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**the  
planners  
handbook**

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# the planners handbook

## PREFACE

This manual was developed by the Massachusetts Federation of Planning and Appeals Boards in order to provide assistance and guidance to Planning Boards established under the General Laws of Massachusetts and acting under the provisions of local zoning ordinances and bylaws and for those concerned persons who may have an interest in such matters.

The goals of this publication are:

- to assist local officials with their regulatory obligations;
- to provide the basis for a better understanding of their authority and responsibility in the land development process;
- to facilitate the revision of local regulations that corresponds with current legislation and reflects present trends in land development;
- to preserve historical and natural resources;
- to accommodate change; and
- to influence future development in an equitable and orderly fashion throughout the Commonwealth.

An Incentive Aid Grant awarded to the Federation in 1988 by the Massachusetts Executive Office of Communities and Development made it possible to completely revise this manual and distribute a free copy of that 1988 edition to every Massachusetts community. Additionally, the grant was a major part of the funding of this 1991 update which was prepared with the technical assistance of Carol A. Rolf, Esquire formerly with the Executive Office of Communities and Development and presently in private practice in Massachusetts and New Hampshire.

We suggest you refer to the actual text of the law constantly when dealing with specific situations. When in doubt, consult your Town Counsel or City Solicitor.

Madelyn A. McKie, Editor  
September, 1991

# the planners handbook

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# Chapter I

## Establishment of a Planning Board

Although Planning Boards and Boards of Survey established under earlier statutes still exist in the Commonwealth, this publication will generally address the powers and duties of a Planning Board established under Chapter 41, Section 81-A, M.G.L.

- A. The organization of Planning Boards established under the provisions of Chapter 41, Section 81-A.<sup>1</sup>**
1. The Planning Board SHALL consist of not less than five nor more than nine members.
  2. Planning Board members in a city SHALL be appointed by the Mayor subject to City Council confirmation.
  3. Planning Board members in a town MAY be either elected at the annual Town Meeting or appointed in such manner as an annual Town Meeting may determine.
  4. When a Planning Board is first established, terms SHALL be so arranged that the term of at least one member will expire each year. Successors to original members SHALL have terms of three or five years each as determined by the City Council or Town Meeting.
  5. A vacancy for an unexpired appointed term SHALL be filled in the same manner as the original appointment. A vacancy in an elected position in a town SHALL be filled until the next annual election by appointment of the Board of Selectmen and the remaining members of the Planning Board.
  6. The Planning Board SHALL annually elect a chairman and a clerk.
  7. The Planning Board MAY employ experts, clerical and other assistants.  
NOTE: Legal counsel are not "experts" within this Section. (See *O'Reilly vs. Town of Scituate* [1952] 328 Mass. 154.)
  8. The Planning Board may appoint a custodian of its plans and records who may be the City Engineer or Town Clerk.
  9. No member of a Planning Board SHALL represent any party of interest in any manner before the Board. If there is any question, Chapter 268A, Section 19(a), M.G.L., the Conduct of Public Employees and the Town Counsel or City Solicitor should be consulted.
- B. In communities of less than 10,000 population, the Board of Selectmen MAY, by vote of the Town Meeting, act as a Planning Board until such Board is established. Every town not having a Planning Board SHALL, upon attaining a population of 10,000, establish one in the manner prescribed by Chapter 41, Section 81-A, M.G.L.**

<sup>1</sup>In some communities, Planning Boards established under Chapter 41, Sections 70-72 or Boards of Survey established under Chapter 41, Sections 73-81 still exist. For their powers, duties and responsibilities, see those sections. By and large, Boards established under Chapter 41, Section 81-A have all the powers of the above Boards plus various expanded functions, authorized by Sections 81-A through 81-GG.

# Chapter II

## Responsibilities and Statutory References

The varied and complex responsibilities of a Planning Board are governed by the General Laws of the Commonwealth of Massachusetts. Some responsibilities are mandatory while others are optional.

Following is an alphabetical listing of these responsibilities, including references to the applicable governing statute. Each subject area is addressed in detail in a later chapter of this publication. Substantive provisions, procedural requirements and provisions, mandatory or optional, are covered under such chapters.

Although there may be additional subject areas which require Planning Board involvement in a community, the list below is relatively inclusive of all functional areas in which a Planning Board may become involved.

<b>Subject - Statutory Reference</b>	<b>Handbook Chapter</b>
Annual Report (Chapter 41, Section 81-C) .....	III
Conflict of Interest (Chapter 268A) .....	VII
Establishment of Planning Board (Chapter 41, Section 81-A) .....	I
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Special Permits Under Zoning (Chapter 40-A, Section 1-A, 6, 9, 11, 15, 16, and 17) .....	XVIII
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Zoning (Chapter 40-A). Complete coverage with a legislative history and highlights of each chapter are contained in The Zoning Guidebook also published by the Federation .....	XVII

## **Chapter III**

### **Annual Report (Chapter 41, Section 81-C)**

The Planning Board SHALL report annually to the City Council or annual Town Meeting giving information regarding the condition of the city or town and any plans or proposals for its development and cost estimates for same. The Board SHALL furnish a copy of such report to:

Commonwealth of Massachusetts  
Executive Office of Communities and Development  
Division of Municipal Development  
100 Cambridge Street, Room 904  
Boston, Massachusetts 02202

<sup>5</sup> Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

# Chapter IV

## Master or Study Plan (Chapter 41, Section 81-D)

A planning board established in any city or town under section eighty-one A shall make a master plan of such city or town or such part or parts thereof as said board may deem advisable and from time to time may extend or perfect such plan.

Such plan shall be a statement, through text, maps, illustrations or other forms of communication, that is designed to provide a basis for decision making regarding the long-term physical development of the municipality. The comprehensive plan shall be internally consistent in its policies, forecasts and standards, and shall include the following elements:

- (1) Goals and policies statement which identifies the goals and policies of the municipality for its future growth and development. Each community shall conduct an interactive public process, to determine community values, goals and to identify patterns of development that will be consistent with these goals.
- (2) Land use plan element which identifies present land use and designates the proposed distribution, location and inter-relationship of public and private land uses. This element shall relate the proposed standards of population density and building intensity to the capacity of land available or planned facilities and services. A land use plan map illustrating the land use policies of the municipality shall be included.
- (3) Housing element which identifies and analyzes existing and forecasted housing needs and objectives including programs for the preservation, improvement and development of housing. This element shall identify policies and strategies to provide a balance of local housing opportunities for all citizens.
- (4) Economic development element which identifies policies and strategies for the expansion or stabilization of the local economic base and the promotion of employment opportunities.
- (5) Natural and cultural resources element which provides an inventory of the significant natural, cultural and historic resource areas of the municipality, and policies and strategies for the protection and management of such areas.
- (6) Open space and recreation element which provides an inventory of recreational and resources and open space areas of the municipality, and policies and strategies for the management and protection of such resources and areas.
- (7) Services and facilities element which identifies and analyzes existing and forecasted needs for facilities and services used by the public.
- (8) Circulation element which provides an inventory of existing and proposed circulation and transportation systems.
- (9) Implementation program element which defines and schedules the specific municipal actions necessary to achieve the objectives of each element of the master or study plan. Scheduled expansion or replacement of public facilities or circulation system components and the anticipated costs and revenues associated with accomplishment of such activities shall be detailed in this element. This element shall specify the process by which the municipality's regulatory structures shall be amended so as to be consistent with the master plan.

Such plan shall be made, and may be added to or changed from time to time, by a majority vote of such planning board and shall be public record. The planning board shall, upon completion of any plan or

report, or any change or amendment to a plan or report produced under this section, furnish a copy of such plan or report or amendment thereto, to the division of municipal development, office of local and regional planning of the executive office of communities and development.

A city or town which has an established master or study plan under section eighty-one A and applies for a state grant from the commonwealth shall prepare and keep on file within such city or town an economic development supplement; provided, however, that such city or town shall not be required to prepare such supplement if such city or town has a supplement on file. Such supplement shall be at least one page in length and shall contain the goals of the city or town with respect to industrial or commercial development, affordable housing, and preservation of parks and open space.

**Highlights of Chapter 41, Section 81-D:**

Planning Board shall make a master plan of the city or town or such part or parts thereof as the Planning Board may deem advisable.

Such plan may be added to, changed, or perfected from time to time.

**Contents of Plan**

Plan shall be a statement which defines goals and policies, through text, maps, illustrations or other forms

Plan shall contain elements of the following :

land use	housing	economic development
natural resources	open space and recreation	services and facilities
circulation		

Plan shall contain an implementation program.

**Procedure for Adoption**

Plan shall be made and may be added to or changed by a majority vote of the entire Planning Board

After adoption, the plan shall be a public record

Upon completion or amendment, such plan or amendment shall be furnished to:

Executive Office of Communities and Development  
Division of Municipal Development  
100 Cambridge Street  
Boston, Massachusetts 02202

If city or town with established master or study plan under s.81A applies for a state grant, it shall prepare and keep an economic development supplement on file within the community but not required to prepare another if one is presently on file.

**Legislative History:**

*Added by St. 1947, c. 340, s. 4; Amended by St. 1954, c. 643, s. 1; St. 1973, c. 795, s. 2; St. 1990, c. 78; St. 1990, c. 372.*

# Chapter V

## Official Map (Chapter 41, Sections 81-E, 81-H)

### A. Optional Official Map

A City Council or Town Meeting MAY adopt or amend an official map showing public ways and parks previously laid out and established by law, and, "... private ways then existing and used in common by more than two owners."

A zoning map or other city or town map is NOT an official map. In order to have an official map the lines and notations of all ways, public parks, and other improvements shown thereon are adopted by Town Meeting or City Council. Although Chapter 41 does not require a land survey of the lines, it is practical to have such a survey before placing any line on the official map so that such line can be located on the ground.

### B. Requirements After Adoption of an Official Map

1. The ways shown on an approved subdivision plan which has been recorded shall become part of the official map;
2. No public water supply, sewer, or other municipal utility or improvements shall be constructed in a public or private way, except in an approved subdivision, unless such way is shown on the official map;
3. No building permit shall be issued for a lot, except in an approved subdivision, unless the way giving access to the lot is shown on the official map;
4. If a public way is laid out, altered, relocated or discontinued or if a public park is established, enlarged or closed pursuant to the appropriate statute, the lines and notations showing such improvements as established or effected shall, without further action by City Council or Town Meeting, be made a part of the official map.

### C. Advantages and Disadvantages

1. Advantages:
  - a. Streets, public ways, parks and all publicly owned land and rights-of-way laid out and established by law are on record;
  - b. Reduces damages if structures are built within ways recorded on the official map and that are later laid out and accepted (Sections 81-G and 81-J).
  - c. Eliminates so-called "paper streets."
2. Disadvantages:
  - a. All existing and proposed streets should be surveyed by the municipality before placement on the map. This can be a costly expenditure;
  - b. The ownership and precise location of old rights-of-way may be difficult to establish;
  - c. All ways and parks which are laid out and established by law must be shown on the official map. Thus, the official map MUST be continually updated so that there will not be the possibility of legal challenge regarding the status of a way or park. This can be an on-going expense;
  - d. Any person injured in his property by a change in the official map may recover the damages under Chapter 79, M.G.L.

#### **D. Procedure for Adoption or Amendment of an Official Map**

- Step 1: Planning Board prepares or has official map prepared under its direction. All lines shown on the map should be precisely reproducible on the ground.
- Step 2: Planning Board submits official map and recommendations to the City Council or Board of Selectmen:
- Step 3: City Council or committee thereof or Board of Selectmen hold a public hearing on the official map after advertising as follows:
- a. At least 10 days before day of public hearing notice shall be given;
  - b. Notice shall be given by advertisement in an official publication of the city or town or in a newspaper of general circulation in the city or town;
  - c. In the case of a change, addition, or discontinuance, notice shall be mailed to all owners of property abutting on such proposed improvement or discontinuance, as appearing upon the most recent tax list;
  - d. Although the statute does not specify the contents of the notice, the notice should at least give the date, time, place and subject matter of the public hearing sufficient for identification.
- Step 4: City Council or Town Meeting vote adoption of the official map or any amendment thereto. The vote SHALL be by majority vote of all the members of a City Council or by a majority vote of Town Meeting.
- a. Any way appearing on an official map, which is not a public way established by statute, may be modified or removed from the map by the Planning Board. The Planning Board SHALL take such action pursuant to Section 81-W, Chapter 41, M.G.L. provided there is no objection at a public hearing by any party in interest;
  - b. No other change or addition SHALL be adopted as part of the official map unless the Planning Board has reported on such change or addition;
  - c. City Council or Town Meeting SHALL NOT vary from a plan prepared or approved by the Planning Board except by a two-thirds vote by all the members of a City Council or by a two-thirds vote of a Town Meeting. The two-thirds vote requirement SHALL not apply if the Planning Board fails to report within thirty (30) days after receiving a request for a report on any proposed change or addition.
- Step 5: A copy of any official map which is adopted or amended shall be filed by the City or Town Clerk with the appropriate registry of deeds. A certificate of the vote adopting or amending the map shall also be filed. Although the statute does not require that an official map or copy of the adoption vote be filed with land court, such filing is recommended.
- A copy of any official map which is adopted or amended shall also be furnished to the Division of Municipal Development of the Executive Office of Communities and Development.
- None of the official map provisions otherwise abridge the powers of municipal officials with regard to the laying out, acceptance, and taking of ways and parks or their discontinuance (Section 81-G).

## **Chapter VI**

### **Planning Board Acting as Park Commissioners (Chapter 41, Section 81-C)**

*In towns*, a Planning Board established under Section 81-A, Chapter 41, M.G.L. MAY be authorized by vote of a Town Meeting to act as Park Commissioners, and if so authorized, MAY be vested with all the powers and duties of Park Commissioners in towns.

# Chapter VII

## Planning in General (Chapter 41, Sections 81-C and 81-I)

### A. Planning Function:

1. Members should acquaint themselves with planning law and procedures in Massachusetts.
2. Members should acquaint themselves with the planning process in general.
3. Board should establish goals and objectives for the future growth and/or re-development of their city or town.

### B. Optional Studies and Reports

#### 1. Referrals:

A city or town MAY by ordinance, bylaw or vote, provide for the reference of various matters to the Planning Board before final action is taken. The ordinance, bylaw or vote MAY also provide that final action shall not be taken until the Planning Board has submitted its report or has had a reasonable fixed time to submit such report. With regard to such referrals, the Planning Board shall have full power to make such investigations, maps and reports as it deems desirable in preparing its recommendations (Section 81-I).

#### 2. Special Studies:

In addition to the preparation of a master plan, the Planning Board MAY make special studies of items which it feels require such consideration. These studies could consider any of the elements of the master plan, taken in greater detail as individual study, or could consist of the detailed study of a portion of the community. Other areas for possible study would include population growth, housing, either public or private, or the economic base of the community (Section 81-C).

#### 3. Wetlands Protection Act:

Attention of local Planning Boards is directed to the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40.

Although there are no statutory provisions mandating cooperation or procedure, the following recommendations might achieve better coordination between the Planning Board and the Conservation Commission. The recommendations are:

- a. That the Planning Board invite the Conservation Commission to a meeting to discuss each other's functions, procedures, plans and programs.
- b. That the Town Meeting acting under Section 81-I of Chapter 41, M.G.L. provide for the reference of all capital planning and Town land acquisitions to the Planning Board.
- c. That a copy of any preliminary plan for a proposed subdivision which is submitted to the Planning Board, be forwarded to the Conservation Commission. Should the Conservation Commission indicate that the plan may be subject to the Wetlands Protection Act, it may be desirable for both Boards to meet to discuss the plan.
- d. That a copy of any definitive plan for a proposed subdivision which is submitted to the Planning Board, be forwarded to the Conservation Commission. Notice of the public hearing should also be sent to the Conservation Commission.
- e. That when land is being dedicated for open space or park purposes and is shown on a definitive plan of a subdivision, cluster development or planned unit development, the Planning Board refer that aspect of the plan to the Conservation Commission for an opinion.

- f. That when either the Planning Board or the Conservation Commission wish to initiate flood plain, watershed protection, conservancy, cluster, planned unit development or similar environmentally-oriented zoning, they should consult with each other as early as practicable in the process to facilitate the necessary study and passage of the bylaw.
- g. That the Planning Board and Conservation Commission act together in determining which local roads should be designated as scenic roads under the Scenic Roads Act.
- h. Other possible areas of joint concern are sand, gravel and earth removal by-laws; assessment of community impact for environmental impact statements now required for certain Federal and State projects; park, open space and recreational studies; and finally analyses of remaining vacant lands to determine their best overall usage.

Many other areas of cooperation exist in each individual community. This listing serves to point out the primary joint concerns of local Planning Boards and Conservation Commissions in a general way to initiate and continue a mutual working relationship.

4. Capital Improvements Program:

- a. As a special study, the Planning Board may desire to prepare a capital improvements program. The major function of such a program is to make a clear statement to the community of the foreseeable capital needs of the community; to establish the priorities of capital needs; and to develop a systematic program to fulfill these needs to lessen the direct impact at the time of actual need.
- b. Such a program would:
  - (1) schedule anticipated capital improvements over a future time period (usually 5 years) to facilitate their funding and
  - (2) accumulate the annual depreciated value of equipment, buildings or other facilities in order to have money on hand to replace them.

This program is usually developed in conjunction with the Finance or Advisory Committee through the survey of all municipal bodies which might request appropriations of funds for capital improvements. These bodies are also surveyed with regard to the priority of their various requests. The Planning Board and Finance Committee would then evaluate these priorities, taking into consideration the costs of the various proposals and the community's ability to meet these costs. On the basis of the above, a program for capital improvements would be prepared by the Board.

Another, and perhaps preferable way is to establish a "Capital Improvements Program Committee" by ordinance or bylaw, consisting of several members, one of whom should be a member of the Planning Board. This permits a separate body to specialize on this one important matter, leaving the Planning Board itself to deal with other planning matters.

A Planning Board cannot successfully undertake capital improvements programs unless all departments are willing to work and cooperate. A capital improvements program may not be utilized extensively at first but becomes valuable after a few years in operation.

**C. Procedures:**

1. **Conduct of Meetings:**

- a. Under the Open Meeting Law, meetings SHALL be public. (See Chapter 39, Section 23-A to 24)

Meetings may be held in executive session for the following purposes only:

- (1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual;
- (2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual;
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigation position of the Board;
- (4) To conduct collective bargaining sessions;
- (5) To discuss the deployment of security personnel or devices;
- (6) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints;
- (7) To consider the purchase, exchange, lease or value of real property, if an open meeting may have a detrimental effect on the negotiating position of the Board;
- (8) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

Executive sessions may be held after the Board has first convened in a duly posted open meeting. A majority of the members must vote to go into executive session and the vote of each member must be entered into the minutes. The presiding officer must state the purpose of the session. If the session is to discuss or consider discipline of an individual, such individual must be notified in writing 48 hours before the session. The individual may request that the meeting be held in Open Session and shall have the following rights:

- (1) To be present at the executive session;
  - (2) To have counsel or a representative present who may participate in the session;
  - (3) To speak in his or her own behalf.
- b. Minutes of meetings should be kept by the Planning Board Clerk to be distributed to members before the next meeting.
- c. Except in an emergency, notice of a meeting SHALL be given to the City or Town Clerk, and posted at least **FORTY-EIGHT HOURS** prior to such meeting. (See Chapter 39, Section 23-B)
- Saturdays are included in the forty-eight hours, Sundays and legal holidays are not.
- d. An agenda is desirable to ensure coverage of all items pending within a reasonable time span.
- e. Meetings may be recorded by any person in attendance with any mechanical device such as a tape or video tape recorder.

2. Conduct of Hearings:

- a. Hearings SHALL be held by the Planning Board with regard to the following:
- ( 1) Definitive Subdivision Plan;
  - ( 2) Adoption of Subdivision Rules and Regulations;
  - ( 3) Zoning Proposals;
  - ( 4) Applications for approval of a project under Chapter 121-A, M.G.L.
  - ( 5) Removal of public shade trees or stone walls within a scenic road as established by statute;
  - ( 6) Naming or changing names of ways;
  - ( 7) Special permit applications under zoning regulations when the Planning Board has been designated as the special permit granting authority;
  - ( 8) Amendment, modification or rescission of the approval of a definitive subdivision plan or change in such plan.
  - ( 9) Modification or removal of a way from an official map, if any, in accordance with the procedure set forth in Section 81-W, Chapter 41, M.G.L.
  - (10) Revocation of a disapproval of a definitive subdivision plan and subsequent approval as provided by Section 81-U, Chapter 41, M.G.L.  
*Patelle vs. Planning Board of Woburn, Mass. App. Ct. Adv. Sh. (1978) 1169; and*
  - (11) Such other hearings as required by local, state or federal law, custom or usage.
- b. Minutes should be kept by Planning Board Clerk.
- c. Chairman should open hearing; Clerk then reads notice.
- (1) Chairman introduces members of Planning Board, its secretary and other town officials.
  - (2) Proponents speak.
  - (3) Opponents speak.
  - (4) Proponents rebuttal.
  - (5) General discussion.
  - (6) Those speakers, pro, con and general commentators, should give their names and addresses. They may have their comments recorded by the Planning Board Clerk but the hearing or its record should not be construed as a vote on the issues.

The Board may desire to refer to M.G.L. Chapter 30A, Administrative Procedures Act, for some basic rules for the conduct of hearings.

**D. Conflict of Interest (M.G.L. Ch. 268A generally)**

1. Generally, a municipal employee may only be paid by the municipality.
2. A municipal employee may not represent anyone before the city or town unless their duties so require such representation.
3. A Planning Board member may not represent anyone before the Planning Board. M.G.L. Ch. 41, s. 81A.
4. Town counsel may not represent anyone before the municipality. *Edgartown v. State Ethics Commission*, 391 Mass. 83 (1984).
5. A municipal employee who participates in anything in which such employee has a financial interest could result in a fine of \$3,000.00 and two years in jail unless a disclosure is made and consent is given.
6. Municipal employees may provide assistance to the public as part of their job, as long as their judgment remains independent.
7. All board members who feel substantial personal animosity, ill-will, bias, prejudice, hostility towards a party, should disqualify themselves from voting.
8. All board members should disqualify themselves if they or a relative could gain by the board's decision.
9. The wise course of action upon disqualification is to leave the room. *Graham v. McGrail*, 370 Mass. 133, 138.
10. Failure of board members to disqualify themselves could result in the entire decision being found invalid, even if the vote of such members was unnecessary to make the decision or obtain a quorum.
11. Rule of necessity permits members who should disqualify themselves to vote if no action is possible without such members' votes, but such members shall make public the reasons which would have required disqualification, and such members shall not consider the reasons which would have required disqualification in participating in making a decision.

## Chapter VIII

### Public Ways (Generally Chapter 82. See Also Chapter 41, Section 81-G and 81-I and Chapter 84)

Statutes relative to public ways were generally adopted around the turn of the century and are unclear in certain areas. Based upon the particular circumstances of a situation, a different interpretation of the governing statutes than those provided in this publication, may be appropriate. Consult your municipal legal officer when questions of interpretation arise.

#### A. Mandatory:

1. A city or town SHALL follow the statutory provision of Chapter 82, before:
  - a. Laying out a public way (Section 21);
  - b. Altering, relocating or discontinuing an existing public way (Section 21);
  - c. Laying out, altering, relocating or discontinuing a private way for the use of one or more inhabitants of the city or town (Section 21);
  - d. Altering, relocating or making specific repairs upon county highways within the city or town limits (Section 17 to 19, incl.);
  - e. Ordering specific repairs to be made upon public or private ways.
  - f. If a city or town unreasonably refuses or neglects to accept, lay out, relocate, alter or discontinue a public way or private way when requested to do so by one or more inhabitants of the city or town, the county commissioners may assume the responsibility.

To initiate action by the county commissioners, an aggrieved person must petition the county commissioners in writing. Such petition must be made within one year of the original request made to the city or town.

The city or town shall pay all costs of the proceedings by the county commissioners and damages (Section 26 to 31, incl.).
2. Report on ways by Planning Board (Chapter 41, Section 81-G and 81-I):
  - a. In municipalities which have not adopted an official map, no public way shall be laid out, altered, relocated or discontinued, unless the matter has been referred to the Planning Board for a report (Section 81-I).

In municipalities which have adopted an official map, no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with the official map, unless the laying out, alteration, relocation or discontinuance has been referred to the Planning Board for a report (Section 81-G).
  - b. In either case, if the Planning Board fails to report within forty-five (45) days after such referral, the layout, alteration, relocation or discontinuance may proceed.

**B. Optional Matters of Interest Concerning Ways:**

**1. Repair of private ways by ordinance or bylaw.**

**a. authority**

A city or town may provide for making temporary repairs on private ways by ordinance or bylaw (Chapter 40, Section 6-N).

The Planning Board may wish to assist in the preparation of such ordinance or bylaw.

**b. Limitations**

(1) Any city or town that was making repairs on private ways prior to July 1, 1978, pursuant to Chapter 40, Sections 6-E to 6-I, inclusive, and 6-M, may not continue to make such repairs after July 1, 1978, without adopting an ordinance or bylaw pursuant to Section 6-N, due to the repeal of Sections 6-E to 6-I and 6-M of Chapter 40.

(2) Cities and towns may remove snow or ice from private ways by accepting Chapter 40, Section 6-C without adopting a Section 6-N ordinance or bylaw. Acceptance of Section 6-C by a municipality must be in accordance with Chapter 40, Section 6-D.

**c. Contents**

Such ordinance or bylaw shall determine the following:

- (1) the type and extent of repairs;
- (2) if drainage shall be included;
- (3) if the repairs are required by public necessity;
- (4) the number or percentage of abutters who must petition for such repairs;
- (5) if betterment charges shall be assessed; (levying or betterment assessments is generally covered in Chapter 80)
- (6) the liability limit of the city or town on account of damages caused by such repairs;
- (7) if the ways were open to public use for a term of years;
- (8) if a cash deposit shall be required for such repairs.

**d. Procedure for adoption**

Such bylaw or ordinance shall be adopted in accordance with Chapter 39, Section 4, Chapter 40, Section 32 (Section 32A in cities), or in accordance with charter provisions.

2. Layout of ways for special purposes (Chapter 82, Sections 33-38, incl.)
    - a. Cities and towns may also lay out special ways for the use of the public. Such special ways and the authority for laying out include:
      - (1) footways (Section 33);
      - (2) horseback trails (Section 34);
      - (3) bicycle paths (Section 34 and Section 35);
      - (4) street railways (Section 34);
      - (5) access ways to areas of materials necessary for the construction, repair or improvement of public ways (Section 38).
    - b. In laying out a way for special purposes, the city or town shall generally follow the same statutory procedures as those for layout of a public way.
- C. Limitations After a Town or Public Way has been Laid Out, Altered, Relocated or Discontinued (Generally Chapter 84):**
1. Once a town way has been laid out, accepted and established as a public way, the municipality shall be responsible and liable for the following, unless otherwise provided:
    - a. Repair of a town way, at the expense of the municipality, so that such way is reasonably safe and convenient for travel (Section 1).
    - b. Covering a public way which has been spread with tar, oil or similar substance with sand, gravel, peastone or other similar material within three (3) hours after such tarring, etc. and in a manner as to render the way safe for travel (Section 6).  
If only one half of the traveled way is spread with tar, etc. or if a detour has been provided the three hour time limit for covering the tar, etc. may be extended.
    - c. Removal of obstructions on ways if such obstructions endanger, hinder or incommode persons traveling on the way, including removal of snow (Section 7, duties of highway surveyor and road commissioners).
    - d. Closing of ways which enter upon and unite with an existing public way or otherwise cautioning the public against entering thereon if public safety so requires (Section 24).
  2. Damages may be claimed against the city or town by any person who sustains bodily injury or damage in his property due to a defect or want of repair in or upon a way due to want of a sufficient railing in or upon a way, (Section 15); or due to any act done for the purpose of repairing any way if such act caused damage to a person's property (Section 10); or due to damages sustained in his property by the discontinuance of a town way or statutory private way (Chapter 82, Section 24). A person who sustains damages due to discontinuance or specific repairs on a public or statutory private way shall be entitled to recover the damages under Chapter 79, M.G.L.

For the purposes of the statutes regarding layout, alteration, relocation or discontinuance of ways; public ways include private ways and town ways laid out and established under statutory authority. (*Denham vs. Bristol County Commissioners* 108 Mass. 202 (1871) and *Davis vs. Smith* 130 Mass. 113 (1881)). For purposes such as Chapter 41, Section 81-L definition of "subdivision" public ways do not include statutory private ways laid out and established under statutory authority. (*Casagrande vs. Town of Harvard* Mass. Adv. Sh. 899 (1979)).

Although not defined by statute, the terms "public way" and "town way" could be described as follows:

"Public way" — A general term describing a free and public roadway, one which everyone has a right to use. Includes "town ways" and under certain circumstances as noted above "private ways laid out and established by statute." Public way is also used to describe a state highway, county way and many times ways in which the public has acquired rights of passage by prescription or otherwise.

"Town way" — a way, entirely within the town limits which has been laid out and accepted by statute, with compensations made by the municipality for necessary taking, thus making the way a "public way" which the municipality is responsible for maintaining in a safe condition.

**D. Statutory Procedures for the Layout, Alteration, Relocation, Acceptance and Discontinuance of Ways by Cities and Towns:**

These procedures may have been supplemented by local charter provisions. When noted, certain requirements are not applicable to cities.

**1. LAYOUT, ALTERATION AND RELOCATION:**

**Step 1:**

Petition is made to lay out, alter or relocate a way. The petition is made to the Selectmen or Road Commissioners in a town or to the City Council or Aldermen in a city. The petition may be on the initiative of the Selectmen, Commissioners, Council or Aldermen, or may be made by one or more inhabitants of the city or town (Chapter 82, Section 21).

In cities, a plan of the proposal is required before a hearing is held with property owners whose land will be taken (Chapter 82, Section 3).

Although a plan is not required in towns before the actual layout, alteration or relocation, a preliminary plan and cost estimates would be useful.

**Step 2:**

The Selectmen, Road Commissioners, City Council or Aldermen vote their intention to lay out, alter or relocate a way. The vote becomes a public record (Chapter 39, Section 23-B).

**Step 3:**

The Selectmen, Road Commissioners, City Council or Aldermen refer the petition to the Planning Board for a non-binding recommendation and report. The Planning Board has forty-five (45) days to report. If no report is made by the Planning Board within forty-five (45) days after it receives the petition, the proceedings continue (Chapter 41, Sections 81-G and 81-I).

**Step 4:**

Notice of a public meeting, hearing or viewing regarding the intended layout, alteration or relocation must be given by the Selectmen, Road Commissioners, City Council or Aldermen.

- a. Notice in cities (Chapter 82, Section 3)

- (1) At least fifteen (15) days before a viewing, adjudication or hearing is scheduled on the proposal, notice of the time and place scheduled for such proceedings and a copy of the petition SHALL be filed with the City Clerk.
- (2) At least seven (7) days before such viewing, adjudication or hearing is scheduled on the proposal, notice shall also be given by:
  - (a) posting the petition or abstracts and notice in two or more public places in the city; and,
  - (b) publishing in a newspaper, the last publication to be at least seven (7) days before the proceedings;
  - (c) mailing to record owners of land subject to a taking shall be required, if a plan has been prepared prior to the scheduled proceedings.

If at the time of the initial proceedings, no plan has been prepared, record owners of land subject to a taking shall be notified of a hearing by mail once such plan is prepared, but before it is approved. Such additional public hearing must be held at least seven (7) days before final approval of the plan. Notice must be mailed at least seven (7) days before the day of the hearing and must be posted and published as specified above.

- (d) Notice should contain:
  - (1) a description of the proposed laying, alteration or relocation including land proposed for taking;
  - (2) the date, time and place of the scheduled viewing, adjudication or hearing;
  - (3) the location where the plan can be reviewed.

b. Notice in towns (Chapter 82, Section 22)

- (1) At least seven (7) days prior to the actual layout out, altering or relocating of a way by the Selectmen or Road Commissioners, they must give notice of such intention to the owners of any land to be taken for such purpose.
- (2) Notice SHALL be given by:
  - (a) leaving such notice at the usual place of abode of the owners of the land which will be taken; or
  - (b) delivering such notice to such owner in person or to his tenant or authorized agent.

If the owner has no such place of abode in the town and no known tenant or authorized agent who is a resident of the town, such notice shall be posted in a public place in the town (Chapter 82, Section 22).

Although the statute requires that notice be given only to those persons whose land will be taken, it is recommended that notice also be given to all owners of land abutting a way to be affected and to others who may have an interest in such way.

(3) Notice should include:

The following provisions for content of notice are not specified in the statute, but are recommended and are comparable to those for a city.

- (a) a description of the proposed layout, alteration or relocation, including a description of land proposed for taking;
- (b) the date, time and place of the meeting at which the Selectmen or Road Commissioners intend to lay out, alter or relocate such way;
- (c) if a preliminary plan and cost estimates were prepared, the notice should also specify where the plan can be reviewed.

Step 5:

- a. The City Council, Aldermen, or a committee designated by the City Council or Aldermen hold a public viewing, adjudication or hearing on the proposal (Chapter 82, Section 4).
- b. The Selectmen or Road Commissioners hold a public meeting on the proposal (Chapter 82, Section 22 and Chapter 39, Section 23-B).

Step 6:

- a. The City Council or Aldermen, by majority vote, and after viewing the premises, makes a finding that the laying out, altering or relocating is required by the common convenience and necessity. If such finding is not made, the petition is dismissed (Chapter 82, Section 4).
- b. The Selectmen or Road Commissioners adopt an order to lay out, alter or relocate the way. A plan must be prepared specifying the courses and distances of such layout, alteration or relocation of a way.

The Selectmen or Road Commissioners vote to adopt such layout, alteration or relocation as shown on the plan (Chapter 82, Section 22).

2. ACCEPTANCE:

Step 1:

In towns, the Selectmen or Road Commissioners file with the Town Clerk, the order and plan of any way which they have laid out, altered or relocated (Chapter 82, Section 23).

This filing provision does not apply to cities.

Appropriate boundaries of the way and measurements must be given (Chapter 82, Section 23).

Step 2:

In towns, the Selectmen place an article on the Town Meeting Warrant, "To see if the town will vote to accept the layout, alteration or relocation . . ."

An article should also be placed on the Warrant, "To see if the town will appropriate money for necessary acquisition or construction . . ."

This provision does not apply to cities.

**Step 3:**

- a. In a city, if there is no objection to the petition at the time of the hearing or viewing, the City council or Aldermen may adopt an order, by majority vote, to lay out, alter or relocate the way. Such order must be adopted within twelve (12) months after the hearing, adjudication or viewing.

If at the time of the hearing or viewing, an objection is made to the petition, the City Council or Aldermen shall hold another hearing and give notice as specified in Step 4 (Chapter 82, Section 5).

The City Council should also vote to appropriate necessary funds for acquisition and/or construction. Such appropriation requires a two-thirds vote of City Council (Chapter 40, Section 14).

- b. When at least seven (7) days has elapsed after completion of Step 1 (filing of order and plan with Town Clerk), the Town Meeting may, by a majority vote, accept the layout, alteration or relocation of the way (Chapter 82, Section 23). The Town Meeting should also vote to appropriate necessary funds for acquisition and/or construction. Such appropriation requires a two-thirds vote of the Town Meeting (Chapter 40, Section 14).

**Step 4:**

- a. In cities, the City Council or Aldermen shall at the time a way is laid out, altered or relocated, take any necessary land, easement or right by eminent domain. Such taking shall be pursuant to Chapter 79 or Chapter 80A, M.G.L. (Chapter 82, Section 7).

Although Chapter 82, Section 7, does not specify Chapter 80A, a city is also authorized to take land by eminent domain pursuant to either Chapter 79 or Chapter 80A.

- b. In towns, within thirty (30) days after the termination of the Town Meeting at which a layout, alteration or relocation of a way was accepted, the Selectmen or Road Commissioners shall either:
- (1) acquire necessary land for such layout, alteration or relocation by purchase or otherwise; or
  - (2) adopt an order for the taking of such land by eminent domain under Chapter 79, M.G.L.; or
  - (3) institute proceedings for such taking under Chapter 80-A, M.G.L. (Chapter 82, Section 24).

The provisions under b. do not apply to cities.

**Step 5:**

Within thirty (30) days after the City Council, Aldermen, Selectmen or Road Commissioners adopt an order of taking, they shall record such order in the registry of deeds of any county in which the property taken lies (Chapter 79, Section 3).

**Step 6:**

The manner in which a way is laid out, altered or relocated SHALL be specified in a report transmitted to the City or Town Clerk by the Selectmen, Road Commissioners, City Council or Aldermen.

The report SHALL give a description of the location and bounds of such way.

The City or Town Clerk SHALL record the report in a book kept for that purpose within ten (10) days of receipt (Chapter 82, Section 32).

Step 7:

The appropriate city or town official implements the layout, alteration or relocation in the ground as adopted and accepted.

When a limited and determinable area receives benefit or advantage from a layout, alteration or relocation of a way, betterments may be assessed upon the owners of property who have benefited.

3. DISCONTINUANCE:

In cities, the procedures for discontinuance are the same as for laying out, altering or relocating (see Chapter 82, Sections 1-7).<sup>1</sup>

Step 1:

In a town, petition is made to discontinue a way. The petition is made to the Selectmen or Road Commissioners and may be on the initiative of the Selectmen or Road Commissioners, or may be made by one or more inhabitants of the city or town (Chapter 82, Section 21).

Step 2:

The Selectmen or Road Commissioners refer the petition to the Planning Board for a non-binding recommendation and report. The Planning Board has forty-five (45) days to report. If no report is made by the Planning Board within forty-five (45) days after they receive the petition, the proceedings continue (Chapter 41, Sections 81-G and 81-I).

Step 3:

The Selectmen place a proper article on the Town Meeting Warrant to see if the town will vote to discontinue the way (Chapter 39, Section 10).

Step 4:

The Town Meeting may, by a majority vote, vote to discontinue a previously accepted way.

The devolution of property rights in ways can be a very complex subject. (For example, see *Newburyport Redevelopment Authority vs. Commonwealth Mass. App. Ct. Adv. Sh. 287 (1980)*).

It is suggested that when a proposal is made to change the status of any way (e.g., to lay out, accept, alter, discontinue) that the following steps be taken.

1. Gather all available information documenting the history of ownership and establishment of the way.
2. Get an assessors' map showing the way and prepare a list of abutting property owners.
3. Prepare a list of all agencies and persons involved in the proposal. e.g., selectmen to lay out, planning board to review, D.P.W. to implement, developer, etc.
4. Prepare a description of the proposal and its objectives.
5. Submit all the above information to the municipal legal officer for comment and identification of problems. Follow that legal advice.

<sup>1</sup>Chapter 82, Section 32A, M.G.L. provided a procedure whereby the county commissioners could discontinue public ways. Chapter 136 of the Acts of 1983 amended Section 32A to provide for a procedure where the board or officers of a city or town having charge of public ways can abandon certain municipal ways. It is suggested that a municipality seek legal counsel before instituting such procedure.

# Chapter IX

## Scenic Roads (Chapter 40, Section 15-C)

This chapter complements Chapter X. Public shade trees

### A. Optional designation

1. A city by vote of the city council or town by town meeting vote MAY designate almost any road within the city or town as a scenic road.
2. Recommendations or requests for scenic road designation may be made by the:
  - a. Planning Board
  - b. Conservation Commission
  - c. Historical Commission

### B. Limitations

1. After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done on such road shall not involve or include the following without a public hearing with statutory notice and prior written consent of the Planning Board or if none, the selectmen or city council:
  - a. cutting or removal of trees;
  - b. tearing down or destruction of stone walls, or portions thereof.
2. Numbered routes or state highways may not be designated as scenic roads.
3. Designation of a road as a scenic road shall not affect the eligibility of a city or town to receive construction or reconstruction aid for such road pursuant to the provisions of Chapter 90, M.G.L.
4. Although the statute is silent with regard to establishment of criteria for regulation of scenic roads, the city or town should adopt an ordinance or bylaw upon which the planning board will base its decisions.

Recommended provisions might include:

- a. Purpose;
- b. Definitions (trees, scenic roads, cutting, removal, tearing down, destruction, repair, maintenance, reconstruction or paving work);
- c. Procedure and criteria for designation as a scenic road;
- d. Procedure and criteria for approval to work on a scenic road;
- e. Enforcement procedures.

### C. Mandatory Joint Hearing in Some Circumstances

When trees are to be cut or removed in a scenic road and a public hearing is required under Chapter 40, Section 15-C, and when a public hearing must also be held under the provisions of Chapter 87, Section 3, M.G.L. relative to public shade trees, the Planning Board and Tree Warden SHALL hold a consolidated public hearing prior to such cutting or removal.

### D. Procedure for Issuance of Permit to Cut or Remove Trees Within Scenic Roads:

If there is no Planning Board, the Selectmen or City Council assume the Planning Board's duties as listed below.

Step 1:

Planning Board is requested to give written consent to cut or remove a tree.  
(In some cases the tree warden is requested to remove a public shade tree.)

**Step 2:**

Planning Board SHALL hold a public hearing before giving consent. (If a public hearing must be held under the scenic roads statute as well as the public shade tree statute, the hearings by the Planning Board and Tree Warden SHALL be consolidated into a single public hearing before the Tree Warden and the Planning Board.)

**Step 3:**

Planning Board SHALL give notice of the public hearing.

a. The notice SHALL CONTAIN:

1. Time, date, place of the public hearing.
2. Purpose of the public hearing.

b. The notice SHALL be given by:

1. Publishing twice in a newspaper of general circulation in the area, the last publication to occur at least seven (7) days prior to such hearing.

(If a consolidated hearing is held notice of the hearing SHALL be given by the tree warden or his deputy as provided in Chapter 87, Section 3, M.G.L. See Chapter VIII, D, Step 3 of this Manual.)

**Step 4:**

Public hearing is held.

**Step 5:**

Planning Board gives written consent for cutting or removal of a tree. (The tree warden issues a written permit for removal of a public shade tree if a consolidated hearing was held.)

# Chapter X

## Public Shade Trees, Consolidated Hearings (Chapter 87, Section 3)

### A. Definition:

A public shade tree is any tree, shrub or growth within the right-of-way of a local public way. If it is doubtful whether the tree is within the public way, it shall be taken to be within the public way until the contrary is shown.

### B. Mandatory Joint Hearing:

1. Public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or the warden's deputy, except upon a permit in writing from the Tree Warden.  
In cities, some other official must be designated these responsibilities.
2. Before a public shade tree is cut down or removed, a public hearing must be held by the Tree Warden or a deputy.
3. The Planning Board and tree warden SHALL hold a consolidated public hearing if the cutting or removal of trees will be within a scenic road as provided under Section 15-C of Chapter 40, M.G.L.

### C. Exemptions (Chapter 87, Section 5)

In the following cases a public shade tree or other plant materials may be removed without obtaining a permit and without a public hearing.

1. Tree wardens and their deputies may trim, cut down or remove trees less than one and one-half (1½) inches in diameter one foot from the ground and bushes standing in public ways.
2. The Mayor, Board of Selectmen, Road Commissioners or Highway Surveyor may order that a tree or bush be trimmed or cut down if such tree or bush is deemed to obstruct, endanger, hinder or incommode persons traveling on a public way, or to obstruct buildings being moved as provided by Section 18, Chapter 85, M.G.L.
3. The officers responsible for widening a highway may order the removal of any tree. Widening of a highway involves changing the boundaries of the right-of-way by taking additional land in eminent domain. It does not include mere widening of the traveled portion of the way. *Graham vs. Board of Public Works of Pittsfield* (1934) 285 Mass. 544.
4. Pests declared to be a public nuisance by Section 11, Chapter 132, M.G.L., including the Dutch elm disease may be suppressed on any tree or bush without interference.
5. Trees within state highways may be cut or removed only with permission from the State Department of Public Works. Trees within Metropolitan District Commission boulevards may be cut or removed only with permission from the M.D.C.

### D. Procedure for issuance of permit to cut, trim, or remove a public shade tree:

Step 1:

Tree warden is requested to remove a public shade tree.

Step 2:

The tree warden or the warden's deputy SHALL hold a public hearing before removing any public shade tree.

**Step 3:**

Notice of the public hearing shall be given by the Tree Warden or the warden's deputy.

- a. The notice SHALL contain:
  1. Time and place of the public hearing;
  2. Identification of the size, type and location of the plant materials to be cut down or removed.
- b. The notice SHALL be given by:
  1. Posting in two or more public places in the city or town at least seven (7) days before the day of the hearing;
  2. Posting upon the tree or plant material to be moved at least seven (7) days before the day of the hearing; and
  3. Publishing 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 seven (7) days before the day of the hearing.

**Step 4:**

Public hearing is held by the Tree Warden. Public hearing is held jointly with the Planning Board when the public shade tree is within a scenic road pursuant to Section 15-C of Chapter 40, M.G.L.

**Step 5:**

Tree Warden issues a written permit for removal of a tree or other plant material. If written objection is made by one or more persons to the tree warden at or before the public hearing, a permit to cut or remove SHALL NOT be issued unless approved by the Board of Selectmen or by the Mayor.

# Chapter XI

## Street Names (Chapter 85, Sections 3, 3-A, and 3-B)

### A. Optional

#### 1. Changing names of public ways (Section 3)

The names of public ways, places or sections duly laid out and established by statute, or the names of public parks may be changed by the Board or officer having jurisdiction over such name changes.

A city or town should give authorization to change the names of public ways to an appropriate Board or officer. The statute does not specify the Board or officer who shall have such jurisdiction. Because the Selectmen or Road Commissioners in towns, and the City Council or Aldermen in cities, have jurisdiction over the layout of ways, it would be reasonable for such Boards to have jurisdiction over changing the names of public ways. Such authorization could be provided in an ordinance or bylaw adopted pursuant to Chapter 40, Section 21.

#### 2. Naming ways which are not public but which are open for public use (Section 3-A)

a. In any city or town which has established a Planning Board pursuant to Section 81A of Chapter 41, such Planning Board shall be responsible for approving the names of ways which are not established public ways, but which are open for public use.

b. In any city or town which has not established an 81-A Planning Board, but which has a Board of Survey, such Board of Survey shall be responsible for approving the names of ways which are not established public ways, but which are open for public use.

Under Chapter 41, Section 81-B, once a city or town establishes a Planning Board pursuant to Section 81-A, the powers and duties of Boards of Survey or Planning Boards established under earlier law shall cease to exist and shall be transferred to such 81-A Planning Board.

c. In any city or town which has not established an 81-A Planning Board or does not have a Board of Survey, the City Council or Aldermen in a city and the Board of Selectmen in a town shall be responsible for approving the names of ways which are not established public ways, but which are open for public use.

#### 3. Changing the name of ways which are not public, but which are open for public use. (Section 3-B)

a. A Planning Board established under Section 81-A of Chapter 41, or if no 81-A Planning Board, the Board of Survey, or if no Board of Survey or 81-A Planning Board, the City Council, Aldermen, or Board of Selectmen shall be responsible for changing the names of ways which are not public, but which are open for public use.

b. Names may be changed under the following circumstances:

(1) If the name of a way is identical with another way, whether public or open for public use; or

(2) If the name of a way is so similar to the name of another way, whether public or open for public use, so that the name might lead to confusion.

<sup>1</sup> Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**B. Procedures for changing the names of or naming ways**

**1. Changing names of public ways**

A concurring vote of a majority of the Board or officer responsible for making name changes shall be necessary.

There is no process specified by statute. It is recommended that a process similar to that for changing the name of ways that are not public be followed. Such process is specified under number 3 below.

**2. Naming ways which are not public, but which are open for public use**

A concurring vote of a majority of an 81-A Planning Board, or the Board of Survey if there is no Planning Board, or the City Council, Aldermen or Board of Selectmen if there is no Board of Survey or 81-A Planning Board shall be necessary to name a way which is not an established public way, but which is open for public use.

**3. Changing names of ways which are not public, but which are open for public use (Section 3-B)**

The following process includes Planning Boards established under Chapter 41, Section 81A, M.G.L., and Boards of Survey, or if neither exists, City Councils, Aldermen or Selectmen, as applicable, in a particular municipality, although reference will only be made to Planning Boards.

**Step 1:**

The Planning Board, by a majority vote, votes to consider a name change of a private way open for public use which has an identical (or so similar a name as to cause confusion) with that of another way, public or private.

**Step 2:**

a. The Planning Board gives notice of a public hearing to be held on the proposed name change. (Section 3-B)

b. Notice shall be given in accordance with Chapter 41, Section 74.

(1) Notice shall be given by:

(a) Publishing once in each of two successive weeks in a newspaper published in the city or town; the last publication to be at least two (2) days before the day of the hearing.

Although not required by Chapter 85, M.G.L., it is recommended that abutters on the way which is to be changed in name be notified of the hearing by mail.

(2) Contents of the notice shall include:

Chapter 85, M.G.L. does not specify contents of notice but it is recommended that the following be included:

(a) Date, time and place of the public hearing;

(b) Subject matter of the public hearing;

(c) Identification of the way involved.

**Step 3:**

The Planning Board holds a public hearing on the proposed name change. (Section 3-B)

**Step 4:**

The Planning Board, by a majority vote, makes an order to change the name of a way. The new name of the way should be included in the order. (Section 3-B)

**Step 5:**

- a. The Planning Board shall cause a suitable sign to be placed on the way where the name change was made.
- b. The sign SHALL be placed on the way at or near each point where the way enters or unites with another way.
- c. The sign shall specify the new name of the way as changed and shall state that such way is not a public way. (Section 3-B)

**Step 6:**

The Planning Board shall file a copy of its order effecting the name change and signed by the Chairman of the Planning Board with the following:

- a. The Registry of Deeds in which the way is located;
- b. In cities, the office of the City Engineer;
- c. In towns, the office of the Town Clerk. (Section 3-B)

# Chapter XII

## The Subdivision Control Law (M.G.L. Chapter 141, Sections 81K - 81GG inclusive)

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## **Section 81-K.**

### **Designation of Law**

Section 81K to 81GG are known as "The Subdivision Control Law."

Subdivision Control Law shall, where apt, include corresponding provision of earlier laws.

## **Section 81-L.**

### **Definitions**

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.

"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.

"Preliminary plan" shall mean a plan of 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.

"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.

"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.

"Registered mail" shall mean registered or certified mail.

"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 bylaw, 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.

#### **Highlights of Section 81-L:**

"Endorsed by" means endorsed by a majority of the members of a planning board.

Preliminary plan and contents of plan are specifically defined.

Subdivision DOES NOT include division of land into 2 or more lots where frontage complies with frontage under zoning, or if none, is at least 20 feet, and where such frontage is located on:

1. A public way, or way the city or town clerk certifies as used and maintained as a public way;
2. A way shown on a subdivision plan previously approved;
3. A private way that has adequate width, grade, and construction to provide adequate access and in order to install municipal services.

Changing the shape and size of lots so that such lots still comply with frontage under zoning, or if none, have at least 20 feet, IS NOT a subdivision.

Dividing land into lots, each of which contains a building existing prior to subdivision control in a municipality IS NOT a subdivision.

#### **Important Case Law Under Section 81-L:**

*Bloom v. Planning Board of Brookline*, 346 Mass 278, 191 NE2d 684 (1963) (one lot on approval not required plan endorsed with language that provided lot did not comply with zoning was admission by owner that for zoning purposes lot not buildable).

Casagrande v. Town Clerk of Harvard, 377 Mass 703, 387 NE2d 571 (1979) (under 81L private way must be used and maintained as public way, not just maintained).

Citgo Petroleum Corp v. Planning Board of Braintree, 24 Mass App Ct 425, 509 NE2d 284 (1987) (dividing land into lots, on each of which is located a building which existed before subdivision control in the community, falls within exception of subdivision control law, and planning board to endorse approval not required, even if lots do not meet zoning and frontage).

Corcoran v. Planning Board of Sudbury, 406 Mass 248, 547 NE2d 911 (1989) (plan to be endorsed as ANR where six lots had frontage on public way meeting zoning by-law with no physical impediments from road to lot, even though wetlands on three lots may interfere with access, as frontage provides adequate vehicular access to lots and wetlands are an issue not under the planning board's jurisdiction).

Duhaime v. Planning Board of Medway, Mass App Ct Adv Sh 1305, 422 NE2d 790 (1981) (town where frontage is located is only town to consider endorsement of approval not required plan, and frontage requirements for separately owned, undersized lots, are those in effect when lot created).

Gallitano v. Waltham Board of Survey & Planning Board, Mass App Ct Adv Sh 1397, 407 NE2d 359 (1980) (where no frontage requirements under zoning, plan showing lots with 20 feet frontage to be endorsed approval not required, even though access difficult).

Haynes v. Grasso, 353 Mass 731, 234 NE2d 877 (1968) (where zoning exception granted for lot frontage, and lots fronted on public way, frontage requirements met for endorsement of approval not required plan).

Hrenchuk v. Planning Board of Walpole, 8 Mass App Ct 949, 397 NE2d 1292 (1979) (limited access highway does not provide frontage and access under meaning of 81L).

Hutchinson v. Planning Board of Hingham, 502 NE2d 572 (Mass App Ct 1987) (language regarding adequate width, grade, and construction applies to private, not public ways).

K Dun Gifford v. Planning Board of Nantucket, 376 Mass 801, 383 NE2d 1123 (1978) (rat-tail lot plan did not allow safe and convenient access and could not be endorsed approval not required).

Kelly v. Planning Board of Dennis, 6 Mass App Ct 24 (1978) (planning board must decide whether to endorse approval not required plan at public meeting).

Long Pond Estates, Ltd v. Planning Board of Sturbridge, 406 Mass 253, 547 NE2d 914 (1989) (although public way providing access to lots was under flood easement, other available access was available at times of periodic flooding and ANR endorsement was required).

McCarthy v. Planning Board of Edgartown, Mass Adv Sh 1623, 407 NE2d 348 (1980) (frontage under subdivision control means that adequate, safe and convenient access for travel is provided to each lot).

Perry v. Planning Board of Nantucket, 15 Mass App Ct 144, 444 NE2d 389 (1983) (public way requirement for approval not required plan endorsement requires way to be laid out and constructed on the ground; if laid-out public way does not exist, endorsement not required).

Rettig v. Planning Board of Rowley, 332 Mass 476, 126 NE2d 104 (1955) (ways which were impassable were not adequate for access and subdivision approval was required).

Richard v. Planning Board of Acushnet, Mass App Ct Adv Sh 1331, 406 NE2d 728 (1980) (Paper street shown on plan approved by selectmen before subdivision control in community, is not a way previously approved and endorsed under subdivision law, and does not provide frontage for approval not required plan lots).

Smally v. Harwich Planning Board, Mass App Ct Adv Sh 1867, 410 NE2d 1219 (1980) (planning board may only deny endorsement of approval not required plan if frontage, not other zoning requirements, is not complied with).

Spalke v. Board of Appeals of Plymouth, Mass App Ct Adv Sh 116 (1979) (Atlantic Ocean is not public as under 81L).

Waldor Realty Corp v. Planning Board of Westborough, 354 Mass 639, 241 NE2d 843 (1968) (frontage required for approval not required plan lot is that under zoning, or if none, at least 20 feet).

**Legislative History:**

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

## **Section 81-M.**

### **Purpose of 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 ensuring compliance with the applicable zoning ordinances or bylaws; for securing adequate provisions 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 recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivision 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.

### **Highlights of Section 81-M:**

Sets forth purposes of law - mainly provision of safe and adequate access and municipal and utility services.

Subdivision plan is to be approved if it conforms to the board of health recommendation and complies with the planning board's reasonable rules and regulations which are not waived.

### **Important Case Law Under Section 81-M:**

Daley Const Co v. Planning Board of Randolph, 340 Mass 149, 163 NE2d 27 (1959) (only grant of authority to planning boards is that clearly and specifically given by statute).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1957, c. 265; St. 1969, c. 884, s. 3; St. 1985, c. 637, s. 8. Corrected 10/89.*

## **Section 81-N.**

### **Extent and Acceptance of Subdivision Control**

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 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.

#### **Highlights of Section 81-N:**

Sets out process for establishing subdivision control in a city or town including filing a copy of rules and regulations with the applicable registry of deeds and the land court.

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1957, c. 146 and St. 1959, c. 144*

## **Section 81-O.**

### **Regulation of New Subdivisions**

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 of 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 a plan approved in accordance with the subdivision control law of at least such distance, if any, as is then required by ordinance or bylaw of said city or town for erection of a building on such lot, and if no distance is so required, has such 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. If so mailed, the date of receipt shall be the date of submission of the plan.

#### **Highlights of Section 81-O:**

May not change width and locations of approved ways unless an amended plan is approved by the planning board.

Number, shape and size of lots may be changed without amending subdivision plan as long as lot maintain frontage required by zoning, or if none, at least 20 feet.

Plan may be submitted by delivery at a planning board meeting or by registered mail to the planning board with the date of receipt the date of submission.

#### **Important Case Law Under Section 81-O:**

Murphy v. Donovan, 4 Mass App Ct 519, 352 NE2nd 210 (1976) ( to change width and location of way must apply to planning board for modification of plan).

#### **Legislative History:**

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

## **Section 81-P.**

### **Endorsement of Plans Not Requiring Approval Under Subdivision Control 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 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.

#### **Highlights of Section 81-P:**

In order to record a plan which does not require subdivision approval, the plan must be submitted to the planning board for such determination.

The board shall decide, without notice and public hearing, whether the plan requires subdivision approval in 21 days after submission.

If the board fails to notify the city or town clerk in writing, and the applicant within 21 days of submission, that the plan requires subdivision approval, it is deemed that the plan does not require subdivision approval, and the city or town clerk issues a certificate to that effect, if the planning board does not so endorse the plan.

The planning board shall deliver the endorsed plan, or the city or town clerk shall deliver the endorsed certificate to the applicant.

If the board determines that the plan requires approval, the applicant may appeal or file a subdivision plan.

A majority of the planning board shall sign a certificate naming an authorized endorser and deliver the certificate to the applicable registry of deeds and land court, where the board has a person other than a majority of the board endorse on plans that approval under the subdivision control law is not required.

The board may state reasons why it believes subdivision approval is not required.

#### **Important Case Law Under Section 81-P:**

*Carey v. Planning Board of Revere*, 335 Mass 740, 139 NE2d 920 (1957) (where planning board fails to act within statutory time limit, planning board endorsement that plan does not require approval is unnecessary as city or town clerk can so endorse).

*Goldman v. Planning Board of Burlington*, 347 Mass 320, 197 NE2d 789 (1964) (even though planning board had earlier determined that way provided necessary frontage for approval not required endorsement, it did not have to repeat mistaken determination when subsequent plan of land was submitted).

*Korkuch v. Planning Board of Eastham*, 26 Mass App Ct 307, 526 NE2d 1301 (1988) (notice of subdivision plan submission must be filed with city or town clerk simultaneously with or promptly after submission to planning board in order to entitle applicant to constructive grant of ANR endorsement).

*Lee v. Board of Appeals*, Mass Adv Sh 54, 414 NE2d 619 (1981) (endorsement of plan approval not required does not mean that lots are buildable, and planning board should not endorse plan approval not required where it shows a lot without frontage).

*Lynch v. Planning Board of Groton*, 4 Mass App Ct 781, 341 NE2d 925 (1976) (where planning board failed to act in timely manner, its subsequent attempt to require approval of plan had no legal effect).

*Maglaguti v. Planning Board of Wellesley*, 3 Mass App Ct 797, 339 NE2d 246 (1975) (planning board does not have to give reasons for its refusal to endorse ANR plan).

*Planning Board of Nantucket v. Board of Appeals*, 15 Mass App Ct 733, 448 NE2d 778 (1983) (endorsement of ANR plan does not give lots standing under zoning).

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1955, c. 326, s. 1 and 2; St. 1957, c. 293, s. 1 and 2; St. 1960, c. 197; St. 1961, c. 332; St. 1963, c. 363, s. 1; St. 1987, c. 122.*

### **Section 81-Q.**

#### **Planning Board Rules and Regulations**

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 bylaw 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 and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board. 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 property lines; limitations on the type, height and placement, of vegetation; and restrictive covenants protecting solar access not inconsistent with existing local ordinances or bylaws. Except in so far as it may require compliance with the requirements of existing zoning ordinances or bylaws, 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 eight-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 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 U 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.

#### **Highlights of Section 81-Q:**

Provides mandatory, optional, and prohibited rules and regulations under the subdivision control law.

Adoption or amendment of rules and regulations requires notice and hearing.

Planning board may not adopt a rule, or require as a condition of approval, that land within a subdivision be dedicated for any public purpose unless just compensation is paid to the owner.

Rule or regulation regarding road construction not to exceed municipal standards commonly applied by municipality to public ways.

Rules and regulations and amendments thereto SHALL be sent to the registry of deeds and land court.

A copy of rules and regulations and amendments thereto are to be available in the planning board office and the city or town clerk's office.

The rules and regulations in effect when a plan is first submitted, including filing of a preliminary plan, if followed within 7 months by a definitive plan, shall govern such plan through the subdivision process.

#### **Important Case Law Under Section 81-Q:**

Canter v. Planning Board of Westborough, 4 Mass App Ct 306, 347 NE2d 691 (1976) (must have regulation in order to use as reason for disapproval of plan).

Chira v. Planning Board of Tisbury, 3 Mass App Ct 433, 333 NE2d 402 (1975) (although planning board may adopt regulations addressing aesthetic and environmental concerns, such regulations unenforceable unless clear and with objective standards to guide applicant).

Doebelin v. Tinkham Development Corp, 7 Mass App Ct 720, 389 NE2d 1044 (1979) (planning board may not adopt regulations concerning sewage disposal where not connected to public sewer).

Francesconi v. Planning Board of Wakefield, 345 Mass App Ct 390, 187 NE2d 807 (1963) (planning board regulations may require that permanent dead-end streets be no longer than 500 feet).

Gallitano v. Board of Survey of Waltham, 7 Planning, Mass App Ct Adv. Sh. 1397, 407, NE2d 359 (1980) (planning board regulations may not regulate lot size, shape, width and frontage).

Loring Hills Developers v. Planning Board of Salem, 374 Mass 343, 372 NE2d 775 (1978) (rules and regulations may require information relating to environmental and other impact issues, but may not generally use as reason for disapproval).

McDavitt v. Planning Board of Winchester, 2 Mass App Ct 806, 308 NE2d 786 (1974) (planning board may adopt regulation requiring street alignment to be continuous and in alignment with existing streets).

North Landers Corp v. Planning Board of Falmouth, Mass Adv St 264, 400 NE2d 273 (1981) (planning board may consider lack of improvements on road leading to subdivision, but only if board has specific rules and regulations concerning necessary improvements, etc.)

Pieper v. Planning Board of Southborough, 340 Mass 157, 163 NE2d 14 (1959) (planning board may not disapprove plan because of general public considerations, unless a specific rule or regulation addresses consideration).

Sansoucy v. Planning Board of Worcester, 255 Mass 647, 246 NE2d 811 (1969) (planning board may adopt regulations concerning installation of public utilities underground).

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1955, c. 370; St. 1956, c. 307; St. 1957, c. 139; St. 1958, c. 206, s. 3; St. 1959, c. 410; St. 1960, c. 196; St. 1960, c. 417; St. 1965, c. 64; St. 1969, c. 844, s. 2; St. 1981, c. 459; St. 1985, c. 637, s. 9; St. 1992, c. 133, s. 327.*

## **Section 81-R.**

### **Waiver of Compliance**

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 part of the plan.

### **Highlights of Section 81-R:**

The planning board may waive rules and regulations if it finds that such waiver is in the public interest and not inconsistent with the intent and purpose of the subdivision control law.

Any waiver shall be endorsed on the plan or in a separate instrument attached to and referencing the plan.

Board may adopt conditions concerning building on lots, and such conditions must be set forth on the plan, or in a separate instrument attached to and referencing the plan.

### **Important Case Law Under Section 81-R:**

Arrigo v. Planning Board of Franklin, Mass App Ct Adv Sh 2101 (1981) (although planning board may waive zoning frontage requirements for lots under subdivision law, variance still necessary under zoning law).

Caruso v. Planning Board of Revere, 354 Mass 569, 238 NE2d 872 (1968) (planning board may waive strict compliance with regulations where in the public interest and not inconsistent with intent of subdivision law).

Curtin v. Board of Survey and Plan of Waltham, 15 Mass App Ct 978 (1983) (findings for waiver necessary, or else plan must comply with all subdivision regulations for approval).

Ellen M. Gifford Sheltering Home Corp v. Board of Appeals of Wayland, 349 Mass 292, 208 NE2d 207 (1965) (imposition of condition that not more than one dwelling permitted on lot is based on inadequacy of way).

Lyman v. Planning Board of Winchester, 352 Mass 209, 224 NE2d 493 (1967) (planning board may waive its regulations where unreasonable to apply under unusual circumstances).

Meyer v. Planning Board of Westport, 29 Mass App Ct 167, 558 NE2d 994 (1990) (although a good practice, planning board is not required to list rules and regulations it is waiving in writing, as long as the record contains evidence of conscious deviation, such as approval of overlong dead-end street, which violates regulations, after decision thereof).

### **Legislative History:**

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

## **Section 81-S.**

### **Preliminary Plan**

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 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 the 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 of deeds shall record a preliminary plan.

### **Highlights of Section 81-S:**

A preliminary plan **MAY** be submitted in the case of a residential subdivision but **MUST** be submitted in the case of a nonresidential subdivision.

The plan is submitted to the planning board and to the board of health with notice of submission to the city or town clerk.

The planning board and the board of health shall act on a preliminary plan within 45 days of submission, and notify the applicant and the city or town clerk by certified mail of its action within this time limit.

Detailed reasons for disapproval shall be given.

A preliminary plan is not recorded at the registry of deeds.

#### **Important Case Law Under Section 81-S:**

*Livoli, Inc v. Planning Board of Marlborough, 347 Mass 330, 197 NE2d 785 (1964)* (planning board may not refuse definitive plan application, because it denied preliminary plan).

*Mac-Rich Realty Const. Inc v. Planning Board of Southborough, 341 NE2d 916 (1976)* (no appeal may be taken from action on preliminary subdivision plan).

#### **Legislative History:**

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

## **Section 81-T.**

### **Submission of Plans**

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 related 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.

#### **Highlights of Section 81-T:**

An applicant shall notify the city or town clerk of any plan submission, giving the date and of submission, a description of the land on the plan, and the name and address of the owner.

Prior to approval of a definitive subdivision plan, the planning board shall give notice and hold a public hearing.

Notice shall include publication in a locally circulated newspaper twice, once in each of two successive weeks, or posting in the city or town hall if there is no newspaper, and by mailing notice to the applicant and abutters to the land in the subdivision, all within 14 days before the hearing.

The applicant shall pay the costs of advertisement.

**Important Case Law Under Section 81-T:**

*Carey v. Planning Board of Revere*, 335 Mass 740, 139 NE2d 920 (1957) (notice of appeal is required to city or town clerk to give third persons constructive notice).

*Doliner v. Planning Board of Millis*, 343 Mass 1, 175 NE2d 919 (1961) (planning board decision annulled for failure to hold public hearing).

**Legislative History:**

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

## **Section 81-U.**

### **Approval, Modification or Disapproval of Plan**

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 of 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 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.

† Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980 1983, 1988)

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.

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 construction shall be completed.

(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.

(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.

(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 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 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 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.

#### **Highlights of Section 81-U:**

Applicant to submit definitive subdivision plan to the planning board and board of health.

Board of health to report its recommendations to the planning board and applicant within 45 days of submission, or deemed approval which the planning board shall note on the plan.

Planning board to finally act on a definitive subdivision plan within 90 days of submission if a preliminary plan was filed, or within 135 days of submission in the case of a residential subdivision which did not include a preliminary plan, which final action shall include certificate to the city or town clerk and notice to the applicant by registered mail.

The time for final action by the planning board may be extended by mutual agreement of the board and applicant, in writing, which shall be filed with the city or town clerk.

If the planning board fails to take timely action, the plan shall be deemed approved.

Final action may include approval, approval with modifications, or disapproval with a statement of specific reasons and those rules and regulations or recommendations of the board of health to which the plan does not conform.

Prior to endorsing approval on a plan, the planning board shall require a performance guarantee, the type of which is selected by the applicant.

Except for covenants, the applicant may specify the time of completion, which shall be set forth in the performance guarantee.

The planning board shall determine that the performance guarantee is sufficient to complete ways and municipal services.

Performance guarantees shall include:

- Bond

- Deposit of money or negotiable security

- Covenant that no building permitted

- Three party lender's agreement with disbursement schedule

Any covenant or condition is to be inscribed on the plan or in an instrument attached to and referencing the plan.

Amount of performance guarantee to be reduced to reflect actual expected costs plus inflation.

Upon completion of work, the applicant shall request by registered mail to the planning board and city or town clerk release of its performance guarantee.

The planning board shall determine whether to release the performance guarantee within 45 days of the applicant's request.

If planning board does not release performance guarantee it must specify reasons for denial in notice by registered mail to the applicant and to the city or town clerk.

If the planning board fails to act upon release of the performance guarantee in 45 days, the city or town clerk shall effect such release, and shall issue a certificate to that effect.

The board's instrument of release of the city or town certificate may be recorded at the registry of deeds.

In approving a plan, the planning board may require that land be reserved for park or playground purposes for up to 3 years.

#### **Important Case Law Under Section 81-U:**

**Canter v. Planning Board of Westborough, 347 NE2d 691 (1976)** (planning board must have clear and definite regulations on which to base a reason for disapproval).

**Crocker v. Martha's Vineyard Commission, 407 Mass 77, 551 NE2d 527 (1990)** (subdivision plan was not constructively approved for failure of planning board to act within 90 days, as 90 day period was suspended while Martha's Vineyard Commission reviewed plan under its own time constraints).

**Daley Const Co v. Planning Board of Randolph, 340 Mass 149, 163 NE2d 27 (1959)** (although planning board may not disapprove proper plan, because approval would render existing water supplies inadequate, board of health may consider such issues).

**Fairbairn v. Planning Board of Barnstable, 5 Mass App Ct 171, 360 NE2d 668 (1977)** (developer cannot be made to take percolation tests on all lots, as determination of leaching area not made until after plan approved and houses located on lots).

**Gordon v. Robinson Homes, Inc, 342 Mass 529, 174 NE2d 381 (1961)** (planning board must release bond or security once work is completed, and private citizen may not attempt to enforce bond).

**Mac-Rich Realty Const, Inc v. Planning Board of Southborough, 341 NE2d 916 (1976)** (plan which conforms to rules and regulations of planning board and to board of health recommendations to be approved).

**M. Dematteo Const Co v. Board of Appeals of Hingham, 3 Mass App Ct 446, 334 NE2d 51 (1975)** (conditions of approval only effective if endorsed on plan or in separate instrument).

**Miles v. Planning Board of Millbury, 29 Mass App Ct 951, 558 NE2d 1150 (1990)** (planning board's condition of approval, which were filed with the town clerk some time after filing of the decision, but still within the time frame for final action, were part of approval).

MP Corp v. Planning Board of Leominster, 27 Mass App Ct 812, 545 NE2d 44 (1989) (cannot disapprove plan because of pre-existing hazardous waste problem, and board of health cannot use same as reason for denial without regulation and cannot deny plan unless point to particular regulations which are violated, rather than general comments for change).

Pieper v. Planning Board of Southborough, 340 Mass 157, 163 NE2d 14 (1959) (final action within statutory time limits includes voting, filing decision with city or town clerk, and mailing copy of decision by registered mail to applicant).

Rounds v. Wilmington Water and Sewer Commission, 347 Mass 40, 196 NE2d 209 (1964) (planning board may consider provision of adequate system of water pipes).

Sparks v. Planning Board of Westborough, 2 Mass App Ct 745, 321 NE2d 666 (1974) (T-shaped cul-de-sac not dead-end street).

Stoneham v. Savelo, 341 Mass 456, 170 NE2d 417 (1960) (one purpose of subdivision control is to provide adequate access to proposed subdivision from public way).

United Reis Homes, Inc v. Planning Board of Natick, 359 Mass 621, 270 NE2d 402 (1971) (planning board approval must require compliance with recommendations of board of health which recommendations may address lot drainage issues).

Vitale v. Planning Board of Newburyport, Mass Adv Sh 1693, 409 NE2d 237 (1980) (without regulation, planning board may not disapprove plan for adverse impact of drainage on abutting public water supply where board of health approved plan).

Wheatley v. Planning Board of Hingham, 7 Mass App Ct 435, 388 NE2d 315, later App Mass Adv Sh 1710, 409 NE2d 247 (1979) (loop road is dead-end street).

Zaltman v. Town Clerk of Stoneham, 5 Mass App Ct 248, 362 NE2d 215 (1977) (record of planning board's action must be filed with city or town clerk within statutory time limits to avoid constructive grant).

#### **Legislative History:**

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

## **Section 81-V.**

### **Approved Definitive Plans**

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.

#### **Highlights of Section 81-V:**

Planning Board to endorse its approval on a plan after expiration of 20 days without an appeal, or if an appeal is filed, after court determination that approval is sustained.

If planning board fails to take timely action on plan, city or town clerk to issue certificate setting forth failure to act and that approval from such failure is final.

Planning board to deliver endorsed plan or city or town clerk to deliver certificate to applicant.

*(Continued next page)*

### **Important Case Law Under Section 81-V:**

*Kay-Vee Realty Co. v. Town Clerk of Ludlow*, 355 Mass. 165, 243 NE2d 813 (1969) (where plan constructively approved, town or city clerk to issue certificate stating that such approval is final and no appeal filed in 20 days, and applicant may enforce issuance by seeking mandamus).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## **Section 81-W.**

### **Modification, Amendment or Rescission**

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 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.

### **Highlights of Section 81-W:**

Motion to amend, modify, or rescind approval or change plan may be made by interested person or by planning board.

All procedures for approval shall be followed to amend, modify, rescind, or change plan.

If amendment, modification or approval affects lots sold or mortgaged, owner and mortgagee, if any, of such lots must consent.

When sale of subdivision to one person, consent to amend, modify, rescind, or change plan not required.

Notice, vote, and changed plan must be supplied to registry of deeds or land court, and cross referencing to original plan required at the registry of deeds.

#### **Important Case Law Under Section 81-W:**

*Bigham v. Planning Board of North Reading*, 362 Mass 860, 285 NE2d 408 (1972) (must obtain consent of mortgagee before can rescind approval of plan).

*Board of Selectmen v. R & P Realty Corp.*, 348 Mass 120, 202 NE2d 409 (1964) (planning board may amend, modify, or rescind constructively approved subdivision plan in order to apply conditions).

*Cassani v. Planning Board of Hull*, 1 Mass App Ct 451, 300 NE2d 746 (1973) (planning board may not rescind approval not required plan endorsement).

*Costanza & Bertolino, Inc v. Planning Board of No Reading*, 360 Mass 677, 277 NE2d 511 (1971) (approval was automatically rescinded where a condition of approval and in the covenant and in rules and regulations was that construction had to be completed in 2 years).

*Patelle v. Planning Board of Woburn*, 6 Mass App Ct 951, 383 NE2d 94 (1978) (ammended plan requires public hearing and notice prior to revocation of denial).

*Patelle v. Planning Board of Woburn*, 20 Mass App Ct 279, 480 NE2d 35 (1985) (approval of modification by owners and mortgagees only required where change impairs marketability of title; indirect impact does not affect such persons and consent unnecessary).

*R Gray Doeblin v. Tinkham Development Corp.*, Mass App Ct Adv Sh 1169 (1979) (amended plan requires resubmission to board of health for consideration prior to revocation of denial).

*Stoner v. Planning Board of Agawam*, 358 Mass 709, 266 NE2d 891 (1971) (planning board may amend, modify, or rescind approval in order to obtain performance guarantee as security for installation of ways and municipal services).

*Young v. Planning Board of Chilmark*, 402 Mass 841, 525 NE2d 654 (1988) (planning board cannot require gift of land as condition to approval of subdivision without consent of developer, and thus cannot rescind approval for that reason, even if developer voluntarily agreed to make gift but later failed to do so. All conditions of approval must be stated in the board's vote, including condition concerning developer's future conduct. Although failure to give notice and hold hearing on rescission was not considered such bad faith that costs and attorney fees were warranted, such failure made the rescission ineffective).

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1973, c. 605; St. 1977, c. 473.*

## **Section 81-X.**

### **Requirements for Registration of Plan**

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

*Continued next page*

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 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 the 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 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 ownerships 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.

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.

### **Highlights of Section 81-X:**

Register of deeds shall not record plan showing division of land in town which has accepted subdivision control, unless planning board endorsement thereon within 6 months of recording or accompanied by city or town clerk certificate concerning failure to act.

City or town clerk to endorse on plan or in separate instrument attached to the plan and referenced thereto that no appeal was filed within 20 days of the date of planning board's notice of approval, or if filed, that the court has sustained such approval.

After 6 months of date of endorsement or certificate, planning board or city or town clerk may issue certificate stating that plan has not been amended, modified, or rescinded, which must be provided to register of deeds in order to record, and which must be dated within 30 days of date of recording.

Register of deeds may record plan bearing certification by registered land surveyor that plan shows existing lines of lots and ways.

Register may not record notice of modification, amendment, or rescission which does not state that such action does not affect lots or rights appurtenant thereto.

### **Important Case Law Under Section 81-X:**

Kay-Vee Realty Co. v. Town Clerk of Ludlow, 355 Mass 165, 243 NE2d 813 (1969) (constructively approved plan cannot be recorded unless accompanied by city or town clerk certificate).

SMI Investor, Inc v. Planning Board of Tisbury, 18 Mass App Ct 408, 466 NE2d 525 (1984) (endorsement of planning board on plan is prerequisite of recording).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1958, c. 207; St. 1960, c. 189; St. 1962, c. 313; St. 1966, c. 380; St. 1967, c. 248*

## **Section 81-Y.**

### **Enforcement by Prohibition of Public Improvements**

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 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 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.

#### **Highlights of Section 81-Y:**

Building inspector to enforce conditions of subdivision approval, and may not issue building permit if conditions not met or covenant against building still applicable.

Grantee of lot created in violation of subdivision control law, may bring action against grantor for all damages sustained within one year of date of delivery of deed, mortgage or other instrument making illegal division.

Ten taxable citizens or planning board may bring superior court action to enjoin violations of subdivision control law by other municipal boards and officers within one year after act or failure to act which is basis for court action.

### **Important Case Law Under Section 81-Y:**

Murphy v. Donovan, 4 Mass App Ct 519, 352 NE2d 210 (1976) (claim that conveyance violated subdivision control law required in one year or not effective).

Nantucket Land Council, Inc. v. Planning Board of Nantucket, 5 Mass App Ct 206, 361 NE2d 937 (1977) (appeal to overturn approval of subdivision plan may not be filed under section 81Y, but only under section 81BB).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## **Section 81-Z.**

### **Board of Appeals**

A city or town in which the subdivision control is in effect shall, by ordinance or bylaw, 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 bylaw; provided, that if the board of appeals under the local zoning ordinance or bylaw 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 bylaw. 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 bylaw, or under both.

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 bylaws 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.

### **Highlights of Section 81-Z:**

City or town which has subdivision control shall provide by ordinance or bylaw for a board of appeals which shall have power to issue building permits pursuant to section 81Y of subdivision control law.

Appointment and removal of board members same as for zoning board of appeals.

Subdivision board of appeals may be same members appointed to zoning or building board of appeals.

### **Important Case Law Under Section 81-Z:**

*Marino v. Board of Appeals of Beverly*, 2 Mass App Ct 859, 311 NE2d 580 (1974) (as long as covenant against building in effect with respect to plan neither building inspector nor board of appeals could issue building permit).

*Planning Board of Easton v. Rolf Koenif*, Mass App Ct Adv Sh 2132, 429 NE2d 81 (1981) (town must have appointed planning board or subdivision board of appeals in addition to zoning board of appeals, although may be same board acting with both functions if properly appointed as both boards).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1957, c. 134; St. 1958, c. 201*

## **Section 81-AA.**

### **Board of Appeals; Powers and Duties**

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.

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.

### **Highlights of Section 81-AA:**

Board of appeals must adopt operational rules.

Before acting under section 81Y, board of appeals must give notice and hold a public hearing.

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1960, c. 198; St. 1962, c. 207, s. 2*

† Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

## **Section 81-BB.**

### **Court Appeal**

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 a 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 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 forgoing 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.

Cost 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.

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.

All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

#### **Highlights of Section 81-BB:**

Aggrieved person, or aggrieved municipal officer or board may appeal planning board decision, or lack thereof, on definitive subdivision plan, or on plan pursuant to section 81P, or may appeal decision of board of appeals under section 81Y.

Appeals under subdivision control law may be filed with superior or land court.

Appeals to be filed within 20 days after decision filed with city or town clerk, or 20 days after date when final action required.

City or town may provide municipal office or board with legal counsel for filing such appeal.

No costs permitted against boards unless acted with gross negligence or in bad faith.

Court may require appellant to post surety or bond where it appears appeal in bad faith or with malice.

### **Important Case Law Under Section 81-BB:**

*Baker v. Planning Board of Framingham*, 353 Mass 141, 228 NE2d 831 (1967) (appeal to review disapproval of definitive subdivision plan may be brought under section 81BB).

*Bloom v. Planning Board of Brookline*, 346 Mass 278, 191 NE2d 684 (1963) (appeal to expunge or correct endorsement that subdivision approval not required may be brought under section 81BB).

*J & R Inv, Inc v. City Clerk of New Bedford*, 545 NE2d 1173 (Mass App Ct 1989) (where constructive grant of ANR endorsement and refusal of city clerk to issue certificate, applicant to bring writ of mandamus within reasonable time after refusal, although not strictly limited to 20 day appeal period of section 81BB).

*Loring Hills Developers Trust v. Planning Board of Salem*, 374 Mass 343, 372 NE2d 775 (1978) (recommendation of Board of Health is subject to review under section 81BB).

*Paul Livoli, Inc v. Planning Board of Marlborough*, 347 Mass 330, 197 NE2d 785 (no basis for appeal of denial of preliminary subdivision plan under section 81BB).

*Strand v. Planning Board of Sudbury*, 5 Mass App Ct 18, 358 NE2d 842, later App 7 Mass App Ct 935, 390 NE2d 1141 (1977) (on appeal, court hears all facts again (de novo) and makes new findings as to whether planning board's decision was valid, but court may not order modifications or changes in plan).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7; Amended by St. 1955, c. 348; St. 1957, c. 199, s. 2; St. 1982, c. 533, s.2; St. 1985, c. 492, s. 2.*

## **Section 81-CC.**

### **Monuments and Marks, Entry on Private Land**

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.

### **Highlights of Section 81-CC:**

Planning Board and its agents may enter land to make examinations in carrying out subdivision control law.

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7.*

## **Section 81-DD.**

### **Powers of Legislative Body not Abridged**

The subdivision control law shall not abridge the powers of the city council, or 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.

#### **Highlights of Section 81-DD:**

Subdivision control law does not authorize taking land or laying out and constructing public ways, except in compliance with statutes.

Person may be entitled to damages where amendment, modification and rescission affects property and no consent, or where entry onto person's land is outside scope of authority under subdivision control law.

#### **Important Case Law Under Section 81-DD:**

*Dolan v. Board of Appeals of Chatham*, 359 Mass 699, 270 NE2d 917 (1971) (approval of ways in subdivision does not vest rights in public or rights in those who abut way, but are not included in subdivision. to use such way).

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## **Section 81-EE.**

### **Subdivision Control Law in Effect to Register of Deeds and to Recorder of Land Court**

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 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 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.

### **Highlights of Section 81-EE:**

Subdivision control law suspended in city or town unless proper procedures followed to notify register of deeds and recorder of land court.

### **Important Case Law Under Section 81-EE:**

*Board of Selectmen of Pembroke, v. R & P Realty Corp*, 348 Mass 120, 202 NE2d 409 (1964) (intent of subdivision control law is to set up orderly procedure for actions within stated time periods and recording of actions in municipal offices so that all persons can rely upon such actions or the lack of appropriate actions).

### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## **Section 81-FF.**

### **Application of Subdivision Control Law on Registered and Unregistered Land**

So far as land 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 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 insofar 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.

#### **Highlights of Section 81-FF:**

Separately owned lots shown on a plan recorded with the registry of deeds prior to the time a municipality adopts subdivision control shall be exempt from the Subdivision Control Law, but commonly owned lots existing at the time a municipality becomes subject to the law, shall comply with the board's rules and regulations.

Land shown on a plan registered with the land court prior to February 1, 1952, shall be deemed to have been approved under the law, even if the law was not in effect in the municipality at such time.

#### **Important Case Law Under Section 81-FF:**

Clows v. Middleton Planning Board, Mass App Ct Adv Sh 1213, 422 NE2d 457, app den, 440 NE2d 1172 (1981) (lots isolated and in separate ownership from remainder of old subdivision at time subdivision control law becomes effective in city or town are exempt from law and local subdivision rules and regulations).

Toothaker v. Planning Board of Billerica, 346 Mass 436, 193 NE2d 582 (1963) (subdivision control law does not apply to lots and rights-of-way appurtenant to lots placed into separate ownership before community adopts subdivision control law, but does apply to all other lots in subdivision).

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## **Section 81-GG.**

### **Powers of Planning Board Established Under Prior 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 provisions of said sections or the administration thereof.

#### **Highlights of Section 81-GG:**

A planning board with subdivision control powers under prior laws, shall have subdivision control powers under the subdivision control law.

#### **Legislative History:**

*Added by St. 1953, c. 674, s. 7*

## Chapter XIII

### Procedures for Processing Various Plans Under the Subdivision Control Law.

#### A. Approval Not Required Plans

##### Step 1.

Applicant submits application and plan to the Planning Board at a meeting or sends to the board by registered mail in care of the city or town clerk. Applicant files written notice with the City or Town Clerk specifying:

- a. date on which such plan was submitted to the Planning Board;
- b. description of the land to which the plan is related sufficient for identification;
- c. the name and address of the owner of such land. (Section 81-T)

##### Step 2.

The Planning Board considers said plan and determines first whether the plan shows a division of land, and if so, only then whether the lots shown on the plan have:

- a. adequate access and frontage on:
  - (1) a public way. Frontage on a limited access highway does not comply with the meaning of frontage and access on a public way; or
  - (2) a way which the City or Town Clerk certifies is *maintained and used as a public way*. A statutory private way would not meet this definition; or
  - (3) a way shown on a plan which was previously approved and endorsed in accordance with the subdivision control law; or
  - (4) 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.
- b. frontage of such distance as is required by the zoning bylaw or ordinance at the time of plan submission. If no distance is required such frontage shall be at least twenty (20) feet. (Section 81-L)

In exceptional cases a plan may show lots which comply with the frontage requirements under zoning, but due to the lot configuration, access to such lots would not be safe and convenient for emergency vehicles. In such rare cases approval under the subdivision control law would be required.

##### Step 3:

If the board determines that the plan does not require approval, it SHALL forthwith, but in any case, within twenty-one (21) days after the plan is submitted to the Board and without a public hearing, endorse the plan "approval under the subdivision control law not required" or words of similar import. Such endorsement may include a statement of the reason why approval is not required (Section 81-P) but SHALL NOT be withheld unless the plan shows a subdivision. (Sections 81-P and 81-L)

Endorsement of a plan by the Planning Board that "approval is not required" DOES NOT give lots shown on such plan standing under the zoning ordinance or bylaw. A determination as to compliance with zoning would be made by the Building Inspector or Building Commissioner, usually at the time a permit to build is sought.

Without a local zoning exemption, a nonconforming lot which is made more non-conforming through endorsement of a plan "Approval under the subdivision control law not required" would be in violation of zoning. The building inspector or commissioner is responsible for enforcing zoning.

**Step 4.**

If the board determines that the plan requires approval it SHALL within twenty-one (21) days after the plan is submitted to the board vote that subdivision approval is required. (Section 81-P)

**Step 5.**

After making its determination, but within the twenty-one (21) day time limit, the Planning Board shall give written notice of its determination to the City or Town Clerk and to the person submitting the plan. (Section 81-P)

**Step 6.**

If the Planning Board fails to either act upon the plan or notify the City or Town Clerk and the person submitting the plan of its action within the twenty-one (21) day time limit, it shall be deemed that the plan does not require approval under the subdivision control law. In case of such a default, the following process shall be used to enable recording of the plan:

- a. the Planning Board shall forthwith endorse the plan "approval under the subdivision control law not required"; or,
- b. if the Planning Board fails to make such endorsement, the City or Town Clerk shall issue a certificate stating the following:
  - (1) date the plan was submitted to the Planning Board;
  - (2) date on which the Planning Board was required to take final action;
  - (3) fact that Planning Board failed to take final action or notify the clerk of such action within the prescribed time and that it is deemed that "approval is not required" as a result of such failure under Chapter 41, Section 81-P, G.L.

**Step 7.**

If the Planning Board determines that approval is required, the applicant may:

- a. submit a definitive subdivision plan to the Planning Board for approval; or,
- b. appeal from the determination of the Planning Board in the manner provided in Section 81-BB of Chapter 41. (Section 81-P)

**Step 8.**

The Planning Board shall deliver the endorsed plan, or in the case of a certificate, the City or Town Clerk shall deliver the plan and certificate to the person who submitted the plan. (Section 81-P)

**Step 9.**

The endorsed plan (or the plan with certificate) is recorded in the Registry of Deeds or registered in the land court. (Section 81-X)

When a plan not requiring approval has been submitted to the Planning Board and if written notice of such submission has been given to the City or Town Clerk, the use of land shown on such plan SHALL be governed by the zoning in effect at the time of such submission for a period of three (3) years from the date of endorsement by the Planning Board that "approval is not required." If an appeal is filed with the Superior Court pursuant to Section 81-BB of Chapter 41, such three-year exemption shall not begin until the date of final disposition of the appeal by the Superior Court, provided the final adjudication is in favor of the owner of the lots which were the subject of the appeal. (Chapter 40A, Section 6)

**B. Preliminary Subdivision Plan (Optional Submission by Applicant Of Residential Land Only)**

**Step 1.**

Applicant submits application and plan to the Planning Board at a meeting or sends to the board by registered mail in care of the city or town clerk. Applicant also submits a copy of the plan to the Board of Health and files a written notice with the City or Town Clerk specifying:

- a. date on which the preliminary plan was submitted to the Planning Board;
- b. description of the land to which the plan is related sufficient for identification;
- c. the name and address of the owner of such land. (Section 81-T)

**Step 2.**

The Planning Board and the Board of Health review the plan. The plan should be reviewed in consideration of the Planning Board rules and regulations, the Board of Health rules and regulations and the provisions of the subdivision control law. A public hearing on the preliminary plan is not required by statute.

**Step 3.**

Within forty-five (45) days after the submission of the preliminary plan to the Planning Board and the Board of Health each Board shall vote to:

- a. approve the plan; or
- b. approve the plan with modifications suggested by either Board or agreed upon by the person submitting the plan; or,
- c. disapprove the plan, stating in detail, the reasons for such disapproval. (Section 81-S)

**Step 4.**

After making a decision, but within the forty-five (45) day time limit, both the Planning Board and the Board of Health shall each notify the applicant and the City or Town Clerk by certified mail of its approval, approval with modifications or disapproval, as the case may be. (Section 81-S)

- a. No Register of Deeds shall record a preliminary plan. (Section 81-S)
- b. A developer has no right to appeal from action taken on a preliminary subdivision plan.
- c. The Planning Board's disapproval of a preliminary plan does not authorize the Board to refuse to receive a definitive plan properly submitted under Section 81-U.
- d. Failure of either board to take action does not mean approval of the preliminary plan.

**Step 5.**

The applicant may proceed to the definitive plan stage. The definitive plan must be submitted within seven (7) months after submission of the preliminary plan and must be evolved from it to retain exemptions from zoning changes and amendments to the subdivision rules and regulations.

**C. Definitive Subdivision Plan**

**Step 1.**

Applicant submits application and plan to the Planning Board at a meeting or sends to the board by registered mail in care of the city or town clerk. Applicant also submits a copy of the plan to the Board of Health and files a written notice with the City or Town Clerk specifying:

- a. date on which the definitive plan was submitted to the Planning Board;
- b. description of the land to which the plan is related sufficient for identification;
- c. the name and address of the owner of such land. (Section 81-T)

**Step 2.**

Planning Board reviews plan and sends notice of public hearing. Action may not be taken on a definitive plan until the Planning Board holds a public hearing on such plan.

- a. Notice SHALL be given by the Planning Board at the expense of the applicant by:
  - (1) advertising in a newspaper of general circulation in the city or town once in each of two successive weeks. The first publication shall be not less than fourteen (14) days before the date of the hearing.  
If there is no such newspaper, the notice shall be posted in a conspicuous place in the City or Town Hall for a period of not less than fourteen (14) days before the day of such hearing.  
The day of the hearing shall not be counted in the fourteen (14) days.
  - (2) 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.
- b. Notice SHALL include:
  - (1) date, time and place of the hearing; and,
  - (2) subject matter of the hearing sufficient for identification. (Section 81-T)

**Step 3.**

Within forty-five (45) days after the plan is filed with the Board of Health, the Board of Health SHALL report in writing to the Planning Board either:

- a. approval; or
- b. disapproval including specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the public health. The report shall also include reasons for such decision and, where possible, shall include recommendations for adjustment thereof.

Failure of the Board of Health to make a timely report shall be deemed approval by the Board of Health.

A copy of such written report shall also be sent by the Board of Health to the person submitting the plan. (Section 81-U)

**Step 4.**

The Planning Board holds a public hearing on the definitive plan. (Section 81-T)  
It is advisable that the public hearing not be held, if time allows, until the Planning Board receives the report of the Board of Health or the report of other Boards or officers, if review by other Boards or officers is required by the Planning Board rules and regulations. The Planning Board should also coordinate with other boards and officers and ask for their attendance at the public hearing if such Board or officer can supply valuable input to the proceedings.

**Step 5.**

After the public hearing, following receipt of the Board of Health report or the lapse of forty-five (45) days without such report, and within ninety (90) days with a preliminary plan or one hundred thirty-five (135) days with no preliminary plan after the submission of the definitive plan to the Planning Board, the Board shall vote to either:

- a. approve the plan if it complies with the subdivision control law, the rules and regulations of the Planning Board, and the recommendations of the Board of Health; or
- b. modify and approve the plan if it does not so comply; or,
- c. disapprove the plan, stating in detail wherein the plan does not conform to the rules and regulations of the Planning Board or the recommendations of the Board of Health. Such disapproval SHALL be revoked if the plan is amended so that it conforms with the rules and regulations or recommendations. After a public hearing, the Planning Board SHALL approve the amended plan. (Section 81-U)

The time period for final action may be extended by written agreement between the Board and the applicant which shall be filed with the city or town clerk.

If the report of the Board of Health shall so require, any 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. In the event approval by the Board of Health is by failure to make a report, the Planning Board shall note on the plan that Board of Health approval is by failure to make a report. (Section 81U)

The Planning Board shall not approve a plan which does not comply with the recommendations of the Board of Health. The Planning Board's options in such a case are limited to disapproving the plan or modifying and approving the plan to bring it into conformity with the recommendations of the Board of Health.

**Step 6.**

After making its decision, but within the required time limit, the Planning Board shall:

- a. file a certificate of its action with the City or Town Clerk, who shall record a copy in a book kept for the purpose, and
- b. send notice of its action by registered mail, postage prepaid, to the applicant. (Section 81-U)

**Step 7.**

If the Planning Board fails to take final action upon the plan or to notify the City or Town Clerk and the person submitting the plan of its action within the required time limit, or such further time as is mutually agreed upon by the Board and applicant, the plan shall be deemed approved. (Section 81-U)

**Step 8.**

Any person aggrieved by a decision of a Planning Board concerning a definitive plan or aggrieved by the failure of the Planning Board to take final action on a definitive plan within the required time, may appeal to the Superior Court or Land Court. (Section 81-BB)

Such appeal **MUST** be entered in the Superior Court or Land Court and a notice of such appeal must be given to the City or Town Clerk:

- a. within twenty (20) days after the Planning Board's decision has been filed with the City or Town Clerk, or
- b. within twenty (20) days after the expiration of the required time for final action by the Planning Board, if no action was taken. (Section 81-V)

If an appeal is filed with the Court in a timely manner, the exemptive provisions under zoning (eight (8) year exemption from zoning changes) shall not begin until the date of final disposition by the Superior Court, provided the final adjudication is in favor of the owner of the land which is the subject matter of the appeal. (Chapter 40A, Section 6)

If a plan is disapproved, but a timely appeal is filed with the Court, the plan shall still be governed by the zoning and subdivision rules and regulations in effect when the plan was first submitted. A disapproval, if successfully appealed, shall not terminate these rights. (Chapter 40A, Section 6)

The submission of an amended definitive plan **SHALL NOT** extend the zoning exemption (eight (8) years from the date of endorsement) that runs with the originally submitted definitive plan. (Chapter 40A, Section 6)

**Step 9.**

After the expiration of the twenty (20) day appeal period, or if an appeal was taken, the City or Town Clerk SHALL endorse on the approved plan or set forth in a separate certificate which SHALL be recorded and SHALL be referred to on the approved plan, the following statement:

- a. The above plan was submitted for approval on (date).

The Clerk shall also include one of the following statements:

- b. "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 and the approval has become final." (No appeal taken — approval by final action of Planning Board);
- c. "no notice of appeal was received during the twenty days next after the expiration of the required time for final action by the Planning Board and the approval has become final." (No appeal taken — approval by failure of Planning Board to take final action within required time);
- d. "a final decree has been entered by the Superior or Land Court of \_\_\_\_\_ County, Case No. \_\_\_\_\_ sustaining the approval of the plan." (Appeal taken — disposition of court upholds approval of plan) (Section 81-X)

**Step 10.**

- a. After expiration of the appeal period and before endorsing its approval on the definitive subdivision plan, the Planning Board SHALL require a performance guarantee to insure construction of ways and the installation of municipal services.
- b. THE APPLICANT MAY select the method of securing performance and MAY vary the method from time to time, as well as secure performance in part by one method and in part by another.
- c. THE PLANNING BOARD SHALL determine that the method of securing performance as selected by the applicant, is sufficient.  
The Planning Board may also require security to assure a compliance with the requirements of the Board of Health.
- d. The method of securing performance shall be one of the following:
- (1) Proper bond
  - (2) Negotiable security
  - (3) Deposit of money

The Planning Board must determine that the monetary amount of the chosen method is sufficient to guarantee construction of ways and the installation of municipal services required for the lots shown on the plan. The Planning Board should include in the total monetary amount a sufficient sum to cover costs that may occur due to inflation. The Planning Board should also require the applicant to specify the time within which the construction and installation will be completed.

Section 81-U does not expressly authorize bank books as security, but many boards have taken such as equivalent to deposit of money. A signed withdrawal slip payable to the Planning Board should be obtained with the bank book, plus an agreement from the bank stating that no withdrawal from the account will be made without approval of the Planning Board.

(4) Covenant

- (a) executed and duly recorded by the owner of record
- (b) runs with the land
- (c) required construction of ways and installation of municipal services to serve lots before they may be built upon or conveyed
- (d) all lots not previously released from covenant may be conveyed by a single deed but are still subject to the covenant
- (e) a deed of any part of the subdivision which violates the covenant shall be voidable by the grantee prior to the release of the covenant but not later than three (3) years from the date of such deed.
- (f) may specify a time period within which such construction and installation shall be completed.

(5) Lender's Agreement

- (a) at the option of the applicant, lots may be released from operation of the covenant with a lender's agreement and without bond or deposit of money.
- (b) a first mortgage must be recorded which covers the premises shown on the plan, or a portion thereof.
- (c) an agreement must be delivered to the Planning Board. The agreement must 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. In determining the total monetary amount to secure the construction of ways and the installation of municipal services, the Planning Board should include a specified sum to cover any costs that may occur due to inflation.
- (d) the agreement shall provide for a schedule of disbursements to the applicant upon completion of various stages of work. The applicant shall set forth the time for completion of various stages. If work is not completed by the applicant in the time set forth, any undisbursed funds may be used by the city or town to complete such work. (Section 81-U)

Step 11.

- a. Written endorsement of approval is made on the plan. The twenty (20) day appeal period must have expired or a final decree must have been entered on an appeal before endorsement. A performance guarantee shall also have been provided by the applicant before approval is endorsed.
- b. Approval is endorsed in one of the following ways:
  - (1) If approval was by action of the Planning Board, the Planning Board endorses its approval on the plan
  - (2) If approval was by failure of the Planning Board to act within the required time the City or Town Clerk shall issue a certificate stating the following:

- (a) Date the plan was submitted to the Planning Board for approval
  - (b) Date on which the Planning Board was required to take final action
  - (c) Fact that Planning Board failed to take final action within the prescribed time and that the approval resulting from such failure has become final. (Section 81-V)
- c. Summary — What must, or what may, be endorsed or referred to on the approved definitive plan.
- (1) To be set forth on the plan:
    - (a) Endorsement of approval signed by a majority of the members of the Planning Board. (Section 81-L and 81-V); or, Endorsement of the board's approval signed by any person authorized in accordance with subdivision control law to endorse the Planning Board's approval on a plan. (Section 81-L and 81-V), or Referral to the book and page number where the certificate of the City or Town Clerk is recorded in cases where the Planning Board failed to take final action within the required time. (Section 81-V and 81-X)
    - (b) Date the plan was approved (must be at least twenty (20) days before the date of endorsement). (Section 81-V)
    - (c) Date of the endorsement of approval on the plan, (must be at least twenty (20) days after the date of approval.) (Section 81-V)
    - (d) Appropriate endorsement by the Planning Board if park or parks are required to be shown on the plan. Such endorsement may require that no building may be erected on a park or parks for a period of not more than three (3) years without the Planning Board's consent. (Section 81-U)
  - (2) To be set forth on the plan or set forth in a separate document referred to on the plan:
    - (a) Certification by the City or Town Clerk regarding expiration of appeal period or favorable disposition of appeal by Superior Court. (Section 81-X)
    - (b) Covenant, if this is the type of performance security selected to guarantee construction and installation. (Section 81-U)
    - (c) Conditions required by the Board of Health. (Section 81-U)
    - (d) Waiver of rules and regulations, frontage or access requirements and conditions of approval required by the Planning Board. (Sections 81-R and 81-U)

**Step 12.**

The Planning Board shall deliver the endorsed plan, or in the case of a certificate, the City or Town Clerk shall deliver the plan and certificate to the person who submitted the plan. (Section 81-V)

**Step 13.**

The applicant records the plan at the registry of deeds (or files it with the land court, in the case of registered land).

If the endorsement on the plan or the certificate which accompanies the plan is not dated within six (6) months of the date of recording, the applicant shall apply to the Planning Board or City or Town Clerk for a certificate which shall be endorsed on the plan or referred to on the plan and recorded with the plan. The certificate must be dated within thirty (30) days of the recording. The certificate shall state:

"that the approval has not been modified, amended or rescinded, nor the plan changed."

Such certificate shall be made unless the records of the Planning Board or City or Town Clerk receiving the application show that there has been such modification, amendment, rescission or change. (Section 81-X)

The preceding portion of Section 81-X relating to endorsement of approval dated within six months of recording or a certificate dated within thirty days of the recording does not apply to plans which have been constructively approved due to failure of the Planning Board to take final action within the required time period.

**Step 14.**

- a. The construction of ways and installation of municipal services is begun by the applicant in accordance with the approved subdivision plan.
- b. Upon the completion of such construction and installation to serve any lot or lots, the applicant shall send by registered mail to the City or Town Clerk and to the Planning Board a written statement that said construction or installation has been completed in accordance with the rules and regulations. The statement shall include the address of the applicant.
- c. Within forty-five (45) days after receipt of the applicant's statement by the City or Town Clerk, the Planning Board shall take one of the following actions:
  - (1) If the Planning Board determines that the construction and installation has been completed, it shall release the interest of the town in any security held as a performance guarantee and shall return such security to the person who furnished same, or it shall release the covenant by appropriate instrument, duly acknowledged, which may be recorded; or,
  - (2) If the Planning Board determines that the construction and installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the City or Town Clerk wherein said construction or installation fails to comply with its rules or regulations; or,
  - (3) If the Planning Board fails to make a determination within the required forty-five (45) days after receipt by the clerk of the applicant's statement or if the Planning Board fails to return the security or release the covenant, the City or Town Clerk shall issue a certificate, duly acknowledged, which may be recorded, to the effect that all obligations under the security are terminated by operation of law and any covenant is void. Any security shall be returned to the applicant by the City or Town Clerk. (Section 81-U)

**Step 15.**

If the applicant fails to perform the construction of ways or installation of municipal services in accordance with the Planning Board rules or regulations or condition of approval, the Planning Board may:

- a. enforce any bond or apply any deposit of money or securities for the benefit of the city or town to the extent of the reasonable cost to such city or town of completing such construction and installation. (Section 81-U); or

The Planning Board should delegate any money received from enforcement by making the necessary administrative arrangements with the local agency, such as the public works department, who will complete the work for which the security was held.

- b. amend, modify or rescind its approval of a plan or require a change in a plan as a condition of its retaining the status of an approved plan. (Section 81-W)

**D. Amendment, modification or rescission of approval of a plan or a change in plan shall be governed by the following requirements of Section 81-W:**

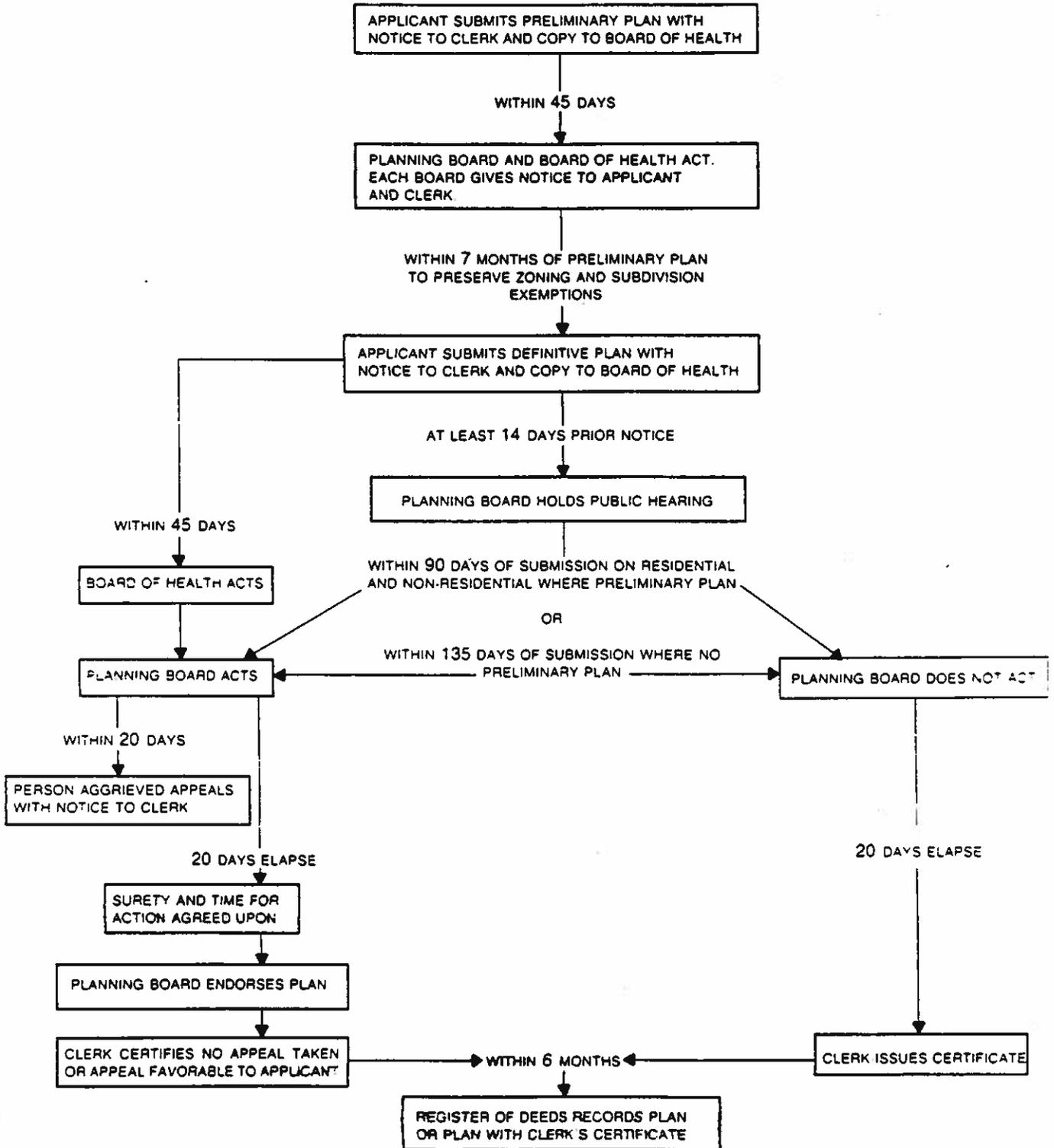
1. Amendment, modification, rescission or change of a plan may be initiated on the motion of the Planning Board or on the petition of any interested person.
2. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment, rescission or change of a plan. A new hearing shall be required and in many instances the amended, modified or changed plan must be resubmitted to the Board of Health for review.
3. No modification, amendment, rescission or change of a 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.

However, the sale of the entire parcel of land shown on the plan or of all lots not previously released by the Planning Board to a single grantee shall not prohibit a modification, amendment, rescission or change to a plan.

4. No modification, amendment, rescission or change shall be in effect until the Registry of Deeds or Recorder of Land Court, or both, whichever is applicable, is notified as follows:
  - a. If original plan is recorded or to be recorded with the Registry of Deeds:
    - (1) a certified copy of the vote making such amendment, modification, rescission or change shall be recorded. (Section 81-W)
    - (2) the plan as originally approved or a copy of such plan shall be endorsed and shall refer to the book and page where the vote as specified under (a) above is recorded. Such plan shall be recorded. (Section 81-W)

- (3) any additional plan referred to in the vote as specified under (a) above shall be recorded. (Section 81-W)
  - (4) the vote as specified under (a) above shall be indexed in the grantor index under the names of the owners of record of the land affected. (Section 81-W)
  - (5) The register of deeds cannot record the vote as specified under (a) above unless it includes a statement by the Planning Board that such modification, amendment, rescission or change 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. (Section 81-X)
- b. If original plan is registered with the Land Court:
- (1) the notice by the Planning Board of such amendment, modification, rescission or change shall contain a statement that such modification, amendment, rescission or change 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. (Section 81-X)
  - (2) the modification, amendment, rescission or change is not effective until verified by the Land Court pursuant to Chapter 185, M.G.L. (Section 81-W)
  - (3) If the Land Court does not verify such amendment, modification, rescission or change then it shall not take effect until ordered by the court pursuant to Chapter 185, Section 114, M.G.L. (Section 81-W)

## Subdivision Approval Process



# SCHEDULE OF KEY WRITTEN NOTICES OF ACTION ON SUBDIVISIONS - G.L. CHAPTER 41

A GUIDE ONLY - REFER TO CHAPTER 41 FOR SPECIFIC DETAILS

ITEM	REQUIRED OF THE APPLICANT	REQUIRED OF THE PLANNING BOARD	TIME LIMIT
Plans believed not to require approval (s.81-P)	Submit plan, copies and application; notify town or city clerk or submittal.	Endorse and return plan or, if endorsement is refused, give written notice that the plan requires approval to town clerk and applicant by certified mail.	Within 21 days of submission. No action, plan deemed approved.
Preliminary subdivision	Residential - optional Non-residential - mandatory Submit plan, copies and application to board of health; notify town clerk	Notify town clerk in writing and applicant by certified mail of approval with or without modifications or disapproval and the reasons therefor.	Within 45 days of submission.
Definitive subdivision plans	Notify town clerk by cert. mail or by delivery, of submission to planning board and board of health.	Hold public hearing (s.81-T). Notify town clerk and applicant by certified mail of approval with or without modifications or disapproval and list specific reasons therefor.	After health board report or 45 days but within 135, res/no prelim; 90 da./non-res.
Bond or other performance security	Furnish bond, passbook, check, other security or lender's agreement, specify completion time.	Accept completion time, execute agreement for the release of lots in a form suitable for recording; specify amount of security based on construction costs plus inflation.	Within 20 days of approval or upon request to replace covenant.
Covenant	Covenant "given" by the applicant in writing and referred to or inscribed on the plan.	No endorsement of the plan unless either a covenant or an appropriate security given.	Within 20 days of approval or upon request to replace security.
Reduction of security	May request reduction as work progresses.	Must reduce the penal sum of the bond or the amount of security and release the obligations in excess of remaining cost.	None specified.
Extension of time limit for action on a subdivision	Written request by the applicant required.	File with the town clerk a notice of the extension granted - not to exceed the time requested by the applicant.	Upon request - prior to expiration of time for action.
Completion of ways and services	Statement of completion to town clerk by certified mail.	a. either release the covenant by a recordable instrument, or b. release interest in security and return it to whoever provided it, or c. notify town clerk in writing and applicant by certified mail of specified details not completed in accord with requirements and planning board rules.	Within 45 days of submission of statement of completion to town clerk.

"Submission" = date of mailing to town clerk or delivery at planning board meeting  
 "town clerk" may be city clerk  
 "certified" and "registered" mail synonymous

# Chapter XIV

## Subdivision Rules and Regulations (Chapter 41, Section 81-Q)

### A. Requirements

1. The Planning Board SHALL adopt reasonable rules and regulations relative to subdivision control after notice and a public hearing.
2. Copies of the Planning Board's rules and regulations, including amendments SHALL be kept on file with the Planning Board and with the City or Town Clerk.
3. A copy of the original and any subsequent amendments SHALL be certified by the City or Town Clerk and SHALL be transmitted forthwith to the Register of Deeds and Recorder of the Land Court before they are effective.
4. Such rules and regulations may not be inconsistent with the subdivision control law or other statutes or any ordinance or bylaw of the municipality.
5. Such rules and regulations regarding the laying out, construction, alteration or maintenance of ways may not exceed the standards and criteria commonly applied by the municipality to the laying out, construction, alteration or maintenance of its publicly financed ways located in similarly zoned districts within the municipality.
6. It is essential that the rules and regulations be so definitely and carefully drafted that owners may know in advance, by reading the regulations as published, what is or may not be required of them and what standards and procedures will be applied to them. (See *Castle Estates vs. Medfield* 344 Mass. 329 [1962] and *Canter vs. Westborough* 4 Mass App. 306 [1976] ). A provision which reserves an unqualified right to the Board to add requirements not previously published is not valid.

### B. Amendments

Such rules and regulations may be amended from time to time by the Planning Board, but such amendments do not affect subdivisions for which preliminary or definitive plans have been submitted, as explained earlier.

### C. Limitations

#### 1. Mandatory:

The subdivision rules and regulations SHALL include the following provisions:

the requirements with respect to location, construction, width and grades of proposed ways shown on a plan; the requirements shall be drafted with due regard for the prospective character of different subdivisions and the amount of travel expected.

the requirements with respect to the installation of municipal services in the ways shown on a plan.

#### 2. Optional:

The subdivision rules and regulations MAY include the following provisions:

- a. specifications with respect to the size, form, contents, style and number of copies of plans required for submission. Such specifications shall enable the person submitting the plan to comply with the requirements of the Register of Deeds for recording. (See Chapter XXIV for requirements).

- b. the procedure for the submission and approval of plans to assure the Planning Board a copy of any plans for its file.

Rules and regulations should detail requirements for submission and contents of preliminary plans as well as definitive subdivision plans. In the case of preliminary plan submission and content such requirements must be consistent with Chapter 41, Section 81-L, definition of "preliminary plan," which lists only the following elements to be included on a preliminary plan:

- the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan";

- the names of the record owner and the applicant and the name of the designer, engineer or surveyor;

- the names of all abutters, as determined from the most recent tax list;

- the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner;

- the approximate boundary lines of proposed lots, with approximate areas and dimensions;

- the names, approximate location and widths of adjacent streets: and,

- the topography of the land in a general manner.

- c. A requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way, and an explanation of the termination of the easement for such turnaround upon recording of a certificate by the planning board of the extension of the way.
- d. A requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services.
- e. A requirement that poles and any associated overhead structures be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting.
- f. A requirement that existing zoning ordinances or bylaws shall be complied with.
- g. A requirement 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 which 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 Planning Board may be able to adopt a regulation requiring an impact statement as to effect of a proposed subdivision on schools, police, fire protection, traffic patterns and municipal services. The authority for adopting such a regulation is not specified by Chapter 41, Section 81-Q, but rests in the more general statutory duties of the Board.

The Federation recommends that Planning Boards of those communities which have coastal waters or wetlands or inland wetlands include the following paragraph in its Rules and Regulations Governing the Subdivision of Land:

"The attention of the applicant is directed to the provisions of Section 40 of Chapter 131, M.G.L. — Protection of Wetlands."

**D. Prohibited:**

The subdivision rules and regulations SHALL NOT include the following provisions:

A requirement that a subdivision plan be referred to any other board or person prior to its submission to the Planning Board.

A provision relative to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, except insofar as to require compliance with zoning requirements.

Any provision which is inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction; or

A requirement that as a condition for approval of a plan any of the land within a subdivision must be dedicated to the public use, or be 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 of such land.

**E. Procedure for adoption and amendment of rules and regulations.**

1. Planning Board drafts proposed rules and regulations.
2. Planning Board holds a public hearing on the proposed rules and regulations after giving notice as follows:

Notice of the public hearing shall include:

time, place and date of the public hearing;  
subject matter of the hearing sufficient for identification.

Notice of the public hearing shall be:

published in a newspaper of general circulation in the city or town once in each of two successive weeks. The first publication may not be less than fourteen (14) days before the day of the hearing. (The day of the public hearing can not be counted in the fourteen [14] days.)

If there is no such newspaper, the notice must be posted in a conspicuous place in the City or Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

3. Planning Board votes to adopt rules and regulations. A concurring vote of a majority of the Planning Board membership is required for favorable action.
4. The Planning Board files a copy of newly adopted rules and regulations in its office and in the office of the City or Town Clerk.  
Amendments to subdivision rules and regulations are adopted in the same manner.
5. Planning Board MUST file its rules and regulations and any amendments thereto with the Registry of Deeds and the Land Court in order for them to be enforceable.

# Chapter XV

## Urban Redevelopment Corporations (Chapter 121-A)

### A. Purpose

Chapter 121-A of the Massachusetts General Laws authorizes the formation of a corporation to undertake a residential, commercial, civic, recreational, historic or industrial project. The corporation may only undertake one project. The project must take place in areas which are found to be blighted open, decadent or substandard. (Section 1)

### B. Mandatory Public Hearing/Mandatory Findings

#### 1. Mandatory Public Hearings

- a. In towns, the Planning Board SHALL hold a public hearing on any application to the town to create a 121-A corporation.
- b. In cities, the Planning Board and the City Council SHALL hold a joint public hearing on any application to the city to create a 121-A corporation.

#### 2. Mandatory Findings

- a. After the public hearing in towns, the Planning Board SHALL make the following statutory findings:
  - (1) That blighted open, decadent or substandard conditions exist within the proposed project area;
  - (2) That the project is not in contravention of any zoning, subdivision, or building ordinance or bylaw or rules or regulations in effect in the city or town;
  - (3) Whether the proposed plan conflicts with the Master Plan;
  - (4) Whether the project is detrimental to the best interests of the public or the city or town;
  - (5) Whether the project is in the best interests of public safety and convenience;
  - (6) Whether the project is inconsistent with the most suitable development of the city of town;
  - (7) Whether the project will constitute a public use and benefit;
  - (8) Whether the relocation plan (if required) is satisfactory.
- b. After the public hearing in cities, the Planning board SHALL make a report to the City Council on the statutory findings as provided under a. above, except that the report is advisory only.

Based on these findings, the Planning Board must then approve, disapprove or disapprove with modifications the application, and issue a report.

### C. Procedure for Approving the Creation of a 121-A Corporation:

Reference will be made to certain responsibilities for approval by the Mayor in cities. In those cities with a city manager form of government such responsibilities shall be those of the city manager, not the Mayor.

**Step 1:**

The persons who have executed an agreement of association under Section 3 of Chapter 121-A SHALL submit an application to the Department of Community Affairs requesting:

- a. consent to the formation of the corporation;
- b. approval of the project that the corporation proposed to carry out. (Section 5)

The application should be submitted to:

Executive Office of Communities and Development  
Division of Community Development  
100 Cambridge Street, Room 904  
Boston, MA 02202

The agreement of association to incorporate cannot be presented to the Secretary of State for filing until approval has been given by the Executive Office of Communities and Development.

**Step 2:**

The Division of Community Development SHALL transmit the application to the Mayor of the city or the Selectmen of the town. (Section 6)

**Step 3:**

The Mayor in a city or the Selectmen in a town shall forthwith transmit the application to the Planning Board. If there is no Planning Board, the Selectmen shall act as Planning Board.

In a city, the application shall also be transmitted to the City Council. (Section 6)

**Step 4:**

Within forty-five (45) days after the Mayor or Selectmen transmit the application, a public hearing must be held by the Planning Board in towns.

In cities, the public hearing shall be held jointly by the Planning Board and City Council. (Section 6)

**Step 5:**

Notice of the public hearing shall be given by the Planning Board.

- a. Notice shall be given at least fourteen (14) days before the day of the hearing by:
  - (1) Publishing in a newspaper of general circulation once in each of two consecutive weeks; the first notice to be at least fourteen (14) days before the hearing;
  - (2) Posting in a conspicuous place in the City or Town Hall;
  - (3) Mailing to:
    - (a) owners of land within the proposed project area;
    - (b) owners of land abutting the proposed project area, including owners across a public or private street or way including owners within a city or town other than the city or town where the project is proposed;  
The Assessors shall certify to the Planning Board the names and addresses of such owners as they appear on the tax list.
    - (c) the applicant;
    - (d) all persons to whom the applicant requests written notice be sent.

- b. Notice shall contain:
- (1) the date, time and place of the hearing;
  - (2) a statement of the purpose of the hearing;
  - (3) a general description of the boundaries of the proposed project;
  - (4) a description of the types of buildings to be constructed in the proposed project;
  - (5) the name and address of the applicant;
  - (6) a statement that any person aggrieved may file a judicial appeal sixty (60) days after an action has been taken on the application, or thirty (30) days after the final day for action, if certain actions are not taken in a timely manner. (Section 6-B)

Step 6:

- a. Within forty-five (45) days after the public hearing, the Planning Board shall make the statutory findings of Section 6, Chapter 121-A, and shall transmit such findings as well as its approval or disapproval of the project including reasons therefore, in a written report to the Selectmen or City Council. Approval or disapproval shall require a majority vote of the members of the Planning Board.
- b. In cities, the report of the Planning Board shall be considered only advisory to the City Council.
- c. If the project is disapproved by the Planning Board, the Board in a city may recommend changes to the City Council. In a town, the Board may suggest changes in the project which, if adopted, would meet its objectives. (Section 6)

Step 7:

Within ninety (90) days after the public hearing in a city, and after receipt of the Planning Board report, the City Council shall make the statutory findings of Section 6, Chapter 121-A, and shall transmit such findings as well as its approval or disapproval of the project including reasons therefore, in a written report to the Mayor.

If the project is disapproved by the City Council, the Council may suggest changes in the project which, if adopted, would meet its objectives.

Approval or disapproval shall require a majority vote of the members of the City Council.

Step 8:

If the project is disapproved, the applicant may amend the application to meet the suggested changes. The amended application is resubmitted to the Planning Board in towns and City Council in cities. (Section 6)

Step 9:

The Planning Board in towns or City Council in cities may approve or disapprove the amended application without further public hearing.

However, if the Board or Council feels that the change is fundamental in character, a public hearing shall be held in accordance with the procedures for the public hearing on the original application. (Section 6)

Step 10:

Copies of the report by the Planning Board in a city or town and by the City Council in a city shall be sent by the Planning Board or City Council to all persons who were notified of the public hearing. (Section 6)

**Step 11:**

Within thirty (30) days after the transmittal of the Planning Board report to the Selectmen and the City Council report to the Mayor, the Selectmen or Mayor shall transmit copies of all reports to the Department of Community Affairs together with a certificate of approval or disapproval by the Selectmen or Mayor.

Approval or disapproval by the Selectmen shall be by majority vote of the members of the Board. (Section 6)

**Step 12:**

The Department of Community Affairs approves, approves with conditions or disapproves the project and the formation of a corporation to carry it out and issues a certificate if the project is approved.

**a. Approval**

The Department may approve a project if the following conditions are met:

- (1) a certificate of approval is received from the Mayor and City Council in a city and from the Selectmen and Planning Board in a town;
- (2) a finding is made that the conditions exist which warrant carrying out the project. Such conditions are the statutory findings of Section 6, Chapter 121-A;
- (3) a finding is made that the cost of the project will be practicable;
- (4) a finding is made that the project will not be in contravention of applicable zoning, subdivision, health or building ordinances, bylaws or rules and regulations in effect or in contravention of the Department's standards regarding such subjects as adopted in accordance with Section 4, Chapter 121-A. (Section 6)

**b. Disapproval**

- (1) The Department shall state its objections in writing and may suggest changes in the project or plans, which, if adopted, would meet its objections.
- (2) If the applicant amends the application, the amended application shall be resubmitted to the Department for its approval.
- (3) The Department may approve or disapprove the application or transmit the amended application to the Mayor or Selectmen if the changes are fundamental in character. If the application is returned to the Mayor or Selectmen, the amended application shall be reprocessed, including public hearing, in the same manner as an original application. (Section 6)

**c. Approval with conditions**

If the Department finds that the proposed construction or use would be in contravention of any zoning, subdivision, health or building ordinances, bylaws, or rules and regulations and the applicant proposes to obtain a waiver, variance or amendment from such requirements, the Department may issue a certificate of approval conditional upon obtaining such waiver, variance or amendment.

No certificate of approval shall be issued by the Department unless such requirements are complied with or are waived, varied or amended by the municipality. (Section 6)

**Step 13:**

The applicant presents the agreement of association along with the certificate of approval with conditions to the Secretary of State for filing. Once filed, the corporation is organized and can proceed with the project including contractual agreements with the city or town. (Section 6)

# Chapter XVI

## Wetlands Protection

(M.G.L. Chapter 131, Section 40 and 310 CMR 10.00)

### A. Jurisdiction

Under the Wetlands Protection Act, M.G.L. Ch. 131, S. 40, the Conservation Commission has the authority to regulate the removal, filling, dredging, or alteration of certain resource areas, as described under the Chapter and under the Regulations, adopted by the Department of Environmental Quality Engineering, 310 CMR 10.00. Chapter 131, S. 40, is better known as "the Wetlands Protection Act."

Certain communities may have adopted local wetland bylaws or ordinances that also carry out the Act and the Regulations.

### B. Resource Areas

The Conservation Commission regulates work that takes place within the resource areas listed below and within 100 feet horizontal of any such areas, which is the area known as the "buffer zone." In brief, the resource areas include:

1. **Bordering vegetated wetlands.** This includes marshes, wet meadows, swamps and bogs. Bordering vegetated wetlands border bodies of water and 50% of the vegetation must consist of wetland-type plants, as are listed under the Wetlands Protection Act.
2. **Banks, Beaches and Dunes.**
3. **Bordering Land Subject to Flooding.** This is land mapped by FEMA (the Federal Flood Insurance Program) which is within the 100 year flood area. If the community does not have flood insurance mapping, the highest flood of record or observation defines this area.
4. **Isolated Land Subject to Flooding.** These areas are closed depressions or basins which provide ponding for run-off or ground water. The areas must have at least 1/4 acre feet in volume annually, with an average depth of 6 inches. The perimeter of the largest observed or recorded volume of water in the basin or depression defines the boundary of this resource area.
5. **Land Under Water (including flats).**

The Conservation Commission also regulates certain work or activity which alters one of these resource areas, even though such work or activity is outside the resource area. This might occur through discharges of pollutants or siltation from erosion caused by work in an area removed from the resource area, but causing run-off into the resource area.

### C. Interests to be protected by the Act

1. The protection of public or private water supply;
2. The protection of ground water supply;
3. The enhancement of flood control;
4. The enhancement of storm damage prevention;
5. The prevention of pollution;
6. The protection of fisheries;
7. The protection of land containing shell fish; and
8. The protection of wildlife habitat.

#### **D. Performance Standards**

The resource areas are significant in that they preserve all or many of the interests promoted by the Act and the Regulations. Thus, work within any resource area or within the 100 foot buffer zone, may be prohibited or severely restricted under the Act and the Regulations. The following is a brief synopsis of the standards which the Conservation Commission should apply within each resource area. Of course, the Act and the Regulations themselves should be consulted for more detailed information.

1. **Bordering Vegetated Wetlands.** Generally, the Conservation Commission will permit no destruction or impairment of wetlands within the bordering vegetated wetland resource area. However, the Commission is permitted to allow work which eliminates up to 5,000 square feet of the bordering vegetated wetlands as long as there is a functional replacement of the lost wetland area. In addition, there is an exception for work which eliminates 500 square feet of bordering vegetated wetlands, when such wetlands are a finger-like extension into adjacent uplands, and it is not possible to redesign or change the work without disturbing the wetlands.
2. **Banks, Beaches and Dunes.** The Conservation Commission will normally permit no work within this resource area, if such work would impair the bank's physical stability, water carrying capacity, ground water and surface water quality, breeding habitat, escape cover, and food for fisheries. However, for those facilities, buildings, structures, and roads built prior to April 1, 1983, or pursuant to a notice of intent filed before that date, there is an exception for flood damage prevention structures.
3. **Bordering Land Subject to Flooding.** Because the interest protected by this resource area is flood control and storm damage prevention, the Conservation Commission will only permit work, if at all, which provides for 100% flood storage compensation.
4. **Isolated Land Subject to Flooding.** The Conservation Commission will only permit work within this resource area if the work will not cause flood damage or will not adversely affect water supply, ground water, or the prevention of pollution.
5. **Land Under Water.** Work within this resource area is prohibited if it would have an adverse effect or impair the water carrying capacity of a channel, the ground or surface water quality, the breeding habitat, the escape cover, or the food for fisheries. There is an exception, however, for maintenance or improvement of boat channels.

#### **E. Performance Standards to Protect Wildlife Habitat**

The intent of the wildlife habitat interest is to preserve a plant community composition or hydrologic regime which provides significant features for wildlife habitat. Significant features for habitat are those areas which provide food, shelter, migratory, overwintering, or breeding areas. If the applicant is able to prove, with scientific data, that the resource area is not significant to wildlife habitat, then the Conservation Commission may not impose conditions.

Certain resource areas are presumed significant for wildlife habitat. For example, in any resource area which includes a rare, vertebrate or invertebrate animal species, located in an area mapped by the Massachusetts Natural Heritage and Endangered Species Program, no activity shall take place which would cause adverse effects on this habitat. In addition, there is a presumption that certain coastal areas, land under

water, beaches, dunes, barrier beaches, intertidal shores, salt marshes and land under salt marshes are significant for wildlife habitat. For inland wetlands, all remaining resource areas are considered significant for wildlife habitat, except that only portions of land subject to flooding are considered to have this significance. Only the areas within the ten year flood plain or within 100 feet of a bank or bordering vegetated wetland are considered significant, except for vernal pool habitat which is considered critical for certain amphibians. Such pools are presumed to exist only when certified and mapped by the Massachusetts Division of Fisheries and Wildlife.

For the five resource areas, the performance standards stated above are varied very little. There is no variation for bordering vegetated wetlands. In the remaining resource areas, only 10% of the wildlife habitat on each lot is permitted to be disturbed, with a maximum amount of 50 feet of bank or 5,000 square feet of land under water or land subject to flooding to be disturbed. Any project which falls below these thresholds, is considered not to impair the capacity of the resource area for wildlife habitat. However, vernal pools and areas of rare endangered species are always protected.

#### **F. Other Exemptions**

The Regulations under the Act have exemptions for various activities such as a properly designed and installed septic systems, for certain agricultural projects and silviculture projects, and for some mosquito control work. The Regulations should be reviewed in order to determine the details of any exemptions available.

#### **G. Procedures**

An applicant may not be sure whether the Wetlands Protection Act applies in a certain case, and thus may first apply to the Conservation Commission for a Determination of Applicability. In making such a filing, the applicant takes the following steps:

**Step 1:**

The applicant files a Request for Determination.

**Step 2:**

The Conservation Commission publishes a newspaper notice five (5) business days prior to the public hearing.

**Step 3:**

The Conservation Commission holds its hearing and makes a determination within twenty-one (21) days from receipt of the request.

**Step 4:**

The applicant may appeal the Conservation Commission's decision to Department of Environmental Quality Engineering (DEQE) within ten (10) days.

**Step 5:**

Within thirty-five (35) days, the DEQE may issue a Superseding determination of applicability.

If the Wetlands Protection Act applies, the applicant must then file a Notice of Intent. The procedure for filing a Notice of Intent, and obtaining an Order of Conditions from the Conservation Commission is as follows:

**Step 1:**

The applicant files a Notice of Intent, or an Abbreviated Notice of Intent where applicable.

**Step 2:**

The Conservation Commission publishes a newspaper notice five (5) business days prior to the public hearing.

**Step 3:**

Within twenty-one (21) days, the Conservation Commission holds a public hearing. This public hearing can be continued with the mutual agreement of the applicant.

**Step 4:**

Within twenty-one (21) days of the public hearing, the Conservation Commission issues an Order of Conditions or notifies the applicant that his or her activity or work will be nonsignificant to the resource area.

**Step 5:**

The applicant may appeal the Conservation Commission's decision or Order of Conditions to the DEQE within ten (10) days.

**Step 6:**

Within seventy (70) days and after site inspection, DEQE may issue a Superseding Order.

The Determination of Applicability or the Order of Conditions is good for three (3) years, although the Conservation Commission or DEQE may extend this time period to five (5) years. The Order of Conditions is to be recorded at the Registry of Deeds or registered with the Land Court, and upon compliance, a Certificate of Compliance should also be recorded or registered.

**H. Enforcement**

Under the Regulations, there is an enforcement order form, which the Conservation Commission uses in order to notify a violator. The Conservation Commission can simply mail or hand deliver this form. Enforcement can be carried out by either the Conservation Commission or the Department of Environmental Quality Engineering.

# Chapter XVII

## Zoning

### (Chapter 40-A as Amended by Chapter 808 of The Acts of 1975)

The complete text of The Zoning Act can be found in "The Zoning Guidebook," published by the Massachusetts Federation of Planning and Appeals Boards.

#### A. Purpose

The purposes for which zoning might be adopted are found in SECTION 2-A; (the so-called outside section) of Chapter 808 of the Acts of 1975. They include, but are not limited to, the following:

1. to lessen congestion in the streets;
2. to conserve health;
3. to secure safety from fire, flood, panic and other dangers;
4. to provide adequate light and air;
5. to prevent overcrowding of land;
6. to avoid undue concentration of population;
7. to encourage housing for persons of all income levels;
8. to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
9. to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
10. to encourage the most appropriate use of land throughout the city or town, including consideration of the recommendations of the master plan, if any, adopted by the Planning Board and the comprehensive plan, if any, of the regional planning agency; and.
11. to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

#### B. Adoption

The Zoning Act (Chapter 40A) provides that any city or town MAY adopt zoning ordinances and bylaws to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

#### C. Provisions

1. Regulations including, but not limited to, restricting, prohibiting, permitting or regulating the following:
  - uses of land, including wetlands, and lands deemed subject to seasonal or periodic flooding;
  - size, height, bulk, location and use of structures, including buildings and signs except that billboards, signs and other advertising devices are also subject to the provisions of sections twenty-nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D;
  - uses of bodies of water, including water courses;
  - noxious uses;
  - areas and dimensions of land and bodies of water to be occupied or unoccupied by uses and structures, courts, yards and open spaces;
  - density of population and intensity of use;

accessory facilities and uses, such as vehicle parking and loading, landscaping and open space; and  
the development of the natural, scenic and aesthetic qualities of the community.

(Chapter 808, Acts of 1975, Section 2-A)

2. Provisions which regulate:

permitted or prohibited uses and construction and location of buildings in a comprehensive fashion,  
density,  
air pollution, noise, demands for sewers and other municipal services,  
character of the community,  
compatibility of nearby land uses,

are typical concerns reflected in zoning. Such adoption must be in accordance with the procedures of Chapter 40-A, Section 5. A bylaw or ordinance which deals with such matters as land use, lot sizes, etc. should be treated procedurally as the zoning bylaw or ordinance regardless of the designation of the bylaw or ordinance. For instance a bylaw designated "protective bylaw," which addresses typical zoning issues, must be adopted and amended in accordance with the procedures of Chapter 40A, Section 5.

**D. Home Rule Ordinances and Bylaws**

The Home Rule Amendment, Article 2, Section 6, of the Amendments to the Constitution of the Commonwealth, as amended by Article 89 of the Amendments, permits cities and towns to adopt land use regulations which may overlap with zoning under a home rule bylaw or ordinance. Such home rule bylaw or ordinance MAY NOT regulate typical zoning concerns and must meet the terms of the Home Rule Amendment which state:

"any city or town may, by the adoption, amendment, or repeal of local ordinances or bylaws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court . . . and which is not denied, either expressly or by clear implication, to the city or town by its charter."

There is no clear definition in statute as to what concerns may be addressed in a home-rule bylaw or ordinance. There have been two court cases which have affirmed the validity of home-rule bylaws. One important factor appears to be that a home-rule bylaw or ordinance is valid if authority for such a regulation can be found in existing statutes separate from zoning. The home-rule bylaws which have been upheld by the court include:

A wetlands bylaw adopted pursuant to Chapter 131, Section 40, M.G.L. (*Lovequist vs. Conservation Commission of the Town of Dennis, Mass. Adv. Sh. 2210 [1979]*) and

A sign bylaw adopted pursuant to Chapter 93, M.G.L. (*American Sign and Indicator Corporation vs. Framingham Mass. App. Ct. Adv. Sh. 101 [1980]*).

Additional discussion of home-rule bylaws and ordinances by the courts can be found in the cases of: *Reyco Inv. Corp. vs. Selectmen of Raynham* 368 Mass. 385 (1975) - town bylaw limiting the total number of trailer park licenses was viewed as zoning regulation because town had for years regulated trailer parks under zoning in a comprehensive fashion; *John Donnelly and Sons, Inc. vs. Outdoor Advertising Board* 361 Mass. 746 (1972) and *Inspector of Buildings of Falmouth vs. General Outdoor Advertising Co., Inc.* 264 Mass. 85 - town could exercise power to regulate signs as authorized by M.G.L. Chapter 93, Section 29, through a provision in a zoning bylaw or ordinance as well as through a wholly separate bylaw or ordinance; *Beard vs. Salisbury* Mass. Adv. Sh. 1703 (1979) and *Goodwin vs. Board of Selectmen of Hopkinton* 358 Mass. 164 (1970) - earth removal can be regulated under zoning or in a separate earth removal bylaw or ordinance as authorized by M.G.L., Chapter 40, Section 21; and *Del Duca vs. Town Administrator of Methuen* 336 Mass. 1 (1975) - Legislature has taken entire subject of establishment, powers and duties of a planning board in hand, thus precluding a home-rule bylaw on the subject.

**E. Mandatory Public Hearing and Report (Chapter 40-A, Section 5)**

1. The Planning Board SHALL hold a public hearing on any zoning proposal. If there is no Planning Board, the City Council or Selectmen SHALL hold the hearing. No zoning ordinance, bylaw or amendment thereto may be adopted unless the required hearings are held.
2. Such hearing SHALL be held within sixty-five (65) days after the Planning Board receives the proposal from the Board of Selectmen in a town or from the City Council in a city.
3. In cities, the City Council shall also hold a public hearing on a zoning proposal. The Planning Board and City Council may want to hold them jointly.
4. The Planning Board SHALL report to town meeting in towns and city council in cities within twenty-one (21) days after the public hearing. The report should be in writing and should include recommendations whether the Board favors or opposes the proposal and reasons for such recommendation.

Amendments can be made but if the fundamental character of the proposal is changed, the proposal must be resubmitted and the Planning Board must hold another public hearing and submit another report.

**Review of Zoning Proposals:**

- a. Planning Board review of zoning proposals should include the following:
  - Will it set any undesirable precedents?
  - Is the request technically correct with regard to wording and/or map changes?
  - Is the requested change in conformity with the master plan, special studies or other goals of the community?
  - What will be the impact of the proposed change upon the community?

## **F. Limitations (Chapter 40-A)**

### **1. Mandatory**

A zoning ordinance or bylaw **SHALL** include the following provisions:

- a. A "special permit granting authority" must be designated from one of the following: Board of Selectmen, City Council, Board of Appeals, Planning Board, or Zoning Administrator. (Section 1-A)
- b. A zoning map must be included as part of the zoning ordinance or bylaw. Zoning district boundaries must be delineated on the map and if the map consists of more than four (4) sheets, an index map outlining the districts **SHALL** be included. Provisions within each zoning district **SHALL** be uniform for each class or kind of structures or uses permitted. (Section 4)
- c. A time limit of up to six (6) months after issuance of a building or special permit must be adopted, in which construction or operations under such permits must commence. If construction or operations has not begun within the time period required or if construction is not continued towards completion in as continuous and expeditious manner as reasonable, after the required time period, the construction or operations must conform to any amendment to the ordinance or bylaw. (Section 6)
- d. A municipality must designate the party in charge of enforcement of the zoning ordinance or bylaw. The party designated shall be the inspector of buildings, building commissioner or local inspector, or if there are none, in a town, the Board of Selectmen, or other person or board so charged by local ordinance or bylaw. The party designated shall have the power to withhold a permit for the construction, alteration or moving of any building or structure if such action would be in violation of the zoning ordinance or bylaw. Also, no permit or license shall be granted for a new use of a building, structure or land which would be in violation of the zoning ordinance or bylaw. (Section 7)
- e. A provision must be adopted which specifies that special permits shall only be issued after a public hearing which must be held within sixty-five (65) days after filing of a special permit application. (Section 9)
- f. A specified time period within which a special permit will lapse, to be no more than two (2) years from the date of when a special permit is granted, must be adopted. If substantial use or construction has not commenced without good cause within the specified time period the special permit shall lapse. The ordinance or bylaw should also state that included within the specified time period is the time required to pursue or await the determination of an appeal. (Section 9)
- g. Specific types of uses must be listed which shall only be permitted in specified districts upon the issuance of a special permit. Such special permit shall be subject to general or specific provisions which shall also be provided for in the zoning bylaw or ordinance. (Section 9)
- h. Provisions must be included for granting special permits for accessory uses which are necessary in connection with scientific research, scientific development, or related production activities which are permitted by right. The accessory use does not have to be on the same parcel as the principal use, and the ordinance or bylaw must require that the special permit granting authority make findings that the proposed accessory use does not substantially derogate from the public good. (Section 9)

- i. Authorization for a Zoning Board of Appeals must be contained in a city or town charter, ordinance or bylaw. The number of members to be on the Board must be determined so that there are at least three, but no more than five. The following provisions should also be included in the ordinance or bylaw:
  - (1) the Zoning Board of Appeals shall be appointed by the Mayor, subject to confirmation by the City Council or by the Selectmen;
  - (2) the length of terms must be determined so that the term of one member expires each year;
  - (3) the Zoning Board of Appeals must elect a chairman from within its own membership and a clerk each year;
  - (4) a member can only be removed for cause by the appointing authority and only after written charges have been made and a public hearing has been held;
  - (5) vacancies shall be filled in the same manner as appointments. (Section 12)

2. Optional

A zoning ordinance or bylaw MAY include the following provisions:

- a. Provisions for a non-resident property owner to receive a separate, conspicuous statement with their property tax bill, stating that notice of hearings under Chapter 40-A shall be sent by mail, postage prepaid, to any such owner who files an annual request for such a notice with the City or Town Clerk before January first, and pays a reasonable fee as established by the ordinance or bylaw. (Section 5)
- b. Definitions and regulations regarding non-conforming uses and structures abandoned or not used for two years or more. (Section 6)
- c. Authorization of special permits which allow increases in the permissible density of population or intensity of a particular use in a proposed development. However, the petitioner must provide certain amenities if the special permit is granted and the ordinance or bylaw must state the following: (1) the specific improvements, or amenities, or locations or proposed uses which will be allowed by special permit; (2) the maximum increases in density of population or density of use which will be allowed by special permit. (Section 9)
- d. Regulations that allow special permits to be granted for multi-family residential uses in non-residential zones if the permit granting authority makes the following findings: (1) that the public good would be served; (2) that the non-residentially zoned area would not be adversely affected; (3) that the uses permitted in the zone would not be noxious to a multi-family use. (Section 9)
- e. Regulations that authorize cluster developments or planned unit developments by special permit, including appropriate criteria as specified by Chapter 40-A. (Section 9)

- f. Regulations that allow special permits for shared elderly housing provided the bylaw or ordinance specifies the maximum number of elderly occupants which may not exceed a total number of six. The bylaw or ordinance must also specify any age requirements as well as any other conditions or requirements deemed necessary by the municipality. (Section 9)
  - g. Regulations pertaining to the establishment and location of adult bookstores and adult motion picture theatres. (Section 9A)
  - h. Provisions for certain classes of special permits to be issued by one special permit granting authority and others by another special permit granting authority. (The Planning Board may now issue all or certain classes of special permits if so authorized by the zoning ordinance or bylaw.) (Section 9)
  - i. Regulations concerning the use of solar energy systems and protection of solar access. (Section 9B)
  - j. The zoning ordinance or bylaw may provide for use variances. If the zoning ordinance or bylaw does not contain specific language authorizing variances for uses or activities not otherwise permitted in the district in which the land or structure is located, use variances will not be permitted. (Section 10)
  - k. Provisions that petitions for special permits shall be submitted to and reviewed by one or more of the following: (1) Board of Health; (2) Planning Board or Department; (3) City or Town Engineer; (4) Conservation Commission; (5) any other town agency or board. The reviews may be held jointly if provided and the ordinance or bylaw shall require that all reviewing agencies who desire to make recommendations shall send a copy of their recommendations to the permit granting authority and to the applicant within thirty-five days of receipt of the petition. (Section 11)
  - l. Provisions which provide for the appointment of associate members to the Board of Appeals in the same manner as the appointment of regular members, unless otherwise provided by charter. (Section 12)
  - m. Authorization for the Board of Appeals, unless otherwise provided by charter, to appoint a zoning administrator, subject to confirmation by the City Council or Board of Selectmen, to serve at the pleasure of the Board of Appeals. (Section 13)
3. Prohibited

A zoning ordinance or bylaw SHALL NOT include the following provisions:

- a. Regulations or restrictions regarding the methods of construction of structures regulated by the State Building Code are prohibited. (Section 3)
- b. Exemptions for land or structures from flood plain or wetlands regulations established pursuant to general law are prohibited. (Section 3)
- c. Agricultural, horticultural, floricultural and viticultural uses and the expansion or reconstruction of existing structures related thereto may not be prohibited, regulated unreasonably or be required to operate under a special permit. Included in such exemption are those facilities for the sale of produce, wine and dairy products insofar as a majority of such products for sale are produced by the owner of the land on which the facility is located. However, a zoning ordinance or bylaw may require that all such activities take place on parcels which are more than five acres in size. (Section 3)

- d. Regulations or restrictions of the interior area of a single-family residence are prohibited. (Section 3)
  - e. The use of land or structures for religious or educational purposes on land owned or leased by the Commonwealth or its agencies, by religious sects, or by non-profit educational corporations may not be prohibited, regulated, or restricted. However, the ordinance or bylaw may require reasonable regulations concerning the bulk and height of structures, yard sizes, lot area, set-backs, open space, parking and building coverage. (Section 3) A special permit may also not be required for such religious or educational uses. (*The Bible Speaks vs. Board of Appeals of Lenox, Mass. App. Ct. Adv. Sh., [1979], p. 1362.*)
  - f. The ordinance or bylaw shall not prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a mobile home on the site of such residence for a period not to exceed twelve (12) months while the residence is being rebuilt. Such mobile home shall be subject to the provisions of the state sanitary code. (Section 3)
  - g. Family day care homes pursuant to M.G.L. Ch. 28-A, Section 9 shall be allowed unless specifically prohibited or regulated.
  - h. Dimensional lot requirements shall not apply to handicapped access ramps. (Section 3)
  - i. The ordinance or bylaw shall not prohibit or unreasonably regulate the installation of solar energy systems. (Section 3)
  - j. Zoning district boundary lines may only be changed by adoption of an amendment to the ordinance or bylaw. Any provisions otherwise are invalid and should be deleted. (Section 3)
  - k. The ordinance or bylaw may not require more than a \$300 penalty per violation. However, each day a violation continues may be counted as a separate offense (violation). (Section 7)
- G. Procedural Steps for the Adoption of a Zoning Ordinance, Bylaw or Amendment(s) thereto. (Chapter 40-A, Section 5 and Chapter 40, Sections 32 and 32-A)**
- 1. Proposed ordinance, bylaw or amendment thereto is submitted to the City Council in a city and the Selectmen in a town. Such proposal may be submitted by:
    - a. Board of Selectmen or City Council;
    - b. Board of Appeals;
    - c. Individual owning land to be affected by change or adoption;
    - d. Ten registered voters in a city;
    - e. Registered voters pursuant to Section 10 of Chapter 39, G.L. in a town;
    - f. Planning Board;
    - g. Regional planning agency;
    - h. Others, if so provided by municipal charter. (Chapter 40-A, Section 5)
  - 2. Within fourteen (14) days of receipt, the City Council or Selectmen SHALL submit the zoning proposal to the Planning Board for review, public hearing thereon and report. (Chapter 40-A, Section 5)

3. Notice of a public hearing to be held on the proposal is given.
  - a. In towns, the Planning Board SHALL give notice and hold the public hearing.
  - b. In cities, both the Planning Board and City Council or a committee appointed by the City Council must hold the public hearing. Each board must give separate notice of its public hearing on the proposal. However, if the hearings are held jointly, one notice given by both boards is sufficient.
  - c. Notice of the public hearing shall be given by:
    - (1) publishing in a newspaper of general circulation in the city or town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. (The date of the public hearing should not be counted in the 14 days);
    - (2) posting in a conspicuous place in the City or Town Hall for a period of not less than fourteen (14) days before the day of the hearing;
    - (3) mailing to the Department of Community Affairs, regional planning agency of the area, if any, and the Planning Board of all abutting cities and towns prior to the public hearing date.

Notices shall be mailed to:

Executive Office of Communities and Development  
 Division of Community Development  
 Department of Community Affairs  
 100 Cambridge Street, Room 904  
 Boston, MA 02202

- d. Notice of the public hearing shall include:
  - (1) the time, date and place of the hearing;
  - (2) the subject matter, sufficient for identification;
  - (3) the place where texts and maps may be inspected. (Chapter 40-A, Section 5)
4. Within sixty-five (65) days after the zoning proposal is submitted to the Planning Board by the Selectmen or by the City Council, the Planning Board SHALL hold its public hearing. (Chapter 40-A, Section 5)  
 In cities, the City Council or its designated committee SHALL also hold a public hearing on the proposal. (Chapter 40-A, Section 5)
5. Within twenty-one (21) days after the public hearing, the Planning Board SHALL submit its final report with recommendations to the City Council or Town Meeting.  
 If the Planning Board fails to submit its report within the twenty-one (21) days, City Council or Town Meeting may proceed to take action on the proposal without a report. (Chapter 40-A, Section 5)
6. a. In cities, the City Council SHALL take action on the zoning proposal within ninety (90) days after the Planning Board hearing.  
 b. In towns, the Town Meeting SHALL take action on the zoning proposal within six (6) months after the Planning Board's hearing.

- c. Action on a proposal may include:
  - (1) adoption of a zoning ordinance, bylaw or amendment;
  - (2) rejection of a zoning ordinance, bylaw or amendment;
  - (3) change to an existing zoning ordinance, bylaw or amendment

In cities, action on a zoning proposal SHALL require a two-thirds (2/3) vote of the entire membership of the City Council. A three-fourths (3/4) vote is required by a City Council of less than twenty-five (25) members if a protest is filed with the council before final action is taken. Such protest must be filed by the owners of twenty (20) percent or more of the area of the land included in the proposed amendment, or the owners of twenty (20) percent or more of the area of land within 300 feet of the boundary of the area affected by the proposed amendment.

- d. If the City Council or Town Meeting fails to take final action within the statutory time limits, no action shall be taken thereon until the public hearing is re-held by the Planning Board and City Council in cities and the Planning Board in towns. Notice of the hearing and report by the Planning Board shall also be required.
  - e. If the zoning proposal is acted upon unfavorably by City Council or Town Meeting, such proposal cannot be considered by any City Council or Town Meeting within two (2) years after the date of the unfavorable action unless the adoption of the proposal is recommended in the final report of the Planning Board. (Chapter 40-A, Section 5)
7. a. In certain cities, the Mayor must approve a zoning proposal which was adopted by City Council. After the Mayor has signed the zoning proposal, the City Clerk SHALL forward a copy of the ordinance or amendment to the Attorney General. If the Mayor disapproves the adopted zoning proposal, the City Council may override the Mayor's disapproval by re-adopting the proposal by a two-thirds (2/3) vote. (Chapter 43, Section 55)
- b. In all cities, the City Clerk SHALL forward a copy of the zoning ordinance or amendment to the Attorney General.
- c. In towns, the Town Clerk SHALL submit any zoning proposal which was adopted by Town Meeting to the Attorney General for approval. Such submission must take place within thirty (30) days after final adjournment of the Town Meeting at which the proposal was adopted. If the Town Clerk fails to submit, the Board of Selectmen, within fifteen (15) days after the failure of the Town Clerk to act, may submit a certified copy of the bylaw requesting approval. (Chapter 40, Section 32)

Instructions for submission to and the materials required by the Attorney General for sub-mission of a zoning bylaw or amendment thereto are contained in Chapter 40, Section 32.

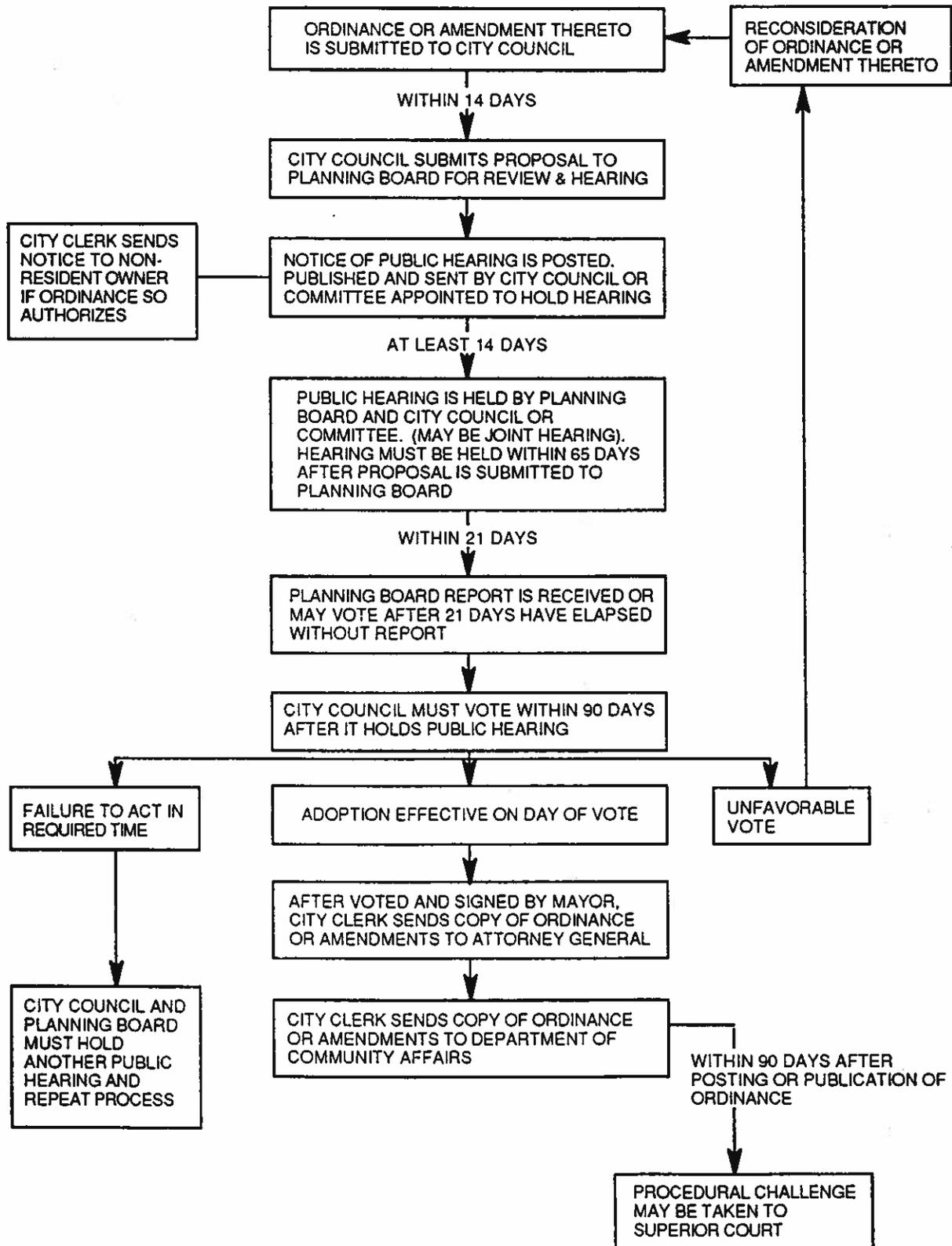
When zoning bylaws or amendments thereto are submitted to the Attorney General, a statement shall be included which may be prepared by the Planning Board. Such statement shall explain the bylaws or amendments thereto and may be accompanied by explanatory maps or plans. (Chapter 40-A, Section 5) Also, Planners Handbook, Chapter XXIII.

- 8. a. The adopted zoning ordinance, bylaw or amendment thereto is published for public review. Such publication shall include a statement indicating where copies of the ordinance, bylaw or amendment thereto may be examined and obtained, and a statement specifying that claims of invalidity by reason of any defect in the procedure of adoption may only be made within ninety (90) days after posting, or after the second publication in a newspaper, or after delivery. (Chapter 40, Section 32 and 32-A).

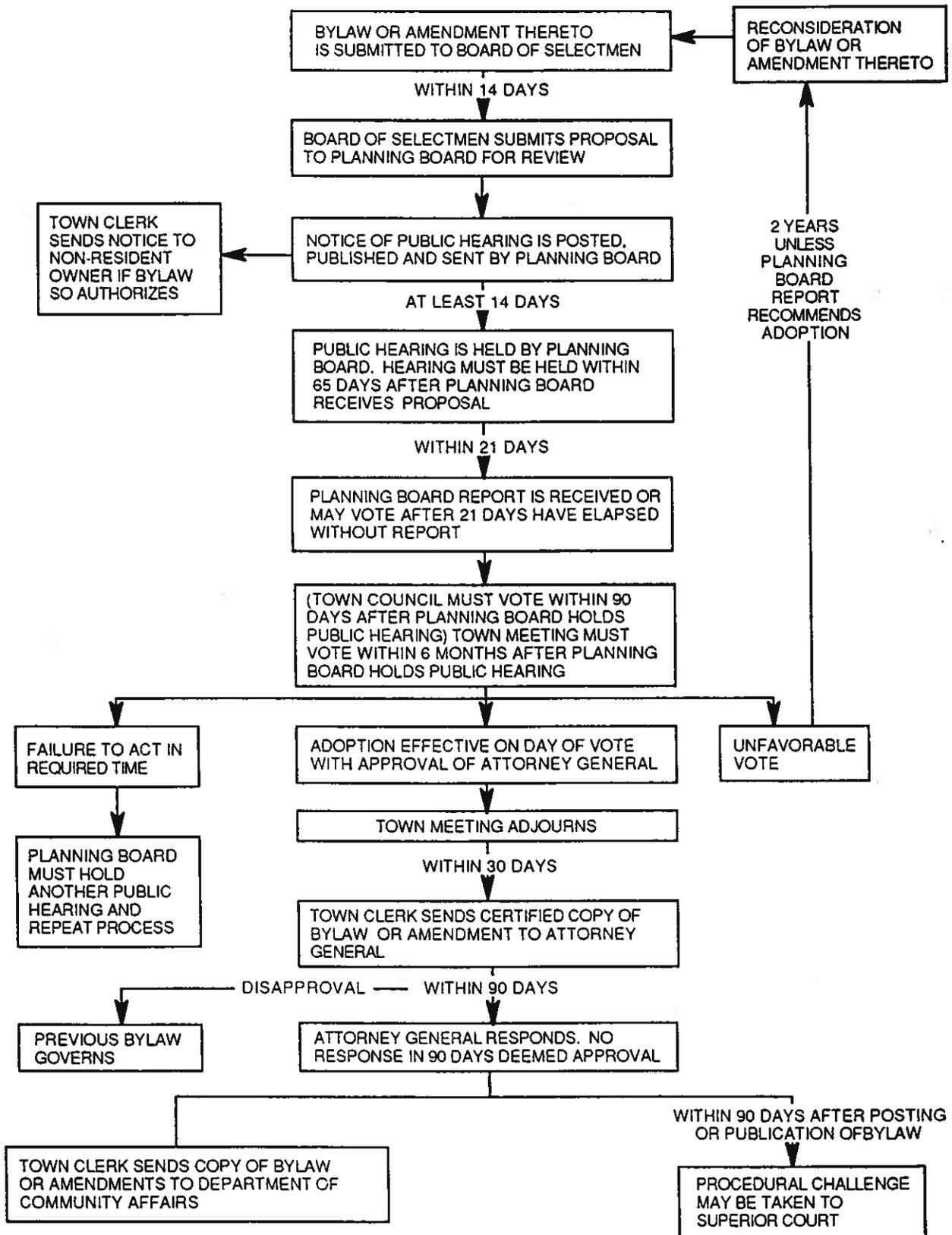
- b. In cities, the provisions of Chapter 40, Section 32-A shall apply if the city has accepted such provision of law and included provisions in its charter. Section 32-A requires a city to publish a summary of an adopted zoning proposal at least two times in a newspaper of general circulation in the city. (Chapter 40, Section 32-A)
  - c. In towns, a zoning proposal which has been adopted by Town Meeting and approved by the Attorney General or approved by default if the Attorney General fails to approve or disapprove an adopted zoning proposal within the statutory ninety (90) day time limit shall be:
    - (1) published in a newspaper of general circulation in the town at least twice and at least one week apart; or
    - (2) published in a municipal pamphlet or bulletin, copies of which shall be:
      - (a) posted in at least five (5) places in town, unless the town is divided into precincts, in which case copies shall be posted in one or more public places in each precinct of the town; or
      - (b) delivered to every occupied dwelling or apartment in town. (Chapter 40, Section 32)
  - d. The effective date of a zoning proposal which has been adopted shall be:
    - (1) In a city, the date the City Council voted to adopt the proposal;
    - (2) In a town, the date Town Meeting voted to adopt the proposal, provided the Attorney General subsequently approves the bylaw or amendment thereto. If the Attorney General disapproves an adopted zoning proposal, the previous zoning bylaw provisions shall govern. (Chapter 40-A, Section 5)
9. After approval of zoning bylaws by the Attorney General, or adoption of zoning ordinances by the City Council, a copy of the latest effective zoning ordinance or bylaw shall be sent by the City or Town Clerk to the Department of Community Affairs. Copies, as required by Chapter 40-A, Section 5, shall be mailed to:
- Executive Office of Communities and Development  
Division of Community Development  
100 Cambridge Street, Room 904  
Boston, MA 02202

**ADOPTION AND AMENDMENT OF ZONING ORDINANCES  
THESE PROCEDURES MUST BE FOLLOWED  
WHEN ANY AMENDMENTS ARE MADE TO YOUR ZONING ORDINANCE**

**IN A CITY**



**ADOPTION AND AMENDMENT OF ZONING BYLAWS  
 THESE PROCEDURES MUST BE FOLLOWED  
 WHEN ANY AMENDMENTS ARE MADE TO YOUR ZONING BYLAW  
 IN A TOWN**



# Chapter XVIII

## Special Permits Under Zoning (Chapter 40A)

### A. Optional designation of Planning Board as special permit granting authority

Chapter 40A, Section 1-A, provides that a Planning Board may be designated the "special permit granting authority" for various classes of uses authorized by special permit.

In many communities the Planning Board is designated the Special Permit Granting Authority for classes of uses such as cluster and planned unit developments. Because such developments often require approval by the Planning Board under the subdivision control law, Chapter 41, Sections 81-K - 81-GG, better continuity can be achieved by designating the Planning Board the Special Permit Granting Authority for such uses under zoning as well.

### B. Requirements for a Planning Board acting as a Special Permit Granting Authority. The Planning Board shall:

1. Adopt rules and regulations relative to the issuance of special permits.  
Such rules and regulations SHALL prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

A copy of such rules and regulations and any amendments thereto SHALL be filed with the City or Town Clerk (Section 9).

2. Hold a public hearing on all special permit applications. Said public hearing to be held within sixty-five (65) days after the application is filed (Section 9).
3. Act upon a special permit within ninety (90) days or any extended time by agreement after the public hearing or such special permit shall be deemed GRANTED.

Action on a special permit SHALL require the following vote in order to issue the special permit:

- a. Vote to issue of at least four (4) members of a five (5) member planning board;
- b. Vote to issue of at least two-thirds (2/3) of the members of a planning board with more than five (5) members (Section 9).

As a Special Permit Granting Authority, the Planning Board may appoint alternate members (Section 9).

### C. Procedural Steps for Acting on a Special Permit when the Planning Board is Designated as the Special Permit Granting Authority as Provided by Chapter 40A, M.G.L.

1. Applicant files a special permit application with city or town clerk who certifies time and date of filing. Applicant files certified copy of application with Special Permit Granting Authority.
2. a. A special permit may not be issued until a public hearing is held. The public hearing must be held within sixty-five (65) days from the date that the application is filed.  
b. Notice of the public hearing shall include:
  - (1) name of the applicant;
  - (2) a description of the area or premises including street address, if any, or other adequate identification of the location;
  - (3) date, time and place of the hearing;
  - (4) the subject matter of the hearing;
  - (5) the nature of the action requested.

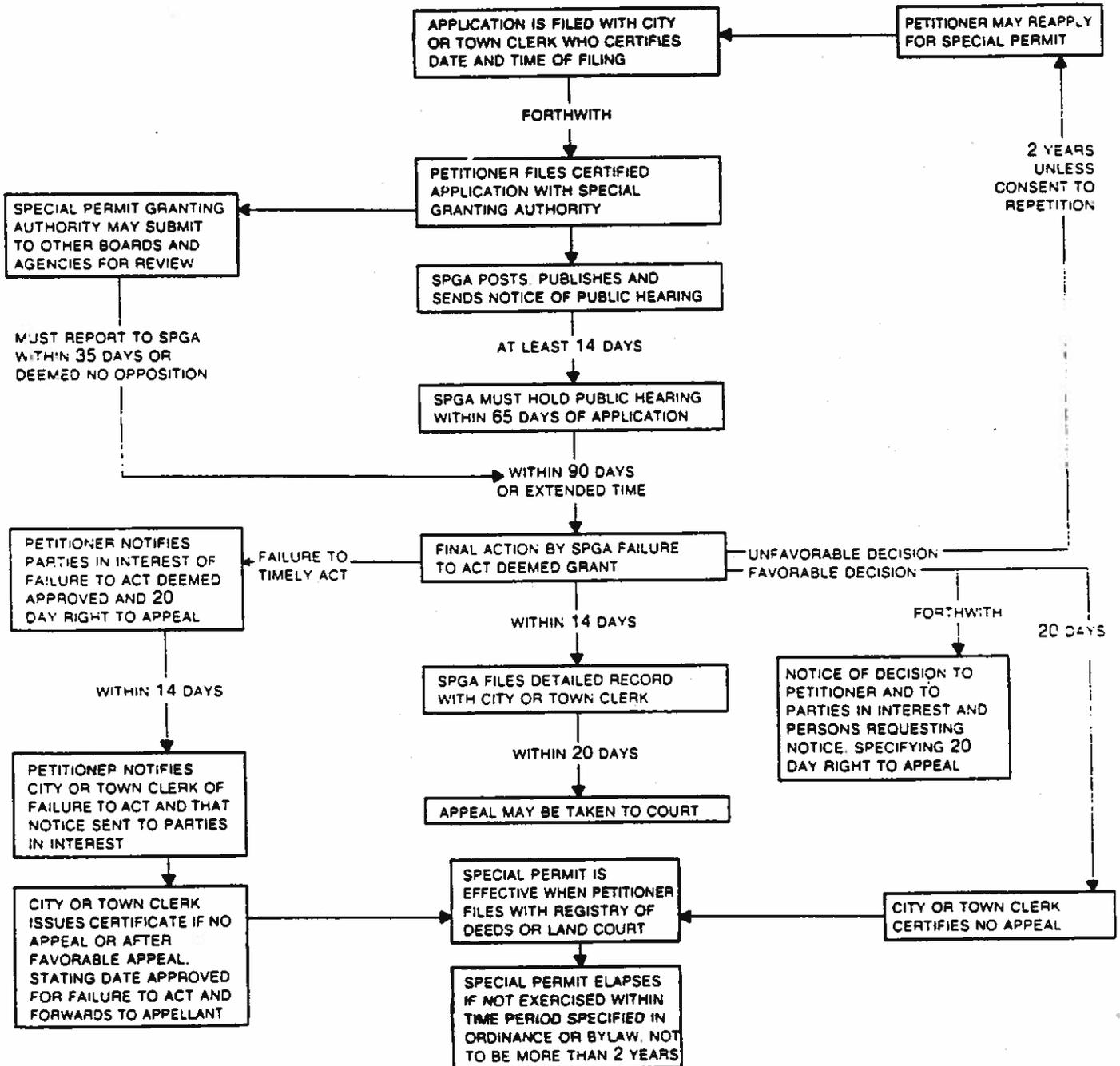
- c. Notice of the public hearing shall be:
  - (1) published in a newspaper of general circulation in the city or town once in each of two successive weeks. The first publication may not be less than fourteen days before the day of the hearing. (The day of the public hearing should not be counted in the fourteen days.)
  - (2) posted in a conspicuous place in the City or Town Hall for a period of not less than fourteen days before the day of the hearing;
  - (3) mailed to "parties in interest" who shall include:
    - (a) the applicant
    - (b) abutters
    - (c) owner of land directly opposite on any public or private street or way
    - (d) the abutters to the abutters within three hundred (300) feet of the property line of the applicants as they appear on the most recent applicable tax list, even if the land is in another city or town.
    - (e) the Planning Board of every abutting city or town.

The Assessors maintaining any applicable tax list shall certify to the special permit granting authority the names and addresses of parties in interest. Such certification shall be conclusive for all purposes.
  - (4) mailed to other individuals, boards or agencies for review if required by the zoning ordinance or bylaw. (Section 11)
- 3. a. Within ninety days or any extended time following the date of the public hearing, the special permit granting authority shall take final action.
- b. If the special permit granting authority fails to take final action within the ninety-day or extended time limit, the special permit shall be deemed GRANTED.
- c. Before granting a special permit, the special permit granting authority must make specific findings including:
  - (1) that the use is in harmony with the general purpose and intent of the zoning ordinance and bylaw.
  - (2) that the use complies with provisions which are set forth in the zoning ordinance and bylaw. (Section 9)
- 4. The special permit granting authority shall:
  - a. File a copy of the decision with the City or Town Clerk;
  - b. Retain a copy of the decision in its own files;
  - c. Mail a certified copy of the decision to the applicant and to the owner if other than the applicant;
  - d. The special permit decision shall contain:
    - (1) the name and address of the owner;
    - (2) an identification of the land affected;
    - (3) description of how the special permit complies with the statutory requirements for issuing the special permit, including expressly any required findings.

- (4) certification that copies of the decision have been filed with the Planning Board and City or Town Clerk; and,
  - (5) specification that appeals, if any, shall be made pursuant to Section 17 of Chapter 40A and shall be filed within twenty (20) days after the date of filing of such notice with the City or Town Clerk. (Section 11)
5. After the decision is filed, a notice of the decision shall be mailed to "parties in interest" and to persons who requested a notice at the public hearing.
- The notice shall specify that appeals, if any, shall be made pursuant to Section 17 of Chapter 40A, G.L., and shall be filed within twenty days after the date the decision is filed in the office of the City or Town Clerk. (Section 9)
6. Within fourteen (14) days after the decision, the special permit granting authority shall file a detailed record with the office of the City or Town Clerk. (Section 9)
7. If a special permit granting authority fails to act within the ninety (90) days or any extended time, the special permit is deemed granted.
- The applicant must notify the city or town clerk, in writing, within fourteen (14) days of the date of final action that the applicant has sent notice to parties of interest as specified by statute.
- After expiration of appeals, the city or town clerk shall issue a certificate stating that the special permit is deemed granted due to the failure of the board to act.
8. The special permit is not in effect until the applicant has filed a certified copy of the decision or certificate with the registry of deeds.
9. a. If an application is unfavorably acted upon, the applicant may re-petition and be granted the special permit within two years only if:
- (1) the Planning Board consents to re-petition;
  - (2) the Planning Board holds a "proceeding" to consider consent and notifies all parties in interest of the time and place;
  - (3) all but one of the members of the Planning Board consent; and,
  - (4) the Planning Board, acting as the special permit granting authority, makes a finding of specific and material changes in the conditions upon which the original unfavorable action was based. Such changes must be described in the record of the Planning Board's proceedings. (Section 16)
- b. Any application for a special permit may be withdrawn without prejudice by the applicant prior to the publication of the public hearing notice. Once the notice has been published, however, a withdrawal without prejudice may be permitted only with the approval of the special permit granting authority. (Section 16)

**SPECIAL PERMIT PROCESS (CONSULT G.L. Chapter 40A FOR COMPLETE AND BINDING TEXT)  
 SPECIAL PERMIT GRANTING AUTHORITY MAY BE CITY COUNCIL, BOARD OF APPEALS,  
 PLANNING BOARD OR ZONING ADMINISTRATOR AS DESIGNATED IN ZONING ORDINANCE  
 OR BYLAW. CERTAIN CLASSES OF SPECIAL PERMITS MAY BE ISSUED BY ONE OF THE  
 PARTIES AND OTHER CLASSES BY ANOTHER.**

**BOARD OF SELECTMEN, CITY COUNCIL, PLANNING BOARD OR BOARD OF APPEALS  
 IS ACTING AS SPECIAL PERMIT GRANTING AUTHORITY**



# Chapter XIX

## Public Records

1. "Public records include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials of data, regardless of physical form or characteristics, made or received by any officer or any employee . . . of any political subdivision . . ." M.G.L. Ch. 4, S. 7 (26(c)).
2. There is a presumption that all records are public.
3. Things that are not generally subject to disclosure include: very limited personnel rules and practices, certain individual privacy, certain preliminary policy memoranda or letters, purely personal notebooks, investigative materials whose disclosure would prejudice law enforcement, certain material voluntarily submitted under a promise of confidentiality, competitive bids before bid opening time, certain real property appraisals, and certain firearms license information.
4. Minutes of meetings, which are public records, do not have to be verbatim, but should include names of all persons participating, subject matters acted upon, votes by each person, and reasons for actions including conditions.
5. Public records and their availability are governed generally by M.G.L. Ch. 66, S. 10 and 950 Code of Mass. Reg. 32.
6. Upon request, the party with custody of a public record, must permit the person making such request to inspect the record without charge. Such inspection may not take place later than 10 days after the request, and must be at a reasonable time.
7. A copy of the public record must be furnished at a reasonable fee (actual costs), which may include the cost of search, if any. The Code of Massachusetts regulations should be reviewed as the supervisor of public records has set standard maximum fees for certain copies and documents.
8. Upon petition, the supervisor of public records, a state officer, makes determinations as to whether the fee is reasonable, and whether a record is public.
9. If the supervisor of public records directs that a record be made available, and the municipality fails to comply, the attorney general or district attorney may take measures to ensure provision of the record.
10. The supervisor of public records can be reached at (617) 727-2832.

**PLANNING BOARD RECORDS RETENTION SCHEDULE<sup>1</sup>****Information and Procedures**

1. The following is a list of standard records used by Planning Boards in carrying out their statutory responsibilities.
2. This schedule is arranged alphabetically by records series under two primary categories, viz. Activity and Administration. Where appropriate, certain records series are further subdivided by record sub-series or by purpose.
3. Each entry includes a schedule number, record series title, statutory reference to the Massachusetts General Laws Annotated (where statutory citation helps to identify the records series), and the minimum period for which the record must be retained.
4. To destroy records included on this schedule, the Planning Board should submit to the Supervisor of Public Records two copies of a letter substantially in the form suggested by the sample shown here indicating the schedule number, estimated volume, and inclusive dates for each type of record to be destroyed. One copy of this letter will be returned to the requester with the approval of the Supervisor. Following receipt of this approval, all records included in the written request may legally be destroyed. Any record may be retained beyond this time at the discretion of the Planning Board.
5. Before submitting destruction requests to the Supervisor, be sure that the prescribed retention period has fully expired for each record to be destroyed. Where this refers to "one year following expiration of 20 day appeal period provided copy filed with clerk" indicate that a copy of the record has been filed with the City or Town Clerk. Where this refers to "after completion of satisfactory audit" include the date of the last audit.
6. Where items subject to audit are dated within the current fiscal year and have already been audited, they should nonetheless be retained through 30 June or later as necessary.
7. For further information regarding this retention schedule contact: Secretary of State, Massachusetts Archives at Columbia Point, 220 Morrissey Boulevard, Boston, MA 02125. Telephone: (617) 727-4062.

<sup>1</sup>From: Secretary of State, Massachusetts Archives.

<sup>1</sup> Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**SAMPLE LETTER TO REQUEST PERMISSION TO DESTROY RECORDS**

**LETTERHEAD  
(PLANNING BOARD)**

DATE: \_\_\_\_\_

Secretary of State  
Supervisor of Public Records  
Archives Division-Records Management Section  
Massachusetts Archives at Columbia Point  
220 Morrissey Boulevard  
Boston, MA 02125

Dear Supervisor:

This is to request authorization for the destruction of records included on the Planning Board Records Schedule RS-22-85 as follows:

**SCHEDULE NUMBER**

22.4a  
22.7  
22.9

**INCLUSIVE DATES**

1975-1984\*  
1975-1984\*  
1975-1983\*\*

Estimated volume: 25 cubic feet

Very truly yours.

(signature of legal custodian)

\*Copy of record has been filed with Town Clerk.

\*\*Last state approved audit of municipal accounts satisfactorily completed as of 30 June 1984.

Approved:

\_\_\_\_\_  
Supervisor of Public Records

Date: \_\_\_\_\_

Department/Agency: Planning Board

RS-22-85

Secretary of State/Supervisor of Public Records/Records Management Section

RECORDS RETENTION SCHEDULE

NUMBER	TITLE ACTIVITY	STATUTORY REFERENCE	RETENTION PERIOD
22.1	Annual Report	C. 41, S. 81-C	Permanent (one mint copy).
22.2	Applications		
	a. Special Permit	C. 40A, S. 1-A	One year following expiration of 20 day appeal period.
	b. Subdivision Control Not Required	C. 41, S. 81-T	" "
	c. Subdivision (Preliminary)	C. 41A, S. 81-T	" "
	d. Subdivision (Definitive)	C. 41, S. 81-T	" "
22.3	Decisions		
	a. Special Permit	C. 40A, S. 11	One year following expiration of 20 day appeal period provided copy filed with clerk.
	b. Subdivision Control Not Required	C. 41, S. 81-P	" "
	c. Subdivision (Preliminary)	C. 41, S. 81-S	" "
	d. Subdivision (Definitive)	C. 41, S. 81-U	" "

Department/Agency: Planning Board

RS-22-85

Secretary of State/Supervisor of Public Records/Records Management Section

RECORDS RETENTION SCHEDULE

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
22.4	Master Plan	C. 41, S. 81-D	Permanent (one mint copy).
22.5	Official Map	C. 41, S. 81-E, 81-H	" "
22.6	Notices for Public Hearings		
	a. Special Permits	C. 40-A, S. 11	One year following expiration of 20 day appeal period.
	b. Subdivisions	C. 41, S. 81-T 81-U	" "
	c. Zoning Changes	C. 40-A, S. 5	" "
22.7	Subdivision Rules and Regulations	C. 41, S. 81-O	" "
22.8	Subdivision Files		
	a. (Preliminary)		One year following date of decision.
	b. (Definitive)		After completion of subdivision.

Department/Agency: Planning Board

RS-22-85

Secretary of State/Supervisor of Public Records/Records Management Section

RECORDS RETENTION SCHEDULE

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
ADMINISTRATION			
22.9	Abuttors List	C. 41, S. 81-T	One year following expiration of 20 day appeal period.
22.10	Budget/Budget Estimates		After use.
22.11	Cash Book		After completion of satisfactory audit.
22.12	Correspondence		Three years if of no informational and/or evidential value.
22.13	Contracts		Seven years.
22.14	Deposits to Treasurer		After completion of satisfactory audit.
22.15	Personnel Records		
	a. Employment applications (unhired)		Two years.
	b. Earning records		Permanent.
	c. Personnel files other than earning records		Twenty years after termination of employment.
22.16	Petty Cash Records		After completion of satisfactory audit.

**Department/Agency: Planning Board**

RS-22-85

Secretary of State/Supervisor of Public Records/Records Management Section

**RECORDS RETENTION SCHEDULE**

<b>NUMBER</b>	<b>TITLE</b>	<b>STATUTORY REFERENCE</b>	<b>RETENTION PERIOD</b>
22.17	Plans (referred to in decisions)		Permanent if not filed with clerk.
22.18	Minutes		Permanent.
22.19	Meeting Notices		One year (if no litigation is pending).

# Chapter XX

## Record Keeping and Sample Subdivision Processing Forms

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	Record Keeping	20.2
	File Index Sheet	20.3
Form A	Application for Approval Not Required Plan	20.4
Form A-1	Approval Is Not Required	20.6
Form A-2	Approval Is Required	20.7
Form B	Application for Approval of Preliminary Plan	20.8
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Form C-3	Disapproval of Definitive Plan	20.14
Form D	Designer's Certificate	20.15
Form E	Amendment, Modification or Rescission of Approval of Definitive Subdivision Plan	20.16
Form F	Covenant	20.17
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Form L	Conveyance of Easements and Utilities	20.33
Form M	Plan Review Referral Form	20.35
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Form N	Control Form for Processing Subdivision Plan and Construction	20.37
Form O	Certificate of Completion - Release of Municipal Interest	20.40

## RECORD KEEPING

Planning Boards face an increasing volume of plans and may find it difficult to file plans accurately with a ready ability for status checks and a minimum loss or damage factor.

The system below is fairly simple and can be adapted to each Planning Board. It is strongly recommended that some similar system be established and kept current.

1. Sort and catalogue all plans and records on hand according to the steps below. These may include definitive subdivision plans, 81-P plans, rezoning proposals, etc.
2. Prepare a file sheet for each plan or record (see sample). The file sheets may be filed in several ways such as alphabetically by applicant's name, under street name, by file index number, by date. If there are many plans and records, consider cross-indexing the file system. For instance, the file sheet might be filed under its file index number. However, a separate file might be established which lists the applicant's name. Under the applicant's name would be a reference to the file index number and the subdivision name. For purposes of cross-indexing, the board might share files with the town engineer, building official, conservation commission, or others who might file the same plans or records. Rather than combining all plans and records into one file the board may wish to have several files based on subject matter. For instance, one file for definitive subdivision plans, one for 81-P plans, one for rezoning proposals, etc.
3. Plot property and file index numbers for plans and records on a large city or town map. Use different colors for different subjects.
4. An important feature of the file sheet is that it shows in one place the dates relevant to a particular plan. This information should be accurately recorded.
5. The file sheet also locates the plan and document files. This is important if a numbered filing system is used. In the document file all forms (ex. Control Form, Document Control Sheet, Inspection Forms, etc.) should be kept.
6. All duplicate plans or records should be returned to the applicant, disposed of or removed to a separate file.
7. All plans should be filed in either a flat file or rolled and stored in bins. Plans should be numbered in accordance with the file index number for easy retrieval.
8. Completed plans or records should be noted on the file sheet. As-built plans, if required, should be filed and copies should be sent to the Engineer's Office and to the Building Department.
9. Where space is a problem, plans and records may be separated into on-going files and completed files. All materials pertaining to an on-going file should be kept in the office. Materials relative to a completed file can be moved to a permanent storage area. Wherever possible, the file index sheet for all records and plans, whether on-going or completed, should be kept in the office. The file folders can be coded with colored labels which can indicate the status of the project such as green label for proposed, yellow label for on-going, and red label for completed.

File# \_\_\_\_\_  
Date Filed \_\_\_\_\_

**FILE INDEX SHEET**

Document Type (Definitive Subdivision Plan, 81-P plan, rezoning proposal, etc.) \_\_\_\_\_

Identifying Name \_\_\_\_\_

Applicant \_\_\_\_\_

Developer \_\_\_\_\_

Owner \_\_\_\_\_

Location in Town \_\_\_\_\_

Streets shown on the plan or abutting property \_\_\_\_\_

Number of Lots \_\_\_\_\_

Zoning requirements: frontage \_\_\_\_\_ area \_\_\_\_\_

Location in Files \_\_\_\_\_

Plans \_\_\_\_\_ # Sheets \_\_\_\_\_

Document Folder \_\_\_\_\_

Date Completed \_\_\_\_\_

FORM A

APPLICATION FOR ENDORSEMENT OF PLAN  
BELIEVED NOT TO REQUIRE APPROVAL

\_\_\_\_\_, 19 \_\_\_\_

To The Planning Board of the City/Town of \_\_\_\_\_

The undersigned wishes to record the accompanying plan and requests a determination and endorsement by said Board that approval by it under the Subdivision Control Law is not required. The undersigned believes that such approval is not required for the following reasons: (Circle as appropriate.)

1. The accompanying plan is not a subdivision because the plan does not show a division of land.
2. The division of the tract of land shown on the accompanying plan is not a subdivision because every lot shown on the plan has frontage of at least such distance as is presently required by the \_\_\_\_\_ zoning bylaw/ordinance under Section \_\_\_\_\_ which requires \_\_\_\_\_ feet for erection of a building on such lot; and every lot shown on the plan has such frontage on:
  - a. a public way or way which the City or Town Clerk certifies is maintained and used as a public way, namely \_\_\_\_\_, or
  - b. a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, namely \_\_\_\_\_ on \_\_\_\_\_, and subject to the following conditions \_\_\_\_\_; or
  - c. a private way in existence on \_\_\_\_\_, the date when the subdivision control law became effective in the city/town of \_\_\_\_\_ 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, namely \_\_\_\_\_
3. The division of the tract of land shown on the accompanying plan is not a "subdivision" because it shows a proposed conveyance/other instrument, namely \_\_\_\_\_ which adds to/takes away from/changes the size and shape of, lots in such a manner so that no lot affected is left without frontage as required by the \_\_\_\_\_ zoning bylaw/ordinance under Section \_\_\_\_\_, which requires \_\_\_\_\_ feet.
4. The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings, specifically \_\_\_\_\_ buildings were standing on the plan prior to \_\_\_\_\_ the date when the subdivision control law went into effect in the city/town of \_\_\_\_\_ and one of such buildings remains standing on each of the lots/said buildings as shown and located on the accompanying plan. Evidence of the existence of such buildings prior to the effective date of the subdivision control law is submitted as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPLICANT'S NAME - PLEASE PRINT

5. Other reasons or comment: (See M.G.L., Chapter 41, Section 81-L) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The owner's title to the land is derived under deed from \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_\_\_, and recorded in \_\_\_\_\_, Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_ or Land Court Certificate of Title No. \_\_\_\_\_, registered in \_\_\_\_\_ District Book \_\_\_\_\_, Page \_\_\_\_\_ and \_\_\_\_\_ Assessors' Book \_\_\_\_\_, Page \_\_\_\_\_.

Received by City/Town Clerk: \_\_\_\_\_  
Date \_\_\_\_\_  
Time \_\_\_\_\_  
Signature \_\_\_\_\_

Applicant's signature \_\_\_\_\_  
Applicant's address \_\_\_\_\_  
\_\_\_\_\_  
Applicant's phone # \_\_\_\_\_  
Owner's signature and address if not the applicant or applicant's authorization if not the owner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORM A-1

PLANNING BOARD  
CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

DETERMINATION THAT SUBDIVISION  
APPROVAL IS NOT REQUIRED

\_\_\_\_\_, 19 \_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

Re: Application for endorsement of plan believed not to require subdivision approval.

Applicant \_\_\_\_\_

Applicant's address \_\_\_\_\_

You are hereby notified that the plan entitled \_\_\_\_\_ submitted by the above applicant on \_\_\_\_\_, 19 \_\_\_\_\_, accompanied by a Form A application for a determination by the Planning Board, dated \_\_\_\_\_, 19 \_\_\_\_\_, has been endorsed by the Planning Board as follows: " \_\_\_\_\_ Planning Board Approval under Subdivision Control Law not Required."

\_\_\_\_\_ PLANNING BOARD

By \_\_\_\_\_, Chairman

\_\_\_\_\_

\_\_\_\_\_

Members

Duplicate copy sent to applicant:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FORM A-2

CITY/TOWN OF \_\_\_\_\_ PLANNING BOARD  
\_\_\_\_\_, MASSACHUSETTS

DETERMINATION THAT SUBDIVISION  
APPROVAL IS REQUIRED

\_\_\_\_\_, 19 \_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

Re: Application for endorsement of plan believed not to require subdivision approval.

Applicant \_\_\_\_\_

Applicant's address \_\_\_\_\_

You are hereby notified that the Planning Board has determined that the plan entitled \_\_\_\_\_ submitted by the above applicant on \_\_\_\_\_, 19 \_\_\_\_\_, accompanied by a Form A application for determination by the Planning Board dated \_\_\_\_\_, 19 \_\_\_\_\_, requires approval under the Subdivision Control Law and it has been determined that that plan shows a subdivision for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ PLANNING BOARD

By \_\_\_\_\_, Chairman

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Members

Duplicate copy sent to applicant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FORM B

APPLICATION FOR APPROVAL OF A PRELIMINARY PLAN

\_\_\_\_\_, 19 \_\_\_\_

To The Planning Board of the City/Town of \_\_\_\_\_

The undersigned, being the applicant as defined under Chapter 41, Section 81-L, for approval of a proposed subdivision shown on a plan entitled: \_\_\_\_\_

By \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ and described as follows: \_\_\_\_\_

located \_\_\_\_\_, number of lots proposed \_\_\_\_\_ (#) total acreage of tract \_\_\_\_\_, said applicant hereby submits said plan as a Preliminary subdivision plan in accordance with the Rules and Regulations of the \_\_\_\_\_ Planning Board and makes application to the Board for approval of said plan.

The undersigned's title to said land is derived from \_\_\_\_\_

by deed dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ (county) District Registry of Deeds Book \_\_\_\_\_, Page \_\_\_\_\_, registered in the \_\_\_\_\_ (county) Registry District of the Land Court, Certificate of Title No. \_\_\_\_\_

Received by City/Town Clerk:

Applicant's signature \_\_\_\_\_

Applicant's address \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

Signature \_\_\_\_\_

Applicant's phone # \_\_\_\_\_

Received by Board of Health:

Owner's signature and address if not the applicant or applicant's authorization if not the owner

Date \_\_\_\_\_

Time \_\_\_\_\_

Signature \_\_\_\_\_

FORM B-1

PLANNING BOARD  
CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

CERTIFICATE OF APPROVAL OF A PRELIMINARY PLAN

\_\_\_\_\_, 19 \_\_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

It is hereby certified by the Planning Board of the City/Town of \_\_\_\_\_  
Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on  
\_\_\_\_\_, 19 \_\_\_\_\_, it was voted to approve/approve with modification a preliminary  
subdivision plan entitled: \_\_\_\_\_

by: \_\_\_\_\_ (designer) dated: \_\_\_\_\_

submitted by: \_\_\_\_\_ address: \_\_\_\_\_

owned by: \_\_\_\_\_ address: \_\_\_\_\_

originally filed with the Planning Board on \_\_\_\_\_ (date)

concerning the property located \_\_\_\_\_

and showing \_\_\_\_\_ proposed lots with the following modifications.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

A true copy, attest:

\_\_\_\_\_

Clerk, \_\_\_\_\_, Planning Board

Duplicate copy  
sent to applicant:

\_\_\_\_\_

FORM B-2

PLANNING BOARD  
CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

CERTIFICATE OF DISAPPROVAL OF A PRELIMINARY PLAN

\_\_\_\_\_, 19 \_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

It is hereby certified by the Planning Board of the City/Town of \_\_\_\_\_  
Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on  
\_\_\_\_\_, 19 \_\_\_\_, it was voted to disapprove a preliminary subdivision plan  
entitled: \_\_\_\_\_

by: \_\_\_\_\_ dated: \_\_\_\_\_

submitted by: \_\_\_\_\_ address: \_\_\_\_\_

owned by: \_\_\_\_\_ address: \_\_\_\_\_

originally filed with the Planning Board on \_\_\_\_\_

concerning property located \_\_\_\_\_

and showing \_\_\_\_\_ proposed lots with the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

A true copy, attest:

\_\_\_\_\_

Clerk, \_\_\_\_\_, Planning Board

Duplicate copy  
sent to applicant:

\_\_\_\_\_

FORM C

APPLICATION FOR APPROVAL OF DEFINITIVE SUBDIVISION PLAN

\_\_\_\_\_, 19 \_\_\_\_

To the Planning Board of the (City/Town) of \_\_\_\_\_

The undersigned, being the applicant as defined under Chapter 41, Section 81-L, for approval of a proposed subdivision shown on a plan entitled \_\_\_\_\_ by \_\_\_\_\_ (designer) dated \_\_\_\_\_, 19\_\_\_\_ and described as follows: located \_\_\_\_\_ number of lots proposed \_\_\_\_\_ (No.) total acreage of tract \_\_\_\_\_ hereby submits said plan as a DEFINITIVE plan in accordance with the Rules and Regulations of the \_\_\_\_\_ (city/town) Planning Board and makes application to the Board for approval of said plan.

The undersigned's title to said land is derived from \_\_\_\_\_ by deed dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ (county) District Registry of Deeds Book \_\_\_\_\_, Page \_\_\_\_\_, registered in the \_\_\_\_\_ (county) Registry District of the Land Court, Certificate of Title No. \_\_\_\_\_; and said land is free of encumbrances except for the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Said plan has ( ) has not ( ) evolved from a preliminary plan submitted to the Board on \_\_\_\_\_, 19\_\_\_\_ and approved (with modifications) ( ) (disapproved) ( ) on \_\_\_\_\_, 19\_\_\_\_.

The undersigned hereby applies for the approval of said DEFINITIVE plan by the Board, in belief that the plan conforms to the Board's Rules and Regulations.

Received by City/Town Clerk: \_\_\_\_\_ Applicant's signature \_\_\_\_\_  
Date \_\_\_\_\_ Applicant's address \_\_\_\_\_  
Time \_\_\_\_\_ Applicant's phone # \_\_\_\_\_  
Signature \_\_\_\_\_ Owner's signature and address if not the applicant or applicant's authorization if not the owner

Received by Board of Health \_\_\_\_\_  
Date \_\_\_\_\_  
Time \_\_\_\_\_  
Signature \_\_\_\_\_

Check-list of items to be submitted with application.

- 1. \_\_\_ Form C application
- 2. \_\_\_ Application fee:  
Amount submitted \$ \_\_\_\_\_
- 3. \_\_\_ Original Plan: # sheets \_\_\_\_\_
- 4. \_\_\_ Copies of Plan: # copies \_\_\_\_\_
- 5. \_\_\_ Engineering calculations

NOTE: The above check-list is only a recommendation. None of the above items can be required unless specifically required by the Planning Board's Rules and Regulations.

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PLANNING BOARD  
CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

CERTIFICATE OF APPROVAL OF A DEFINITIVE PLAN

\_\_\_\_\_, 19 \_\_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

It is hereby certified by the Planning Board of the City/Town of \_\_\_\_\_, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on \_\_\_\_\_, 19 \_\_\_\_\_, it was voted to approve a definitive subdivision plan entitled: \_\_\_\_\_

by: \_\_\_\_\_ (designer) dated: \_\_\_\_\_

submitted by: \_\_\_\_\_ address: \_\_\_\_\_

\_\_\_\_\_ owned by: \_\_\_\_\_

address: \_\_\_\_\_

originally filed with the planning board on \_\_\_\_\_ (date) concerning the property located \_\_\_\_\_

and showing \_\_\_\_\_ (No) \_\_\_\_\_ proposed lots, with the following condition(s):

Endorsement of the approval is conditional upon the provision of a performance guarantee, in the form of a \_\_\_\_\_ (Covenant/Agreement) duly executed and approved, to be noted on the plan and recorded with the \_\_\_\_\_ (county) County Registry of Deeds, said form of guarantee may be varied from time to time by the applicant subject to agreement on the adequacy and amount of said guarantee by the board.

NOTE TO PLANNING BOARD: Conditions should be written on the endorsed plan which is recorded or should be set forth in a separate instrument, which could be a copy of the approval vote, and which should be referenced on the endorsed and recorded plan.

NOTE TO CLERK: The Planning Board should be notified immediately of any appeal to the Superior or Land Court on this subdivision approval made within the statutory twenty (20) day appeal period. If no appeal is filed with your office the Planning Board should be notified at the end of the twenty (20) day appeal period in order that the plan(s) may be endorsed.

A true copy, attest:

\_\_\_\_\_  
Clerk, \_\_\_\_\_, Planning Board

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

Duplicate copy sent  
to applicant:

\_\_\_\_\_  
\_\_\_\_\_

FORM C-2

PLANNING BOARD

CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

CERTIFICATE OF APPROVAL WITH MODIFICATIONS OF A DEFINITIVE PLAN

\_\_\_\_\_, 19 \_\_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_

\_\_\_\_\_, Massachusetts

It is hereby certified by the Planning Board of the City/Town of \_\_\_\_\_, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on \_\_\_\_\_, 19 \_\_\_\_\_, it was voted to approve a definitive subdivision plan entitled: \_\_\_\_\_

by: \_\_\_\_\_ (designer) dated: \_\_\_\_\_

submitted by: \_\_\_\_\_ address: \_\_\_\_\_

\_\_\_\_\_ owned by: \_\_\_\_\_

address: \_\_\_\_\_

originally filed with the planning board on \_\_\_\_\_ (date) concerning the property located \_\_\_\_\_

and showing \_\_\_\_\_ (No) proposed lots, with the following modifications:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and with the following conditions:

Endorsement of the approval is conditional upon the provision of a performance guarantee, in the form of a \_\_\_\_\_ (Covenant/Agreement) duly executed and approved, to be noted on the plan and recorded with the \_\_\_\_\_ (county) County Registry of Deeds, said form of guarantee may be varied from time to time by the applicant subject to agreement on the adequacy and amount of said guarantee by the board. Modifications must also be shown on the plan before its endorsement and recording.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE TO PLANNING BOARD: Conditions should be written on the endorsed plan which is recorded or should be set forth in a separate instrument, which could be a copy of the approval vote, and which should be referenced on the endorsed and recorded plan.

NOTE TO CLERK: The Planning Board should be notified immediately of any appeal to the Superior or Land Court on this subdivision approval made within the statutory twenty (20) day appeal period. If no appeal is filed with your office the Planning Board should be notified at the end of the twenty (20) day appeal period in order that the plan(s) may be endorsed.

A true copy, attest:

\_\_\_\_\_  
Clerk, \_\_\_\_\_, Planning Board

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

Duplicate copy sent to applicant:

\_\_\_\_\_  
\_\_\_\_\_

FORM C-3

PLANNING BOARD  
CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS

CERTIFICATE OF DISAPPROVAL OF A DEFINITIVE PLAN

\_\_\_\_\_, 19 \_\_\_\_

It is hereby certified by the Planning Board of the City/Town of \_\_\_\_\_, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on \_\_\_\_\_, 19 \_\_\_\_ , it was voted to disapprove a definitive subdivision plan

entitled: \_\_\_\_\_

by: \_\_\_\_\_ (designer) dated: \_\_\_\_\_

submitted by: \_\_\_\_\_ address: \_\_\_\_\_

\_\_\_\_\_ owned by: \_\_\_\_\_

address: \_\_\_\_\_

originally filed with the planning board on \_\_\_\_\_ (date) concerning the the property located \_\_\_\_\_

and showing \_\_\_\_\_ (No.) proposed lots because the plan fails to conform to the Planning Planning Board's Rules and Regulations or the recommendations of the Board of Health in the following respects:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE TO CLERK: The Planning Board should be notified immediately of any appeal to the Superior or Land Court on this subdivision approval made within the statutory twenty (20) day appeal period.

A true copy, attest:

\_\_\_\_\_  
Clerk, \_\_\_\_\_ Planning Board

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

Duplicate copy sent to applicant:

\_\_\_\_\_  
\_\_\_\_\_

\* Massachusetts Federation of Planning and Appeals Boards 1972 (Revised 1980, 1983, 1988)

FORM D

DESIGNER'S CERTIFICATE

\_\_\_\_\_, 19\_\_\_\_

To the Planning Board of the City/Town of \_\_\_\_\_

In preparing the plan entitled \_\_\_\_\_ and dated \_\_\_\_\_ I hereby certify that the above named plan and accompanying data is true and correct to the accuracy required by the current Rules and Regulations Governing the Sub-division of Land in \_\_\_\_\_ (city/town) \_\_\_\_\_ Massachusetts and required by the rules of the Massachusetts Registries of Deeds and my source 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 \_\_\_\_\_ Registry in Book \_\_\_\_\_, page \_\_\_\_\_.
2. Other deeds and plans, as follows \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Oral information furnished by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Actual measurement on the ground from a starting point established by \_\_\_\_\_  
\_\_\_\_\_
5. Other sources \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Seal of Surveyor)

Signed \_\_\_\_\_  
Registered Land Surveyor)

\_\_\_\_\_  
\_\_\_\_\_

Address

Registration No. \_\_\_\_\_

(Seal of Professional Engineer)

Signed \_\_\_\_\_  
(Registered Professional Engineer)

\_\_\_\_\_  
\_\_\_\_\_

Address

Registration No. \_\_\_\_\_

**FORM E**  
**PLANNING BOARD**  
**CITY/TOWN OF \_\_\_\_\_, MASSACHUSETTS**

**CERTIFICATE OF AMENDMENT, MODIFICATION OR RESCISSION OF APPROVAL  
OF DEFINITIVE SUBDIVISION PLAN**

\_\_\_\_\_, 19 \_\_\_\_\_

City/Town Clerk

City/Town of \_\_\_\_\_, Massachusetts

On the motion/petition of \_\_\_\_\_, dated \_\_\_\_\_ and in accordance with Massachusetts General Laws, Chapter 41, Section 81-W, it is hereby certified by the Planning Board of the city/town of \_\_\_\_\_, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on \_\_\_\_\_ (date), it was voted to amend/modify/rescind the approval of the definitive subdivision plan of land entitled: \_\_\_\_\_ owned by \_\_\_\_\_ of \_\_\_\_\_ plan(s) dated \_\_\_\_\_, (and revised \_\_\_\_\_ (date)), by \_\_\_\_\_ (designer), and recorded at the \_\_\_\_\_ County Registry of Deeds, Plan Book \_\_\_\_\_, Page \_\_\_\_\_, (performance guarantee being \_\_\_\_\_ and recorded Book \_\_\_\_\_, Page \_\_\_\_\_), land located \_\_\_\_\_ and showing \_\_\_\_\_ (No.) proposed lots, by making the following amendments/modification(s):/ by rescinding the approval for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All prior conditions of approval shall remain in full force and effect until such time as they are met; pursuant to Massachusetts General Laws, Chapter 41, Section 81-W, this Amendment/Modification/Rescission shall take effect when duly recorded by the Planning Board at the \_\_\_\_\_ County Registry of Deeds the plan or originally approved, or a copy thereof, a certified copy of this vote making such Amendment/Modification or Rescission, and any plan or other document referred to in this vote. Said recording to be at the expense of the applicant in the case of Amendment or Modification.

The Amendment/Modification/Rescission of the approval of this plan does/does not affect the lots in the subdivision which have been sold or mortgaged in good faith and for a valuable consideration. The consent of the owner(s) of lots, and of the holder(s) of the mortgage or mortgages affected are attached.

**NOTE TO CLERK:** The Planning Board should be notified immediately of any appeal to the Superior or Land Court on this subdivision Amendment/Modification/Rescission of the approval made within the statutory 20-day appeal period.

If no appeal is filed with your office, the Planning Board should be notified at the end of the 20-day appeal period in order that the originally approved plan may receive an appropriate endorsement and be recorded along with a registered copy of the certified vote Amending/Modifying/Rescinding the approval.

A true copy, attest:

\_\_\_\_\_  
\_\_\_\_\_  
Clerk, \_\_\_\_\_, Planning Board  
Duplicate copy sent to applicant:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Planning Board

Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**FORM F**  
**COVENANT**

\_\_\_\_\_ 19 \_\_\_\_  
\_\_\_\_\_ (city/town) \_\_\_\_\_, Massachusetts

KNOW ALL MEN by these presents that the undersigned has submitted an application dated \_\_\_\_\_, to the \_\_\_\_\_ (city/town) Planning Board for approval of a definitive plan of a subdivision of land entitled: \_\_\_\_\_, plan by: \_\_\_\_\_ (designer), dated: \_\_\_\_\_ and owned by: \_\_\_\_\_, address: \_\_\_\_\_, land located: \_\_\_\_\_, and showing \_\_\_\_\_ (No.) proposed lots. The undersigned has requested the Planning Board to approve such plan without requiring a performance bond.

IN CONSIDERATION of said Planning Board of \_\_\_\_\_ (city/town) in the county of \_\_\_\_\_ (county) approving said plan without requiring a performance bond, the undersigned hereby covenants and agrees with the inhabitants of the \_\_\_\_\_ (city/town) as follows:

1. That the undersigned is the owner\* in fee simple absolute of all the land included in the subdivision and that there are no mortgages of record or otherwise on any of the land, except for those described below, and that the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.  
\*If there is more than one owner, all must sign. "Applicant" may be an owner or his agent or representative, or his assigns, but the owner of record must sign the covenant.
2. That the undersigned will not sell or convey any lot in the subdivision or erect or place any permanent building on any lot until the construction of ways and installation of municipal services necessary to adequately serve such lot has been completed in accordance with the covenants, conditions, agreements, terms and provisions as specified in the following:
  - a. The Application for Approval of Definitive Plan (Form C).
  - b. The Subdivision Control Law and the Planning Board's Rules and Regulations governing this subdivision.
  - c. The certificate of approval and the conditions of approval specified therein, issued by the Planning Board, dated \_\_\_\_\_.
  - d. The definitive plan as approved and as qualified by the certificate of approval.
  - e. Other document(s) specifying construction to be completed, namely:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

However, a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell or convey any lot, subject only to that portion of this covenant which provides that no lot be sold or conveyed or shall be built upon until ways and services have been provided to serve such lot.

3. That this covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon the land.
4. That particular lots within the subdivision shall be released from the foregoing conditions upon the recording of a certificate of performance executed by a majority of the Planning Board and enumerating the specific lots to be released; and
5. That nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board.

6. That the undersigned agrees to record this covenant with the \_\_\_\_\_ (county) \_\_\_\_\_ County Registry of Deeds, forthwith, or to pay the necessary recording fee to the said Planning Board in the event the Planning Board shall record this agreement forthwith. Reference to this covenant shall be entered upon the definitive subdivision plan as approved.
7. A deed of any part of the subdivision in violation of the covenant shall be voidable by the grantee prior to the release of the covenant; but not later than three (3) years from the date of such deed, as provided in Section 81-U, Chapter 41, M.G.L.
8. That this covenant shall be executed before endorsement of approval of the definitive plan by the Planning Board and shall take effect upon the endorsement of approval.
9. Upon final completion of the construction of ways and installation of municipal services as specified herein, on or before \_\_\_\_\_ (Planning Board date for construction and installation to be completed) \_\_\_\_\_ the Planning Board shall release this covenant by an appropriate instrument, duly acknowledged. Failure to complete construction and installation within the time specified herein or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant, shall result in automatic rescission of the approval of the plan. Upon performance of this covenant with respect to any lot, the Planning Board may release such lot from this covenant by an appropriate instrument duly recorded.
10. Nothing herein shall prohibit the applicant from varying the method of securing the construction of ways and 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 described in M.G.L., Chapter 41, Section 81-U, as long as such security is sufficient in the opinion of the Planning Board to secure performance of the construction and installation; and

For title to the property, see deed from \_\_\_\_\_, dated \_\_\_\_\_ recorded in \_\_\_\_\_ (county) Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, or registered in \_\_\_\_\_ (county) Land Registry as Document No. \_\_\_\_\_, and noted on certificate of title no. \_\_\_\_\_, in Registration Book \_\_\_\_\_, Page \_\_\_\_\_.

The present holder of a mortgage upon the property is \_\_\_\_\_ (name) of \_\_\_\_\_ (address). The mortgage is dated \_\_\_\_\_ and recorded in \_\_\_\_\_ (county) Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, or registered in \_\_\_\_\_ (county) Land Registry as Document No. \_\_\_\_\_, and noted on certificate of title no. \_\_\_\_\_, in Registration Book \_\_\_\_\_, Page \_\_\_\_\_. The mortgagee agrees to hold the mortgage subject to the covenants set forth above and agrees that the covenants shall have the same status, force and effect as though executed and recorded before the taking of the mortgage and further agrees that the mortgage shall be subordinate to the above covenant.

\_\_\_\_\_, spouse of the undersigned applicant hereby agrees that such interest as I, we, may have in the premises shall be subject to the provisions of this covenant and insofar as is necessary releases all rights of tenancy by the dower or homestead and other interests therein.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ (day) of \_\_\_\_\_ (month), 19 \_\_\_\_\_.

_____	_____
Owner	_____
_____	_____
Spouse of Owner	_____
_____	_____
Mortgage	Acceptance by a Majority of the Planning Board of (name of city/town)

- One acknowledgement must be completed for each of the following:
- Planning Board representative
  - Owner or owners
  - Spouse of the owner
  - Mortgagee

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ (county), ss \_\_\_\_\_, 19 \_\_\_\_\_

Then personally appeared before me the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be \_\_\_\_\_ (his/her/its) free act and deed.

\_\_\_\_\_  
Signature of Notary Public

My commission expires \_\_\_\_\_

Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**SCHEDULE G**  
**PERFORMANCE SECURED**  
**BY DEPOSIT OF MONEY**

\_\_\_\_\_ 19 \_\_\_\_  
\_\_\_\_\_ (city/town) \_\_\_\_\_, Massachusetts

AGREEMENT made this date between the (city/town) of \_\_\_\_\_ (name of city/town) and \_\_\_\_\_ (name of applicant), hereinafter referred to as "the applicant" of \_\_\_\_\_ (address of applicant), to secure construction of ways and installation of municipal services in the subdivision of land shown on a plan entitled: \_\_\_\_\_ (name of subdivision), by: \_\_\_\_\_ (name of designer), dated: \_\_\_\_\_ (date of plan), owned by: \_\_\_\_\_ (name of owner), address: \_\_\_\_\_ (address of owner), land located: \_\_\_\_\_ (street address or other identification of location), and showing \_\_\_\_\_ (No.) proposed lots.

KNOW ALL MEN by these presents that the applicant hereby binds and obligates himself, his or its executors, administrators, devisees, heirs, successors and assigns to the (city/town) of \_\_\_\_\_ (name of city/town), a Massachusetts municipal corporation, acting through its Planning Board, in the sum of \_\_\_\_\_ (dollar amount) dollars, and has secured this obligation by depositing with the Treasurer of said (city/town) of \_\_\_\_\_ (name of city/town) a deposit of money in the above sum to be deposited in a subdivision escrow account in the name of the (city/town). The deposit of money is to be used to insure the performance by the applicant of all covenants, conditions, agreements, terms and provisions contained in the following:

1. Application for Approval Definitive Plan (Form C), dated: \_\_\_\_\_ (date of application);
2. The subdivision control law and the Planning Board's Rules and Regulations governing this subdivision and dated \_\_\_\_\_ (date of subdivision rules and regulations which govern plan);
3. Conditions included in the Certificate of Approval issued by the Planning Board and dated \_\_\_\_\_ (date of vote to approve);
4. The definitive plan as qualified by the Certificate of Approval; and
5. Other document(s) specifying construction or installation to be completed, namely: (specify other documents, if any, and list lots secured if only a part of the subdivision is secured by a deposit of money) \_\_\_\_\_

This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all obligations or has elected to provide another method of securing performance as provided in M.G.L., Chapter 41, Section 81-U.

Upon completion by the applicant of all obligations as specified herein, on or before \_\_\_\_\_ (date construction and installation is to be completed, as specified by applicant), or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant, the deposit of money including all interest accrued thereon shall be returned to the applicant by said (city/town) and this agreement shall become void. In the event the applicant should fail to complete the construction of ways and installation of municipal services as specified in this agreement and within the time herein specified, the deposit of money may be applied in whole, or in part, by the Planning Board for the benefit of the (city/town) of \_\_\_\_\_ (name of city/town) to the extent of the reasonable cost to the (city/town) of completing such construction or installation as specified in this agreement. Any unused money and the interest accrued on the deposit of money will be returned to the applicant upon completion of the work by said (city/town); and

The (city/town) of \_\_\_\_\_ (name of city/town) acting by and through its Planning Board hereby agrees to accept the aforesaid deposit of money in the amount specified in this agreement as security for the performance of the project as aforesaid.

Any amendments to this agreement and/or to the aforesaid security shall be agreed upon in writing by all parties to this agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ (day) of \_\_\_\_\_ (month) , 19 \_\_\_\_ .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signatures of a Majority of the Planning Board  
of the (city/town) of \_\_\_\_\_  
(name of city/town)

\_\_\_\_\_  
Signature of Applicant

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ (county) , ss \_\_\_\_\_ , 19 \_\_\_\_

Then personally appeared \_\_\_\_\_ (name) one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town) , Massachusetts and the applicant and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

- Duplicate copy to:
- Applicant
  - Planning Board
  - City/Town Clerk
  - City/Town Treasurer
  - City Council/Board of Selectmen

FORM H

PERFORMANCE SECURED BY  
A SURETY COMPANY

\_\_\_\_\_, 19 \_\_\_\_  
(city/town) \_\_\_\_\_, Massachusetts

AGREEMENT made this date between the (city/town) of \_\_\_\_\_ (name of city/town) and \_\_\_\_\_ (name of applicant), hereinafter referred to as "the applicant" of \_\_\_\_\_ (address of applicant); and \_\_\_\_\_ (name of surety company), a corporation duly organized and existing under the laws of the state of \_\_\_\_\_ (state where incorporated) and having a usual place of business at \_\_\_\_\_ (address of surety company), hereinafter referred to as "the surety," to secure construction of ways and installation of municipal services in the subdivision of land shown on a plan entitled: \_\_\_\_\_ (name of subdivision), by: \_\_\_\_\_ (name of designer), dated: \_\_\_\_\_ owned by: \_\_\_\_\_ (name of owner), address: \_\_\_\_\_ (address of owner) land located: \_\_\_\_\_ (street address or other identification of location), and showing \_\_\_\_\_ (No.) proposed lots.

KNOW ALL MEN by these presents that the applicant and the surety hereby bind and obligate themselves, their, or its executors, administrators, devisees, heirs, successors and assigns, jointly and severally to the (city/town) of \_\_\_\_\_ (name of city/town), a Massachusetts municipal corporation, acting through its Planning Board, in the sum of \_\_\_\_\_ (dollar amount) dollars, and have secured this obligation by depositing with the Treasurer of said (city/town) of \_\_\_\_\_ (name of city/town) a surety bond to secure the above sum of money, said surety bond to be used to insure the performance by the applicant of all covenants, conditions, agreements, terms and provisions contained in the following:

1. Application for Approval Definitive Plan (Form C), dated: \_\_\_\_\_ (date of application);
2. The subdivision control law and the Planning Board's Rules and Regulations governing this subdivision and dated \_\_\_\_\_ (date of subdivision rules and regulations which govern plan);
3. Conditions included in the Certificate of Approval issued by the Planning Board and dated \_\_\_\_\_ (date of vote to approve);
4. The definitive plan as qualified by the Certificate of Approval; and
5. Other document(s) specifying construction or installation to be completed, namely: (specify other documents, if any, and list lots secured if only a part of the subdivision is secured by a surety company) \_\_\_\_\_

This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all obligations, or has elected to provide another method of securing performance as provided in M.G.L., Chapter 41, Section 81-U.

Upon completion by the applicant of all obligations as specified herein, on or before \_\_\_\_\_ (date construction and installation is to be completed, as specified by applicant), or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant and the surety, the interest of the (city/town) in such surety bond shall be released, the surety bond shall be returned to the surety, and this agreement shall become void. In the event the applicant should fail to complete the construction of ways and installation of municipal services as specified in this agreement and within the time herein specified, the surety bond may be enforced, in whole, or in part, by the Planning Board for the benefit of the (city/town) of \_\_\_\_\_ (name of city/town) to the extent of the reasonable cost to the city/town of completing such construction or installation as specified in this agreement. Any unused portion of the surety bond will be released and the unused portion of the surety bond will be returned to the surety upon completion of the work by said (city/town); and

The (city/town) of \_\_\_\_\_ (name of city/town) acting by and through its Planning Board hereby agrees to accept the aforesaid surety bond in the amount specified in this agreement as security for the performance of the project as aforesaid.

Any amendments to this agreement and/or to the aforesaid security shall be agreed upon in writing by all parties to this agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ (day) of \_\_\_\_\_ (month) , 19 \_\_\_\_\_ .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signatures of a Majority of the Planning Board of the (city/town) of \_\_\_\_\_ (name of city/town)

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Authorized Representative of the Surety

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ (county) , ss \_\_\_\_\_ , 19 \_\_\_\_\_

Then personally appeared \_\_\_\_\_ (name) one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town) , Massachusetts, the applicant, and the authorized representative of the surety, and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

- Duplicate copy to:
- Applicant
  - Surety
  - Planning Board
  - City/Town Clerk
  - City/Town Treasurer
  - City Council/Board of Selectmen

SCHEDULE I

PERFORMANCE SECURED BY REGISTERED  
NEGOTIABLE SECURITIES (BONDS,  
STOCKS, PUBLIC SECURITIES)

\_\_\_\_\_ 19 \_\_\_\_  
(city/town) \_\_\_\_\_, Massachusetts

AGREEMENT made this date between the (city/town) of \_\_\_\_\_ (name of city/town) and  
(name of applicant) \_\_\_\_\_, hereinafter referred to as "the applicant" of \_\_\_\_\_ (address  
of applicant) \_\_\_\_\_, to secure construction of ways and installation of municipal services  
in the subdivision of land shown on a plan entitled: \_\_\_\_\_ (name of subdivision), by:  
(name of designer) \_\_\_\_\_, dated: \_\_\_\_\_ (date of plan), owned by: \_\_\_\_\_ (name of owner),  
address: \_\_\_\_\_ (address of owner), land located: \_\_\_\_\_ (street address or other identification of  
location), and showing \_\_\_\_\_ (No.) proposed lots.

KNOW ALL MEN by these presents that the applicant hereby binds and obligates himself, his or  
its executors, administrators, devisees, heirs, successors and assigns to the (city/town) of  
\_\_\_\_\_ (name of city/town), a Massachusetts municipal corporation, acting through its  
Planning Board, in the sum of \_\_\_\_\_ (dollar amount) dollars and has secured this obligation by  
depositing with the Treasurer of said (city/town) of \_\_\_\_\_ (name of city/town) an instrument of  
transfer to the Planning Board of said (city/town), duly acknowledged, and prepared in a suitable form  
pursuant to the provisions of the Massachusetts General Laws for the following type of negotiable  
security \_\_\_\_\_ (type of security), said instrument of transfer shall also specify the  
above sum of money as a security for performance by the applicant of construction of the ways and  
installation of municipal services in the aforesaid subdivision and, where apt, a new certificate shall  
also be deposited with said Treasurer. Said certificate shall be free from encumbrances and shall be  
issued pursuant to Chapter 156-B, Section 30, M.G.L. in the name of the Planning Board of said  
(city/town) and shall express on its face that it is held as collateral security to insure the performance  
by the applicant of all covenants, conditions, agreements, terms and provisions contained in the  
following:

1. Application for Approval Definitive Plan (Form C), dated: \_\_\_\_\_ (date of application);
2. The subdivision control law and the Planning Board's Rules and Regulations governing this sub-  
division and dated \_\_\_\_\_ (date of subdivision rules and regulations which govern plan);
3. Conditions included in the Certificate of Approval issued by the Planning Board and dated  
\_\_\_\_\_ (date of vote to approve);
4. The definitive plan as qualified by the Certificate of Approval; and
5. Other document(s) specifying construction or installation to be completed, namely: (specify other  
documents, if any, and list lots secured if only a part of the subdivision is secured by a negotiable  
security) \_\_\_\_\_

This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all obligations, or has elected to provide another method of securing performance as provided in M.G.L., Chapter 41, Section 81-U.

Upon completion by the applicant of all obligations as specified herein, on or before \_\_\_\_\_ (date construction and installation is to be completed, as specified by applicant) \_\_\_\_\_, or such later date as may be specified by vote of the Planning Board with the written concurrence of the applicant, the interest of the (city/town) in the aforesaid security shall be released and said security shall be returned, by appropriate instrument, to the applicant by the (city/town) and this agreement shall become void. In the event the applicant should fail to complete the construction of ways and installation of municipal services as specified in this agreement and within the time specified herein, the security, namely \_\_\_\_\_ (type of security) \_\_\_\_\_ may be negotiated in whole, or in part, by the Planning Board for the benefit of the (city/town) of \_\_\_\_\_ (name of city/town) \_\_\_\_\_ to the extent of the reasonable cost to the (city/town) of completing such construction or installation as specified in this agreement. Any unused funds resulting from the negotiation of aforesaid security by the (city/town) or any securities which are not negotiated by the (city/town) will be returned to the applicant upon completion of the work by said (city/town); and

The (city/town) of \_\_\_\_\_ (name of city/town) acting by and through its Planning Board hereby agrees to accept the aforesaid negotiable security, namely \_\_\_\_\_ (type of security) as specified in this agreement as security for the performance of the project as aforesaid.

Any amendments to this agreement and/or to the aforesaid security shall be agreed upon in writing by all parties to this agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ (day) of \_\_\_\_\_ (month) , 19 \_\_\_\_\_ .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signatures of a Majority of the Planning Board  
of the (city/town) of \_\_\_\_\_  
(name of city/town)

\_\_\_\_\_  
Signature of Applicant

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ (county) , ss \_\_\_\_\_ , 19 \_\_\_\_\_

Then personally appeared \_\_\_\_\_ (name) one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town) , Massachusetts and the applicant and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Duplicate copy to:

- Applicant
- Corporation originally issuing the negotiable security
- Planning Board
- City/Town Clerk
- City/Town Treasurer
- City Council/Board of Selectmen

NOTE: Many securities are available in two forms—registered and bearer. Registered securities bear the owner's name and the issuing party keeps a record of the owner. Bearer securities are not registered as to ownership. Registered securities generally facilitate better safekeeping but can be bothersome and take time to sell since it would have to be re-registered. The bearer form of security is therefore preferable when the security is to change hands.

§ Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**FORM J**  
**PERFORMANCE SECURED BY**  
**BANK PASSBOOK**

\_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_, Massachusetts

**AGREEMENT** made this date between the (city/town) of \_\_\_\_\_ (name of city/town) and \_\_\_\_\_ (name of applicant), hereinafter referred to as "the applicant" of \_\_\_\_\_ (address of applicant), to secure construction of ways and installation of municipal services in the subdivision of land shown on a plan entitled: \_\_\_\_\_ (name of subdivision), by: \_\_\_\_\_ (name of designer), dated: \_\_\_\_\_ (date of plan), owned by: \_\_\_\_\_ (name of owner), address: \_\_\_\_\_ (address of owner) land located: \_\_\_\_\_ (street address or other identification of location), and showing \_\_\_\_\_ (No.) proposed lots.

KNOW ALL MEN by these presents that the applicant hereby binds and obligates himself, his, or its executors, administrators, devisees, heirs, successors and assigns to the (city/town) of \_\_\_\_\_ (name of city/town), a Massachusetts municipal corporation, acting through its Planning Board, in the sum of \_\_\_\_\_ (dollar amount) dollars, and has secured this obligation by deposit with the Treasurer of said (city/town) of \_\_\_\_\_ (name of city/town), a deposit of money for the above sum represented by Bank Passbook No. \_\_\_\_\_ (No.) with an order drawn on the \_\_\_\_\_ (name of Bank) Bank of \_\_\_\_\_ (address of Bank), payable to the order of the planning board of the (city/town) of \_\_\_\_\_ (name of city/town), said sum to be used to insure the performance by the applicant of all covenants, conditions, agreements, terms and provision contained in the following:

1. Application for Approval Definitive Plan (Form C), dated: \_\_\_\_\_ (date of application) ;
2. The subdivision control law and the Planning Board's Rules and Regulations governing this subdivision and dated \_\_\_\_\_ (date of subdivision rules and regulations which govern plan) ;
3. Conditions included in the Certificate of Approval issued by the Planning Board and dated \_\_\_\_\_ (date of vote to approve) ;
4. The definitive plan as qualified by the Certificate of Approval; and

5. Other document(s) specifying construction or installation to be completed, namely: (specify other documents, if any, and list lots secured if only a part of the subdivision is secured by a bank passbook)

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This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all obligations, or has elected to provide another method of securing performance as provided in M.G.L., Chapter 41, Section 81-U.

Upon completion by the applicant of all obligations as specified herein, or before \_\_\_\_\_ (date construction and installation is to be completed, as specified by applicant), or such later date as may be specified by vote of the Planning Board with the written concurrence of the applicant and the bank, the bank passbook shall be returned to the applicant by the (city/town) and this agreement shall become void. In the event the applicant should fail to complete the construction of ways and installation of municipal services as specified in this agreement and within the time herein specified, the funds on deposit in the account represented by the aforesaid bank passbook and order drawn thereon may be applied in whole, or in part, by the Planning Board for the benefit of the (city/town) of \_\_\_\_\_ (name of city/town) to the extent of the reasonable cost to the (city/town) of completing such construction or installation as specified in this agreement. Any unused funds and the bank passbook will be returned to the applicant upon completion of the work by said (city/town).

The (city/town) of \_\_\_\_\_ (name of city/town) acting by and through its Planning Board hereby agrees to accept the aforesaid bank passbook and order drawn thereon as security for the performance of this project; and

The \_\_\_\_\_ (name) Bank of \_\_\_\_\_ (address) hereby agrees not to release any funds from the account represented by the aforesaid bank passbook or otherwise amend or make a change to the aforesaid bank passbook or to the order drawn thereon without written agreement by the Planning Board.

Any amendments to this agreement and/or to the aforesaid security shall be agreed upon in writing by all parties to this agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ (date) of \_\_\_\_\_ (month), 19\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signatures of a Majority of the Members of the Planning Board of the (city/town) of \_\_\_\_\_ (name of city/town)

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Authorized Representative of the \_\_\_\_\_ bank.

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ (county), ss \_\_\_\_\_, 19\_\_\_\_\_

Then personally appeared \_\_\_\_\_ (name) one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town), Massachusetts, the applicant, and the authorized representative of the \_\_\_\_\_ (name) Bank, and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

- Duplicate copy to:  
Applicant  
\_\_\_\_\_ (name) Bank  
Planning Board  
City/Town Clerk  
City/Town Treasurer  
City Council/Board of Selectmen

§ Massachusetts Federation of Planning and Appeals Boards 1972  
(Revised 1980, 1983, 1988)

**FORM K**  
**PERFORMANCE SECURED BY**  
**LENDER'S AGREEMENT**

\_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_, Massachusetts  
(city/town)

AGREEMENT made this date between the (city/town) of \_\_\_\_\_ (name of city/town) \_\_\_\_\_;  
(name of applicant) \_\_\_\_\_, hereinafter referred to as "the applicant" of \_\_\_\_\_ (address  
of applicant) \_\_\_\_\_; and \_\_\_\_\_ (name of bank that has first mortgage) \_\_\_\_\_, hereinafter referred to  
as "the lender" of \_\_\_\_\_ (address of lender) \_\_\_\_\_, to secure construction of ways and installa-  
tion of municipal services in the subdivision of land shown on a plan entitled: \_\_\_\_\_ (name of  
subdivision) \_\_\_\_\_, by: \_\_\_\_\_ (name of designer) \_\_\_\_\_, dated: \_\_\_\_\_, owned by:  
(name of owner) \_\_\_\_\_, address: \_\_\_\_\_ (address of owner) \_\_\_\_\_ land located: \_\_\_\_\_ (street  
address or other identification of location) \_\_\_\_\_, and showing (No.) \_\_\_\_\_ proposed lots.

KNOW ALL MEN by these presents that the applicant has recorded a first mortgage with the lender dated \_\_\_\_\_, recorded in the \_\_\_\_\_ (county) Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, covering (area of plan that is covered by first mortgage) as shown on the above-referenced plan as security for the payment of a certain note in the principal sum of \_\_\_\_\_ (dollar amount) dollars, and that the applicant and lender hereby bind and obligate themselves, their, or its executors, administrators, devisees, heirs, successors and assigns, jointly and severally to the (city/town) of \_\_\_\_\_ (name of city/town) \_\_\_\_\_, a Massachusetts municipal corporation, acting through its Planning Board in the sum of \_\_\_\_\_ (dollar amount) dollars, and have secured this obligation by the lender retaining said sum of money of said principal sum otherwise due the applicant to insure the performance by the applicant of all covenants, conditions, agreements, terms and provisions contained in the following:

1. Application for Approval Definitive Plan (Form C), dated: \_\_\_\_\_ (date of application) \_\_\_\_\_;
2. The subdivision control law and the Planning Board's Rules and Regulations governing this subdivision and dated \_\_\_\_\_ (date of subdivision rules and regulations which govern plan) \_\_\_\_\_;
3. Conditions included in the Certificate of Approval issued by the Planning Board and dated \_\_\_\_\_ (date of vote to approve) \_\_\_\_\_;
4. The definitive plan as qualified by the Certificate of Approval; and
5. Other document(s) specifying construction or installation to be completed, namely: (specify other documents, if any, and list lots secured if only a part of the subdivision is secured by a lender's agreement) \_\_\_\_\_

This agreement shall remain in full force and effect until the applicant has fully and satisfactorily performed all obligations.

Upon completion by the applicant of obligations as specified in the following schedule:



COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss \_\_\_\_\_, 19\_\_\_\_

Then personally appeared \_\_\_\_\_ (name) one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town), Massachusetts, the applicant, and the authorized representative of the lender, and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

- Duplicate copy to:  
Applicant  
Lender  
Planning Board  
City/Town Clerk  
City/Town Treasurer  
City Council/Board of Selectmen

**FORM L**  
**CONVEYANCE OF EASEMENTS AND UTILITIES**

\_\_\_\_\_, (name of owner) of \_\_\_\_\_ (address of owner, including county) \_\_\_\_\_  
County, Massachusetts; for the consideration of \_\_\_\_\_ (state  
consideration) \_\_\_\_\_, hereby grants, transfers and delivers unto the (city/town) of \_\_\_\_\_  
a municipal corporation in \_\_\_\_\_ County, the following:

- A. The perpetual rights and easements to construct, inspect, repair, 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 for the aforesaid purposes, in, through, and under the whole of \_\_\_\_\_, dated \_\_\_\_\_, said plan is made and said plan is incorporated herein for a complete and detailed description of said roads.
- B. The perpetual rights and easements to use for \_\_\_\_\_ (describe use or purpose) of 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 (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 \_\_\_\_\_  
19 \_\_\_\_\_, and recorded in \_\_\_\_\_ District Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, or under Certificate of Title No. \_\_\_\_\_, registered in \_\_\_\_\_ District of the Land Court, Book \_\_\_\_\_ Page \_\_\_\_\_.

This is not a homestead property.

And (to be completed if a mortgage exists) \_\_\_\_\_  
(name and address \_\_\_\_\_)

the present holder of a mortgage on the above described land, which mortgage is dated \_\_\_\_\_, 19 \_\_\_\_\_, and recorded in said Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, for consideration paid, hereby releases unto the (City/Town) forever from the operation of said mortgages, the rights and easements hereinabove granted and assents thereto.

\_\_\_\_\_  
Authorized Signature of Mortgagee

\_\_\_\_\_  
Owner

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ day  
of \_\_\_\_\_, 19 \_\_\_\_\_.

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 19\_\_\_\_

Then personally appeared the above named \_\_\_\_\_  
and acknowledged the foregoing to be \_\_\_\_\_ free act and deed, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

NOTE: This conveyance is not effective until accepted by town meeting or city council.

**FORM M  
PLAN REVIEW REFERRAL FORM**

\_\_\_\_\_ Planning Board  
(City or Town name)

Date: \_\_\_\_\_

TO:

- \_\_\_\_\_ Building Inspector/Commissioner
- \_\_\_\_\_ Water Commission\*
- \_\_\_\_\_ Sewer Commission\*
- \_\_\_\_\_ Department of Public Works\*
- \_\_\_\_\_ Conservation Commission
- \_\_\_\_\_ Public Safety Commission
- \_\_\_\_\_ Police Department
- \_\_\_\_\_ Fire Department
- \_\_\_\_\_ City or Town Engineer
- \_\_\_\_\_ Highway Superintendent\*
- \_\_\_\_\_ Energy Coordinator

- \_\_\_\_\_ Office of Community Development
- \_\_\_\_\_ Board of Selectmen
- \_\_\_\_\_ City Council
- \_\_\_\_\_ Board of Aldermen
- \_\_\_\_\_ Parks and Recreation Commission
- \_\_\_\_\_ Local utility companies:
- \_\_\_\_\_ gas
- \_\_\_\_\_ electric
- \_\_\_\_\_ telephone
- \_\_\_\_\_ Other \_\_\_\_\_

\*In some communities, the duties of these officers or boards may be carried out by the Board of Selectmen or other designated officer.

A definitive Subdivision plan entitled " \_\_\_\_\_ " and dated \_\_\_\_\_, located at \_\_\_\_\_ was submitted to the Planning Board on \_\_\_\_\_, by \_\_\_\_\_, whose address is \_\_\_\_\_. In accordance with Section \_\_\_\_\_ of the Planning Board's subdivision rules and regulations, this plan has been submitted to your agency for review and recommendations. Please consider the following subject area(s), among others, in your review of this plan:

Planning Board to check off applicable subject area(s) to be reviewed.

- |                                  |                       |
|----------------------------------|-----------------------|
| _____ Water system               | _____ Open space      |
| _____ Sewer system               | _____ Street lights   |
| _____ Road design and layout     | _____ Street names    |
| _____ Wetlands, floodplains      | _____ Health          |
| _____ Fire protection            | _____ Utility system: |
| _____ Police protection          | _____ gas             |
| _____ Engineering specifications | _____ electric        |
| _____ Drainage                   | _____ telephone       |
| _____ Other _____                |                       |

Please make any comments and recommendations regarding this plan on the attached form, or in a written report, and submit to the Planning Board no later than \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Planning Board

**For Your Information:** A public hearing has been scheduled for \_\_\_\_\_ p.m. on \_\_\_\_\_ at \_\_\_\_\_ to discuss this plan. The Planning Board may disapprove the plan only if it fails to conform to the Rules and Regulations of the Planning Board or the recommendations of the Board of Health.

**FORM M-1  
PLAN REVIEW REPORT FORM**

TO: The \_\_\_\_\_ Planning Board

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Comments and recommendations regarding the definitive subdivision plan entitled  
" \_\_\_\_\_ " and dated  
\_\_\_\_\_

The undersigned recommends:

\_\_\_\_\_ approval; \_\_\_\_\_ approval with modifications; \_\_\_\_\_ disapproval of the above-named subdivision plan insofar as its area of jurisdiction is concerned. The reasons for this recommendation are as follows:

\_\_\_\_\_  
Name of officer, agency, or board

The Planning Board will take into consideration any recommendations made hereon before taking legal action on the definitive subdivision plan. Lack of a timely report by any officer, agency, or board will be so recorded in the minutes of the Planning Board.

**FORM N**  
**CONTROL FORM FOR PROCESSING**  
**SUBDIVISION PLAN AND CONSTRUCTION**

SUBDIVISION PLAN ENTITLED: \_\_\_\_\_

LAND LOCATED: \_\_\_\_\_

BY: \_\_\_\_\_

APPLICANT: \_\_\_\_\_ ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

Date of Preliminary Plan \_\_\_\_\_

Date of Preliminary Plan Submission (PS) \_\_\_\_\_

Preliminary Plan Approval Date (PS + 45) \_\_\_\_\_

Date of Definitive Plan \_\_\_\_\_

Submission Date(s) \_\_\_\_\_

Check: Rec'd \_\_\_\_\_ Forms Rec'd \_\_\_\_\_ Plans Rec'd \_\_\_\_\_

Date of Definitive Plan Submission to Board of Health (SH) \_\_\_\_\_

Date Received Board of Health Report (SH + 45) \_\_\_\_\_

Date of Plan Submission to Other Boards and Agencies

Board

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date Received Reports from Other Boards and Agencies

Board

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
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_____	_____

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(Revised 1980, 1983, 1988)

Approval Deadline Date (S + 90 or 135 days)

\_\_\_\_\_

Hearing Date (H)

\_\_\_\_\_

Date of Letters to Abutters (H-14 days)

\_\_\_\_\_

Date of Newspaper Notices (2) (H-14 days for first notice)

\_\_\_\_\_

Approval or Disapproval Date (A)

\_\_\_\_\_

Appeal Deadline Date (A + 20 days)

\_\_\_\_\_

Date of Performance Guarantee Agreement

\_\_\_\_\_

Description of Performance Guarantee

\_\_\_\_\_

Date Record Plans Endorsed

\_\_\_\_\_

Date Plans and Performance Guarantee Recorded

\_\_\_\_\_

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_

\_\_\_\_\_

Date of Amendments or Extensions to Original Performance Guarantee

\_\_\_\_\_

Description of Amended Performance Guarantee

\_\_\_\_\_

Date of Amendment Modification or Rescission of Approval

\_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_

Releases

Lot Numbers

Date of Lot Releases

Description of Performance Guarantee

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of

Final Release/

Certificate of Completion

\_\_\_\_\_

**INSPECTIONS**

Date	Type	Signature of Inspector When Inspection Completed
1. _____	Clearing, Grubbing and Excavation	_____
2. _____	Drainage system	_____
_____	Water system	_____
_____	Sewer system	_____
3. _____	Underground utilities	_____
3. _____	Backfill, fill and rough grading	_____
4. _____	Gravel base	_____
5. _____	Bituminous Concrete	_____
_____	Binder course Curbs/berms	_____
6. _____	Bituminous Concrete Surface course	_____
7. _____	Sidewalks	_____
_____	Loam and seed	_____
_____	Street trees	_____
_____	Road signs	_____
_____	Street lights	_____
_____	Fire hydrants	_____
_____	Fire alarm system	_____
_____	Other	_____
8. _____	Bounds	_____
9. _____	Final inspection	_____
_____	Final clean-up	_____

(Check Appropriate Box)

**FORM O**  
**CERTIFICATE OF COMPLETION**  
**AND**  
**RELEASE OF MUNICIPAL INTEREST IN**  
**SUBDIVISION PERFORMANCE SECURITY**

\_\_\_\_\_, 19 \_\_\_\_  
Planning Board, \_\_\_\_\_ (city/town) \_\_\_\_\_, Massachusetts

Subdivision Name: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Owner's Address: \_\_\_\_\_  
Applicant, if other than owner: \_\_\_\_\_  
Applicant's Address: \_\_\_\_\_  
Date of Subdivision Plan: \_\_\_\_\_  
Designer of Plan: \_\_\_\_\_  
Land Located: \_\_\_\_\_ (street address or other identification which locates the subdivision)

Plan Recorded:  \_\_\_\_\_ (county) \_\_\_\_\_ Registry of Deeds

Plan and Certificate  
of Title (No.) \_\_\_\_\_

Registered:  Registered Land Office of \_\_\_\_\_ (county) \_\_\_\_\_ Registry of Deeds

Plan found in Book (No.) \_\_\_\_\_, Page (No.) \_\_\_\_\_

Type of Performance Security:

Covenant, dated: \_\_\_\_\_

Covenant recorded: \_\_\_\_\_ (county) \_\_\_\_\_ Registry of Deeds

or

Covenant registered: Registered land Office of \_\_\_\_\_ (county) \_\_\_\_\_ Registry of Deeds

Covenant found in Book (No.) \_\_\_\_\_, Page (No.) \_\_\_\_\_

Bond, agreement dated: \_\_\_\_\_

Surety Company: \_\_\_\_\_

Address of Surety: \_\_\_\_\_

Deposit of money, agreement dated: \_\_\_\_\_

Bank, if bank passbook: \_\_\_\_\_

Address of Bank: \_\_\_\_\_

Other Security, agreement dated: \_\_\_\_\_

Letter of Credit, agreement dated: \_\_\_\_\_

Bank: \_\_\_\_\_

Address of Bank: \_\_\_\_\_

The undersigned, being a majority of the Planning Board of \_\_\_\_\_ (name of city/town) \_\_\_\_\_ have determined that the construction of ways and installation of municipal services in the subdivision referred to above have been fully and satisfactorily completed by the applicant in accordance with the Board's rules and regulations to serve the following enumerated lots: \_\_\_\_\_

Pursuant to Section 81-U of Chapter 41, M.G.L. and in consideration of completion of said construction and installation, the (city/town) of \_\_\_\_\_ (name) \_\_\_\_\_, a Massachusetts municipal corporation, acting through its Planning Board, hereby releases its interest in the performance security referred to above.

Duly executed as a sealed instrument this \_\_\_\_\_ (date) \_\_\_\_\_ day of \_\_\_\_\_ (month) \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed by a Majority of the Planning Board of  
(city/town) of \_\_\_\_\_  
(name of city/town)

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ (county) \_\_\_\_\_, ss \_\_\_\_\_, 19 \_\_\_\_\_

Then personally appeared \_\_\_\_\_ (name) \_\_\_\_\_ one of the above-named members of the Planning Board of \_\_\_\_\_ (name of city/town) \_\_\_\_\_, Massachusetts and acknowledged the foregoing instrument to be (his/her) free act and deed before me.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Duplicate copy to:

- Applicant
- (Surety, if bond agreement)
- (Bank, if bank passbook or letter of credit)
- Planning Board
- City/Town Clerk
- City/Town Treasurer
- City Council/Board of Selectmen

# Chapter XXI

## Design Details

1. Lotting Practices .....	21.2
2. Street and Lot Layout .....	21.3
3. Cluster Development and Comparison .....	21.8

## A. LOTTING PRACTICES

### EFFECT OF NEARBY DEVELOPMENT ON THE SITE

One obvious effect of existing development that may adjoin the site of a proposed subdivision comes from the need to provide for the extension of roads from the adjoining area into the new one. In some cases, the new development will need to employ the streets in the older one as the means of access to it, and in others the older subdivision streets will provide a second means of access to the new subdivision.

Experience throughout the State has shown that there are some basic principles that should not be violated when new streets are laid out adjacent to existing ones. One of these principles is that no "reserve strips" be permitted at the end of a street so as to prohibit future access into land beyond it. The need for convenient traffic circulation throughout a community makes this protective device an obsolete method of providing "privacy" for a particular subdivision.

Another principle is that the main means of access to a large new subdivision (say more than ten lots) should be provided from a street designed to carry a fairly high traffic load and should not be provided through a local street designed only for light traffic.

If the community does not have a master plan that shows how these traffic routes are to be laid out and coordinated as the area is developed, common sense will often indicate where through traffic or collector-street traffic is best routed. The planning board which has a master plan for traffic circulation will be in a better position to make sure that both new and existing development is not devalued by heavy or high-speed traffic.

When the subdivision design requires that a proposed street be continued to the edge of a presently undeveloped area to make provision for its future extension, it is desirable to require a *temporary* turn-around at the end of the street to allow for convenient vehicular movement. Such excess right-of-way that may be required for the temporary turn-around can revert to the abutting lots when the street is extended.

Unless there is an existing or proposed street to be extended, it is generally undesirable to terminate a street at a property line (See Figure 1). The problem of providing street access to the corner of a property can be solved by the provision of a short stub or "eyebrow" around which usable lots can be created (See Figure 2).

When the new subdivision lies next to an area already provided with public services and utilities, the extension of these becomes an important factor in the layout. Water mains and hydrants can usually follow streets without serious problems, unless a significantly higher elevation is involved, which may call for some adjustment in water pressure. Gas mains are a similar utility, with pressure rarely a problem. Sanitary sewers, however, normally rely on gravity flow, and the grades of streets will very definitely affect the adequacy and cost of this service. In many cases, it is necessary to provide a sanitary sewer easement across lots to make the system workable. (It is good practice to have such easements follow lot lines where possible.) Pumping sewage should be avoided and in some areas will not be approved by health authorities. Storm water drainage is a comparable service; it requires careful analysis to relate its requirements to the street system, the slope of the individual lot, and the location of buildings.

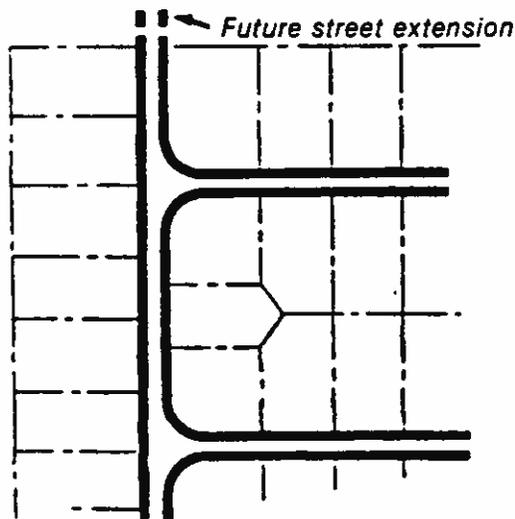


FIGURE 1 - Provision for future street extension

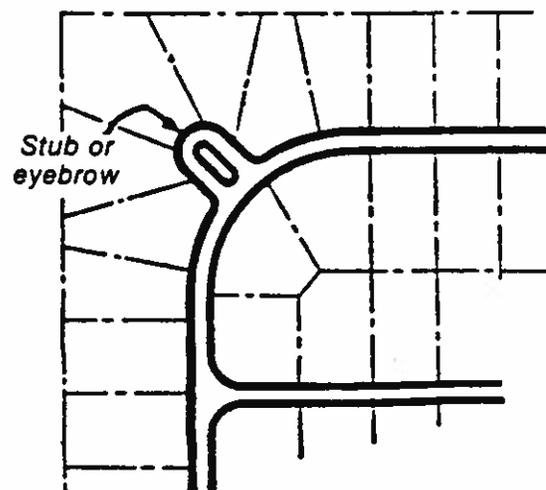


FIGURE 2 - Use of stub street or "eyebrow."

## B. STREET AND LOT LAYOUT

The prime function of residential streets is to provide access to individual properties, to accommodate their prospective traffic and to allow the convenient entry of fire fighting, snow removal and other road maintenance equipment and emergency vehicles. Streets should also be logically related to the topography and be coordinated into a system whereby each street performs the function for which it is intended.

The function that a street is intended to serve will determine both its right-of-way width and its pavement width. A minor residential street that serves a relatively low density residential area may need less pavement width than if the same street served higher concentrations of residential development. This results from both the higher volumes of traffic on the street and from the resultant higher incidence of on street parking. Collector streets and major streets carry progressively higher amounts of traffic than minor residential streets. This fact must be reflected in the criteria used for determining the street cross-section. Other considerations affecting street right-of-way width are sidewalks, planting strips and utilities including street lights and fire hydrants.

The volume and speed of vehicular traffic on a street can be influenced by its particular design. An undifferentiated rectangular or grid street pattern usually does not include a collector or secondary street system and tends to make each local street as important as the next (See Figure 3). This encourages through traffic at higher speeds on each street and also creates many potential traffic conflict points at the four-way intersections. One of the most trouble-free designs for a residential street is that of a "loop" which provides convenient access to each lot without encouraging through traffic (See Figure 4).

The dead-end or cul-de-sac street can also be used to advantage in residential subdivisions. (See Figure 5). Through traffic is completely eliminated because there is only one entrance into the street. This creates an added sense of privacy, safety and value to the lots fronting on this street. Two major drawbacks of cul-de-sac streets are that access to the interior lots can be impeded by a blockage at the open end and that traffic at the open end can become undesirably high if the street is too long and access to a large number of homes is provided. These streets should have paved turn-arounds at their closed ends that are wide enough to permit vehicles to negotiate the turn without the need for backing.

When residential development occurs along major streets and other highly travelled traffic arteries, special consideration must be given to its design. Lots should not front directly on or have direct access to such streets (See Figure 6). When this occurs, the efficiency of these streets is reduced and they are no longer able to adequately perform the function for which they were designed. This problem can usually be solved by either building a marginal access street (See Figure 7) or backing the lots up to the major street (See Figure 8). The marginal access street provides frontage for the individual lots and greatly reduces the number of points of access to the major street. When a landscaped buffer strip is provided between the marginal access street and the major street, the traffic noise will be reduced and a more private environment created. Unless care is taken in designing the marginal access street, it may cause more traffic conflict at its entrances and exits than it is intended to solve. By maintaining a minimum safe distance between these entrances and exits and other intersections most of this traffic conflict can be avoided.

In cases where lots can be backed onto a major street, the land use conflict can be reduced by requiring a landscaped buffer zone between the major street and the rear property line. In addition, a fence along the rear property line can provide for more privacy and a safer back yard.

Intersections are another important element of street design. When improperly designed, street intersections become potential traffic hazards. Streets should intersect at right angles (See Figure 10) and not at acute angles (See Figure 9). The centerlines of offset street intersections should be far enough apart so that traffic is deterred from cutting diagonally across them. Intersections should occur on straight sections of street instead of on curves, and should have gentle grades rather than steep slopes. Fourway intersections should be avoided except at the crossing of collector or major streets where traffic control devices are utilized.

The blocks which make up a subdivision are inherently related to the street patterns. Although the number of intersections should be kept to a minimum, it is necessary to limit block length in order to permit adequate vehicular and pedestrian circulation within the subdivision. In situations where excessive block lengths are unavoidable, such as under unusual topographic or drainage conditions, a right-of-way or easement for pedestrians should be provided across the block to break up its excessive length.

The lot layout and street arrangement in a subdivision are so closely interrelated that one cannot be planned without considering its effect on the other. Once the general lot size and dimension requirements have been determined, a street system can then be designed to allow for the development of a desirable lot layout. In order to create a desirable home site which can be developed economically, several factors must be considered and certain general principles adhered to when lots are being laid out.

Good trees and other desirable natural growth should be preserved and the amount of grading kept to a minimum. Generally, it is preferable for the lot elevation to be somewhat higher than that of the abutting street. The grade between the street and the house location on the lot should not be excessive but should be enough to provide good surface drainage to the street and subsequently to a storm drainage system. Each lot should provide a desirable building site which allows adequate space for side yards and a driveway. It should be deep enough to allow for proper building setback and provide some space for outdoor activities.

The size and shape of the individual lot is often influenced by the type and size of dwelling contemplated for the development. This is especially true when the subdivider is also the home builder. Rectangular lots are generally the most usable. However, topography, street layout and the shape of the original parcel often necessitate creation of lots which are not rectangular. When this occurs, odd shaped lots with excessive jogs and corners should be avoided (See Figure 11). Whenever possible, side lot lines should be perpendicular to straight streets or radial to curved streets (See Figure 12). Corner lots that are too small do not provide an adequate building site (See Figure 13). Generally, corner lots should be larger than interior lots to allow for required setback from each street and provide a more usable back yard (See Figure 14).

When developing an odd shaped parcel of land fronting on an existing road, creation of excessively deep lots should be avoided (See Figure 15). Use of a short cul-de-sac street can often facilitate development of the parcel into more desirable lots (See Figure 16).

A subdivision site which is traversed by a small drainage way or a small stream often requires special consideration. A small stream may necessitate a different treatment from that used for a small drainage way. The lots should be laid out so that the drainage way will not be near the center of a lot (See Figure 17). More desirable and usable lots (See Figure 18) can be created by letting the side lot line follow the center of the drainage way and by providing an adequate easement on each side of this line for drainage purposes. The lot width should be increased to allow for the easement and still provide a suitable building site. When a small stream traverses a subdivision site, desirable lots can be created by providing a drainage right-of-way or easement on each side of the stream and backing the lots up to it (See Figure 20). This treatment tends to preserve the stream bed in its natural state, provide continuous public or private open space and eliminate the need for costly and undesirable driveway culverts which would be required if lots were fronted on the stream (See Figure 19).

The development of a desirable street arrangement and lot layout is essential if the subdivision is to become an asset to the community. However, this alone is not enough. Adequate street improvements, utilities and drainage facilities must be installed and certain community facilities provided.

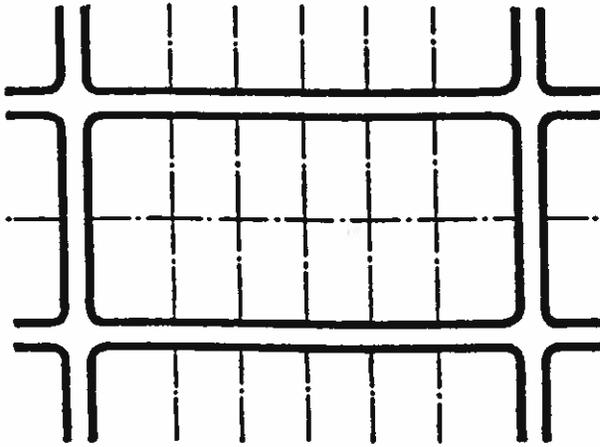


FIGURE 3 - A rectangular or grid street pattern.

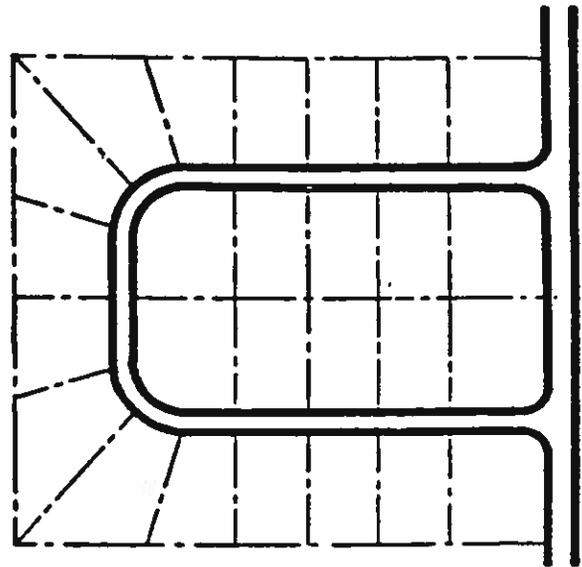


FIGURE 4 - A loop street.

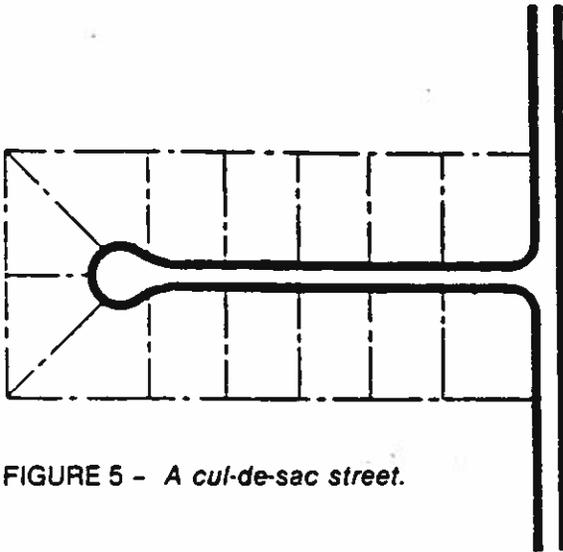


FIGURE 5 - A cul-de-sac street.

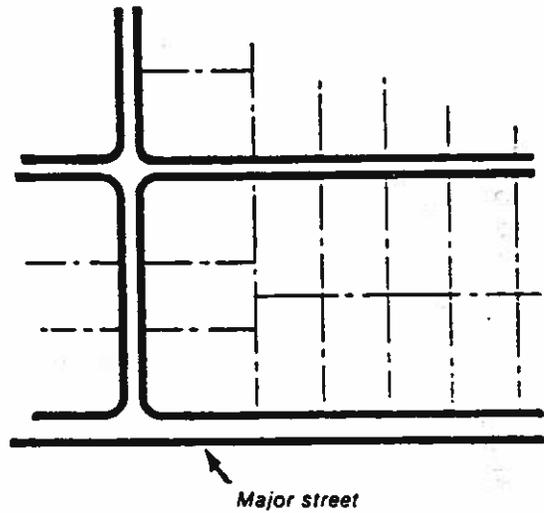


FIGURE 6 - The practice of fronting lots directly on a major street is undesirable.

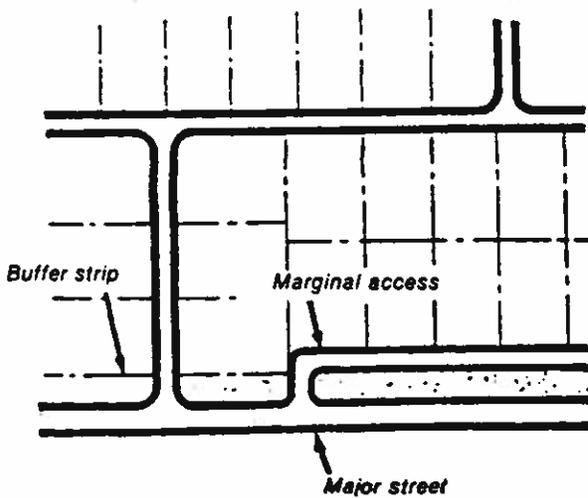


FIGURE 7 - Use of a buffer strip and marginal access street is more desirable.

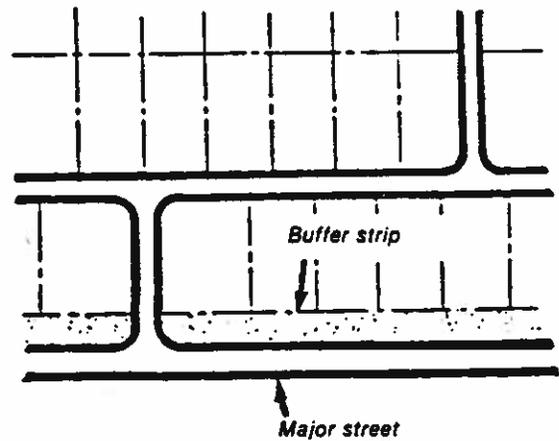


FIGURE 8 - Use of a buffer strip when backing lots on a major street is desirable

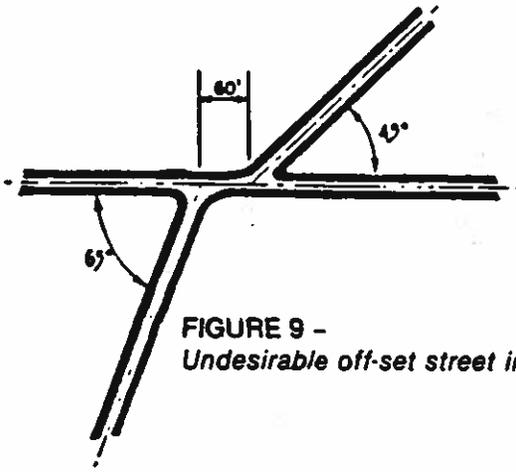


FIGURE 9 - Undesirable off-set street intersection.

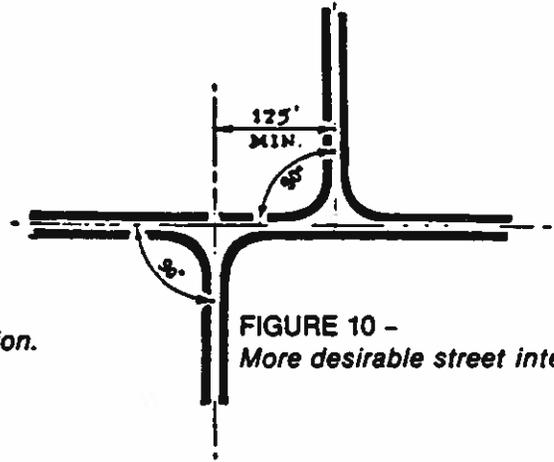


FIGURE 10 - More desirable street intersection.

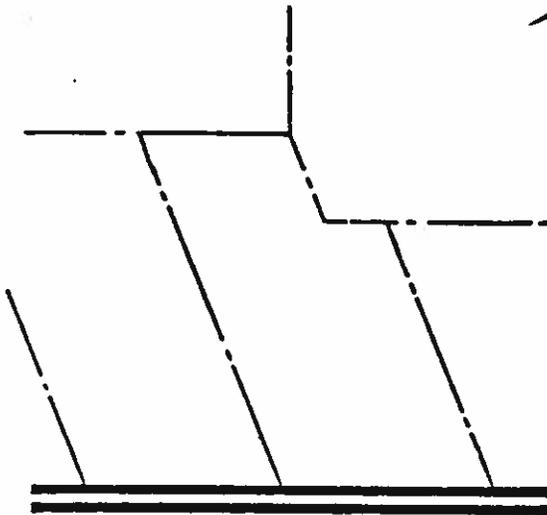


FIGURE 11 - Undesirable lot layout.

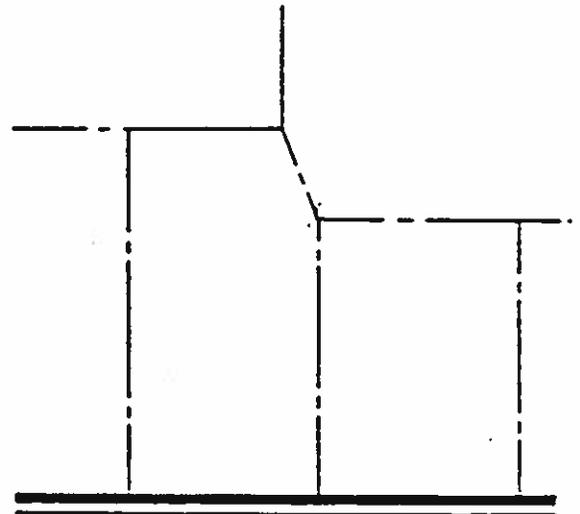


FIGURE 12 - More desirable lot layout.

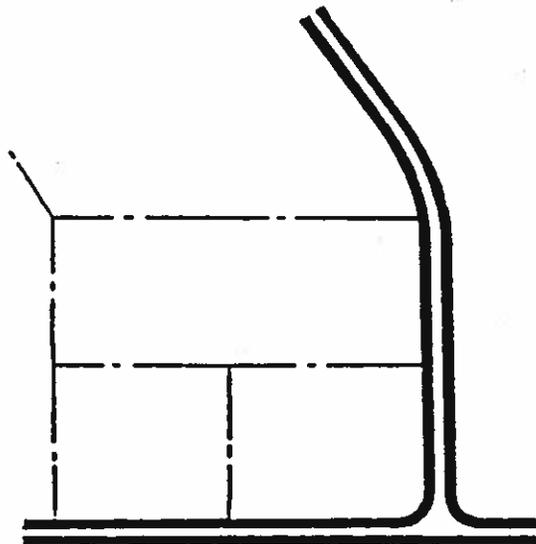


FIGURE 13 - Undesirable corner lot arrangement.

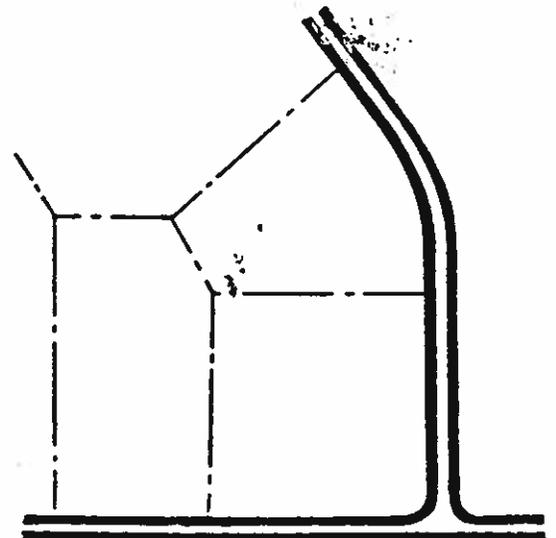


FIGURE 14 - More desirable corner lot arrangement.

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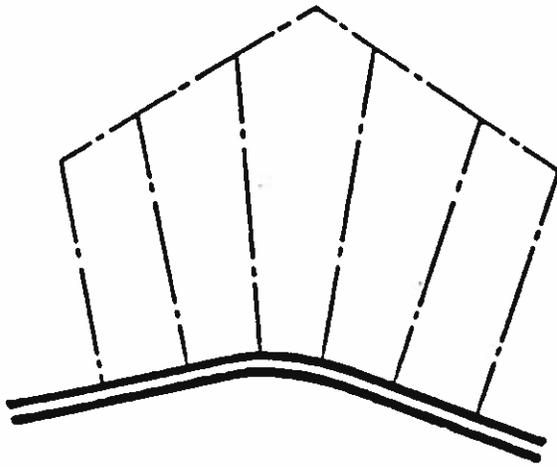


FIGURE 15 - Excessively deep lots.

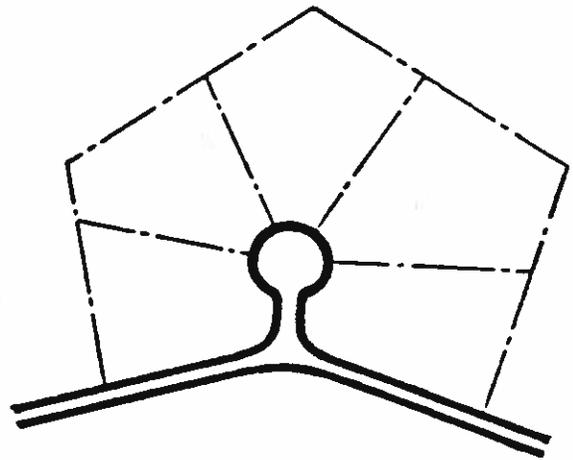


FIGURE 16 - More desirable lots.

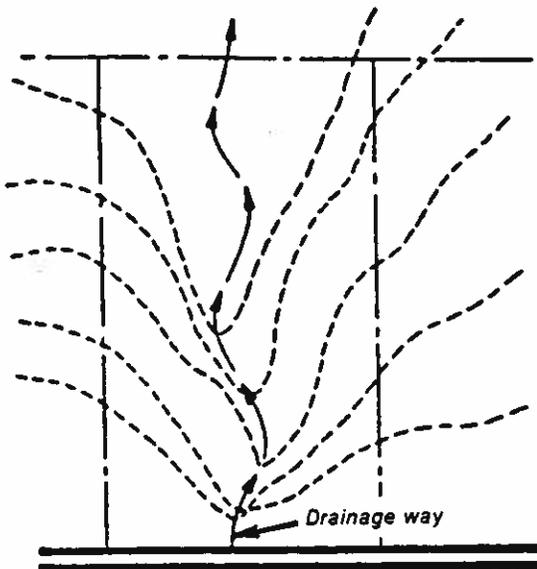


FIGURE 17 - Undesirable building site.

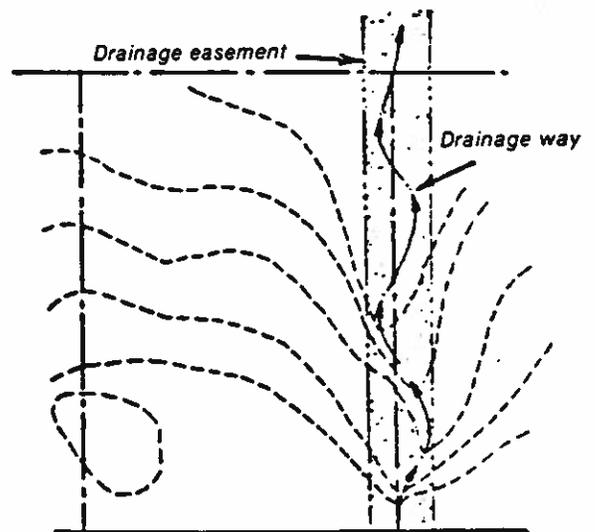


FIGURE 18 - More desirable building site.

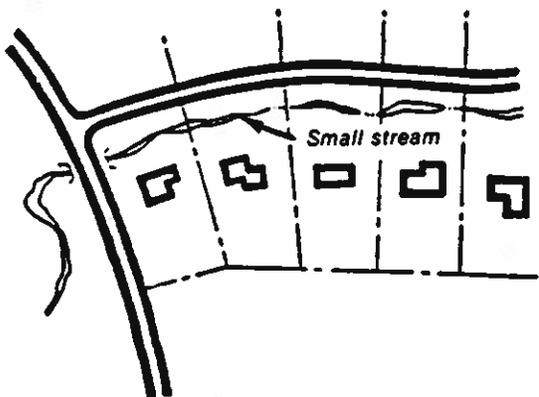


FIGURE 19 - Undesirable design.

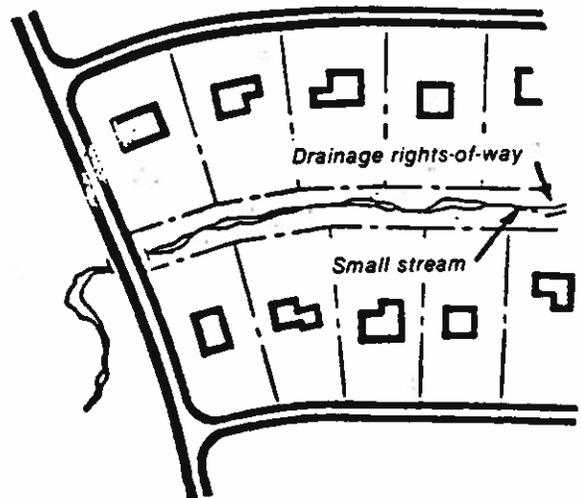


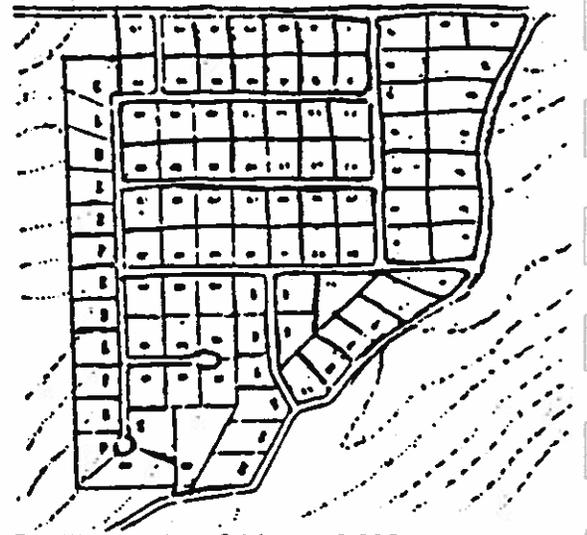
FIGURE 20 - More desirable design.

### C. CLUSTER DEVELOPMENT AND COMPARISON

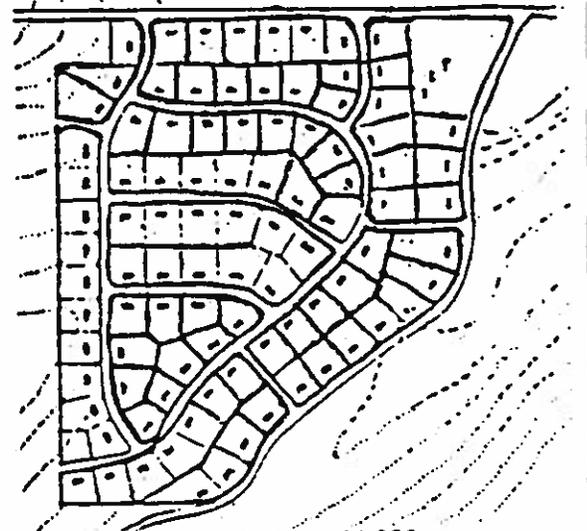
Several practical advantages of a cluster design are listed as follows and several are illustrated by the accompanying diagrams:

- Fewer linear feet of street and utilities, thus lower initial cost, reduced maintenance cost
- Less costly burial of normal overhead utilities
- Fewer intersections for potential accident occurrence
- Best soils for development are more fully utilized
- Less storm runoff
- Less disturbance to natural features
- More usable open space, promotes walking, bicycling, outdoor activities
- Yard maintenance reduced
- Sense of neighborhood enhanced

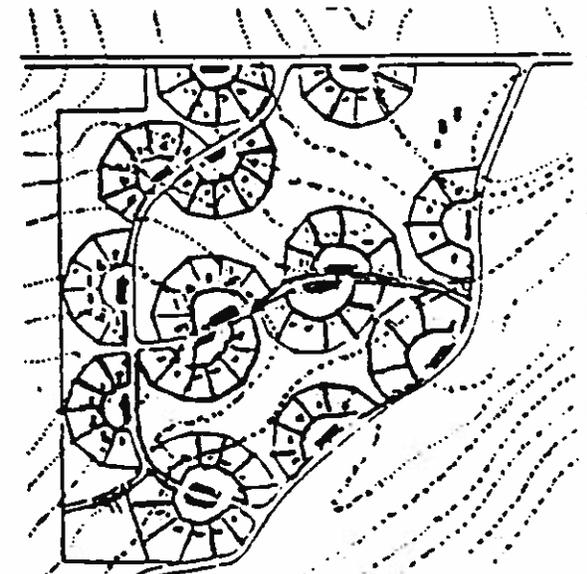
Lot size in the first two cases is 50,000 square feet: in the third case, lot size is reduced to 30,000 square feet, with some 44 acres left open. Design by Myron X. Feld, planning engineer, from *The American City*.



*Rectilinear plan, 94 lots, 12,000 feet of streets and utilities.*



*Curvilinear plan, 94 lots, 11,600 feet of streets and utilities.*



*Cluster plan, 94 lots, 6,000 feet of streets and utilities.*

# Chapter XXII

## Sample Public Hearing Notices and Article/Petition

### A. Sample Zoning Article/Petition:

ARTICLE "To see if the (City/Town) will vote to amend the Zoning (Ordinance/Bylaw) by (exact wording of amendment), or take any action relative thereto."

### B. Sample Public Hearing Notice to Amend Zoning:

SEAL

#### PUBLIC HEARING NOTICE

(City/Town) PLANNING BOARD/CITY COUNCIL

In accordance with the provisions of Chapter 40-A, Section 5, M.G.L., the Planning Board/City Council will hold a public hearing on (day, date and time), at (place) on the petition of (name and address of petitioner) to consider amending the (city/town) zoning ordinance/bylaw by (describe subject matter of proposal in sufficient detail for identification).

A copy of the proposed text (and map) may be inspected at (place) during (hours and days when place will be available for such inspection).

Any person interested or wishing to be heard on the zoning proposal should appear at the time and place designated.

(Name of Chairman)

(city/town) Planning Board/City Council

### C. Sample Public Hearing Notice for a Special Permit Application:

SEAL

#### PUBLIC HEARING NOTICE

(City/Town) (Name of Special Permit Granting Authority)

In accordance with the provisions of Chapter 40-A, Section 11, M.G.L., the (name of special permit granting authority) will hold a public hearing on (day, date and time) at (place) on the application of (name and address of applicant) for a special permit under Section \_\_\_\_\_ of the (city/town) zoning bylaw/ordinance to (describe subject matter of the hearing in sufficient detail for identification) on property located at (street address, if any, or other adequate identification of the location).

A copy of the application (and plan) may be inspected at (place) during (hours and days when place will be available for such inspection).

Any person interested or wishing to be heard on the application should appear at the time and place designated.

(Name of Chairman)

(city/town) (Name of Special Permit Granting Authority)

**D. Sample Public Hearing Notice to Amend Subdivision Rules and Regulations:**

**SEAL**  
**PUBLIC HEARING NOTICE**  
**(City/Town) PLANNING BOARD**

In accordance with the provisions of Chapter 41, Section 81-Q, M.G.L., the Planning Board will hold a public hearing on (day, date and time) at (place) to consider amending the (city/town) subdivision rules and regulations by (describe subject matter of amendments in sufficient detail for identification).

A copy of the proposed text may be inspected at (place) during (hours and days when place will be available for such inspection).

Any person wishing or interested to be heard on the proposed amendment to the subdivision rules and regulations should appear at the time and place designated.

(Name of Chairman)

\_\_\_\_\_  
(city/town) Planning Board

**E. Sample Public Hearing Notice for a Definitive Subdivision Plan Application:**

**(SEAL)**  
**PUBLIC HEARING NOTICE**  
**(City/Town) PLANNING BOARD**

In accordance with the provisions of Chapter 41, Section 81-T and 81-U, M.G.L., the Planning Board will hold a public hearing on (day, date and time) at (place) on the application of (name and address of applicant) for approval of a definitive subdivision plan entitled (name of subdivision) by (name and address of designer) dated (date of plan), located (location of subdivision) and showing (No.) proposed lots.

A copy of the plan and application is on file (place) and may be inspected during (hours and days when place will be available for such inspection).

Any person interested, or wishing to be heard on the proposed plan, should appear at the time and place designated.

(Name of Chairman)

\_\_\_\_\_  
(city/town) Planning Board

# Chapter XXIII

## Sample Letter to the Attorney General

(date)

The Honorable \_\_\_\_\_  
Attorney General of Massachusetts  
State House  
Boston, Massachusetts 02133

Dear Attorney General:

I submit herewith and request approval of the amendments to zoning bylaws adopted under Article(s) \_\_\_\_\_ of the warrant for the annual town meeting held \_\_\_\_\_, 19\_\_\_\_ and at the adjourned sessions thereof on \_\_\_\_\_, 19\_\_\_\_.

The following documents are enclosed to prove that all procedural requirements for the adoption of such zoning bylaws have been complied with:

1. one certified copy of the opening of the warrant showing the date and place the meeting was called for; one certified copy of the closing of the warrant showing the manner in which service of the warrant was ordered, the date of the warrant and the person or persons who issued same and one certified copy of the officer's return of service showing date of service and posting.
2. a certification that the service of the warrant was in accordance with town bylaw; or in the absence of a bylaw, in accordance with a previous vote of the town or in a manner previously approved by the Attorney General and a certification that any adjournments of the town meeting met all notice requirements of local bylaw or vote.
3. one certified copy of each of the Articles being acted upon as they appeared in the warrant including material referred to by reference.
4. one certified copy of the notice of the public hearing held by the Planning Board (or other Board) on the proposed changes showing all the dates of publication and the name of the newspaper of general circulation in the town in which published and with the items therein correlated to the article numbers under which voted.
  - a. Newspaper articles must appear at least 14 days before the hearing and at least once in each of two successive weeks.

An advertisement for a hearing scheduled for the 20th day of the month must first appear *on or before* the 6th of the month. An ad that appears on the 7th for a hearing on the 20th is only *thirteen* days notice.
5. one certified copy of any material referred to by reference in the published notice of the public hearing held on the proposed changes by the Planning Board.
6. a certificate from the Planning Board that notice of its hearing was sent by mail, postage prepaid, to the Executive Office of Communities and Development, the regional planning agency, to the Planning Boards of all abutting cities and towns and if applicable, to nonresident property owners who file an annual request with the Town Clerk in accordance with local bylaw.

7. one certified copy of the Planning Board's written report on each of the Articles and a statement as to whether or not such report was presented to the town meeting, or, if no written report was made, a summary of any oral reports that the Planning Board made to the town meeting, or, if no written or oral reports were made by the Planning Board, a statement to that effect.
  - a. in order for a Town Meeting to act legally on zoning matters, the Planning Board must make a report with recommendations or 21 days after its public hearing must elapse without submission of a report or recommendations.
  - b. a report that is evenly divided with two in favor and two opposed does *not* constitute a report with recommendations.
8. a certification as to quorum requirements and a certification that a quorum was or was not present.
9. one certified copy of the record of any amendments on the town meeting floor before the final vote under each of the Articles.
10. two certified copies of the final vote taken under each Article with all amendments incorporated within such final text, with the date of town meeting action noted thereon, and the vote certified thereon with the actual count shown.
11. there must be a count if the vote is not unanimous since a two-thirds vote is required; unanimous "but one" or "but a few" does not suffice.
12. if a town meeting fails to act on any proposed bylaw within 6 months after the Planning Board's public hearing, *no* action can be taken until a subsequent public hearing is held with notice and report.
13. once a bylaw has gone before a town meeting and has not been adopted, it may *not* be considered by a later town meeting without full compliance with the hearing process even though the second town meeting is held within six months of the first.
14. a copy of the previous bylaws being amended if the substance of the proposed amendment is not readily understandable from the language in the Article in the warrant.
15. two certified copies of the zoning map (in file size not larger than 24 inches by 36 inches, preferably smaller) with the proposed changes delineated thereon in color by article number.
16. a certification as to the members of the Planning Board.
17. additional statements explaining clearly the bylaws or changes proposed. which may be accompanied by explanatory maps or plans.

Very truly yours,  
John Doe  
Town Clerk

# Chapter XXIV

## Recording Specifications of Registries of Deeds

The following are the requirements of the Registries of Deeds relative to preparation of plans. All requirements must be met before a plan is suitable for recording at a Registry of Deeds. A Planning Board may wish to include these requirements in its subdivision rules and regulations with regard to contents of a proposed definitive subdivision plan.

The rules require that:

1. Plan sizes shall be a minimum of 8½" x 11" and a maximum of 24" x 36".
2. Plans shall be on linen or polyester film, single matte with a thickness of .004 mils, and must have an opacity so as to allow consistent diazo and microfilm reproduction.
3. Plans shall be prepared using a compatible ink with excellent cohesiveness which will produce a permanent bond and result in a plan with long-term durability.  
The Planning Board must also sign all plans in black india ink (or its equal). Ballpoint is not acceptable to the Registry of Deeds.
4. Plans shall have 3/4-inch borders.
5. The minimum letter size on plans shall be 1/8 inch.
6. Plans shall include a graphic scale.
7. Plans shall have a 3½-inch square reserved for Registry use.
8. Plans shall have an area reserved to receive Planning Board recitation/endorsement or a surveyor's certification pursuant to Chapter 41, Section 81X, M.G.L.
9. Plans shall contain a certification clause signed by the preparer stating that the rules and regulations of the Registers of Deeds have been conformed with in preparing the plan.

Any plan, including a plan that does not require subdivision approval (81-P), would not be suitable for recording unless it complies with the requirements of the Registries of Deeds. A Planning Board may want to make note of this in its rules and regulations. A Planning Board may not, however, refuse to endorse an 81-P plan because it does not meet the Registries' requirements. Such endorsement may be withheld only if a plan shows a subdivision.

If the Planning Board includes these specifications in their rules and regulations, they should also include a provision which assures that the Planning Board will have a copy of any plan submitted for its files.

# Chapter XXV

## Index to Selected Massachusetts General Laws

The index below is included for the convenience of those persons using this manual. It contains most of the laws that need to be referenced by planning and appeals board members and are listed in alphabetical order.

In the notations below, the numbers immediately before the slash are the chapter number, the numbers following are the section numbers. Where nothing follows the slash, the entire chapter is devoted to the subject, e.g., city charters, 43/. Therefore, the notation acceptance of ways, 82/23, 26-27 can be interpreted as chapter 82, section 23 and sections 26 through 27.

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# Chapter XXVI

## List of Planning and Related Agencies

### *Regional:*

1. Berkshire County Regional Planning Commission  
10 Fenn Street  
Pittsfield, MA 01201  
(413) 442-1521
2. Blackstone Valley Planning Commission  
Sutton Town Hall, 4 Uxbridge Road  
Sutton, MA 01527  
(508) 865-5078
3. Cape Cod Planning and Economic Development Commission  
1st District Court House  
Barnstable, MA 02630  
(508) 362-2511
4. Central Massachusetts Regional Planning Commission  
340 Main Street, Suite 747  
Worcester, MA 01608  
(508) 765-7717
5. Franklin County Commission  
Court House  
Greenfield, MA 01301  
(413) 774-4015
6. Martha's Vineyard Commission  
Box 1447  
Oak Bluffs, MA 02557  
(508) 693-3453
7. Merrimack Valley Planning Commission  
350 Main Street  
Haverhill, MA 01830  
(508) 374-0519
8. Metropolitan Area Planning Council  
60 Temple Place  
Boston, MA 02111  
(617) 451-2770
9. Montachusett Regional Planning Commission  
R-1427 Water Street  
Fitchburg, MA 01520  
(508) 345-7376
10. Nantucket Planning and Economic Development Commission  
4 North Water Street  
Nantucket, MA 02554  
(508) 228-7233

11. Northern Middlesex Area Commission  
35 Market Street - 2nd Floor  
Lowell, MA 01852  
(508) 454-8021
12. Old Colony Planning Council  
70 School Street  
Brockton, MA 02401  
(508) 583-1833
13. Pioneer Valley Regional Planning Commission  
26 Central Street  
West Springfield, MA 01089  
(413) 781-6045
14. Southeastern Regional Planning and Economic Development District  
88 Broadway  
Taunton, MA 02780  
(508) 824-1367

**State:**

1. Governor's Office  
State House  
Boston, MA 02133  
(617) 727-3600
2. Lt. Governor's Office  
State House  
Boston, MA 02133  
(617) 727-7200
3. Secretary of State  
1 Ashburton Place  
Boston, MA 02108  
(617) 727-2800
4. Secretary of State (Citizen Information)  
1 Ashburton Place  
Boston, MA 02108  
(617) 727-7030  
1-800-392-6090 (toll free)
5. Attorney General, Department of the  
1 Ashburton Place  
Boston, MA 02108  
(617) 727-8400
6. Senate-Information  
State House  
Boston, MA 02133  
(617) 722-1455
7. House of Representatives-Information  
Room 145  
State House  
Boston, MA 02133  
(617) 722-2000

8. Commerce and Development, Department of  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-3218
9. Executive Office of Communities and Development  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-7765
  - a. Division of Neighborhoods and Economic Development  
100 Cambridge Street  
Boston, MA 02108  
(617) 727-7004
  - b. Division of Housing  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-7130
  - c. Division of Municipal Development  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-7001  
1-800-392-6445 (toll free)
10. Executive Office of Environmental Affairs  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-9800
  - a. Coastal Zone Management  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-9530
  - b. Division of Conservation Services  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-1552
  - c. Environmental Impact Review  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-5830
  - d. Environmental Management, Department of  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-3180
  - e. Environmental Quality Engineering, Department of  
1 Winter Street  
Boston, MA 02108  
(617) 292-5856

- f. **Environmental Quality Engineering, Department of (Regional Offices)**
  - (1) **Metro Boston/Northeast Regional Office**  
5 Commonwealth Avenue  
Woburn, MA 01801  
(617) 935-2160
  - (2) **Southeast Regional Office**  
Lakeville Hospital  
Middleboro, MA 02346  
(508) 947-1231
  - (3) **Central Regional Office**  
75 Grove Street, Box 23  
Worcester, MA 01605  
(508) 792-7650
  - (4) **Western Regional Office**  
P.O. Box 2410  
Springfield, MA 01101  
(413) 785-5327
- 11. **Massachusetts Historical Commission**  
80 Boylston Street  
Boston, MA 02116  
(617) 727-8470
- 12. **Massachusetts Housing Finance Agency**  
50 Milk Street  
Boston, MA 02109  
(617) 451-3480
- 13. **Public Health Department**  
150 Tremont Street  
Boston, MA 02111  
(617) 727-2700
- 14. **Public Utilities Department**  
100 Cambridge Street  
Boston, MA 02202  
(617) 727-3500
- 15. **Public Works Department**  
10 Park Plaza, Room 3151  
Boston, MA 02116  
(617) 973-7800
  - a. **District I-DPW**  
270 Pittsfield Road  
Lenox, MA 01240  
(413) 637-1750
  - b. **District II-DPW**  
811 North King Street  
Northampton, MA 01060  
(413) 584-1611

- c. District III-DPW  
403 Belmont Street  
Worcester, MA 01608  
(508) 754-7204
  - d. District IV-DPW  
519 Appleton Street  
Arlington, MA 02174  
(617) 648-6100
  - e. District V-DPW  
485 Maple Street  
Danvers, MA 01923  
(508) 774-3190
  - f. District VI-DPW  
1000 County Street  
Taunton, MA 02780  
(508) 824-6633
  - g. District VII-DPW  
151 Pierce Street  
Middleboro, MA 02346  
(508) 947-9000
  - h. District VIII-DPW  
400 "D" Street  
South Boston, MA 02118  
(617) 482-0811
16. State House - Document Room  
Room 428  
State House  
Boston, MA 02133  
(617) 722-2860
17. State House - Book Store  
Room 116  
State House  
Boston, MA 02133  
(617) 727-2834

**Federal:**

1. Environmental Protection Agency  
JFK Federal Building  
Boston, MA 02114  
(617) 223-2100
2. Federal Information Center  
JFK Federal Building  
Boston, MA 02114  
(617) 565-8121
3. Government Printing Office  
Government Book Store  
Superintendent Office Documents G25  
JFK Federal Building  
Boston, MA 02114  
(617) 565-2488
4. Housing and Urban Development Department  
Regional Office  
JFK Federal Building  
Boston, MA 02114  
(617) 565-5256
5. Soil Conservation Extension Service, USDA  
Extension Land Use Specialist  
Hills North  
Department of Landscape Architecture and Regional Planning  
University of Massachusetts  
Amherst, MA 01003  
(413) 545-2255
6. Soil Conservation Service USDA  
451 West Street  
Amherst, MA 01002  
(413) 545-0441

**Other:**

1. Massachusetts Municipal Association  
James Segel, Executive Director  
60 Temple Place  
Boston, MA 02111  
(617) 426-7272 & 1-800-882-1498
2. Massachusetts Recreational and Park Association  
P.O. Box 5135  
Cochituate, MA 01778  
(508) 845-9121
3. Massachusetts Association of Conservation Commissions  
Lincoln-Filene Center  
Tufts University  
Medford, MA 02155  
(617) 381-3457
4. Conservation Law Foundation  
3 Joy Street  
Boston, MA 02108  
(617) 742-2540

# Chapter XXVII

## Federation Publications and Information

### Publications

*The Planners Handbook*, 11/88

subdivision law, highlights of each section, case law and other matters related thereto

*Planners Handbook Update* to September, 1991, sold separately

*The Zoning Guidebook*, 11/88

the zoning act, highlights of each section, other related law, case law and other matters related thereto

*Zoning Guidebook Update* to September, 1991, sold separately

*The Land Use Manager, Volumes I, II and III* (1984, 1985, 1986) complete manual only

*The Land Use Manager, Volumes IV, V, VI and VII* (1987, 1988, 1989, 1990) complete manual only

*Approval Not Required Manual*

*The Planning and Zoning Newsletter*

published four times per year

recent decisions of the Massachusetts Supreme Judicial Court and Massachusetts Appeals Court

planning and zoning items of interest

available only with membership

additional copies to members for a minimal fee

### Membership

Membership in the Massachusetts Federation of Planning and Appeals Boards, Inc. is open to all.

Membership categories:

Official: local boards and officials

Individual: former board members only

Associate: professionals and others concerned with current planning and zoning law

### Assistance, Other Information and Publication Orders

Technical assistance, additional information and prices for publications are available through the office of the Executive Director, Madelyn A. McKie, 187 Mill Street, Haverhill, Massachusetts 01830 or by telephone at (508) 372-2159.

