



A Presentation by the  
Citizen Planner Training Collaborative



## Legislative History

- 1891 – First comprehensive subdivision control law statute enacted exclusively for Boston
- 1916 – Similar powers conferred on Boards of Survey throughout the Commonwealth
- 1936 – Subdivision control powers expanded and conferred on Planning Boards
- 1953 – Comprehensive revision to statute

## Purpose

“The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of cities and towns in which it is, or may be, put into effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.”

## Intent

“It is the intent of the subdivision control law that any subdivision plan filed with the Planning Board shall receive 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.”

## Subdivision

“Subdivision” shall mean the division of a tract of land into two or more lots ... 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 it is made, every lot within the tract so divided has frontage on:

- A public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or
- A way shown on a plan therefore approved and endorsed in accordance with the Subdivision Control Law, or

- 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 land...and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon

## Standards for ANR Endorsement

- The lots shown on the plan must front on one of three types of ways specified in M.G.L., Chapter 41, Section 81L;
- The lots shown on the plan must meet the minimum frontage requirements as specified in M.G.L., Chapter 41, Section 81L;
- A Planning Board's determination that the vital access to such lots as contemplated by M.G.L., Chapter 41, Section 81M otherwise exists

## The Vital Access Standard

- Adequacy of the way on which the proposed lots front
- Adequacy of the access from the way to the buildable portions of the lot

## Adequacy of Public Way

Perry v. Planning Board of Nantucket, 15 Mass. App. Ct. 144 (1983) **unconstructed public way, i.e. paper street, is not a public way for the purposes of the Subdivision Control Law.**

Hutchinson v. Planning Board of Hingham, 23 Mass. App. Ct. 416 (1987) **paved public way similar to other ways in area satisfies the purposes of the Subdivision Control Law.**

## Adequacy of Public Way

Sturdy v. Planning Board of Hingham, 32 Mass. App. Ct. 72 (1992)

**Deficiencies in public way are insufficient grounds for denying ANR endorsement.**

**Note:** Public way was a passable road of a dirt substance with some packed gravel; approximately 11-12 feet wide; muddy in spots; close to impassable during very wet portions of the year; way was wide enough for one car and it would be very difficult for large emergency vehicles to turn onto the roadway.

### **Adequacy of Public Way**

Bell v. Planning Board of Leverett, 58 Mass. App. Ct. 513 (2003)

A plan is not entitled to ANR endorsement if the public way does not provide safe, practical access to the proposed building lots

### **Adequacy of Subdivision Way**

Richard v. Planning Board of Achushnet, 10 Mass. App. Ct. 216 (1980)

For the purposes of ANR endorsement, to be considered a way that has been previously approved under the Subdivision Control Law requires either that an approved way is built, or that there exists the assurance required by MGL, Chapter 41, Section 81U that it will be built.

### **Adequacy of Subdivision Way**

The Planning Board should also check to see if there was any condition placed on the subdivision plan that would prevent further subdivision of land.

### **Adequacy of Subdivision Way**

Costanza & Bertolino, Inc. v. Planning Board of North Reading, 360 Mass. 677 (1977)

The court upheld the denial of an ANR endorsement where the lots on the plan abutted a way approved under the Subdivision Control Law and where the developer had not met the condition that the ways shown on the approved plan be constructed within 2 years from the date of the execution of the covenant.

## Adequacy of Subdivision Way

Hamilton v. Planning Board of Beverly, 35 Mass. App. Ct. 386 (1993)

The court upheld building inspector's denial of a building permit under section 81Y where a definitive plan had been approved by the Planning Board limiting the land shown on the plan to five lots and seven years later the Planning Board approved an ANR plan creating more lots.

## Adequacy of Private Way

Hutchinson v. Planning Board of Hingham, 23 Mass. App. Ct. 416 (1987) there are broader powers given to a Planning Board when determining the adequacy of ways which were in existence prior to the Subdivision Control Law taking effect versus determining the adequacy of public ways and ways previously approved under the Subdivision Control Law.

Corrigan v. Board of Appeals of Brewster, 35 Mass. App. Ct. 514 (1993) where a zoning bylaw allows lot frontage on a way if the Planning Board determines that the way provides suitable access, there must be a specific determination by the Planning Board that the way meets the zoning criteria.

## Interesting Land Court Decisions

Coolidge Construction Co., Inc. v. Planning Board of Andover, 7 LCR 75 (1999); Gould v. Planning Board of Pembroke, 7 LCR 78 (1999) a way does not qualify as a "way in existence" if it did not exist on the ground at the time of the Subdivision Control Law took effect in the community.

Musto v. Medfield Planning Board, 7 LCR 281 (1999) prior to the Subdivision Control Law taking effect, the existing way must have been used in a meaningful way as a means of providing vehicular access.

Barton Properties, Inc. v. Hetherington, 4 LCR 293 (1996) in determining the adequacy of such a way a Planning Board must consider the present condition of the way in relationship to its rules and regulations and the way's historic inadequacy is not material if the access is adequate at the time the ANR plan is submitted to the Planning Board.

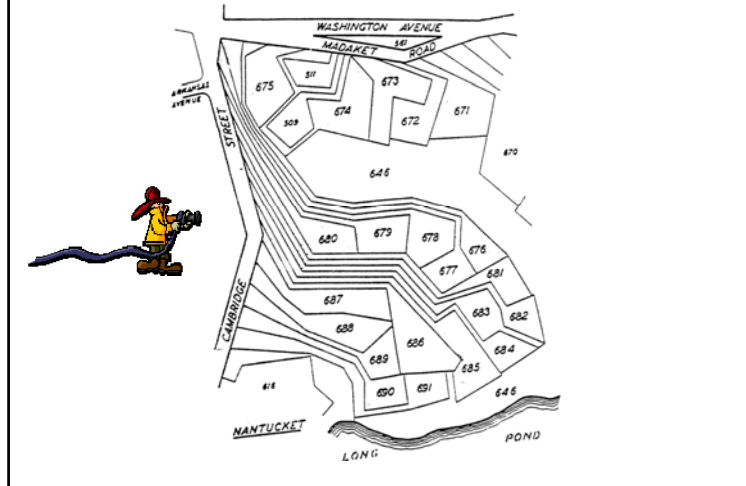
## Adequacy of Access

Gifford v. Planning Board of Nantucket, 376 Mass. 801 (1978)

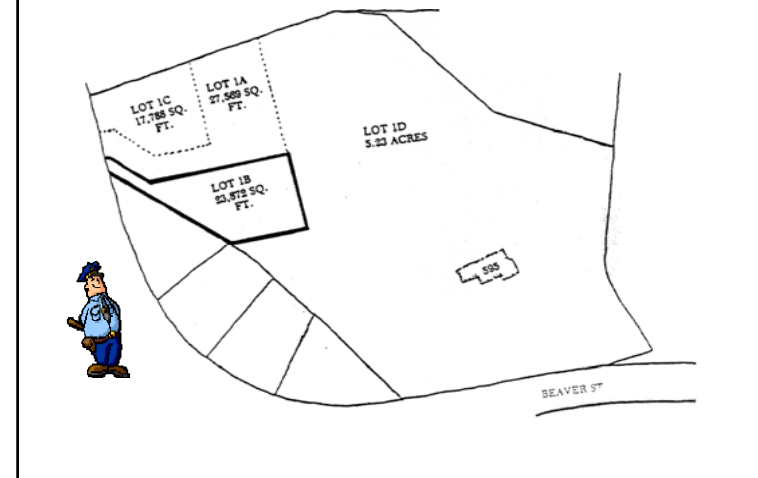
Gallitano v. Board of Survey & Planning of Waltham, 10 Mass. App. Ct. 269 (1980)



## Gifford v. Planning Board of Nantucket



## Gallitano v. Board of Survey and Planning of Waltham



## Gallitano Rule of Thumb

“as a rule of thumb ... the Gifford case should not be read as applying to a plan ... in which the buildable portion of each lot is connected to the required frontage by a strip of land not narrower than the required frontage at any point, measured from that point to the nearest point of the opposite sideline.”

## Distinct Physical Impediments

Poulos v. Planning Board of Braintree, 413 Mass. 359 (1992)  
a severe slope and guard rail were distinct physical impediments preventing present practical access.

Hobbs Brook Farm Property Company Limited Partnership v. Planning Board of Lincoln, 48 Mass. App. Ct. 403 (2000)  
unless the local bylaw provides to the contrary, it is simply not correct that the entire frontage of each lot shown on an ANR plan must be unobstructed for the plan to be entitled to ANR endorsement.

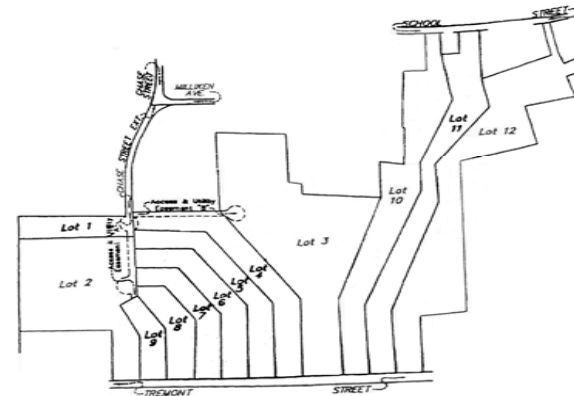
Each lot had the required 120 feet of frontage. Four lots were partially obstructed by a metal guardrail or Jersey barrier but had unobstructed access ranging from twenty-two to eighty-seven feet.

## Existence Of Wetlands

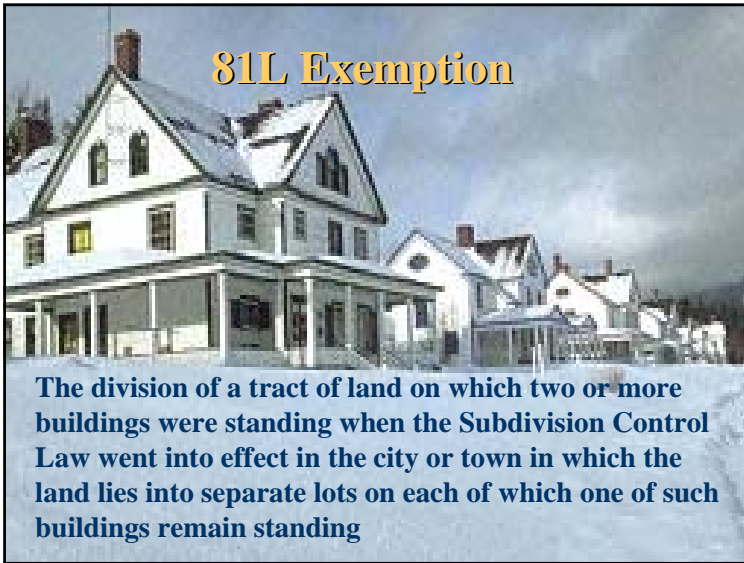
Corcoran v. Planning Board of Sudbury, 496 Mass. 248 (1989)  
the existence of interior wetlands that do not render access illusory is a different situation than when there exists a distinct physical impediment or unusual lot configuration which would bar practical access.

Gates v. Planning Board of Dighton, 48 Mass. App. Ct. 394 (2000) planning board was correct in denying ANR endorsement because the existence of wetlands prevented practical access to the buildable portions of the proposed lots and the proposed roadway extension and common driveways constituted a road system which required approval under the Subdivision Control Law.

## Gates v. Planning Board of Dighton



## 81L Exemption



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 remain standing

## 81L Cases

- Citgo v. Planning Board of Braintree, 24 Mass. App. Ct. 425 (1987)
- Smalley v. Planning Board of Harwich, 10 Mass. App. Ct. 599 (1980)
- Mignosa v. Parks, 6 LCR 297 (1998)
- Norton v. Donahue, 12 LCR 173 (2004)
- Norwell-Arch, LLC v. Opdyke, 12 LCR 208 (2004)

## The division of a parcel of land into one building lot

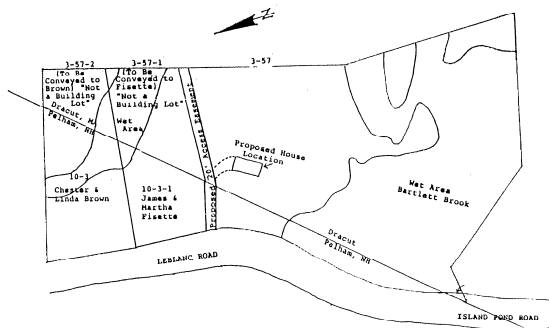
- Bloom v. Planning Board of Brookline, 346 Mass. 278 (1963)
- Cricanes v. Planning Board of Dracut, 39 Mass. App. Ct. 264 (1995)

## Bloom v. Planning Board of Brookline



This was the first case dealing with the placement of statements on ANR plans

## Cricanes v. Planning Board of Dracut



The Appeals Court went one step further and held that a division of land showing one lot that does not meet the frontage requirement of the zoning bylaw is also not a subdivision

## Statements for One Lot Plans

For the purposes of the Subdivision Control Law, parcel \_\_\_\_\_ cannot be used as the site for a building

Parcel \_\_\_\_\_ to be conveyed to abutting property owner is not available as a site for a building

## Statements for Plans Showing Zoning Violations

The above endorsement is not a determination of conformance with zoning regulations

No determination of compliance with zoning requirements has been made or intended by this endorsement

Planning Board endorsement under the Subdivision Control Law should not be construed as either an endorsement or an approval of zoning lot area requirements

## ANR Plans

- No public hearing required
- Planning Board has 21 days to act which includes giving written notice to the municipal clerk
- Planning Board cannot rescind an ANR endorsement

## Preliminary Plans

- Designed primarily to open negotiations between the Planning Board and the developer
- A developer proposing a non-residential subdivision must submit a preliminary plan
- A preliminary plan is not recorded at the Registry of Deeds
- A developer or interested party has no right to appeal a decision on a preliminary plan

## Definitive Plans

- This is the formal, working document for the creation of new lots and roadways
- The form and contents of the definitive plan are defined by the rules and regulations of the Planning Board
- If the plan is not in compliance with its rules and regulations, or the recommendations of the Board of Health, the Planning Board must disapprove or modify the plan to bring it into compliance and then approve the plan

## Definitive Plans

- Definitive plan can be submitted at a regular meeting of the Planning Board or sent by registered mail to the Planning Board
- If the plan is mailed then the date of receipt by the Planning Board is the date of submission

## Definitive Plans

- Voting requirement – a majority of the entire membership of the Planning Board is required for approval of the definitive plan
- The definitive plan is recorded at the Registry of Deeds
- A definitive plan must be recorded within 6 months from the date of endorsement. This requirement does not apply to ANR plans

## 81X Plans

“A register of deeds shall accept ... and the land court shall accept ... 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 existing public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.”

## Planning Board Rules and Regulations

- The Planning Board is solely responsible for adopting regulations
- Effective date of regulations
- A true copy of regulations must be kept on file in the office of the Planning Board and the municipal clerk

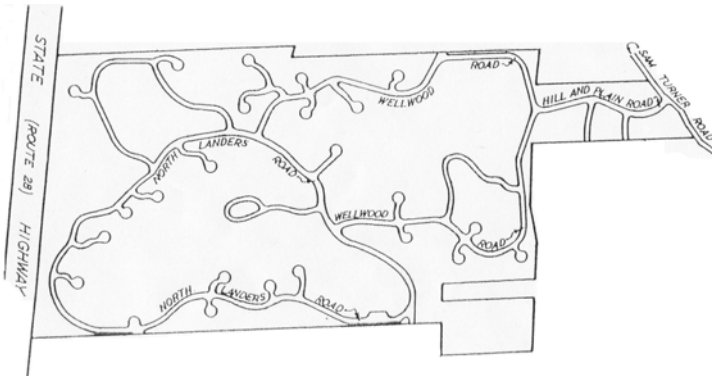
**A Planning Board may adopt a regulation requiring lots shown on a subdivision plan to be in compliance with local zoning requirements**

Beale v. Planning Board of Rockland, 423 Mass. 690 (1996)

Even if a Planning Board does not adopt such a regulation, the Board can still disapprove a definitive plan which does not comply with the provisions of the zoning bylaw

**A Planning Board can consider the adequacy of public ways providing access to proposed subdivisions.**

**North Landers Corp. v. Planning Board of Falmouth**



## **Planning Board Waivers**

Section 81R authorizes a Planning Board to waive any of its rules and regulations or the frontage requirement of the Subdivision Control Law if they find:

- Such action is in the public interest
- Such action is not inconsistent with the intent and purpose of the Subdivision Control Law
- A waiver is not a zoning variance



## Board of Health Report

The Board of Health, shall, within 45 days after a definitive plan has been 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, of any areas, shown on such plan cannot be used for building sites without injury to the public health, and include specific findings and the reasons therefore in such report, and where possible, shall make recommendations for adjustment thereof.”

## Board of Health Report

- Failure of the Board of Health to report is considered an approval of the plan
- However, such approval does not mean that the Board of Health has approved the construction or use of any individual sewage system

Fairbairn v. Planning Board of Barnstable,  
5 Mass. App. Ct. 171 (1977)

The Board of Health is required to afford a developer a measure of procedural due process prior to formulating an adverse recommendation to the Planning Board.

## Constructive Approval

In the case of a nonresidential subdivision plan – within 90 days from the date of submission.



## Constructive Approval

In the case of a residential subdivision plan where a preliminary plan was submitted – within 90 days from the date of submission.

## Constructive Approval

In the case of a residential subdivision plan where no preliminary plan was filed – within 135 days from the date of submission.

## Performance Guarantees

- By a Proper Bond
- By a Deposit of Money or Negotiable Securities
- By a Covenant
- By an Agreement Whereby Lender Retains Funds



## Modification, Amendment and Rescission of Definitive Plans

“A Planning Board, on its own motion or on the petition of any person interested, shall have the power to require a change in a plan as a condition of its retaining the status of an approved plan.”

## Enforcement



The Building Inspector may not issue any permit for construction unless the lot is shown on a plan and that there is no limiting condition that would prevent the issuance of a building permit.

