



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks,  
Undersecretary

**PROCEDURAL REQUIREMENTS OF THE SUBDIVISION CONTROL LAW**

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This outline gives limited information relative to certain aspects of the Subdivision Control Law. It is intended only for informational and reference purposes. When a question of legal interpretation arises, local officials should always seek the advice of their municipal counsel.

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**I. PLANS NOT REQUIRING SUBDIVISION APPROVAL**

Note: For more detailed information regarding approval not required plans, please refer to MGL, c. 41, §§ 81L, 81P, 81T and 81BB.

**A. DEFINITION OF A SUBDIVISION**

1. A subdivision of land is the division of a tract of land into two or more building lots. (81L)
2. The division of a tract of land into two or more lots is not a subdivision within the meaning of the subdivision control law if each proposed building lot fronts on a qualified way and has the required frontage as specified in the subdivision control law. (81L)
3. Each proposed building lot must front on (a) a public way or a way which the municipal clerk certifies is maintained and used as a public way, or (b) a way shown on a plan approved and endorsed under the subdivision control law, or (c) a way in existence when the subdivision control law took effect in the community which in the opinion of the planning board provides adequate access to the proposed building lots. (81L)

## **B. NOTICE OF PLAN SUBMISSION**

1. Every person submitting an "approval not required plan" to the planning board must give written notice to the municipal clerk by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If notice is given by delivery the clerk shall, if requested, give a written receipt to the person who delivered such notice. (81T)
2. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land. The facts stated in such notice shall be taken by the municipal clerk as true, unless the contrary is made to appear. (81T)

Case Notes: Korkuch v. Planning Board of Eastham, 26 Mass. App. Ct. 307 (1988) (developer who submitted anr plan but who did not give immediate or very prompt written notice of the submission of the plan to the municipal clerk was not entitled to a certificate from the municipal clerk certifying constructive approval of the plan).

## **C. PLANNING BOARD DETERMINATION**

1. If the planning board determines that the plan does not require approval, the board should "forthwith" endorse the plan "approval under the subdivision control law not required" or words of similar import. (81P)
2. If the planning board determines that a plan requires subdivision approval, it shall, within twenty-one days after the plan has been submitted, give written notice of its determination to the municipal clerk and to the person submitting the plan. (81P)

Case Notes: Hamilton v. Planning Board of Beverly, 35 Mass. App. Ct. 386 (1993) (endorsement "approval not required" is a ministerial act that does not constitute attestation with either zoning requirements or subdivision plan conditions).

J&R Investment, Inc. v. City Clerk of New Bedford, 28 Mass. App. Ct. 1 (1989) (a vote to constitute a determination that a particular plan requires approval must be capable of being read by a reasonable person as making such a determination).

Bisson v. Planning Board of Dover, 43 Mass. App. Ct. 504 (1997) (a planning board cannot delay endorsement and wait for new zoning bylaw to take effect as the term "forthwith" compels immediate action).

Cumberland Farms, Inc. v. Planning Board of West Bridgewater, 64 Mass. App. Ct. 902(2005) (perimeter plan entitled to ANR endorsement).

Duddy v. Mankewich, 66 Mass. App. Ct. 789 (2006) (affirmative vote of a majority of the planning board and not merely a majority of a quorum is required to endorse ANR plan).

#### **D. PLANNING BOARD FAILURE TO ACT**

1. If the planning board fails to act on the plan or fails to notify the municipal clerk or the person submitting the plan of its determination within twenty-one days after the date the plan was submitted to the planning board, it shall be deemed that the plan does not require subdivision approval. The planning board shall forthwith make such endorsement on the plan. (81P)
2. If the planning board fails to endorse the plan, the municipal clerk shall issue a certificate to the person who submitted the plan stating that approval of the plan under the subdivision control law is not required since no notice of action was received from the planning board within the required time period. (81P).

Case Notes: Devine v. Town Clerk of Plymouth, 3 Mass. App. Ct. 747 (1975) (where clerk of planning board returned plan to applicant resulted in constructive approval of plan).

Lynch v. Planning Board of Groton, 4 Mass. App. Ct. 781 (1976) (planning board determination that plan required approval was without legal effect where board failed to act within the required time period).

Maini v. Whitney, Misc. Case No. 250542 (1999); 7LCR 263 (1999) (anr plan was considered submitted to the planning board under the board's rules and regulations which required that anr plans be submitted at a meeting of the board and the submission date was not the date the anr plan was submitted to the planning board secretary and notice of such delivery was given to the town clerk).

#### **E. NOTICE OF APPEAL**

1. If the planning board determines that subdivision approval is required and takes timely action, the person submitting the approval not required plan may appeal from the planning board's determination. (81P)
2. Such appeal must be entered in the court within twenty days after the notice of the planning board's determination was recorded with the municipal clerk. Notice of the appeal must also be given to the municipal clerk so as to be received within the same twenty-day period. (81BB)

Case Notes: Stefanick v. Planning Board of Uxbridge, 39 Mass. App. Ct. 418 (1995) (judicial review of an endorsement of an anr plan by a planning board can be made pursuant to mgl, c. 249, s. 4 and the time period for seeking such review is 60 days).

## **II. PRELIMINARY SUBDIVISION PLANS**

Note: For more detailed information regarding the preliminary plan process, please refer to MGL, c.41, § 81S.

### **A. NOTICE OF PLAN SUBDIVISION**

1. Any person, before submitting a residential subdivision plan, may submit a preliminary residential subdivision plan to the planning board and board of health. The person submitting the plan must give written notice to the municipal clerk, by delivery or by registered mail, postage prepaid, indicating that he has submitted such a plan. If notice is given by delivery, the municipal clerk must give a written receipt, if requested.
2. Any person, before submitting a nonresidential subdivision plan, must submit a preliminary nonresidential subdivision plan to the planning board and the board of health. The person submitting the plan must give written notice to the municipal clerk, by delivery or registered mail, postage prepaid, that he has submitted such a plan. If notice is given by delivery, the municipal clerk must give a written receipt, if requested.

Case Notes: Lavoie Construction Co. Inc. v. Building Inspector of Ludlow, 346 Mass. 274 (1963) (zoning protection was not lost for failure of applicant to file preliminary plan with the board of health).

### **B. NOTICE OF DECISION**

1. Within 45 days after submission of a preliminary plan, each board shall notify the applicant and the municipal clerk, by certified mail, either that the plan has been approved, or that the plan has been approved with modifications suggested by the planning board or agreed upon by the applicant, or that the plan has been disapproved. In the case of disapproval, the planning board must state its reasons for disapproval.
2. Except as is otherwise provided, the provisions of the subdivision control law relating to a definitive plan shall not be applicable to a preliminary plan, and no register of deeds shall record a preliminary plan.

Case Notes: Livoli v. Planning Board of Marlborough, 347 Mass. 330 (1964) (a planning board has no right to refuse to receive a definitive plan merely because the board had disapproved a preliminary plan).

Livoli v. Planning Board of Marlborough, 347 Mass. 330 (1964) (a preliminary plan which complies substantially with the definition of a preliminary plan in c. 41, § 81L will give the land shown on such plan

the benefit of the zoning protection in c. 40A, § 6 and such zoning protection is not lost if a planning board disapproves the preliminary plan).

Mac-Rich Realty Construction, Inc. v. Planning Board of Southborough, 4 Mass. App. Ct. 79 (1976); Livoli v. Planning Board of Marlborough, 347 Mass. 330 (1964) (developer has no right to appeal action taken on preliminary plan).

### **III. DEFINITIVE SUBDIVISION PLANS**

Note: For more detailed information regarding the definitive plan process, please refer to MGL, c. 41, §§ 81O, 81T, 81U, 81V and 81X.

#### **A. PLAN SUBMISSION**

1. Every applicant submitting a definitive plan to the planning board must give written notice to the municipal clerk by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If notice is given by delivery the clerk shall, if requested, give a written receipt to the person who delivered such notice. (81T)
2. Such notice shall describe the land to which the plan relates sufficiently for identification, it shall state the date the plan was submitted and the name and address of the owner of such land. The facts stated in the notice shall be taken by the municipal clerk to be true, unless the contrary is made to appear. (81T)
3. A plan is considered submitted if delivered at a meeting of the planning board or when sent by registered mail to the planning board. If the plan is mailed, the date of receipt is considered the date of submission of the plan. (81O)
4. Every applicant must also file a copy of the definitive plan with the board of health. (81U)

Case Notes: Cullen v. Planning Board of Hadley, 4 Mass. App. Ct. 842 (1976) (subdivision application can be hand delivered to town clerk).

#### **B. PUBLIC HEARING**

1. Before acting on a definitive plan, a public hearing must be held by the planning board. (81T)
2. Notice of the public hearing must be given by the planning board at the expense of the applicant by:

- a. advertisement in a newspaper of general circulation in the community once of each of two successive weeks. The first publication must be at least 14 days before the day of the hearing.

If there is no newspaper then the planning board must post the notice in a conspicuous place in the city or town hall at least 14 days before the day of the public hearing.

- b. mailing a copy of the notice to the applicant and all owners of land abutting the subdivision as appearing on the most recent tax list. (81T)
3. Notice of the public hearing must include the:
    - a. date, time and place of the public hearing; and,
    - b. subject matter of the public hearing sufficient for identification. (81T)

Case Notes: Pieper v. Planning Board of Southborough, 340 Mass. 157 (1959); Doliner v. Planning Board of Millis, 343 Mass. 1 (1961) (planning board failure to hold public hearing in disapproving plan not fatal and plan was not considered constructively approved by the board).

### **C. BOARD OF HEALTH ACTION**

1. The board of health has 45 days after the definitive plan is filed to report to the planning board in writing either:
  - a. approval of the plan; or
  - b. disapproval of the plan including specific findings as to which, if any, areas shown on the plan cannot be used for building sites without injury to the public health.

The report should also include the reasons for such decision and, where possible should include recommendations for adjustments to the plan. (81U)

2. Where a definitive plan shows that no public or community sewer is to be installed, approval of the plan by the board of health shall not be deemed:
  - a. to be an approval of a permit for the construction and use on any lot of an individual sewage system, or
  - b. an application for a permit to construct or use an individual sewage system on any lot shown on the plan. (81U)
3. A copy of the board of health's report must be sent by the board of health to the person who submitted the plan. (81U)

4. Failure of the board of health to report shall be considered an approval of the plan by the board. (81U)

Case Notes: Fairbairn v. Planning Board of Barnstable, 5 Mass. App. Ct. 171 (1977) (board of health can not require percolation tests as part of the subdivision plan review).

Fairbairn v. Planning Board of Barnstable, 5 Mass. App. Ct. 171 (1977) (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 and a developer who files a request with the board of health at the time of filing is entitled to a hearing).

United Reis Homes, Inc. v. Planning Board of Natick, 359 Mass. 621 (1971) (board of health can require performance bond to secure satisfactory completion of lot drainage requirements).

Loring Hills Developers Trust v. Planning Board of Salem, 374 Mass. 343 (1978) (if the plan does not comply with the recommendations of the board of health, the planning board must modify and approve or disapprove the plan).

#### **D. PLANNING BOARD WAIVER**

1. A planning board may waive any of its rules and regulations or may waive the frontage or access requirements of the subdivision control law if they find:
  - a. such action is in the public interest, and
  - b. such action is not inconsistent with the intent and purpose of the subdivision control law. (81R)

Case Notes: Arrigo v. Planning Board of Franklin, 12 Mass. App. Ct. 802 (1981) (waiver of the frontage requirement of the subdivision control law is not a variance).

Seguin v. Planning Board of Upton, 33 Mass. App. Ct. 374 (1992) (applicant must submit subdivision plan to obtain frontage waiver from planning board).

Meyer v. Planning Board of Westport, 29 Mass. App. Ct. 167 (1990) (planning board is not required to specify and list in writing those rules and regulations which it has waived so long as record discloses evidence of conscious waiver).

Windsor v. Planning Board of Wayland, 26 Mass. App. Ct. 650 (1988) (planning board need not make written finding to support waivers).

Batchelder v. Planning Board of Yarmouth, 31 Mass. App. Ct. 104 (1991) (planning board lacks authority to waive "owner of record" requirement for applicant as subdivision control law requires owner of record to file subdivision plan).

## E. PLANNING BOARD ACTION

1. After the public hearing and after the report of the board of health or the lapse of 45 days without such report, the planning board shall vote to either:
  - a. approve the plan if it complies with the board's rules and regulations and the recommendations of the board of health. If the board of health report so requires, the approval by the planning board shall be on the condition that no building or structure shall be built or placed without the consent of the board of health. If the board of health fails to report, the planning board must note on the plan that board of health approval is by failure of the board to report; or
  - b. modify and approve the plan if it does not comply with the planning board rules and regulations and the recommendations of the board of health; or
  - c. disapprove the plan, stating in detail where the plan does not comply with the rules and regulations of the planning board or the recommendations of the board of health and shall revoke its disapproval and approve a plan which, as amended, conforms to such rules or regulations or recommendations. (81U)

Case Notes: Green v. Board of Appeals of Norwood, 358 Mass. 253 (1970); M. DeMatteo Construction Co. v. Board of Appeals of Hingham, 3 Mass. App. Ct. 446 (1975) (conditions of approval only effective if endorsed on plan or set forth in a separate instrument referred to in the plan).

Patel v. Planning Board of North Andover, 27 Mass. App. Ct. 477 (1989) (the mere approval and recording of a subdivision plan which referred to a roadway did not convey an easement in favor of those owning property abutting the subdivision or the public generally and regardless whether a future roadway connecting streets is considered an easement to the public or to the owners of the abutting property, no such easement was ever created by any express act or grant).

Campanelli, Inc. v. Planning Board of Ipswich, 358 Mass. 797 (1970) (condition limiting duration of approval enforceable on future owner of subdivision).

Falcone v. Planning Board of Stoughton, 14 Mass. App. Ct. 950 (1982) (condition requiring applicant to submit revised plan with changes and plainly indicating that revised plan was subject to discretionary approval was in effect a disapproval of the plan as submitted).

Patelle v. Planning Board of Woburn, 6 Mass. App. Ct. 951 (1978) (disapproval of a plan is a final action from which the developer has a right of appeal and any resubmission to revoke such disapproval requires a new public hearing).

Doebelin v. Tinkham Development, 7 Mass. App. Ct. 720 (1979) (revised plan must be filed with board of health for review even though board of health approved original plan).

McElderry v. Planning Board of Nantucket, 431 Mass. 722 (2000) (majority of the entire membership of a planning board is required for approval of a definitive subdivision plan).

**F. PLANNING BOARD'S CERTIFICATE OF ACTION**

1. The planning board must file a certificate of its action with the municipal clerk. The municipal clerk shall record a copy of the planning board's certificate of action in a book kept for that purpose. The planning board must also send a notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application. (81U)

Case Notes: Kay-Vee Realty Co. Inc. v. Town Clerk of Ludlow, 355 Mass. 165 (1969) (a carbon copy of a letter to the applicant stating that the letter will be construed as a disapproval if further information is not received is not a certificate of action by the board; a certificate is a "written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with").

**G. APPEAL OF PLANNING BOARD DECISION**

1. Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by the planning board's decision on a definitive plan or the board's failure to take timely action may appeal to the court. (81BB)
2. Any appeal must be entered with the court within twenty days after the decision was filed with the municipal clerk, or within twenty days after the final action date if the planning board failed to act on the definitive plan. (81BB)
3. The notice of appeal must also be filed with the municipal clerk within the twenty-day period. (81BB)

Case Notes: Loring Hills Developers Trust v. Planning Board of Salem, 374 Mass. 343 (1978) (decision of board of health is subject to review under § 81BB).

Booker v. Chief Engineer of Fire Department of Woburn, 324 Mass. 264 (1949) (the word "day" when not qualified means a "calendar day", which is the space of time that elapses between two successive midnights).

**H. CERTIFICATION OF NO APPEAL**

1. The municipal clerk must certify that no notice of a court appeal was received within 20 days 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. (81X)

2. Such certification may be endorsed on the plan or stated on a separate document, which must be recorded and referred to on the plan. (81X)

## **I. PERFORMANCE GUARANTEE & ENDORSEMENT**

1. After the expiration of the appeal period and before endorsing its approval on the definitive subdivision plan, the planning board must obtain a performance guarantee to insure the construction of ways and the installation of municipal services. (81U)
2. The method for securing performance may be one of the following:
  - a. a proper bond,
  - b. a deposit of money or negotiable securities,
  - c. a covenant,
  - d. a lenders agreement, or
  - e. a combination of the above. (81U)
3. The applicant may select the method of securing performance and may vary the method from time to time. (81U)
4. The planning board must determine whether the performance guarantee is sufficient to secure performance of the construction of the ways and the installation of municipal services. In determining the monetary amount to secure performance the planning board should include a sufficient sum to cover cost that may occur due to inflation. (81U).
5. In all cases, the planning board should require the applicant to specify the time period within which the construction and installation will be completed.
6. A definitive subdivision plan which has been approved and endorsed by the planning board must be recorded with the registry of deeds within six months after the date of the planning board endorsement.(81X)
7. If the six months expires without recording, the applicant must apply to either the planning board or the municipal clerk for a certificate to allow recording. (81X)

8. Such certificate shall be issued by the planning board or the municipal clerk if the records of the board or the municipal clerk show that there has not been any modification, change, amendment or rescission to the approval of the plan. (81X)
9. Such certificate must be dated and either endorsed on the plan, or referred to on the approved subdivision plan and issued in a separate document which must be recorded by the applicant. (81X)
10. Such certification will allow the applicant to record the approved subdivision plan within thirty days after the date of the certification. (81X)

Case Notes: Stoner v. Planning Board of Agawam, 358 Mass. 709 (1971) (six month time period to record plan does not apply to constructively approved plan).

Gordon v. Robinson Homes, Inc., 342 Mass. 529 (1961); Stoner v. Planning Board of Agawam, 358 Mass. 709 (1971) (planning board has the authority to require owner of an approved or constructively approved subdivision plan to furnish sufficient performance guarantee as matters relating to required security are in the centralized hands of the city or town).

Marlborough Saving Bank v. City of Marlborough, 45 Mass. App. Ct. 250 (1998) (purpose of performance guarantees is to protect the public interest and does not confer a private benefit).

## **J. NOTIFICATION OF COMPLETION OF WORK**

1. Upon the completion of ways and the installation of municipal services in accordance with an approved subdivision plan, the applicant must send by registered mail to the municipal clerk and the planning board a written statement indicating that the construction or installation in connection with a bond, deposit or covenant, has been completed in accordance with the planning board's rules and regulations. The statement must also contain the address of the applicant. (81U)
2. If the planning board determines that the construction or installation has not been completed, it shall specify, in a notice sent by registered mail to both the applicant and the municipal clerk, the details where the construction or installation fails to comply with the planning board's rules and regulations. (81U)
3. In the event that the planning board does not make a determination regarding the status of construction or installation of services within forty-five days after receipt by the municipal clerk of the applicant's written statement, all obligations under a bond shall cease and terminate by operation of law, any deposit shall be returned and any covenant shall become void. (81U)
4. In the event that the forty-five day period expires without planning board notification that the construction or installation of services has not been completed, or without release and return of

the bond or return of the deposit or release of the covenant, the municipal clerk shall issue a certificate to that effect, duly acknowledged, which may be recorded by the applicant. (81U)

#### **K. CONSTRUCTIVE GRANT OF DEFINITIVE PLANS**

1. In the case of a nonresidential subdivision plan or residential subdivision plan where a preliminary plan was acted upon or where 45 days elapsed since the submission of a the preliminary plan, and then the definitive plan was submitted, the failure of a planning board either to take final action or to file with the municipal clerk a certificate of such action regarding the definitive plan within 90 days after the submission of the definitive plan, shall be deemed an approval of the plan. (81U)
2. In the case of a residential subdivision plan where no preliminary plan was filed or where 45 days had not elapsed since the submission of the preliminary plan and the definitive residential subdivision plan was submitted, the failure of a planning board either to take final action or to file with the municipal clerk a certificate of such action regarding the definitive plan within 135 days after the submission of the definitive plan, shall be deemed an approval of the plan. (81U)
3. At the written request of the applicant, the time period to take final action or file with the municipal clerk a certificate of action regarding the definitive plan may be extended. A notice of any agreed upon extension must be filed by the planning board with the municipal clerk. (81U)

Case Notes: Board of Selectmen of Pembroke v. R&P. Realty Corp., 348 Mass. 120 (1964); Stoner v. Planning Board of Agawam, 358 Mass. 709 (1971); Zaltman v. Planning Board of Stoneham, 5 Mass. App. Ct. 248 (1977) (failure to record certificate of action with municipal clerk within statutory time period will result in constructive grant).

Windsor v. Planning Board of Wayland, 26 Mass. App. Ct. 650 (1988) (the occurrence of a constructive approval renders any subsequent filing, whether of approval or disapproval of a plan, a nullity).

Craig v. Planning Board of Haverhill, 64 Mass. App. Ct. 677 (2005) (failure to file mutual extension of time with the municipal clerk results in constructive approval).

Kupperstein v. Planning Board of Cohasset, 66 Mass. App. Ct. 905 (2006) (if plan constructively approved then landowner is entitled, forthwith, to endorsement of plan or certificate from municipal clerk).

Krafchuk v. Planning Board of Ipswich, 70 Mass. App. Ct. 484 (2007) (failure of planning board to file mutual extension of time with town clerk not fatal where applicant acquiesced to the board's extended deliberations and took no timely action to secure certificate from the town clerk).

#### **L. CERTIFICATE WHEN PLANNING BOARD FAILS TO ACT**

1. In the case of the approval of a definitive plan by reason of the planning board's failure to act within the time prescribed, the municipal clerk shall, after the expiration of twenty days without

notice of appeal to the court, or, if an appeal has been taken and the municipal clerk has received the certified records of the court that approval of the plan has become final, shall issue a certificate to the person who submitted the plan. (81V)

2. The certificate must state:
  - a. the date the plan was submitted for approval;
  - b. the fact that the planning board failed to take timely final action; and
  - c. that the approval resulting from such failure has become final. (81V)

#### **IV. MODIFICATIONS, AMENDMENTS OR RESCISSIONS**

1. An amendment, modification or rescission of a plan may be initiated by the planning board or any interested person. (81W)
2. All of the provisions of the subdivision control law relating to the submission and approval of a definitive subdivision plan shall, so far as apt, be applicable to a modification, amendment or rescission of a definitive subdivision plan. The planning board should proceed according to all procedures that should be followed when originally approving a definitive subdivision plan. (81W)
3. No modification, amendment or rescission shall affect lots in a 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.

The sale of the entire parcel of land or all of the lots not previously released by the planning board to a single grantee shall not prohibit any modification, amendment or rescission. (81W)

4. So far as unregistered land is concerned, no modification, amendment or rescission takes effect until:
  - a. the plan as originally approved, or a copy thereof, and a certified vote of the planning board and any additional plan referred to in the vote has been recorded;
  - b. an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded; and,
  - c. the vote of the board is indexed in the grantor index under the names of the owners of record of the land affected. (81W)
5. So far as registered land is concerned, no modification, amendment or rescission takes effect until:

- a. verified by the Land Court pursuant to MGL, c. 185 or,
  - b. if the Land Court does not make such verification until ordered by the court pursuant to MGL, c. 185, § 114. (81W)
6. The register of deeds or recorder of the land court should not accept for recording a notice of modification, amendment or rescission unless the notice contains a statement that the 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; (81X)

Case Notes: Cassani v. Planning Board of Hull, 1 Mass. App. Ct. 451 (1973) (planning board may not rescind approval not required plan).

Windsor v. Planning Board of Wayland, 26 Mass. App. Ct. 650 (1988) (planning board may modify, amend or rescind ... or require a change in a constructively approved plan pursuant to 81W).

Bigham v. Planning Board of North Reading, 362 Mass. 860 (1972) (whatever reason a planning board may have for rescinding approval it must follow the procedures of § 81W).

Young v. Planning Board of Chilmark, 402 Mass. 841 (1988) (rescission of plan requires notice and public hearing).

Costanza & Bertolini, Inc. v. Planning Board of North Reading, 360 Mass. 677 (1971) (approval of plan was automatically rescinded where condition of approval was that construction had to be completed within 2 years or the plan was automatically rescinded).

Heritage Park Development Corp. v. Town of Southbridge, 424 Mass. 71 (1997) (automatic rescission of a subdivision plan does not terminate the eight year zoning protection afforded definitive plans under the Zoning Act).

Massachusetts Broken Stone Company v. Town of Weston, 45 Mass. App. Ct. 748 (1998) (under the freeze provisions of the Zoning Act, it is the subdivision plan that is protected for eight years, and only incidentally, the land).

Patelle v. Planning Board of Woburn, 20 Mass. App. Ct. 279 (1985) (amendments to plan affecting location of trees, width of streets, planting between curb and lot lines, traffic signals, overhead or underground utilities, street lighting, transformation of cul-de-sac to through street, relocation of open space area, and creation of house lots out of portion previously designated as open space did not "affect" owners of lots and mortgagees in subdivision in the statutory sense and therefore did not require their consent; approval would be required where changes would impair marketability of title).

Terrill v. Planning Board of Upton, 71 Mass. App. Ct. 171 (2008) (where a mortgagee's interest is acquired in good faith and for valuable consideration, rescission of a prior constructive approval of a subdivision plan is a nullity without the consent of the mortgagee).

## **V. PLANNING BOARD RULES AND REGULATIONS**

Note: For more detailed information regarding planning board rules and regulations, please refer to MGL, c. 41, §§ 81A, 81N, 81Q and 81EE.

### **A. SUBDIVISION CONTROL AS OF JANUARY 1, 1954**

1. Any planning board having subdivision control powers on January 1, 1954, should have transmitted one copy each of their subdivision rules and regulations to the register of deeds and recorder of the land court within sixty days after January 1, 1954. Copies of the subdivision rules and regulations should have been certified by the municipal clerk. If the copies of the subdivision rules and regulations have never been transmitted to the register or recorder, the operation of the subdivision control law would be suspended in your community until such copies are transmitted. (81EE)

### **B. SUBDIVISION CONTROL AFTER JANUARY 1, 1954**

1. In a community which accepts the provisions of the subdivision control law after January 1, 1954, the subdivision control law will not be in effect until the planning board has notified the register of deeds and the recorder of the land court that they have adopted their rules and regulations. The planning board must also furnish one copy of their rules and regulations to both the register of deeds and the recorder of the land court. Such copies of the rules and regulations must be certified by the municipal clerk. (81N)

### **C. AMENDMENTS TO RULES AND REGULATIONS**

1. The planning board must hold a public hearing before adopting or amending subdivision control rules and regulations. (81Q)
2. Notice of the public hearing must include:
  - a. the date, time and place of the public hearing; and
  - b. the subject matter sufficient for identification. (81Q).

3. Notice of the public hearing must be:
  - a. Published in a newspaper of general circulation in the community once in each of two successive weeks. The first publication can not be less than 14 days before the day of the public hearing.
  - b. 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 14 days before the day of the public hearing. (81Q)
4. A true copy of the planning board subdivision rules and regulations, with their most recent amendments, must be kept on file and available for inspection in the office of the planning board and in the office of the municipal clerk. (81Q)
5. A copy of the planning board subdivision rules and regulations and any amendments adopted after January 1, 1954, must be certified by the municipal clerk and transmitted by the planning board to the register of deeds and recorder of the land court. (81Q)

**D. CUSTODIAN OF RECORDS**

1. The planning board may appoint a custodian of its plans and records who may be the municipal clerk. (81A)

**VI. SUBDIVISION CONTROL LAW STATEMENT**

Note: For more detailed information regarding subdivision control law statements please refer to MGL, c. 41, §§ 81N and 81EE.

**A. SUBDIVISION CONTROL AS OF JANUARY 1, 1954**

1. The subdivision control law is not in effect in a municipality unless the board having the power of subdivision control on January 1, 1954 transmitted a statement to the register of deeds and the recorder of the land court within sixty days after January 1, 1954. Unless such statement was transmitted within sixty days, the operation of the subdivision control law is suspended until the municipal clerk notifies the register of deeds and recorder of the land court that the subdivision control law is in effect in the municipality in the manner provided in MGL, c.41, § 81N. (81EE)
2. The statement should have included an opinion of the board having subdivision control powers that the subdivision control law is in effect in the community. (81EE)

3. Included with the statement should be a copy, certified by the municipal clerk, of the vote of the city council or town meeting under which the subdivision control law which in the opinion of the board having subdivision control powers took effect. The statement should also include the date such vote was taken. If there was no vote, then the board having subdivision control powers should have referenced any special statute under which the subdivision control law was established in the municipality. (81EE)
4. The subdivision control law is in effect in a municipality if prior to January 1, 1954 the municipal clerk 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 January 1, 1954. The notice should have also included the date the planning board was established. (81EE)

**B. SUBDIVISION CONTROL AFTER JANUARY 1, 1954**

1. If the subdivision control law was established in a municipality after January 1, 1954, it does not take effect until the planning board has notified the register of deeds and the recorder of the land court that the municipality has accepted the provisions of the subdivision control law. (81N)
2. Such notice must include a copy of the vote of the city council or town meeting, certified by the municipal clerk, under which the provisions of the subdivision control law were accepted. (81N)