ District of
the Land Court, Book _____, Page _____.

To be completed if a mortgage exists --

The mortgagee, _____, with an address of
_____, the present holder
of a mortgage on the above-described land, which mortgage is dated _____,
_____, and recorded in said Registry of Deeds, Book _____, Page _____, for
consideration paid, hereby releases unto the city/town forever from the operation of said
mortgage, the rights and easements hereinabove granted.

We, the owner and his/her spouse, as far as necessary, hereby release all rights of dower, curtesy, or homestead, or any other interests that we may have in the parcel of land that constitutes the subdivision.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of 2 _____.

OWNER

Signature of Owner

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, owner, or person duly authorized to execute this instrument on behalf of the owner, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

OWNER'S SPOUSE

Signature of Owner's Spouse

Date

Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____, and acknowledged the execution of the foregoing instrument to be his/her free act and deed for the purposes provided therein.

Notary Public

My commission expires: _____

MORTGAGEE

Signature of Mortgagee

Date

Witness

By:

Its:

Duly authorized

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____,
person duly authorized to execute this instrument on behalf of the mortgagee, and
acknowledged the execution of the foregoing instrument to be his/her free act and deed
for the purposes provided therein.

Notary Public

My commission expires: _____

SAMPLE REFERRAL AND REVIEW FORM:

**FORM M
REFERRAL AND REVIEW FORM**

FROM: Planning Board of _____

DATE: _____

RE: Title of plan: _____

Date of plan: _____

Drawn by: _____

Location of land subdivided: _____

Number of proposed lots: _____

TO: (enter the names of all departments or officers in the city/town who are required to review subdivision plans under the planning board's subdivision rules and regulations)

A SAMPLE LIST MIGHT INCLUDE—

<input type="checkbox"/> Board of Alderman	<input type="checkbox"/> Office of Community Development
<input type="checkbox"/> Board of Selectmen	<input type="checkbox"/> Parks and Recreation Commission
<input type="checkbox"/> City Council	<input type="checkbox"/> Police Department
<input type="checkbox"/> City or Town Engineer	<input type="checkbox"/> Post Office
<input type="checkbox"/> Conservation Commission	<input type="checkbox"/> Public Safety Commission
<input type="checkbox"/> Department of Public Works	<input type="checkbox"/> Road Commission
<input type="checkbox"/> Energy Coordinator	<input type="checkbox"/> Sewer Commission
<input type="checkbox"/> Fire Department	<input type="checkbox"/> Water Commission
<input type="checkbox"/> Highway Superintendent	<input type="checkbox"/> Other _____
<input type="checkbox"/> Local utility companies:	
<input type="checkbox"/> Cable	<input type="checkbox"/> Electric
<input type="checkbox"/> Gas	<input type="checkbox"/> Telephone

In accordance with section _____ of the planning board's subdivision rules and regulations, the above-captioned plan is being submitted to your department/board or to you for review and recommendations. Please consider the following subject area(s), among others, in your review of this plan.

(Planning board to check off area to be reviewed)

<input type="checkbox"/> Drainage	<input type="checkbox"/> Street names and addresses
<input type="checkbox"/> Engineering specifications	<input type="checkbox"/> Utility system:
<input type="checkbox"/> Fire protection	<input type="checkbox"/> cable
<input type="checkbox"/> Health	<input type="checkbox"/> electric
<input type="checkbox"/> Open space	<input type="checkbox"/> gas
<input type="checkbox"/> Police protection	<input type="checkbox"/> telephone
<input type="checkbox"/> Road design and layout	<input type="checkbox"/> Water system
<input type="checkbox"/> Sewer system	<input type="checkbox"/> Wetlands, floodplains
<input type="checkbox"/> Street lights	<input type="checkbox"/> Other _____

Please submit your report and any recommendations to the planning board by _____.

Clerk, Planning Board

SAMPLE CONTROL FORM FOR SUBDIVISION PROCESSING AND CONSTRUCTION:

FORM N
SUBDIVISION PLAN PROCESSING AND CONSTRUCTION CONTROL

GENERAL INFORMATION:

Name of applicant: _____
Address of applicant: _____
Telephone # of applicant: _____
Name of applicant's representative: _____
Address of applicant's representative: _____
Telephone # of applicant's representative: _____
Title of plan: _____
Date of plan: _____
Drawn by: _____
Location of land subdivided: _____
Number of proposed lots: _____

PRELIMINARY PLAN:

Date of preliminary plan: _____
Date of preliminary plan submission: _____
Date of preliminary plan decision: _____
 ___ approval
 ___ approval with the following modification:

 ___ disapproval with detailed reasons:

DEFINITIVE PLAN:

Date of definitive plan: _____
Date of definitive plan submission to planning board: _____
Date of definitive plan submission to board of health: _____
Date received board of health report: _____
Date of plan submission to other boards: _____
(see attached referral sheet)

Department/Board/Agency[illegible]

PERFORMANCE GUARANTEE(S) AND RELEASES:

Type of initial performance guarantee: _____

Date of initial performance guarantee: _____

Releases from initial performance guarantee:

<u>Date</u>	<u>What Was Released</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Changes in type of performance guarantee: _____

Date of replacement performance guarantee (s): _____

Replacement performance guarantee releases:

<u>Date</u>	<u>What Was Released</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of final release of all performance guarantees: _____

Date of issuance of certificate of completion: _____

CONSTRUCTION CONTROL AND INSPECTION(S):

The following items are provided as examples only. Construction control and inspections must be based on the requirements in the planning board's subdivision rules and regulations.

<u>Date</u>	<u>Type</u>	<u>Signature of Inspector</u>
1. _____	Clearing, grubbing, and excavation	_____
2. _____	Drainage system	_____
3. _____	Water system	_____
4. _____	Sewer system	_____
5. _____	Underground utilities	_____
6. _____	Backfill, fill and rough grading	_____
7. _____	Gravel base	_____
8. _____	Binder course	_____
9. _____	Curbs/berms	_____
10. _____	Top coat bituminous concrete	_____
11. _____	Sidewalks	_____
12. _____	Loam and seed	_____
13. _____	Street trees	_____
14. _____	Road signs	_____
15. _____	Street lights	_____
16. _____	Fire hydrants	_____
17. _____	Fire alarm system	_____
18. _____	Bounds	_____
19. _____	Other _____	_____
20. _____	Final inspection	_____
21. _____	Final clean-up	_____

**SAMPLE CERTIFICATE OF COMPLETION AND RELEASE OF
MUNICIPAL INTEREST IN PERFORMANCE GUARANTEE:**

**FORM O
CERTIFICATE OF COMPLETION AND RELEASE OF PERFORMANCE
GUARANTEE**

Date: _____

The planning board of the city/town of _____ [hereinafter
"board"] has received a written request on _____ from
_____ requesting:

_____ change in type of performance guarantee
_____ partial release of performance guarantee
_____ final release of performance guarantee
_____ certificate of completion

for the following subdivision:

Title of plan: _____
Drawn by: _____
P.E.'s or surveyor's registration #: _____
Date of plan: _____
Owner's name: _____
Owner's address: _____
Date of approval: _____
Recording information for plan: _____
Other recording information: _____

The planning board has made the following determination with respect to the
request:

1. _____ The subdivision as approved has been fully and satisfactorily completed
in accordance with the requirements of M.G.L., ch. 41, §§ 81K-81GG (The
Subdivision Control Law); the planning board's Subdivision Rules and
Regulations applicable to this subdivision; the application submitted for approval
of this subdivision; the certificate of approval and all conditions of approval of this
subdivision; the recommendations, if any, of the board of health; the approved
definitive plan; all conditions subsequent to approval of this subdivision due to
any amendment, modification, or rescission of the approval of the definitive
subdivision plan; all of the provisions set forth in any performance guarantee and
any amendments thereto; and the following additional documents

[hereinafter "approval instruments"].

The following lots are hereby released from any covenant:

All existing methods for securing construction of ways and installation of municipal services in the subdivision are hereby released.

2. ____ The subdivision as approved has been partially and satisfactorily completed in accordance with the approval instruments.

Therefore, the following lots are hereby released from any covenant:

3. ____ The subdivision as approved has not been satisfactorily completed, but the owner wants to substitute a new method of securing the construction of ways and installation of municipal services, which method the planning board has determined is sufficient for completing the following work: _____

and the planning board therefore releases the following enumerated lots from any covenant: _____

4. ____ The subdivision as approved has not been satisfactorily completed in accordance with the approval instruments based on the following insufficiencies as required by the Planning Board's Subdivision Rules and Regulations and the approval instruments:

Insufficiency

Rule or Regulation Requirement

PLANNING BOARD

_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness
_____ Planning Board Member	_____ Date	_____ Witness

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me the above-named _____

and acknowledged the execution of the foregoing instrument to be their free acts and deeds for the purposes provided therein.

Notary Public

My commission expires: _____

Cc: City/town clerk

LINKS

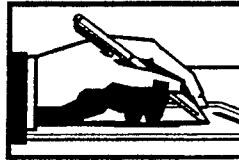
- 🔑 <http://www.landlaw.com> (lower court cases available from landlaw)
- 🔑 <http://www.massapa.org/> (Mass. American Planning Association resources with links to other sites)
- 🔑 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)
- 🔑 <http://www.sociallaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)
- 🔑 <http://www.umass.edu/masscptc/> (Citizen Planner Training web site -- this site has links to other planning sites)

REFERENCES

- 📁 [Subdivision Control Guidebook](#), Section 81R
- 📁 [Subdivision Control Guidebook](#), Section 81T
- 📁 [Subdivision Control Guidebook](#), Section 81V
- 📁 [Subdivision Control Guidebook](#), Section 81W
- 📁 [Subdivision Control Guidebook](#), Section 81X
- 📁 [The Zoning Guidebook](#) (available from the Massachusetts Federation of Planning and Appeals Boards)

SECTION 81V.

ENDORSEMENT OF APPROVAL



THE LAW

In case of approval of a plan by action of the planning board, after the expiration of twenty days without notice of appeal to the superior court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the planning board shall cause to be made upon the plan a written endorsement of its approval. In case of the approval of a plan by reason of the failure of the planning board to act within the time prescribed, the city or town clerk shall, after the expiration of twenty days without notice of appeal to the superior court, or, if appeal has been taken, after receipt of certified records of the superior court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the planning board failed to take final action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or, in the case of the certificate, by the city or town clerk, to the person who submitted such plan. Except as provided in section eighty-one E, the existence of an official map in a city or town shall not affect the operation of the subdivision control law therein.

ANNOTATIONS

Planning board to endorse approval on definitive plan after expiration of 20 day appeal period or entry of court decree sustaining board's approval

If approval is constructive, for failure of planning board to take timely action, city or town clerk shall issue certificate of approval after expiration of appeal period or after receipt of certified records from the court indicating appeal is final

Planning board shall deliver plan and clerk shall deliver certificate, if one is issued, to the person submitting the plan

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ Once a planning board has approved a definitive subdivision plan it shall:

- 1) Wait 20 days to determine if an appeal of its decision has been filed with the court, and
- 2) After the expiration of 20 days without an appeal having been filed, endorse its approval in writing on the definitive subdivision plan;
- 3) If an appeal is filed, wait until the issuance of a final court decree sustaining the board's approval, and then endorse its approval in writing on the definitive subdivision plan; and
- 4) After endorsing the plan, transmit the plan to the person who submitted the plan initially.

➤ Endorsement by the planning board, as defined under section 81L of the subdivision control law, requires one of the following actions:

- 1) Signature by a majority of the members of the planning board as it is constituted, or
- 2) Signature by the planning board's chairman, clerk, or other authorized person, so long as a written statement of authority to endorse plans on behalf of the planning board has been filed with the register of deeds and recorder of land court, and such statement is signed by a majority of the members of the planning board as it is constituted.

➤ If a definitive subdivision plan is constructively approved for failure of the planning board to take final action (vote and file decision with city or town clerk) in the time prescribed under the subdivision control law, the city or town clerk shall:

- 1) Wait 20 days to determine if an appeal of the constructive grant of approval has been filed with the court, and
- 2) After the expiration of 20 days without an appeal having been filed, issue a certificate of constructive approval that provides the following:
 - a. The date the plan was submitted for approval;
 - b. A statement that the planning board failed to take final action by the required date for such action; and
 - c. A statement that the approval of the definitive plan because of such failure to take timely final action has become final;
- 3) If an appeal is filed, wait until receipt of certified records from the court specifying that approval of the subdivision plan has become final, and then issue the certificate of constructive approval; and
- 4) The planning shall return the constructively approved subdivision plan to the person who submitted the plan initially, and the clerk shall transmit the certificate of constructive approval to the person who submitted the plan initially.

RELATED CASE LAW

- ☐ *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (purpose of subdivision control law is to set up orderly procedure for review of subdivisions and notice of actions within stated times).
- ☐ *Kay-Vee Realty v. Town Clerk of Ludlow*, 355 Mass. 165, 243 N.E.2d 813 (1969) (although subdivision was constructively approved for failure to take timely action and applicant had a right to a certificate of approval, the planning board could also amend, modify, or rescind the constructive approval).
- ☐ *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).
- ☐ *Stoner v. Planning Bd. of Agawam*, 358 Mass. 709, 266 N.E.2d 891 (1971) (due to failure of planning board to take timely action, the applicant was entitled to a certificate of approval, which could be recorded with the subdivision plan in the appropriate registry of deeds).
- ☐ *Waldor Realty v. Planning Bd. of Westborough*, 354 Mass. 639, 241 N.E.2d 843 (1968) (applicant may obtain writ of mandamus that requires city or town clerk to issue certificate of constructive approval, but only after stating date of plan submission, that approval is final due to failure of the planning board to take timely act, and that the appeal period has expired without notice of appeal).

CAUTIONARY NOTES

- ✓ If the planning board wants to allow someone other than a majority of the planning board to endorse plans, a majority of the members of the planning board as constituted must sign a written statement indicating the person who may endorse plans on behalf of the board and must file such statement with both the applicable register of deeds and the land court.
- ✓ If the planning board does not take final action on a definitive subdivision plan within the required time limit for such final action, including any extensions of the time limit, then the city or town clerk has authority to take action and issue a certificate of constructive approval of a subdivision. This action does not prohibit the planning board from amending, modifying, or rescinding such approval in accordance with section 81W of the subdivision control law.
- ✓ If the city or town clerk fails to issue the certificate of constructive approval, the applicant may seek a Writ of Mandamus from the court ordering the clerk to issue such certificate.
- ✓ The existence of an official map does not affect the operation of the subdivision control law in the city or town and the procedures for issuing a certificate of constructive grant under this section, except as may be provided under section 81E of M.G.L. chapter 41.

**SAMPLE CERTIFICATION BY THE CITY OR TOWN CLERK
FOR FAILURE OF THE PLANNING BOARD TO TAKE TIMELY
ACTION ON A DEFINITIVE SUBDIVISION PLAN:**

As city/town clerk of the city/town of _____,
(name of city of town)

I hereby certify that:

The accompanying definitive subdivision plan entitled:

_____ and dated: _____, by _____
(P.E. or surveyor signing the plan)

for land owned by: _____

was filed with the city/town clerk on _____
(date of filing)

The planning board did not take final action on the above-referenced definitive subdivision plan within the time prescribed and as required by M.G.L. ch. 41, § 81U.

No notice of appeal was filed with this office within 20 days after the date when the planning board should have taken final action on such plan/I am in receipt of certified records from the court indicating that the approval of such plan has become final.

Thus, the approval resulting from the planning board's failure to take timely final action on the above-referenced definitive subdivision plan has become final.

Date: _____
City/Town Clerk

SECTION 81W.

AMENDMENT, MODIFICATION, OR RESCISSION OF APPROVAL OF A DEFINITIVE SUBDIVISION PLAN



THE LAW

A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally

ANNOTATIONS

Planning board may amend, modify, or rescind approval of plan or require a change in an approved plan

An amendment, modification, or rescission cannot affect good faith purchasers of lots and holders of mortgages subsequent to approval of the subdivision plan and who paid value unless such purchasers and holders consent

Approval of a plan may be rescinded, amended, or modified without consent when the entire subdivision is conveyed to a single grantee or all of the lots not previously released are conveyed

approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and fourteen of said chapter one hundred and eighty-five.

With respect to land that is not registered, no amendment, modification, or rescission shall take effect until recording of the planning board's vote at the applicable registry of deeds; referencing the vote on the originally approved and recorded plan; and indexing the vote in the grantor's index

With respect to land that is registered, no amendment, modification, or rescission shall take effect until such change has been verified by the land court or ordered by the court

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1973, c. 605; St. 1977, c. 473.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ After a definitive subdivision plan is approved by final action of the planning board or after a plan is constructively approved for failure of the planning board to take final action in a timely manner, the planning board may take one of the following actions:

- 1) Amend approval of the plan;
- 2) Modify approval of the plan;
- 3) Rescind approval of the plan; or
- 4) Require a change in the approved plan.

➤ The motion or petition to amend, modify, or rescind approval or require a change in a plan may be brought forward by the planning board or by any person interested (although not yet defined by the courts, a person interested is most likely to be a person who would receive notice of a public hearing or a person with rights in the subdivision or in its lots and improvements).

➤ If the planning board decides to amend, modify, or amend approval of a subdivision or require a change in the plan, it must follow the procedural provisions of the subdivision control law for submitting and approving a subdivision in addition to provisions set forth under section 81W, including the following:

- 1) Hold a public hearing with notice of the proposed amendment, modification, or rescission of approval or change in the plan;

- 2) Seek review of the amendment, modification, rescission, or change from the board of health;
- 3) Obtain consent from lot owners and holders of mortgages who:
 - a) obtained an interest in a lot through deed or mortgage after the subdivision was approved;
 - b) obtained the lot interest in good faith (they had no knowledge of something such as a condition that might affect their right to consent); and
 - c) who paid valuable consideration for the lot (it was not a gift).Such consent may be unnecessary if it will not affect the marketable title of the lot owner or mortgage holder to the lot or any appurtenant rights (e.g., an easement), but will simply provide an improvement to the subdivision and further enhance the purposes of the subdivision control law, such as changing a dead-end street to a through street.
- 4) Follow the procedural requirements of section 81W in order to provide notice to third parties of the amendment, modification, rescission or approval or a plan or change in a plan by completing the following:
 - For an approved plan that is recorded at the applicable registry of deeds, the amendment, modification or rescission of approval or change in the plan shall not take effect until the following occurs:
 - a) the plan as originally approved or a copy of such plan is recorded at the applicable registry of deeds;
 - b) a certified copy of the planning board's vote making such amendment, modification, rescission, or change is recorded at the applicable registry of deeds;
 - c) a copy of any additional plan referred to in the vote to amend, modify, rescind, or make a change is recorded at the applicable registry of deeds;
 - d) an endorsement is made on the originally approved plan as recorded that refers to the vote for amendment, modification, rescission, or change, and where it is recorded; and
 - e) the vote to amend, modify, rescind, or change the plan is indexed in the grantor index under the names of the owners of record of the land affected.
 - For an approved plan that is registered with the land court, the amendment, modification or rescission of approval or change in the plan shall not take effect until the following occurs:
 - a) the amendment, modification, or rescission of approval or change in the plan is submitted to the land court and verified by the land court in accordance with M.G.L., ch. 185; or
 - b) if not verified by the land court, the amendment, modification, or rescission of approval or change in the plan is ordered by a court in accordance with M.G.L., ch. 185, § 114.

☛ The planning board is not required to obtain consent to amend, modify, or rescind approval of a subdivision or require a change in the plan for lots not sold or mortgaged prior to the amendment, modification, rescission, or change, or if the entire subdivision has been sold to a single grantee.

RELATED CASE LAW

☞ *Bigham v. Planning Bd. of North Reading*, 362 Mass. 860, 285 N.E.2d 408 (1972) (before planning board may rescind approval of plan it must obtain consent from the holder of the mortgage of lots that were mortgaged in good faith and for valuable consideration after approval of the subdivision plan).

☞ *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (any lot owner and subsequent purchaser of a lot who knew that they could treat plan as constructively approved, were not protected as bona fide purchasers from amendment, modification, or rescission of that approval if they knew the planning board had actually approved the plan with conditions).

☞ *Campanelli, Inc. v. Planning Bd. of Ipswich*, 358 Mass. 798, 261 N.E.2d 65 (1970) (landowner may agree to conditions of approval that may not have been authorized by subdivision control law by acquiescing in such conditions of approval, including amendment extending termination date of conditions of approval).

☞ *Cassani v. Planning Bd. of Hull*, 1 Mass. App. Ct. 451, 300 N.E.2d 746 (1973) (endorsement of an approval not required plan by or on behalf of the planning board is conclusive on the board and may not be rescinded under section 81W of the subdivision control law).

☞ *Costanza & Bertolino, Inc. v. Planning Bd. of No. Reading*, 360 Mass. 677, 277 N.E.2d 511 (1971) (rescission of a conditional approval requiring completion of the construction of ways and installation of municipal services within two years of approval is automatic upon failure of such condition).

☞ *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (all conditions of approval must be endorsed on the plan or be set forth in a separate instrument referred to on the plan in order to be binding).

☞ *Kay-Vee Realty v. Town Clerk of Ludlow*, 355 Mass. 165, 243 N.E.2d 813 (1969) (although subdivision was constructively approved for failure to take timely action and applicant had a right to a certificate of approval, the planning board could also amend, modify, or rescind the constructive approval).

☞ *McDavitt v. Planning Bd. of Winchester*, 5 Mass. App. Ct. 827, 362 N.E.2d 1211 (1977) (landowner could seek declaratory judgment where planning board had threatened to rescind approval of subdivision, but this did not preclude planning board from making such rescission).

☞ *Murphy v. Planning Bd. of Norwell*, 5 Mass. App. Ct. 593, 363 N.E.2d 536 (1977) (1973 statutory amendment that permitted rescission of approval without consent of landowner and mortgagee could not be given retroactive effect; period of zoning freeze stops running once the planning board votes to rescind approval; applicant may amend plan for which approval has been rescinded in order to cure reasons for such rescission).

☞ *Patelle v. Planning Bd. of Woburn*, 6 Mass. App. Ct. 951, 383 N.E.2d 94, *appeal after remand*, 20 Mass. App. Ct. 279, 480 N.E.2d 35 (1985) (requirement for consent of lot owners and mortgagees before rescission, modification, or amendment of approval takes effect is to protect marketability of title, but not to prevent changes that would not affect owners and mortgagees directly such as providing a through street where a dead-end street exists, creating a house lot out of open space, changing width of street and plantings between street curb and lot lines, changing street lighting and traffic signals, or making changes to underground and overhead utilities; failure of a condition of approval could result in automatic rescission of approval of a subdivision).

☞ *Stoner v. Planning Bd. of Agawam*, 358 Mass. 709, 266 N.E.2d 891 (1971) (planning board must obtain consent of lot owners and holders of mortgages who acquired their interests after approval of a subdivision before such subdivision approval may be rescinded; even though planning board had no authority to rescind approval without consent of subsequent lot owners and mortgagees, such parties would need to furnish security such as a bond, deposit, or covenant in order to guarantee construction of ways and municipal services to serve their lots, if they intended on providing such roads and services themselves; planning board's endorsement of approval dated six months before recording or certificate that the approval has not been amended, modified, or rescinded dated no later than 30 days of the date of recording does not apply to a constructively approved plan).

☞ *Strand v. Planning Bd. of Sudbury*, 5 Mass. App. Ct. 18, 358 N.E.2d 842 (1977), *appeal after remand*, 7 Mass. App. Ct. 935, 390 N.E.2d 1141 (1977) (trial court may not order modification of subdivision plan without first requiring planning board to hold another public hearing and board of health to review plan, as all provisions of the subdivision control law that apply to original approval also apply to the amendment, modification, or rescission of approval).

☞ *Vitale v. Planning Bd. of Newburyport*, 10 Mass. App. Ct. 483, 409 N.E.2d 237 (1980) (under section 81W of subdivision control law planning board has right to rescind approval of a subdivision, as does the board of health, but both must inform the applicant/developer of the rescission and the planning board must hold a public hearing before rescission).

☞ *Windsor v. Planning Bd. of Wayland*, 26 Mass. App. Ct. 650, 531 N.E.2d 272 (1988) (planning board may amend, modify, or rescind constructively approved plan).

📖 *Zaltman v. Town Clerk of Stoneham*, 5 Mass. App. Ct. 248, 362 N.E.2d 215 (1977) (planning board may amend, modify, or rescind constructive approval of original plan).

CAUTIONARY NOTES

⚡ The planning board must obtain consent of all good faith lot owners and holders of mortgages who obtained their right, title, and interest to a lot and appurtenant rights after a plan was approved and after paying valuable consideration, if such amendment, modification, or rescission of approval or change in the plan will affect the marketable title of the lot owner's or mortgagee's lot or appurtenant rights. If such consent is not obtained, an amendment, modification, rescission, or change approved by the planning board is a nullity.

⚡ The planning board MAY NOT rescind its endorsement of an approval not required plan under section 81W of the subdivision control law.

⚡ In some cases approval of a subdivision plan may be automatically rescinded for failure of a condition of approval. However, to make such rescission effective against third parties a conservative planning board will still hold a hearing with notice and prepare a document that can be recorded at the applicable registry of deeds or registered with land court as set forth under section 81W of the subdivision control law.

SAMPLE DOCUMENTS

PETITION/MOTION TO AMEND, MODIFY, OR RESCIND APPROVAL OR REQUIRE A CHANGE IN AN APPROVED SUBDIVISION PLAN

PETITIONER/MOVANT--

- Petitioner's/Movant's name: _____
- Petitioner's/Movant's address: _____
- Petitioner's/Movant's phone #: _____
- Interest of Petitioner/Movant in subdivision: _____

ORIGINAL APPLICANT--

- Original applicant's name: _____
- Original applicant's address: _____

THE ORIGINAL PLAN --

- Title of original plan: _____
 - Drawn by: _____
 - P.E.'s or surveyor's registration #: _____
 - Date of plan: _____
 - Revision dates: _____
 - Approved by the planning board on: _____
 - Constructively approved on: _____
 - Approval endorsed by the planning board on _____
 - Certificate issued by city/town clerk for constructively approved plan on _____
 - Performance guarantee accepted on: _____ and
being _____
- Plan and other documents recorded/registered at: _____
- on: _____, as Plan # _____
- Book _____, Page _____

PRESENT OWNER –

If the original applicant and present owner are not the same person, the following must be completed:

- Present owner's name: _____
- Present owner's address: _____
- Present owner's phone #: _____

ASSESSOR'S RECORDS –

The land shown on the plan is shown on Map _____, Lot _____ of the
assessor's records and has an address of _____

PROPOSAL FOR AMENDMENT, MODIFICATION, RESCISSION, OR CHANGE –

This is a petition/motion for:

_____ Amendment of the approved subdivision plan as follows:

And for the following reasons:

_____ Modification of the approved subdivision plan as follows:

And for the following reasons:

____ Rescission of the approved subdivision plan as follows:

And for the following reasons:

____ Change to the approved subdivision plan as follows:

And for the following reasons:

I hereby certify that a copy of this petition/motion has been filed with the board of health.

Signature of petitioner/movant (may be planning board)

Received by board of health:

Date: _____

Signature of board of health representative

RE VOTE TO AMEND, MODIFY, OR RESCIND APPROVAL OR REQUIRE A CHANGE IN THE PLAN (To be certified by the city or town clerk that no appeal was filed or if filed that the vote has been upheld by the court, and to be recorded at the applicable registry of deeds or registered with the land court):

FORM E

Date: _____

Owner

Owner's address

City/Town Clerk

City/Town of _____

Address, Massachusetts

Petitioner or person making motion if other than planning board

Petitioner's/Movant's address

RE: Title of plan:

Date of plan:

Drawn by:

Date of approval of plan (actual/constructive):

Date of endorsement of approval of plan (actual/constructive)

Recording information for originally approved plan

On the motion/petition of _____, dated _____, to amend/modify/rescind the approval of the above-captioned subdivision plan/change the above-captioned plan, it is hereby certified by the planning board of the city/town of _____, Massachusetts that it took the following actions concerning such motion/petition:

1. Submitted a copy of the motion/petition to the board of health for review, who approved on _____/disapproved on _____/did not comment on the proposed amendment, modification, rescission, or change of the approved subdivision plan;

2. On _____, held a duly noticed and properly posted public hearing on the motion/petition to amend, modify, rescind, or change the approved subdivision plan;

3. Obtained consent from the following bona fide lot owners and holders of mortgages, who obtained title to lots after the subdivision plan was approved and for valuable consideration, where the marketability of such lots and appurtenant rights would be affected by the amendment, modification, or rescission of approval, or change of the plan:

<u>Name and address of bona fide lot purchaser for value</u>	<u>Date of consent</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

<u>Name and address of bona fide holders of mortgages for value</u>	<u>Date of consent</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

4. Voted at an open meeting duly noticed and posted held on _____:

_____ To amend approval of the above-captioned subdivision plan as follows:

(insert complete information concerning amendment and reasons for the amendment)

All prior conditions of approval shall remain in full force and effect until they are complied with.

_____ To modify approval of the above-captioned subdivision plan as follows:

(insert complete information concerning modification and reasons for the modification)

All prior conditions of approval shall remain in full force and effect until they are complied with.

_____ To rescind approval of the above-captioned subdivision plan as follows:

(insert complete information concerning rescission and reasons for the rescission)

_____ To require the following change(s) in the approved subdivision plan as a condition of its retaining the status of an approved plan:

(insert complete information concerning the change in the plan and reasons for the change)

All prior conditions of approval shall remain in full force and effect until they are complied with.

This amendment, modification, or rescission of approval or change in the approved plan shall take effect as follows:

If it concerns a plan recorded at the registry of deeds, it shall take effect when the originally approved plan or a copy of the plan is recorded at the applicable registry of deeds together with a certified copy of this vote, which shall be referenced on the originally recorded plan and indexed under the land owner's name in the grantor index, and any other plans or documents referred to in this vote are also recorded. The petitioner or moving party shall pay the expense of recording.

If it concerns a plan registered with the land court, it shall take effect when this vote is filed with the land court, which is to verify the amendment, modification, rescission, or change in the approval of the subdivision plan. If the land court fails to make such verification in accordance with M.G.L., ch. 185, then the court may order such verification in accordance with M.G.L., ch. 185, § 114. The petitioner or moving party shall pay the expense of registration with land court.


Planning Board

A true copy attest:

Clerk, planning board

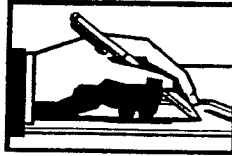
NOTE: The planning board should file this vote with the city or town clerk and provide a copy to the owner and petitioner. The planning board may not proceed to record this vote, endorse the vote or refer to it on the originally recorded plan, or record any plan that is the result of the amendment, modification, rescission, or change until the city or town clerk has certified that no appeal was filed within 20 days of filing this vote with the city or town clerk, or if there was an appeal, that the appeal has become final and the court upheld the vote.

LINKS

 <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81X.

REGISTRATION AND RECORDING OF A PLAN



THE LAW

No register of deeds shall record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, in a city or town in which the subdivision control law is in force unless (1) such plan bears an endorsement of the planning board of such city or town that such plan has been approved by such planning board, and a certificate by the clerk of such city or town, is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the twenty days next after receipt and recording of notice from the planning board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or (2) such plan bears an endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3) the plan is accompanied by a certificate of the clerk of such city or town that it is a plan which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, as provided in sections eighty-one U and eighty-one V, or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required, and a reference to the book and page where such certificate is recorded is made on said plan; and, unless, in case of plans approved, the endorsement or certificate is dated within six months of the date of the recording, or there is also endorsed thereon or recorded therewith and referred to thereon a certificate of the planning board or city or town clerk, dated within thirty days of the recording, that the

ANNOTATIONS

No register of deeds shall record a subdivision plan in a municipality in which subdivision control has been accepted unless the plan is endorsed by the planning board and the city or town clerk has certified that no appeal was received or that the court sustained approval on any appeal taken

A register of deeds may record a plan endorsed by the planning board as not requiring subdivision approval

A register of deeds may record a subdivision plan or plan that approval under the subdivision control law is not required, which is accompanied by a certificate from the city or town clerk that the plan is approved or the approval is not required due to failure of the planning board to take timely action

approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall upon application be made by the board or by the clerk unless the records of the board or clerk receiving the application show that there has been such modification, amendment, rescission or change. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The contents of any such endorsement of the planning board or certificate by the clerk of the city or town shall be final and conclusive on all parties, subject to the provisions of section eighty-one W.

Such register and recorder shall each keep in a place open for public inspection a book which shall be a public record in which the name of each city or town in which, according to notices sent him by the board having powers of subdivision control in such city or town the subdivision control law is or may be in effect, shall be separately indexed and in which shall be entered all notices from such board or the board of appeal of such city or town relating to subdivision control, including copies of the rules and regulations of such boards. Such register and recorder may each accept for record any plan of land, otherwise appropriate for record, in a city or town of which the board having powers of subdivision control has not sent him notice that the subdivision control law is in effect in such city or town, without requiring the approval of the planning board of such city or town, or a certificate that no approval is necessary.

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that the property lines shown are the lines

The register of deeds shall not record any definitive plan in which the endorsement is dated more than 6 months from the date of recording, unless the plan is accompanied by a certificate dated within 30 days of recording that there has been no modification, amendment, rescission, or change in the approval

The register of deeds and recorder of land court shall keep a public record of the notice from each municipality that subdivision control is in effect and a copy of the board's subdivision rules and regulations

The register or recorder may receive any appropriate subdivision plan for record without planning board approval, if the register and recorder have not received a notice that the subdivision control law is in effect in such municipality

The register and recorder shall accept a plan certified by a registered land surveyor that the plan does not show a subdivision, but only existing property lines

dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The recording of any such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.	<i>and ways already established</i>
No register of deeds or recorder of the land court shall accept for record a notice of modification, amendment or rescission of approval of a plan of a subdivision unless such notice contains a statement by the planning board that such modification, amendment or rescission does not affect any lot or rights appurtenant thereto in such subdivision which lot was conveyed or mortgaged in good faith and for valuable consideration subsequent to the approval of the subdivision plan.	<i>The register of deeds and recorder of land court shall not accept a notice of modification, amendment, or rescission of approval of a subdivision without a statement from the planning board that the rights of lots conveyed or mortgaged in good faith are not affected.</i>

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1958, c. 207; St. 1960, c. 189; St. 1962, c. 313; St. 1966, c. 380; St. 1967, c. 248.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ The register of deeds and recorder of land court **MAY ACCEPT** the following plans and documents for recording:

- 1) In a municipality in which the board with subdivision control powers has notified the register and recorder of acceptance of the subdivision control law by the city or town and has recorded its subdivision rules and regulations –
 - a. A plan endorsed by the planning board that approval under the subdivision control law is not required, as provided in section 81P;
 - b. A plan accompanied by a certificate of the city or town clerk that approval under the subdivision control law is not required due to failure of the planning board to take timely action on a plan submitted to the board as provided in section 81P;
 - c. A definitive subdivision plan containing:
 - i. an endorsement that the plan has been approved by a majority of the members of the planning board or by a person authorized to endorse plans on its behalf, as long as a majority of the members of the planning board has endorsed a written statement granting authority to such person to endorse plans on the

- board's behalf and has filed such statement with the register and recorder, and
 - ii. a city or town clerk certification on the plan or in a separate document recorded with and referenced on the plan, which states that no notice of court appeal was received by the clerk within 20 days after receipt of the board's decision, or if an appeal was filed, that the clerk has received a final decree from the court sustaining the approval of the plan;
 - d. A definitive subdivision plan accompanied by a certificate of the city or town clerk referenced on the plan that the subdivision approval is final due to failure of the planning board to take timely action on the plan as required by section 81U;
 - e. A notice from the planning board that the approval of a subdivision has been amended, modified, or rescinded, or the plan changed, accompanied by a statement that such amendment, modification, rescission, or change has not affected any lot or the rights of any person who was conveyed a lot in good faith and for valuable consideration (it was not a gift) subsequent to the original approval and recording of the plan, including any rights of a mortgagee (the lender).
- 2) In a municipality which has not accepted the subdivision control law or in which no board with purported subdivision control powers has notified the register and recorder of acceptance of the subdivision control law by the city or town, or in which the board with subdivision control powers has failed to record its subdivision rules and regulations, or both –
- a. Any plan otherwise appropriate for recording, even if the plan shows a division of a tract of land into two or more lots and ways providing access thereto, and there is no endorsement or certificate by the planning board or municipal clerk.
- 3) A plan certified by a registered land surveyor that the property lines shown and the ways and streets shown are existing, that the plan does not show a subdivision, and that no new lines of division or for new ways are shown. Such plan must still comply with all applicable laws, such as subdivision control and zoning and is allowed to be recorded simply to put on record a plan of existing ownership; and

☛ The register of deeds and recorder of land court **MAY NOT ACCEPT** the following plans for recording in a municipality in which the board with subdivision control powers has notified the register and recorder of acceptance of the subdivision control law by the city or town and recorded its subdivision rules and regulations:

- 1) Any definitive plan that the register or recorder could normally accept, but that has an endorsement or certificate dated more than 6 months before the date of recording, unless such plan or certificate is accompanied by a certificate of the planning board or city or town clerk referenced on the plan and dated within 30 days of recording that the approval of the plan has not been amended, modified, or rescinded, or the plan changed.

- a. The planning board or city or town clerk are not obligated to issue such certificate when applied for if their records show that there has been an amendment, modification, or rescission of the approval or change in the plan.

➤ The register of deeds and recorder of land court are required to keep as a public record open for public inspection a book which lists the municipalities in which the subdivision control law is in effect, based on the notices received by the register and recorder from the board having subdivision control powers, which notices together with the subdivision rules and regulations for each city and town shall be separately indexed. Also included in such book shall be any other notices from the board with subdivision control powers or from the board of appeals relating to subdivision control.

RELATED CASE LAW

📖 *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (purpose of subdivision control law is to set up orderly procedure for review of subdivisions within stated times, including notice of actions).

📖 *Cassani v. Planning Bd. of Hull*, 1 Mass. App. Ct. 451, 300 N.E.2d 746 (1973) (endorsement of an approval not required plan by or on behalf of the planning board is conclusive on the board).

📖 *Nantucket Land Council, Inc. v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

📖 *Russell Management v. Nantucket Conservation Foundation*, 3 Mass. App. Ct. 782, 334 N.E.2d 649 (1975) (city or town clerk shall issue a certificate that subdivision approval is not required when the planning board fails to take timely action on an approval not required plan, and the certificate shall accompany the plan for recording).

📖 *SMI Investors v. Planning Bd. of Tisbury*, 18 Mass. App. Ct. 408, 466 N.E.2d 525 (1984) (endorsement of a plan by a planning board is a prerequisite to recording and to the marketability of lots).

📖 *Stoner v. Planning Bd. of Agawam*, 358 Mass. 709, 266 N.E.2d 891 (1971) (due to failure of planning board to take timely action, the applicant was entitled to a certificate of approval, which could be recorded with the subdivision plan in the appropriate registry of deeds).

CAUTIONARY NOTES

✓ All endorsements of the planning board or certificates of the city or town clerk are final and conclusive on all parties, except that approval of a subdivision may be amended, modified, or rescinded, or a plan changed in accordance with section 81W.

✓ An approved definitive plan must be recorded within 6 months of the date of endorsement or of a city or town clerk certificate. Otherwise the planning board or city or town clerk must issue another certificate dated 30 days before recording that the approval has not been amended, modified, or rescinded, or the plan changed.

✓ Any certificate or document separate from the plan, but intended to be recorded as part of the plan approval, must be referenced on the recorded plan.

CERTIFICATE TO ALLOW LATE RECORDING OF PLAN, CERTIFICATE, OR BOTH

Date: _____

Register of Deeds/Recorder of Land Court
Address, Massachusetts

RE: Certificate to allow recording of approved subdivision plan more than 6 months after original endorsement/date on certificate

Title of plan:

Date of plan:

Drawn by:

(TO BE USED WHEN PLANNING BOARD TIMELY ACTED ON THE PLAN)

On the application of _____ with respect to the above-captioned approved subdivision plan, approval endorsed by the planning board on the plan on _____, and the city/town clerk certification as to no court appeal within 20 days/receipt of final court decree of approval endorsed on the plan/set forth in a separate document referenced on the plan on _____, the planning board of the city/town of _____ hereby certifies that as of the above date, the records of the planning board show that the approval of the plan has not been amended, modified, or rescinded and that the plan has not been changed.


Planning Board

(TO BE USED WHEN CONSTRUCTIVE GRANT BECAUSE OF FAILURE OF PLANNING BOARD TO TAKE TIMELY ACTION)




On the application of _____ with respect to the above-captioned plan subject to a city/town clerk certificate that approval is final because of failure of the planning board to take timely action on the subdivision plan dated _____, and the city/town clerk certification as to no court appeal within 20 days/receipt of final court decree that approval is final endorsed on the plan/set forth in a separate document referenced on the plan on _____, the city/town clerk of the city/town of _____ hereby certifies that as of the above date, the records of the city/town clerk show that the approval of the plan has not been amended, modified, or rescinded and that the plan has not been changed.

City/Town Clerk

LINKS

 <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

REFERENCES

-  Subdivision Control Guidebook, Section 81P
-  Subdivision Control Guidebook, Section 81U
-  Subdivision Control Guidebook, Section 81W

SECTION 81Y.

LIMITATIONS ON CONSTRUCTION BY BUILDING OFFICIAL



THE LAW

In any city or town in which the subdivision control law is in effect, no public way shall be laid out, accepted or constructed, and no municipal service or improvement shall be constructed in a way within a subdivision, to serve the land therein, unless such way appears on a plan of such subdivision approved under such law, except by or in accordance with the affirmative vote of two thirds of those present and voting at a meeting of the city council or at a town meeting.

In any city or town in which the subdivision control law is in effect, the board or officer, if any, having the power and duty to issue permits for the erection of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a subdivision, or that a way furnishing the access to such lot as required by the subdivision control law is shown on a plan recorded or entitled to be recorded under section eighty-one X, and that any condition endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, or waived by the planning board, and in the event that the planning board has by rule or regulation required that not more than one building for dwelling purposes be erected or placed or converted to use as such on any lot without its consent, until satisfied that such consent has been obtained. In any city or town in which the subdivision control law is in effect in which there is no board or officer having the power and duty to issue permits for the erection of buildings, no building shall be erected within a subdivision without

ANNOTATIONS

No public ways shall be laid out, accepted or constructed and no municipal services provided to a subdivision if the subdivision control law is in effect unless a plan is approved or the city council or town meeting votes by a 2/3rds affirmative vote

The official who issues building permits shall not issue a building permit to erect a building or improvements on a lot unless:

- *The lot is not in a subdivision*
- *The lot is in an approved subdivision shown on a recorded plan or a plan entitled to be recorded*
- *All conditions endorsed on a subdivision plan limiting the right to erect buildings have been satisfied or waived by the planning board*
- *Consent is given by the planning board to build more than one dwelling on a lot where the rules make such a limitation*

written permission from the planning board of the city or town. Such permission shall be given when it appears that the subdivision control law, so far as applicable, has been complied with. If, however, the enforcement of the foregoing provisions of this paragraph would entail practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on such plan, the board of appeal provided for in section eighty-one Z shall have power by vote of a majority of its members to issue a permit for the erection of such building, subject to the provisions of said section eighty-one Z and sections eighty-one AA and eighty-one BB.

If a subdivision of land has been made in a city or town while the subdivision control law is in effect in such city or town without a plan thereof recorded or entitled to be recorded under section eighty-one K, the person or persons executing and delivering the deed, mortgage or other instrument by which such subdivision was made shall be liable to each owner of such land or any part thereof who acquired title without notice or knowledge of such division having been made, for all damages sustained by such owner by reason of such failure to comply, in an action brought within one year after such delivery. Any person owning a lot in a subdivision, approval of which was required by the subdivision control law but not obtained, who did not make the subdivision and acquired title without notice or knowledge of the lack of such approval, may submit a plan of said lot and of the ways giving access thereto to the planning board, and such plan shall be acted upon in the same manner and with the same effect, so far as affects said lot and the rights of access appurtenant thereto, as a plan of a subdivision.

The superior court for the county in which the land affected by any of the provisions of the subdivision control law lies shall have jurisdiction in equity on petition of the planning board of a city or town, or of ten taxable inhabitants thereof, to review any action of any municipal board or officer of such city or town in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection

If enforcement of this section of law entails practical difficulty or unnecessary hardship, and if the building does not need to be related to a way shown on a plan, an appeal may be taken to the subdivision board of appeals

The subdivision board of appeals may vote by majority vote to issue a building permit

Any person who makes a subdivision without a plan by deeding, mortgaging, or using another instrument to make such subdivision shall be liable for damages sustained by the owner who acquired title without knowledge that an improper subdivision was made

The owner must bring an action for damages within one year after delivery of a deed, mortgage, or other instrument

The owner may file a plan showing the ways providing access to the lot, and the planning board shall act on it in the same manner as a subdivision plan

The applicable superior court may hear an equity petition filed by the planning board or 10 taxable inhabitants of the municipality to review, annul, and enjoin any action

of a building in violation of this section, and otherwise to enforce the provisions of the subdivision control law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

by a municipal board or officer in violation of this section, the planning board's rules and regulations, and any conditions of approval

A proceeding to enjoin a municipal board or officer shall be filed within 1 year of the action complained of

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ If the subdivision control law is in effect in a municipality, then a public way may not be laid out, accepted, or constructed and no municipal service or improvement shall be constructed in a way within a subdivision unless one of the following actions takes place:

- 1) the planning board has approved a definitive subdivision plan that shows such way and municipal improvements; or
- 2) two-thirds of those present and voting at a city council or town meeting vote in the affirmative to allow the layout, acceptance, or construction of ways and municipal services and improvements.

☛ If the subdivision control law is in effect in a municipality, then a building permit may not be issued by the building official to erect a building on a lot, unless the official is satisfied that:

- 1) the lot is not within a subdivision;
- 2) the lot is within a subdivision and has access from a way shown on a plan approved by the planning board, which has been or is entitled to be recorded at the registry of deeds;
- 3) the lot is within a subdivision and all conditions of approval that limit the right to erect or maintain a building on the lot have been satisfied or waived by the planning board;
- 4) the planning board has consented to the construction of more than one dwelling on a lot when the planning board has adopted a rule and regulation limiting the number of dwellings on a lot to one.

☛ If the subdivision control law is in effect in a municipality, and there is no board or official who issues building permits to erect buildings, then the planning board may give written permission to erect a building on a lot within a subdivision (this is not likely to ever occur, as all municipalities in Massachusetts are to have appointed building officials who issue building permits). The permission shall be given when it appears the subdivision control law has been complied with.

➤ Any person who is denied a building permit by the building official or by the planning board may appeal the denial to the subdivision board of appeals as provided for under section 81Z.

➤ The appellant to the subdivision board of appeals must claim and prove the following:

- 1) that enforcement of the section 81Y provisions entails practical difficulty or unnecessary hardship; and
- 2) the circumstances of the case do not require that the building be related to a way shown on a subdivision plan.

➤ If the appellant proves the case to the subdivision board of appeals, the board may vote by a majority vote of its members to issue the building permit. This decision may be appealed under section 81BB.

➤ If the subdivision control law is in effect in a municipality, and a person or persons make a subdivision by deed, mortgage, or other instrument, rather than by a plan approved by the planning board, then any person damaged by such failure to comply with the subdivision control law may be able to sue for damages. Any person who acquired title from the person or persons who subdivided land without an approved plan, but rather made such division by executing and delivering a deed, mortgage, or other instrument, must meet the following requirements in order to sue for damages:

- 1) the title holder may not have notice or knowledge that a subdivision was made without compliance with the subdivision control law; and
- 2) the action must be filed in court within one year after delivery of the deed, mortgage, or other instrument that created the subdivision.

➤ Any person who owns a lot in a subdivision, which did not receive approval under the subdivision control law, may obtain approval of the lot by:

- 1) proving lack of notice or knowledge that subdivision approval was not obtained at the time title was acquired;
- 2) proving that he or she did not make the improper subdivision; and
- 3) submitting a plan of the lot and the ways giving access to the lot with the planning board, who shall act on the plan in the same manner as it would act on a definitive subdivision plan.

➤ If the subdivision control law is in effect in a municipality, an equity petition may be brought in the superior court for the county in which the city or town is located by the planning board or 10 taxable inhabitants of the municipality whenever a municipal official or board takes or fails to take an action that is allegedly:

- 1) in disregard of the provisions of section 81Y;
- 2) in violation of the subdivision control law;
- 3) in violation of the planning board's subdivision rules and regulations; or
- 4) in violation of any conditions of approval concerning erection of buildings on lots.

➤ No equity petition may be filed more than one year after the act or failure to act complained of in the petition.

☛ In considering such equity petition and reviewing the action of the municipal official or board, the superior court shall have the power to:

- 1) annul the action;
- 2) enjoin the action;
- 3) enjoin the erection of a building;
- 4) restrain by injunction any violations under the subdivision control law; or
- 5) make such decree as justice and equity may require.

RELATED CASE LAW

☞ *Bloom v. Planning Bd. of Brookline*, 346 Mass. 278, 191 N.E.2d 684 (1963) (plan showing a large lot that complied with zoning and a smaller lot or parcel that was too small for building thereon is not a subdivision under the subdivision control law definition of subdivision, and it was proper to issue building permit on the larger lot without subdivision approval; endorsement of approval not required plan by chair of planning board was wrong, as the plan should properly have been submitted to the entire planning board for action before endorsement).

☞ *Carey v. Planning Bd. of Revere*, 335 Mass. 740, 139 N.E.2d 920 (1957) (endorsement of approval not required plan by chair of board within the required time limit, which endorsement was later ratified by the planning board, was not deemed action in disregard of the subdivision control law).

☞ *Caruso v. Pastan*, 1 Mass. App. Ct. 28, 294 N.E.2d 501 (1973) (after close of public hearing on special permit for PUD, zoning board of appeals should not have discussed case with planning board).

☞ *Dolan v. Board of Appeals of Chatham*, 359 Mass. 699, 270 N.E.2d 917 (1971) (planning board approval of way shown on a plan, but not constructed, does not vest right to use the way as frontage in lot owners who abut the way, but are not within the approved subdivision).

☞ *Ellen M. Gifford Sheltering Home Corp. v. Board of Appeals of Wayland*, 349 Mass. 292, 208 N.E.2d 207 (1965) (condition that not more than one dwelling is permitted on a lot because the way is inadequate does not permit construction of other non-dwellings on the lot, such as a sheltering home for cats).

☞ *Green v. Board of Appeals of Norwood*, 358 Mass. 253, 263 N.E.2d 423 (1970) (all conditions of approval must be endorsed on the plan or set forth in a separate instrument referred to on the plan in order to be binding on subsequent developer).

☞ *Hogan v. Hayes*, 19 Mass. App. Ct. 399, 474 N.E.2d 1158 (1978) (building official may not issue a building permit for a lot that was created after the subdivision control law was adopted in the municipality, if the lot does not satisfy the requirements of such law).

☞ *Horn v. Crest Hill Homes*, 340 Mass. 362, 164 N.E.2d 150 (1960) (discussing damages for drainage easement and encumbrances).

☞ *Mahoney v. Board of Appeals of Winchester*, 366 Mass. 228, 316 N.E.2d 606, *appeal dismissed*, 420 U.S. 903 (1974) (chapter 40B, which provides for low and

moderate income housing, allows zoning board of appeals to override requirements for subdivisions and the subdivision control law).

☐ *Marino v. Board of Appeals of Beverly*, 2 Mass. App. Ct. 859, 311 N.E.2d 580 (1974) (neither building official nor zoning board of appeals may give relief from subdivision plan condition prohibiting construction and grant building permit, even if condition was invalidly imposed, as only relief available is to appeal decision under Section 81BB of the subdivision control law).

☐ *Mullen Lumber v. Board of Appeals of Marshfield*, 7 Mass. App. Ct. 917, 389 N.E.2d 736 (1979) (court ordered issuance of building permits for all remaining lots in subdivision despite zoning change based on illegal actions of building official, including pattern of delaying building permit issuance)

☐ *Murphy v. Donovan*, 4 Mass. App. Ct. 519, 352 N.E.2d 210 (1976) (proceedings in equity to enforce subdivision control law are subject to a one year statute of limitations; recording of subdivision plan vests no interest in the ways in the public).

☐ *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (general right of way in private way that provided for "the right to use the whole of said way" is only an easement for travel and does not include right to install utilities in the way; court also denied right of 10 taxable citizens to attempt appeal of subdivision under section 81Y, when appeal should be brought under section 81BB).

☐ *Roland Lavoie Construction Co. v. Building Inspector of Ludlow*, 346 Mass. 274, 191 N.E.2d 697 (1963) (filing preliminary subdivision plan with planning board, despite failure to file with board of health, makes lots shown on such plan subject to zoning at time of filing in accordance with statutory zoning freeze).

☐ *SMI Investors v. Planning Bd. of Tisbury*, 18 Mass. App. Ct. 408, 466 N.E.2d 525 (1984) (Section 81Y of the subdivision control law precludes issuance of a building permit if a condition has not been satisfied, but does not prohibit issuance of a special permit).

☐ *Toothaker v. Planning Bd. of Billerica*, 346 Mass. 436, 193 N.E.2d 582 (1963) (rights of way granted before adoption of subdivision control law are based on private rights in grant).

CAUTIONARY NOTES

✓ If the subdivision control law is in effect in a municipality, a subdivision may only be made by a plan approved by the planning board.

✓ Any person acquiring title who is damaged by a subdivision by deed, mortgage, or other instrument that is not an approved plan may not file for damages after expiration of one year from the delivery of the deed, mortgage, or other instrument.

✓ Any equity petition by the planning board or 10 taxable inhabitants of the municipality must be filed with the applicable superior court within one year of the invalid action complained of.

✓ An appellant who fails to make a timely appeal under section 81BB concerning an action by the planning board will rarely be successful in attempting an appeal under section 81Y, as this section is intended to protect persons from violations or disregard of the subdivision control law by other than the planning board.

LINKS

🔗 <http://www.socialaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81Z.

SUBDIVISION CONTROL BOARD OF APPEALS



THE LAW

A city or town in which the subdivision control law is in effect shall, by ordinance or by-law, provide for a board of appeals, which shall have jurisdiction to issue a permit for the erection of a building under section eighty-one Y. Such board of appeals may be the existing board of appeals under the local building or zoning ordinance or by-law; provided, that if the board of appeals under the local zoning ordinance or by-law in any city or town is also the planning board in such city or town, it shall not act as a board of appeals under the subdivision control law. The mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals the city council or selectmen shall act as a board of appeals. Any board of appeals newly established hereunder shall consist of at least three members, who shall be appointed in a city by the mayor subject to the confirmation of the city council, or in a town by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year; and said board shall elect annually a chairman from its own members and a clerk. Any board so newly established may also act as a board of appeals under the local building or zoning ordinance or by-law, or under both.

ANNOTATIONS

A city or town that has accepted the subdivision control law must provide for a subdivision control board of appeals by ordinance or bylaw

The subdivision control board of appeals may be the existing zoning or local building board of appeals

Mayor with city council confirmation or selectmen shall appoint subdivision control board of appeals

Subdivision control board of appeals shall have at least three members with terms of such length that the term of one member expires annually

THE LAW CONTINUED

Any member of such a board of appeals may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Ordinances or by-laws adopted hereunder may provide for the appointment in like manner of associate members of the board of appeals; and the chairman of the board may designate any such associate member to sit on the board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said board may designate any such associate member to sit as a member of the board until said vacancy is filled in the manner provided in this section.

ANNOTATIONS

The appointing authority may remove a member for cause

Vacancies are filled in same manner as initial appointments

Ordinance or bylaw providing for subdivision control board of appeals may also provide for associate members to act for regular members

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1957, c. 134; St. 1958, c. 201, § 1.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ If a building permit is denied because of failure of a lot to meet a condition of subdivision approval or because such lot is not released by the planning board for construction, the subdivision control board of appeals may, under limited circumstances as set forth under section 81Y, authorize the issuance of the building permit.

☛ The city council, selectmen, or other similar municipal appointing authority shall act as the subdivision control board of appeals until the initial board is appointed.

☛ The mayor with city council confirmation in a city or selectmen in a town or such other appointing authority in the municipality shall be responsible for:

- Appointing the initial subdivision control board of appeals within three months after adoption of the ordinance or bylaw establishing such board;
- Filling vacancies on the subdivision control board of appeals;
- Removing members on the subdivision control board of appeals for cause upon written charges and after a public hearing; and
- Appointing associate members to the subdivision control board of appeals, if such associate members are provided for by ordinance or bylaw.

☛ If associate members are provided for in the ordinance or bylaw that establishes the subdivision control board of appeals, the chair of the board shall designate an associate member to sit on the board whenever a regular member is absent, whenever a regular member is unable to act or has a conflict of interest, or to fill a vacancy until the vacancy is filled by the appointing authority.

RELATED CASE LAW

📖 *Planning Board of Easton v. Koenig*, 12 Mass. App. Ct., 429 N.E.2d 81 (1981) (zoning board of appeals has no authority to grant building permit for lot not released by planning board from covenant under the subdivision control law, as only subdivision control board of appeals, acting pursuant to section 81Y, has that authority).

CAUTIONARY NOTES

- ☛ A city or town is required to establish a subdivision control board of appeals by ordinance or bylaw once it has accepted the subdivision control law.
- ☛ A subdivision control board of appeals does not have the same authority and jurisdiction as a zoning or local building board of appeals.
- ☛ A zoning or local building board of appeals, if appointed to do so, may act as a subdivision control board of appeals.
- ☛ If a zoning board of appeals in a city or town is also the planning board it shall not act as a subdivision control board of appeals.
- ☛ The subdivision control board of appeals must have at least three members.
- ☛ The ordinance or bylaw that establishes the subdivision control board of appeals must provide for terms of such length that ensure expiration of at least one term each year.

SAMPLE ORDINANCE OR BYLAW FOR A SUBDIVISION CONTROL BOARD OF APPEALS

In accordance with M.G. L., ch. 41, § 81Z, the (city or town name) hereby provides for a subdivision control board of appeals by adoption of this (ordinance or bylaw - or charter in some municipalities) this _____ day of _____, _____

Appointment

1. (The mayor, subject to confirmation of the city council, or board of selectmen, or as provided by charter) shall appoint members of the subdivision control board of appeals within three months of the adoption of this (ordinance or bylaw).
2. Prior to adoption of this (ordinance or bylaw), the (city council or board of selectmen) shall act as the subdivision control board of appeals.

Members

1. The subdivision control board of appeals shall consist of (three is minimum, but the board can be larger) members.
2. The subdivision control board of appeals shall have (three - number is optional) associate members who shall be appointed in the same manner as a regular member. The chairperson shall designate an associate member to sit on the subdivision control board of appeals in case of the absence, inability to act, or conflict of interest on the part of any regular member.

Terms of Members

1. Members shall be appointed for three-year terms. Initially, one member shall be appointed for a one year term, a second member appointed for a two-year term, and a third member appointed for a three-year term so that the term of one member expires each year.
2. Associate members shall be appointed for terms in the same manner as regular members.

Removal and Vacancies

1. In the event of a vacancy on the subdivision control board of appeals, the appointing authority shall appoint another member to fill the unexpired term in the same manner as the original appointments.
2. The chairperson may designate an associate member to act as a member of the subdivision control board of appeals until another person is appointed to fill the unexpired portion of the vacated term.
3. Any regular or associate member of the subdivision control board of appeals may be removed by cause by the appointing authority upon written charges and after a public hearing is held.

LINKS

- 🔗 <http://www.sociallaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)
- 🔗 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)

REFERENCES

- 📁 Subdivision Control Guidebook, Section 81Y
- 📁 Subdivision Control Guidebook, Section 81AA

SECTION 81AA.

BOARD OF APPEALS; RULES; POWERS AND DUTIES



THE LAW

The board of appeals appointed under section eighty-one Z shall adopt rules not inconsistent with this section and sections eighty-one Y and eighty-one Z, for conducting its business and otherwise carrying out the purposes of said sections. Meetings of the board shall be held at the call of the chairman and also when called in such other manner as it shall determine in its rules. Such chairman, or, in his absence, the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the board shall be open to the public. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if any member is absent or fails to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official acts, copies of all of which shall be immediately filed in the office of the city or town clerk and shall be public records.

ANNOTATIONS

The subdivision control board of appeals shall adopt rules and regulations for conducting its business

Meetings shall be held at the call of the chairman

All hearings are to be public

The subdivision control board of appeals shall make a detailed record of its proceedings

Copies of decisions shall be filed with city or town clerk and be public records

THE LAW CONTINUED

Before taking any action under section eighty-one Y, the board of appeals shall hold a hearing at which parties in interest shall have an opportunity to be heard, in person or by agent or attorney. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. The board may require the appellant to pay the expense of giving such notice. The board may, as a condition of granting a permit under section eighty-one Y, impose reasonable requirements designed to promote the health, convenience, safety and general welfare of the community and to benefit the city or town.

ANNOTATIONS

Parties in interest shall have an opportunity to be heard at public hearings

Notice of public hearing to be published in a newspaper no less than fourteen days before the day of the hearing or posted in city or town hall

Subdivision control board of appeals may require appellant to pay costs of hearing notice

Subdivision control board of appeals may impose reasonable conditions on permit granted

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1960, c. 198; St. 1962, c. 207, § 2.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ The subdivision control board of appeals shall hold meetings at the call of the chairman or as provided in its rules.

☛ The chair or acting chair of the subdivision control board of appeals may take the following actions during a meeting or hearing:

- Administer oaths;
- Summon witnesses; and
- Call for the production of papers.

☛ Subdivision control board of appeals must hold a public hearing before taking any action on an appeal for a building permit under section 81-Y.

☛ The subdivision control board of appeals shall give notice of the time and place of all public hearings, sufficient for identification, as follows:

- Notice shall be published in a newspaper of general circulation in the community once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or
- If there is no such newspaper in the municipality the notice shall be posted in the in the city or town hall for a period of not less than fourteen days before the day of such hearing.

NOTE: *The board's rules may require both types of notice.*

- ✦ The subdivision control board of appeals may charge the appellant for all costs of notice for the hearing.
- ✦ The subdivision control board of appeals may impose reasonable conditions to promote the health, convenience, safety, and general welfare of the community on any permit it grants.

RELATED CASE LAW

☐ *Chira v. Planning Bd. of Tisbury*, 3 Mass. App. Ct. 433, 333 N.E.2d 204 (1975) (zoning freeze under the state zoning act applies to approved and endorsed subdivisions as well as proceedings before the subdivision control board of appeals).

CAUTIONARY NOTES

- ✦ Subdivision control board of appeals shall adopt rules for conducting its business.
- ✦ All public hearings held by the subdivision control board of appeals shall be open to the public.
- ✦ The subdivision control board of appeals shall keep a detailed record of its proceedings that shall be filed immediately with the municipal clerk and shall be a public record.
- ✦ An appellant shall have a right to be heard in person or by agent or attorney.

SAMPLE RULES FOR THE CONDUCT OF BUSINESS

SUBDIVISION CONTROL BOARD OF APPEALS **RULES FOR THE CONDUCT OF ITS BUSINESS**

Adopted _____

ARTICLE I - ORGANIZATION

SECTION 1. OFFICERS

The Subdivision Control Board of Appeals ("SCBA") shall annually elect the following officers from among its members: chairperson; vice-chairperson; and clerk. A majority of all regularly appointed SCBA members must vote favorably to elect each officer. Associate SCBA members shall not participate in the vote.

SECTION 2. CHAIRPERSON

The chairperson shall transact the official business of the SCBA; coordinate with the clerk and staff when necessary; conduct the meetings and public hearings of the SCBA; and decide all points of order, unless overruled by a majority of the members of the SCBA. The chairperson shall vote and be recorded on all matters coming before the SCBA.

SECTION 3. VICE-CHAIRPERSON

The vice-chairperson shall act as chairperson in case the chairperson is absent, disabled, or otherwise unable to perform his or her duties.

SECTION 4. CLERK

The clerk shall supervise all clerical work of the SCBA, subject to the direction of the SCBA and the chairperson. Clerical work shall include, but not be limited to correspondence of the SCBA; sending of all notices required by law and these Rules; filing the SCBA's Rules and all amendments thereto; compiling, filing, and mailing copies of all decisions and detailed records; maintaining necessary files and indexes; and calling the roll at all SCBA meetings. If the clerk is absent, the chairperson shall appoint an acting clerk.

SECTION 5. ASSOCIATE MEMBERS

The chairperson shall designate an associate member to sit on the SCBA in case of an absence, inability to act, or conflict of interest on the part of any SCBA member. In the event of a vacancy on the SCBA, the chairperson may designate an associate member to act as a member of the SCBA until another person is appointed to fill the vacancy.

ARTICLE II - MEETINGS

SECTION 1. QUORUM

Three (or number equal to a majority) members must be present for a quorum for purposes of acting as a SCBA upon appeals for a building permit under M.G.L., ch. 41, section 81-Y.

SECTION 2. REGULAR MEETINGS

Regular meetings of the SCBA shall be held (time) on (day) of each week/month at (where), unless notice is otherwise provided. If a regular meeting day falls on a holiday or election day, the meeting shall be held at such rescheduled time and place as posted.

NOTE: Because the SCBA may not need to meet very often, regular meetings may be unnecessary. However, meetings held should be posted in accordance with the Open Meeting Law, M.G.L. ch. 39, § 23 (minimum notice of 48 hours).

SECTION 3. SPECIAL MEETINGS

Special meetings may be called by the chairperson, or at the request of two members. Written notice of a special meeting shall be given to each member at least 48 hours before the time set. A notice of every special meeting shall be posted publicly in the (city or town name) Hall.

SECTION 4. VIEWING

The SCBA may conduct a site visit of the property that is the subject of an appeal for a building permit under M.G.L., ch. 41, section 81-Y. No deliberations or decisions shall be made by the SCBA on such site visit that would be in conflict with the Open Meeting Law.

SECTION 5. OPEN MEETING LAW

All meetings of the SCBA shall be subject to and comply with the Open Meeting Law, M.G.L. Ch. 39, Sections 23A-23C.

ARTICLE III - PUBLIC HEARINGS

SECTION 1. NOTICE

Notice of public hearings shall be advertised as required by M.G.L, chapter 41, Section 81AA. The notice shall contain the name and address of the appellant for a building permit; a description of the area or premises and street address, if any, or other identification of the property that is the subject of the appeal; the date, time, and place of the public hearing; and the subject matter of the appeal and relief requested.

Notice shall be published once in each of two successive weeks in a newspaper of general circulation in the (city or town name). The first notice shall be not less than 14 days before the date of the public hearing. The date of the public hearing shall not be counted in the 14 days. Notice of the public hearing shall also be posted in a conspicuous place in the (city or town name) hall not less than 14 days before the date of the public hearing.

A copy of the notice shall be sent by mail, postage prepaid, not less than 14 days prior to the date of the hearing to the parties in interest who include: the appellant; abutters to the property that is the subject of the appeal; owners of land directly opposite on any public or private street or way from the property that is the subject of the appeal; and the (name of city or town) Planning Board. The assessors maintaining any applicable tax list shall certify to the SCBA the names and addresses of the parties in interest and such certification shall be conclusive for all purposes. The SCBA may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or any successor owner of record who may not have received a notice by mail. The SCBA may also order special notice to any person, giving not less than five nor more than 10 additional days to reply.

***NOTE:** Notice should be given to parties in interest. The list of people or boards who are parties in interest can be modified. In addition, although the statute only requires posting or publication as a second form of notice, both forms of notice are recommended.*

No public hearing shall be held on the day on which a state or municipal election, caucus, or primary is held in the (name of city or town).

A public hearing shall take place within 65 days after the appeal is filed with the SCBA.

SECTION 2. HEARINGS TO BE PUBLIC

All hearing shall be open to the public. No person shall be excluded unless considered by the chairperson to hinder seriously the workings of the SCBA.

SECTION 3. REPRESENTATION AT HEARINGS

An appellant may choose to be represented by an agent or attorney at the public hearing. If the appellant or the appellant's agent or attorney fails to appear for a duly scheduled public hearing, the SCBA may decide on the appeal for a building permit under M.G.L., ch. 41, section 81-Y using the information it has otherwise received.

SECTION 4. ORDER OF BUSINESS

The public hearing shall be held at the call of the chairperson, who shall describe the rules of procedure for the hearing and then read or direct the reading of the public hearing notice to open the public hearing. After the opening of the public hearing the order of business shall generally proceed as set forth below:

- a. Appellant or appellant's agent or attorney presents the appeal for a building permit under M.G.L., ch. 41, section 81-Y
- b. Those in favor speak after first providing their name and address for the record
- c. Those opposed speak after first providing their name and address for the record
- d. All reports of other boards and officials are read into the record
- e. Representatives and town officials ask questions
- f. The SCBA members ask for additional information from any or all parties

- g. The appellant or the appellant's agent or attorney provides a rebuttal restricted to the matters raised by others' presentations or questions
- h. The chairperson, upon majority vote of the members of the SCBA, continues the public hearing to a date, time, and place certain that is announced at the public hearing or closes the public hearing if all testimony and documentation has been provided

The members of the SCBA may direct appropriate questions at the end of any party's or person's presentation. Testimony may be given under oath of the chairperson. All questions shall be directed through the chairperson.

SECTION 5. INFORMATION FROM OTHER TOWN BOARDS AND OFFICIALS

The following (city or town) boards and officials shall receive copies of the appeal for a building permit under M.G.L., ch. 41, section 81-Y and may provide comments to the SCBA concerning such appeal: (select from this list or add to this list or delete this provision if desired: Planning Director, Board of Selectmen, Department of Public Works, Sewer Department, Water Department, Inspector of Buildings, Town Engineer, Fire Chief, and Police Chief). Such board or official shall make recommendations on the appeal as are appropriate and shall send copies of such recommendations to the SCBA and to the appellant, who shall have the right to a hearing before any such board. Any board or official who fails to make recommendations within 35 days after receipt of the appeal shall be deemed to have no opposition to the appeal. Failure of a board or official to make recommendations shall not vitiate that board's or official's jurisdiction over the permit.

SECTION 6. CONFLICT OF INTEREST

No member of the SCBA who has a conflict in interest, under the meaning of M.G.L., ch. 268A, shall remain an active participant of the SCBA on any proceeding before the board. A conflict of interest shall include, but not be limited to a financial interest; personal interest; potential for self-gain or gain of a relative; and when a member has a substantial personal animosity, ill-will, bias, prejudice, or hostility towards an appellant or an appellant's agent or attorney. Any member who has a conflict of interest shall leave the hearing and meeting room to avoid any appearance of impropriety, unless such member is

a party in interest who has a right to present evidence and testify to the SCBA.

The rule of necessity shall permit a member who should be disqualified to participate in a hearing, vote, or both, when the only way that a decision can be reached is with the participation of such member. Before any participation in the matter, such member shall make the reasons that would have required disqualification public, and the remaining members of the SCBA may not consider such reasons that would have required disqualification in participating on the matter, making a decision, or both. Before invoking the rule of necessity, the SCBA shall seek an opinion from municipal legal counsel or from the Ethics Commission.

ARTICLE IV - APPEAL FORM

SECTION 1. APPEAL FORM

All appellants shall use the appeal form provided in the Appendix of these Rules. Any communication, purporting to be an appeal, shall be treated as mere notice of an intention to seek appeal for the issuance of a building permit under M.G.L., ch. 41, section 81-Y, until such time as an appeal form is filed together with all additional required material.

SECTION 2. REQUIREMENTS FOR FILING

NOTE: These requirements are optional

All appeals shall include, in addition to the appeal form, the following:

- a. A plan, size 24" x 36", drawn by a Civil Engineer registered in Massachusetts, drawn on mylar to a maximum scale of 1" = 40', and showing access and the proposed building(s) requested;
- b. The plan shall contain the following:
 1. a north arrow
 2. names of abutting and proposed streets
 3. indication of zoning district boundaries if the property is located in more than one district
 4. names and addresses of abutters
 5. property lines and location of buildings on abutting properties and properties across any street or way
 6. dimensions of the subject property and verified distances from buildings, structures, and uses on abutting properties

7. location of all uses, structures, and buildings on the subject property, principal or accessory
8. location of all entrances, exits, drives, ways, parking, and loading
9. location of sewer and water lines and connections on the subject property

The appellant shall file an original and (number) copies of a complete appeal form, plan, and all required associated materials.

SECTION 3. FILING PROCEDURE

The appellant shall file the appeal form and any required plans and associated materials with the (city/town) clerk and subsequently with the subdivision control board of appeals together with the notice from the (city/town) clerk certifying the date and time of filing with the (city/town) clerk.

SECTION 4. FEES

The appellant shall pay all fees for advertising a public hearing, not limited to the cost of newspaper advertisement and postage costs for mailing notices. The initial application shall be accompanied by a check made payable to the (city or town name) in the amount of _____ dollars.

ARTICLE V - DECISION

SECTION 1. VOTING REQUIREMENTS

Any member who votes on the decision must attend all public hearings concerning the matter, unless the rule of necessity applies and the only way to permit a vote is to have members review the record prior to making a decision. All favorable actions on an appeal for a building permit under M.G.L., ch. 41, section 81-Y, including adoption of all conditions, shall require a majority vote of the members of the SCBA in favor.

In deciding upon an appeal for a building permit under M.G.L., ch. 41, section 81-Y, the SCBA shall make the following findings:

- The enforcement of the provisions of M.G.L., ch. 41, section 81-Y would entail practical difficulty or unnecessary hardship and
- The circumstances of the case do not require that the building(s) be related to a way shown on a plan approved under the subdivision control law.

Upon making its decision, the SCBA shall file its decision with the (city/town) clerk.

SECTION 2. CONDITIONS

The SCBA may impose reasonable requirements on any permit granted that are designed to promote the health, convenience, safety and general welfare of the community and to benefit the (city or town name).

SECTION 3. DETAILED RECORD

The SCBA shall make a detailed record of its proceedings on an appeal. The vote of each member on each question shall be made a part of the detailed record, including any absence or failure of a member to vote. The detailed record shall set forth clearly the reason or reasons for the SCBA's decision and its official actions and shall be filed with the (city or town) clerk within 14 days of the decision.

SECTION 4. FILING AND MAILING DECISION

After filing its decision in the office of the (city/town) clerk, the SCBA shall immediately mail a notice of its decision, noting the date of filing with the (city/town) clerk, to the appellant and to all parties in interest who requested notice at the public hearing. Such notice shall specify that court appeals, if any, must be filed within 20 days after the date of the SCBA's filing of the decision in the office of the (city/town) clerk.

ARTICLE VI - WITHDRAWAL

SECTION 1. WITHDRAWAL

An appellant may withdraw an appeal without prejudice at any time before the public hearing for such appeal is published. After the public hearing is published, the SCBA must agree by majority vote of the members present and voting to permit such appeal to be withdrawn without prejudice.

ARTICLE VII - ADOPTION

The foregoing Rules are hereby adopted this _____ day of _____, by the (city or town name) SCBA. All prior Rules concerning the conduct of business of the SCBA are hereby repealed. A copy of these Rules and any amendments thereto shall be filed with the (name of city/town) clerk.

**APPENDIX TO RULES FOR THE CONDUCT OF THE SCBA'S
BUSINESS**

APPEAL FORM

This form shall be submitted by all persons appealing for a building permit under M.G.L., ch. 41, section 81-Y

Appellant

Name of Appellant: _____

Address of Appellant: _____

Telephone # of Appellant: _____

Appellant is the owner, tenant, licensee, prospective buyer, other

_____ (circle one)

Agent

Name of Agent, if any: _____

Address of Agent, if any: _____

Telephone # of Agent, if any: _____

Attorney

Name of Attorney, if any: _____

Address of Attorney, if any: _____

Telephone # of Attorney, if any: _____

Property

Address or location of property: _____

Tax map _____; Lot # _____; Zoning District _____

Nature of Appeal

(explain why a building permit was not issued)

Relief Requested

(what relief do you want from the SCBA)

The Findings

(explain why you believe you meet the below two findings)

1. The enforcement of the provisions of M.G.L., ch. 41, section 81-Y would entail practical difficulty or unnecessary hardship because

2. The circumstances of the case do not require that the building(s) be related to a way shown on a plan approved under the subdivision control law because

I hereby request a hearing before the subdivision control board of appeals concerning this appeal and agree to pay all costs of notice of this hearing.

Signature of Appellant or Appellant's Agent or Attorney

Date: _____

LINKS

- 🔑 [http://www.umass.edu/masscptc/bylaws/Ridgeline W.html](http://www.umass.edu/masscptc/bylaws/Ridgeline_W.html) (model provisions available from CPTC)
- 🔑 <http://www.sociallaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)
- 🔑 <http://www.massapa.org/> (Mass. American Planning Association resources with links to other sites)
- 🔑 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)

SECTION 81BB.

APPEAL TO SUPERIOR COURT



THE LAW

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision of land, or by the failure of such a board to take final action concerning such a plan within the required time, may appeal to the superior court for the county in which said land is situated or to the land court pursuant to the provisions of clause (k) of section one of chapter one hundred and eighty-five; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. The court shall hear all pertinent evidence and determine the facts, and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals or a planning board and for taking such other subsequent action as parties in other equity cases are permitted to take.

ANNOTATIONS

Aggrieved person or municipal officer or board may appeal planning board decision on subdivision or failure to act or board of appeals decision under section 81Y to the superior court or land court

Appeal may be taken within 20 days after decision recorded with city or town clerk or lack of recording within 20 days of date decision should have been recorded

Notice of appeal must be given to city or town clerk within such 20 days

Court may annul decision if found to be in excess of board's authority

City or town may provide municipal officer or board with legal counsel in order to file appeal of planning board or board of appeals decision

<p>Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith.</p> <p>The court shall require nonmunicipal appellants to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision approving a subdivision plan if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.</p> <p>All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.</p>	<p><i>Costs not allowed against board unless board acted with gross negligence or in bad faith</i></p> <p><i>Nonmunicipal appellants are to post a surety or cash bond to secure payment of costs incurred by appellee when appellant filed appeal in bad faith or with malice</i></p> <p><i>Equity actions under this section to be advanced over civil actions</i></p>
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LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7; Amended by St. 1955, c. 411, § 1.

PERMISSIBLE ACTIONS UNDER THE STATUTE

➤ An appeal may be filed under this section concerning the following:

- 1) Appeal the determination of the planning board concerning a plan filed for endorsement that approval under the subdivision control law is not required;
- 2) Appeal of a decision of the planning board (including the board of health recommendation or decision) concerning a definitive subdivision plan;
- 3) Appeal for failure of the planning board to take final action on a definitive subdivision plan within the required time; or
- 4) Appeal of a decision of a board of appeals as set forth under section 81Y.

➤ An appeal of a planning board or board of appeals decision may be filed by the following:

- 1) A municipal officer;
- 2) A municipal board; or
- 3) Any person aggrieved, which means that such person must be able to put forth evidence of infringement to such person's legal rights.

➤ The city or town may provide the municipal officer or board with legal counsel for filing the appeal against the planning board or board of appeals.

➤ An appeal under this section is filed with the superior court in the county where the land under issue is located or with the land court and shall be advanced for speedy trial over civil actions.

➤ To properly file an appeal, the appellant, or person filing the appeal, must complete one of the following:

- 1) Within 20 days after the board's decision is filed with the city or town clerk file an appeal in court and give notice of filing the appeal to the city or town clerk, or
- 2) Within 20 days after the planning board's decision should have been filed with the city or town clerk file an appeal in court and give notice of filing the appeal to the city or town clerk.

➤ Before making its decision, the court will hold a trial *de novo* in which it will hear all of the pertinent evidence and determine the facts.

➤ A court may decide that the board exceeded its authority in making its decision and annul such decision for such reason as failure of the board to comply with its rules and regulations.

RELATED CASE LAW

📖 *Baker v. Planning Bd. of Framingham*, 353 Mass. 141, 228 N.E.2d 831 (1967) (court properly annulled planning board's disapproval of subdivision plan based on expense to town to enlarge municipal drainage system).

📖 *Bigham v. Planning Bd. of North Reading*, 362 Mass. 860, 285 N.E.2d 408 (1972) (landowner and mortgagee were both aggrieved persons concerning appeal of a rescission of subdivision approval without consent of the mortgagee).

📖 *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (time for filing appeal begins to run on last day for planning board's action, not from belated date the decision is filed).

📖 *Brush Hill Dev. v. Commonwealth*, 338 Mass. 359, 155 N.E.2d 170 (1959) (in deciding damages for a taking, trial court did not need to consider increase to value because of tentative approval of a subdivision plan on the property taken).

📖 *Bucci v. Planning Bd. of Lincoln*, 4 Mass. App. Ct. 775, 341 N.E.2d 294 (1976) (planning board's rescission of approval made appeal moot).

📖 *Canter v. Planning Board of Westborough*, 4 Mass. App. Ct. 306, 347 N.E.2d 691 (1976) (in reviewing the disapproval of a subdivision plan, the court must confine itself to review of the reasons for disapproval stated by the planning board).

📖 *Carey v. Planning Bd. of Revere*, 335 Mass. 740, 139 N.E.2d 920 (1956) (a mortgagee of adjacent premises was an aggrieved person and could file an appeal and given notice of appeal to municipal clerk within 20 days of decision, but could not initiate appeal by serving a subpoena on municipal clerk naming various municipal officials).

📖 *Caruso v. Planning Board of Revere*, 354 Mass. 569, 238 N.E.2d 872 (1968) (court found evidence did not support problem with sewer line).

📖 *Chira v. Planning Bd. of Tisbury*, 3 Mass. App. Ct. 433, 333 N.E.2d 204 (1975) (court would not consider decision that did not adversely affect appellant, but would consider issues raised concerning attached and detached units in a cluster development in order to further proceedings).

☞ *Cohen v. Hurley*, 20 Mass. App. Ct. 439, 480 N.E.2d 658, *review denied*, 396 Mass. 1101, 484 N.E.2d 102 (1985) (although appeal of subdivision decision was groundless, it was not an abuse of process).

☞ *Cullen v. Planning Bd. of Hadley*, 4 Mass. App. Ct. 842, 355 N.E.2d 490 (1976) (when subdivision is approved due to constructive grant for failure of timely action by the planning board, any appeal must be brought within 20 days after the date of the constructive grant).

☞ *Curtin v. Board of Survey and Planning of Waltham*, 15 Mass. App. Ct. 978, 447 N.E.2d 15 (1983) (board's decision was in excess of its authority, as board failed to comply with its rules and regulations).

☞ *Doliner v. Planning Bd. of Millis*, 343 Mass. 1, 175 N.E.2d 919 (1961) (letter from planning board disapproving application gave applicant right to appeal and avoided constructive grant of approval; board's disapproval was remanded to planning board for failure to hold public hearing).

☞ *Fairbairn v. Planning Bd. of Barnstable*, 5 Mass. App. Ct. 171, 360 N.E.2d 668 (1977) (In addition to appealing the planning board's disapproval of a subdivision plan, developer may also maintain appeal seeking review of the board of health's recommendation on the subdivision; developer has burden of proof; trial court is to conduct a hearing *de novo* and find relevant facts in order to determine the validity of the planning board's reasons for disapproval of a subdivision plan).

☞ *Francesconi v. Planning Board of Wakefield*, 345 Mass. 390, 187 N.E.2d 807 (1963) (because of meager planning board record, court reversed subdivision disapproval to permit planning board to develop additional facts).

☞ *Freeman v. Planning Bd. of W. Boylston*, 419 Mass. 548, 646 N.E.2d 139, *certiorari denied*, 516 U.S. 931 (1995) (on appeal court views evidence in light most favorable to plaintiff in determining whether planning board acted with caprice or in an arbitrary manner).

☞ *Gallitano v. Board of Survey and Planning of Waltham*, 10 Mass. App. Ct. 269, 407 N.E.2d 359 (1980) (unless board acted in bad faith or with gross negligence in denying endorsement on plan that approval was not required, costs cannot be awarded against board).

☞ *Gattozzi v. Director of Inspection Services of Melrose*, 6 Mass. App. Ct. 816, 376 N.E.2d 1266 (1978) (case concerning 10 foot right-of-way connecting two streets and whether right-of-way was a way under the subdivision control law).

☞ *Goldman v. Planning Bd. of Burlington*, 347 Mass. 320, 197 N.E.2d 789 (1964) (revocation of building permits was an order or decision that would be appealed to the board of appeals and could not be reviewed through a bill in equity for declaration as to the building official's rights).

☞ *Hahn v. Planning Bd. of Stoughton*, 24 Mass. App. Ct. 553, 511 N.E.2d 20, *review denied*, 400 Mass. 1106, 513 N.E.2d 1289 (1987) (municipal clerk is obligated to record notice of appeal from planning board's decision).

- 📖 *Hamilton v. Planning Bd. of Lexington*, 4 Mass. App. Ct. 802, 345 N.E.2d 906 (1976) (trial court has discretion to decide what evidence of witnesses to rely on in making decision and it was reasonable for judge to determine that it was likely there would be flooding during a 10 year storm).
- 📖 *Independence Park v. Board of Health of Barnstable*, 403 Mass. 477, 530 N.E.2d 1235 (1988) (full de novo review is available to review board of health conditions contained in its recommendation on a subdivision plan).
- 📖 *Iverson v. Building Inspector of Dedham*, 354 Mass. 688, 241 N.E.2d 817 (1968) (builder cannot seek mandamus until first seeking administrative appeal of building official's decision).
- 📖 *J & R Inv. V. City Clerk of New Bedford*, 28 Mass. App. Ct. 1, 545 N.E.2d 1173 (1989) (mandamus, as opposed to an appeal under section 81BB of the subdivision control law, is appropriate remedy to obtain certificate for failure of planning board to take timely action on an approval not required plan).
- 📖 *K. Hovnanian at Taunton, Inc. v. Planning Bd. of Taunton*, 32 Mass. App. Ct. 480, 590 N.E.2d 1172, *review denied*, 413 Mass. 1103, 597 N.E.2d 1371 (1992) (despite remand by Land Court, decision of Land Court was sufficiently final to warrant further appeal, as Land Court's decision left no basis for planning board to withhold approval of plan).
- 📖 *Kay-Vee Realty v. Town Clerk of Ludlow*, 355 Mass. 165, 243 N.E.2d 813 (1969) (although subdivision was constructively approved for failure to take timely action and applicant had a right to a certificate of approval, the court gave planning board 60 days in which to amend, modify, or rescind the constructive approval).
- 📖 *Kuklinska v. Planning Bd. of Wakefield*, 357 Mass. 123, 256 N.E.2d 601 (1970) (court was required to make own finding as to whether the planning board had complied with its requirement providing for projection of streets in proposed subdivisions into adjoining property).
- 📖 *Lee v. Board of Appeals of Harwich*, 11 Mass. App. Ct. 148, 414 N.E.2d 619 (1981) (propriety of endorsement of an approval not required plan is subject to judicial appeal).
- 📖 *Loring Hills Developers Trust v. Planning Bd. of Salem*, 374 Mass. 343, 372 N.E.2d 775 (1978) (recommendation of the board of health is part of the planning board's decision and is subject to appeal under section 81BB of the subdivision control law, as long as board of health is made a party to the appeal).
- 📖 *Lyman v. Planning Board of Winchester*, 352 Mass. 209, 224 N.E.2d 493 (1967) (planning board's waiver of its regulations so as to not require extension of road was proper where under unusual circumstances it was unreasonable to apply them).
- 📖 *Lynch v. Planning Bd. of Groton*, 4 Mass. App. Ct. 781, 341 N.E.2d 925 (1976) (planning board must raise issues it wishes to appeal at the time of trial).

☞ *Mac-Rich Realty Const. v. Planning Bd. of Southborough*, 4 Mass. App. Ct. 79, 341 N.E.2d 916 (1976) (applicant has no right to appeal the planning board's decision on a preliminary plan; trial court is to conduct a hearing *de novo* and find relevant facts in order to determine the validity of the planning board's reasons for disapproval of a subdivision plan).

☞ *Malaguti v. Planning Bd. of Wellesley*, 3 Mass. App. Ct. 797, 339 N.E.2d 246 (1975) (court found that not every proposed building lot had frontage on a public way or a way adequate for vehicular traffic).

☞ *Marino v. Board of Appeals of Beverly*, 2 Mass. App. Ct. 859, 311 N.E.2d 580 (1974) (neither building official nor zoning board of appeals may give relief from subdivision plan condition prohibiting construction and grant building permit, even if condition was invalidly imposed, as only relief available is to appeal decision under Section 81BB of the subdivision control law).

☞ *McDavitt v. Planning Bd. of Winchester*, 5 Mass. App. Ct. 827, 362 N.E.2d 1211 (1977) (landowner could seek declaratory judgment where planning board had threatened to rescind approval of subdivision, but this did not preclude planning board from making such rescission).

☞ *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (both entry of the appeal in court and the notice of the appeal to the municipal clerk so that the clerk has received the notice must be completed within 20 days of a decision to give notice of appeal to third parties; municipal clerk has no obligation to determine whether court appeal has been filed; 10 taxable citizens may not appeal a decision of the planning board within one year under section 81Y of the subdivision control law, as such appeal must be timely made under section 81BB of such law; proceeding concerning violation of open meeting law must be filed within 14 days of alleged violation).

☞ *Paul Livoli, Inc. v. Planning Bd. of Marlborough*, 347 Mass. 330, 197 N.E.2d 785 (1964) (applicant has no right to appeal the planning board's decision on a preliminary plan).

☞ *Pieper v. Planning Bd. of Southborough*, 340 Mass. 157, 163 N.E.2d 14 (1969) (even though planning board failed to precisely follow procedures for filing decision with municipal clerk and mailing decision to applicant by registered mail, applicant appealed decision before board could cure informalities and thus cannot now complain that board's actions were not final).

☞ *Pinecrest v. Planning Bd. of Billerica*, 350 Mass. 336, 214 N.E.2d 868 (1966) (plan was not constructively approved due to failure of planning board to give applicant notice of decision by registered mail, as board properly filed decision with municipal clerk, thus setting up 20 day appeal period; because board did not act in bad faith or with gross negligence, no assessment of costs were permitted against planning board).

☞ *R.D. Matthews Const. Co. v. Planning Bd. of Hingham*, 13 Mass. App. Ct. 497, 434 N.E.2d 684 (1982) (an appeal under section 81BB of the subdivision control law is the exclusive remedy for challenging a planning board's decision on a subdivision plan).

📖 *Rattner v. Planning Bd. of W. Tisbury*, 45 Mass. App. Ct. 8, 695 N.E.2d 669 (1998) (to be aggrieved, abutters must put forth evidence to demonstrate infringement to their legal rights).

📖 *Rettig v. Planning Bd. of Rowley*, 332 Mass. 476, 126 N.E.2d 104 (1955) (trial court is to conduct a hearing *de novo* and find relevant facts in order to determine the validity of the planning board's reasons for disapproval of a subdivision plan).

📖 *Rounds v. Board of Water and Sewer Com'rs of Wilmington*, 347 Mass. 40, 196 N.E.2d 209 (1964) (remedy for challenging the reasonableness of a condition of subdivision approval is to appeal under section 81BB of the subdivision control law).

📖 *Selectmen of Ayer v. Planning Bd. of Ayer*, 3 Mass. App. Ct. 545, 336 N.E.2d 388 (1975) (burden of proof on appeal is on person who claims that planning board exceeded its authority and improperly approved a subdivision plan).

📖 *Stefanick v. Planning Bd. of Uxbridge*, 39 Mass. App. Ct. 418, 657 N.E.2d 475, 422 Mass. 1104, 661 N.E.2d 935 (1995) (judicial review of planning board's decision that subdivision control approval was not required, where no statutory right of review exists, is in the nature of certiorari).

📖 *Strand v. Planning Bd. of Sudbury*, 5 Mass. App. Ct. 18, 358 N.E.2d 842 (1977), *appeal after remand*, 7 Mass. App. Ct. 935, 390 N.E.2d 1141 (1977) (interpretation of words "justice and equity" and requiring court to remand modification of plan to planning board for rehearing and input by board of health; in reviewing plan court should determine if plan conforms to the planning board's rules and regulations and the recommendations of the board of health).

📖 *United Reis Homes v. Planning Bd. of Natick*, 359 Mass. 621, 279 N.E.2d 402 (1971) (planning board's condition that stagnant water pockets be filled and brook be piped to prevent public health problems was reasonable).

📖 *Waldor Realty v. Planning Bd. of Westborough*, 354 Mass. 639, 241 N.E.2d 843 (1968) (applicant may obtain writ of mandamus that requires city or town clerk to issue certificate of constructive approval, but only after stating date of such approval).

📖 *Young v. Planning Bd. of Chilmark*, 402 Mass. 841, 525 N.E.2d 654 (1988) (developer not entitled to costs and attorneys fees where planning board in rescinding approval of subdivision plan did not act in bad faith or with gross negligence).

CAUTIONARY NOTES

⚡ The court may award costs against the board whose decision is being appealed if it finds that the board acted with gross negligence or in bad faith.

⚡ When the planning board has approved a definitive subdivision plan and an appeal is filed, the court may require the person filing the appeal to post a surety or cash bond to pay costs incurred by the planning board, if the court determines that the appeal was filed in bad faith or with malice. The bond can range from \$2,000 to \$15,000.

✱ Failure to notify the city or town clerk that an appeal has been filed will result in dismissal of the appeal.

✱ The remedy provided by section 81BB is the exclusive remedy for filing appeals concerning planning board determination with respect to an approval not required plans, decisions regarding definitive subdivision plans, and appeals of board of appeals decisions under section 81Y.

LINKS

🔗 <http://www.landlaw.com> (lower court cases and other resources available from landlaw)

🔗 <http://www.socialaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81CC.

ENTRY ON LANDS



THE LAW

Planning boards and their officers and agents may, as far as they deem it necessary in carrying out the subdivision control law, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

ANNOTATIONS

In carrying out the subdivision control law, planning boards and its officers or agents may enter private property

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ In order to carry out the subdivision control law, the planning board and its officers and agents may:

- Enter upon lands (private property) without a warrant
- Examine lands
- Survey lands
- Place and maintain monuments and marks on lands

CAUTIONARY NOTES

☛ Although a warrant is *not* required to enter lands concerning a subdivision, notice to the owner and consent are recommended.

☛ Under the Open Meeting Law the planning board may *not* make decisions upon entering the land unless proper notice of a meeting is given.

☛ Any entry on private property made by the planning board or its officers and agents must be deemed necessary in carrying out the subdivision control law.

SAMPLE NOTICE TO PRIVATE PROPERTY OWNER

TO: (private property owner concerned in matter under the
subdivision control law)
FROM: Planning board of the (city/town name)
DATE:
RE: Entry upon your land/examination of your land/
survey your land/placement or maintenance of monuments
and marks on your land (enter appropriate statement)

The planning board (or its officer or agent) hereby provides notice that it has
deemed it necessary to carry out its responsibilities under the subdivision
control law to (enter upon your land/examine your land/survey your
land/place or maintain monuments or marks on your land)

On: (date and time)

For the purpose of:

You are invited to be present at such date and time.

Chairman, Planning Board

Consent by owner: _____

Date: _____

SECTION 81DD.

TAKING OF LAND; DAMAGES



THE LAW

The subdivision control law shall not abridge the powers of the city council, of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize a city or town to lay out or construct any way which may be indicated on any plan of a subdivision until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render a city or town liable for damages; provided, however, any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eighty-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

ANNOTATIONS

Subdivision control law does not abridge the municipality's power to layout, construct, and accept public ways

Any person who suffers property injury because of an invalid modification, amendment, or rescission of an approved subdivision plan or improper entry upon private property is entitled to damages

No damages are payable unless the person complaining of injury has changed position or made expenditures in reliance upon an approval of a subdivision plan, as long as approval was not obtained through misrepresentation

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- ☛ Even though a municipality has adopted the subdivision control law, the city or town may still layout, construct, and accept public ways as prescribed by other laws.
- ☛ A city or town is not liable for damages due to a modification, amendment, or rescission of the approval of a subdivision plan, if such approval was obtained through fraud or misrepresentation of the applicant.

RELATED CASE LAW

- 📖 *Bigham v. Town of No. Reading*, 8 Mass. App. Ct. 709, 323 N.E.2d 748 (1975) (court dismissed petition for damages by landowner based on purported rescission of subdivision approval).
- 📖 *Board of Selectmen of Pembroke v. R. & P. Realty Corp.*, 348 Mass. 120, 202 N.E.2d 409 (1964) (landlord and grantees who knew that subdivision was approved on conditions were not protected from modification, amendment, and rescission of subdivision approval as they were not good faith purchasers).
- 📖 *Dolan v. Board of Appeals of Chatham*, 359 Mass. 699, 270 N.E.2d 917 (1971) (subdivision control law is for the purpose of approving new ways needed to serve subdivided lots).

CAUTIONARY NOTES

- ⚡ City or town may not take land to lay out or construct a way shown on a subdivision plan until the way is laid out as a public way as prescribed by law.
- ⚡ The city or town may be liable for damages if a person suffers damage to private property because of:
 - Modification, amendment, or rescission of approval of a subdivision plan without the owner's consent, as required by common law under section 81-W of the subdivision control law or
 - Entry onto private property that is not within the limits of a subdivision as shown on a preliminary or definitive subdivision plan submitted for approval.
- ⚡ A person whose property is injured may recover damages under M.G.L. ch. 79, but damages shall not be awarded for modification, amendment, or rescission of approval of a subdivision plan if the alleged injured party has not:
 - Changed his or her position or
 - Made expenditures in reliance on such approval.

LINKS

- 🔗 <http://www.sociallaw.com/sjcslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81EE.

RECORDING TO MAKE THE SUBDIVISION CONTROL LAW EFFECTIVE



THE LAW

Every board having on the first day of January, nineteen hundred and fifty-four, powers of subdivision control shall, within sixty days thereafter transmit to the register of deeds and the recorder of the land court a statement stating that in the opinion of such board the subdivision control law is in effect in such city or town, including a copy certified by the clerk of such city or town of the vote of the city council or of the town meeting under which the subdivision control law in the opinion of such board went into effect, together with the date thereof, or a reference to any special statute under which subdivision control was established, in such city or town. The register of deeds and the recorder of the land court shall enter such statement in the book which he is required to keep under section eighty-one X. Unless such statement is transmitted as herein provided within sixty days after said date, or the clerk of such city or town has previously notified the register of deeds and recorder of the land court of the establishment of a planning board under the provisions of law in effect prior to said date, and included in his notice a statement of the date of such establishment, the operation of the subdivision control law in and in respect to such city or town shall be suspended until the clerk of such city or town has notified the register of deeds and recorder of the land court that the subdivision control law is in effect in his city or town in the manner provided in section eighty-one N. The register of deeds and the recorder of the land court shall each enter such notice in his records in the manner provided in

ANNOTATIONS

For subdivision control to be in effect, board with subdivision control powers must record a statement of the date subdivision control was adopted by the municipality, including a certified copy of city council or town meeting vote adopting subdivision control

Register of deeds and recorder of land court are to record statement of adoption of subdivision control

Failure to notify the register and recorder shall suspend the operation of the subdivision control law until the city or town clerk notifies the register and recorder that the subdivision control law is in effect in the municipality

Register of deeds and recorder of land court are to record notice

section eighty-one X. Any planning board having powers of subdivision control on the first day of January, nineteen hundred and fifty-four, shall, within sixty days thereafter, transmit to the register of deeds and recorder of the land court a certified copy of its rules and regulations relating to subdivision control, which shall be kept by him in the same manner as copies of rules and regulations thereafter adopted, and unless such copy is so transmitted, the operation of the subdivision control law in and with respect to such city or town shall be suspended until the board so transmits such copy.

Board shall transmit a certified copy of its subdivision rules and regulations to the register and recorder

Operation of subdivision control law is suspended until rules and regulations are transmitted

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ A city or town may have had powers of subdivision control under prior laws on January 1, 1954, or a city council or town meeting may adopt the subdivision control law after January 1, 1954.

☛ Any prior subdivision control powers or powers established through adoption of the subdivision control law after January 1, 1954 are not effective until the following steps are taken within 60 days of January 1, 1954 or 60 days after adoption of the subdivision control law in the city or town:

- 1) The board having powers of subdivision control shall transmit a statement to the register of deeds and the recorder of land court that in the opinion of the board the subdivision control law is in effect in the municipality and must include:
 - a. a copy of the vote under which the subdivision control law went into effect, certified by the city or town clerk;
 - b. the date of such vote; and
 - c. if subdivision control was established by special statute, a reference to such statute.
- 2) If the board with subdivision control powers fails to transmit the required statement or the city or town clerk has not previously notified the register of deeds and recorder of land court of the establishment of a planning board prior to January 1, 1954, including the date of establishment, then the operation of the subdivision control law is suspended in the municipality until the city or town clerk has notified the register of deeds and recorder of land court that the subdivision control law is in effect in the city or town. The notice shall be in the manner as required under section 81N of the subdivision control law.
- 3) The board with subdivision control powers must record a certified copy of its subdivision control rules and regulations with the

register of deeds and recorder of land court, or else the subdivision control law is suspended until such recording takes place.

✶ The register of deeds and recorder of land court shall duly record:

- 1) all statements by the board with subdivision control powers that the subdivision control law is in effect in the city or town;
- 2) any notice from the city or town clerk that the subdivision control law is in effect in the city or town; and
- 3) subdivision control rules and regulations adopted by the board with subdivision control powers.

RELATED CASE LAW

📖 *Board of Selectmen of Pembroke v. R. & P. Realty*, 348 Mass. 120, 202 N.E.2d 409 (1964) (purpose of subdivision control law is to set up orderly procedure for review of subdivisions within stated times, including notice of actions).

📖 *Dolan v. Board of Appeals of Chatham*, 359 Mass. 699, 270 N.E.2d 917 (1971) (recording of town development plan does not cause ways shown on the plan to become dedicated as public ways).

📖 *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

CAUTIONARY NOTES

✶ The planning board or other board with subdivision control powers has no power to act on subdivisions until:

- A statement or notice that subdivision control is in effect in the city or town is recorded by the register of deeds or recorder of land court
- The subdivision control rules and regulations are recorded by the register of deeds or recorder of land court.

**SAMPLE STATEMENT TO REGISTER OF DEEDS AND
RECORDER OF LAND COURT**

TO: Register of Deeds or Recorder of Land Court of _____
County
FROM: Planning board (or other board with subdivision control powers)
of the (city/town name)
DATE:
RE: Adoption of subdivision control law

In the opinion of the planning board (or other board with subdivision control powers), the subdivision control law became effective in the city/town of _____ on (date of city council or town meeting vote accepting the subdivision control law or date of special statute establishing subdivision control in the city or town).

A copy of the vote of the (city council/town meeting), certified by the city/town clerk, is hereby transmitted together with a copy of the board's subdivision control rules and regulations, certified by the city/town clerk.

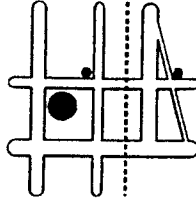
NOTE: If subdivision control was established by a special statute, the last paragraph might read as follows:

Subdivision control became effective in the city/town of _____ through a special statute, M.G.L. _____. The board hereby transmits a copy of its subdivision control rules and regulations, certified by the city/town clerk.

Planning Board of the city/town of _____

SECTION 81FF.

APPLICATION OF SUBDIVISION CONTROL LAW TO REGISTERED AND UNREGISTERED LAND



THE LAW

So far as land which has not been registered in the land court is affected by the subdivision control law, recording of the plan of a subdivision in the registry of deeds before the subdivision control law was in effect in the city or town in which the subdivision was located shall not exempt the land within such subdivision from the operation of said law except with respect to lots which had been sold and were held in ownership separate from that of the remainder of the subdivision when said law went into effect in such city or town, and to rights of way and other easements appurtenant to such lots; and plans of subdivisions which were recorded in the registry of deeds and subdivisions made without the recording of a plan after said law had gone into effect in such city or town and before February first, nineteen hundred and fifty-two, without receiving the approval of the planning board of such city or town, shall have the same validity and effect as if the subdivision control law became effective in such city or town on February first, nineteen hundred and fifty-two, as above provided.

So far as land which has been registered in the land court is affected by said law, any plan of a subdivision which has been registered or confirmed by said court before February first, nineteen hundred and fifty-two, whether the subdivision control law was in effect in the city or town in which the subdivision was located or not, and whether the plan of the

ANNOTATIONS

Lots shown on a plan recorded in the registry of deeds before the effective date of subdivision control in a city or town, which are sold before the effective date and remain in separate ownership, are exempt from the subdivision control law

Land shown on a plan registered or confirmed by the land court before February 1, 1952 shall be valid as if the plan had received approval under the subdivision control law

subdivision was approved by the planning board or not, shall have the same validity in all respects as if said plan had been so approved, but the land court shall not register or confirm a plan of a subdivision in a city or town in which the subdivision control law is in effect which has been filed on or after February first, nineteen hundred and fifty-two, unless it has first verified the fact that the plan filed with it has been approved by the planning board, or would otherwise be entitled if it had related to unregistered land, to be recorded in the registry of deeds. The land court shall have jurisdiction in so far as affects land registered or to be registered or confirmed under chapter one hundred and eighty-five, to determine whether the subdivision control law has been complied with, and shall verify before registering or confirming any plan of land in any city or town in which the subdivision control law is in effect, that the plan filed with it is entitled to be recorded in accordance with the subdivision control law, and every plan heretofore or hereafter registered or confirmed by the land court pursuant to said chapter one hundred and eighty-five shall for the purposes of the subdivision control law be deemed to be, and shall be invested with all the rights and privileges of, a plan approved pursuant to said law. In case of conditions imposed pursuant to section eighty-one R or eighty-one U of said law, and set forth or referred to by endorsement on the plan filed with it, the land court shall cause said conditions to be set forth or referred to on the plan prepared by it therefrom for registration or confirmation, or in the decree of registration or confirmation or certificate of title issued for the land shown thereon.

The land court shall not register or confirm a subdivision plan after February 1, 1952 unless it is approved by the planning board

If plan contains conditions of approval, land court shall set forth such conditions or refer to such conditions on the plan in its certificate of title

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

☛ Lots shown on a subdivision plan that was recorded at the applicable registry of deeds before the subdivision control law was in effect in a municipality or before February 1, 1952, or a subdivision without recording a plan before February 1, 1952, shall be governed by such law as follows:

- 1) Lots that were sold and were held in ownership separate from the remainder of the subdivision when the subdivision control law became effective in a municipality shall be exempt from the

operation of the subdivision control law. These lots shall retain all rights to ways and other easements appurtenant to the lots; and

- 2) All remaining lots held in the same ownership at the time the subdivision control law became effective in a municipality are subject to the subdivision control law and the planning board's rules and regulations.

➤ Once the subdivision control law is in effect in a municipality, all subdivisions in which the plan will be recorded at the registry of deeds are subject to the subdivision control law.

➤ Lots shown on a subdivision plan that was registered with the land court or confirmed by the land court before February 1, 1952, whether or not the subdivision control law was in effect in a municipality, and whether or not the planning board approved the subdivision, shall be valid as if the plan had been approved in accordance with the subdivision control law.

➤ Once the subdivision control law is in effect in a municipality, the land court may not register or confirm a plan unless land court verifies that it has been approved by the planning board in accordance with the subdivision control law, or would be entitled to recording at the registry of deeds if it were unregistered land. The land court shall verify that the plan conforms to the subdivision control law.

➤ If a plan contains conditions of approval as permitted by sections 81R and 81U under the subdivision control law, the land court shall set forth the conditions on the plan it prepares for registration or confirmation or refer to such conditions on the plan and set them forth in a separate document.

RELATED CASE LAW

☞ *Clows c. Middleton Planning Bd.*, 422 N.E.2d 457 (Mass. App. Ct. 1991) (), *appeal denied*, 440 N.E.2d 1172 (1981) (isolated lots in separate ownership at the time the subdivision control law is accepted in a city or town are exempt from the subdivision control law and the planning board's subdivision control rules and regulations; commonly held lots are protected as one lot).

☞ *Nantucket Land Council v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

☞ *Russell Management v. Nantucket Conservation Foundation*, 3 Mass. App. Ct. 782, 334 N.E.2d 649 (1975) (city or town clerk shall issue a certificate that subdivision approval is not required when the planning board fails to take timely action on an approval not required plan, and the certificate shall accompany the plan for recording).

☞ *Sturges v. Town of Chilmark*, 380 Mass. 246, 402 N.E.2d 1346 (1980) (unregistered land in common ownership shown on a plan recorded before subdivision control was effective in municipality is subject to subdivision control law).

☞ *Toothaker v. Planning Bd. of Billerica*, 346 Mass. 436, 193 N.E.2d 582 (1963) (only lots shown on a plan recorded before effective date of subdivision control

law in municipality are exempt from such law; lots held in common ownership at the time subdivision control becomes effective are subject to the subdivision control law; rights of way for lots sold before effective date of subdivision control law in municipality are determined by the private grant).

CAUTIONARY NOTES

✓ Even though lots may be exempt from the operation of the subdivision control law because they were held in separate ownership from the remainder of the subdivision, or when commonly held lots are treated as one protected lot, zoning may preclude building on such lots until the ways are constructed in order to provide frontage. The construction of the ways may be subject to municipal requirements, including the posting of a bond to ensure completion of the ways and any required municipal services.

LINKS

- 🔑 <http://www.landlaw.com> (lower court cases available from landlaw)
- 🔑 <http://www.socialaw.com/sicslip/8067.html> (appellate and supreme court decisions available from the social law library)

SECTION 81GG.

POWERS OF PLANNING BOARDS ESTABLISHED UNDER PRIOR LAWS



THE LAW

Any planning board having powers of subdivision control under corresponding provisions of earlier laws shall have all of the powers and be subject to all of the duties of a planning board with respect to subdivision control under sections eighty-one K to eighty-one FF, inclusive, without any further action by such city or town. If any provision of sections eighty-one K to eighty-one GG, inclusive, known as the subdivision control law, or in the administration thereof, shall be held to be unconstitutional, it shall not affect any other provision of said sections or the administration thereof.

ANNOTATIONS

Planning board established under prior law to remain planning board under subdivision control law

Any provision held unconstitutional shall not affect remainder of law

LEGISLATIVE HISTORY

Added by St. 1953, c. 674, § 7.

PERMISSIBLE ACTIONS UNDER THE STATUTE

- Planning board established under law prior to municipal adoption of the subdivision control law shall be subject to the subdivision control law without any further action by the city or town.
- If any provision of the subdivision control law is held to be unconstitutional, such holding shall not affect the constitutionality of the remaining sections of the law.

RELATED CASE LAW

📖 *Nantucket Land Council, Inc. v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 361 N.E.2d 937 (1977) (subdivision control law is a comprehensive statutory scheme).

CAUTIONARY NOTES

⚡ Only a Planning Board established under a prior Law may assume the powers of a planning board under the subdivision control law.

LINKS

🔗 <http://www.state.ma.us/> (links to Mass. Law and other state agencies such as DHCD)

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