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## IMPORTANT CASES

### I. Subdivision Definition

#### A. What are adequate ways?

1. Rettig v. Planning Board of Rowley, 332 Mass. 476 (1955).

Rough country road, rutted and only ten feet wide, although perhaps a way in existence at the time the subdivision control law was accepted by the Town, is clearly not "adequate". Because improvements are required, the division required provision for one or more new ways to furnish access, and therefore requires approval, and plan not entitled to ANR endorsement.

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

Developer created scheme where remote building sites in Nantucket subdivision were connected to public way frontage by long thin strips of land as long as 1,000 feet, and as narrow as 12 feet. SJC held that because practical vehicle access by fire, police and emergency vehicles was inadequate, no more than "a purely technical or formal compliance with the frontage equipment" Id at 804. Plan not entitled to ANR endorsement.

3. Hrenchuck v. Planning Board of Walpole, 8 Mass. App Ct. 949 (1979).

Frontage of lot on limited access highway (Interstate 95) provided no practical means of access, and therefore refusal to endorse ANR plan was proper.

4. Perry v. Planning Board of Nantucket, 15 Mass. App. Ct. 144 (1983)  
(same subdivision as Gifford)

Lots had frontage on public way which was "a paper street" i.e. which had been laid out by Town, but had not been constructed. Court affirmed trial court's decision that frontage on a paper street, even though it is a "public way", is not adequate, and therefore planning board could withhold endorsement.

5. Hutchinson v. Planning Board of Hingham, 23 Mass. App. Ct. 416 (1987).

Good discussion of the limits of the Perry and Hrenchuck decisions.

Dissatisfaction with the quality of the access provided by a public way is not grounds for withholding ANR endorsement. Where road was 20 to 21 feet wide, Planning Board endorsement mandated.

6. Corcoran v. Planning Board of Sudbury, 406 Mass. 248 (1989) reversing the Appeals Court (opinion at 26 Mass. App. Ct. 1000).

Where each lot has adequate frontage on public ways, but buildable portion of lot was separated from public way by an area of wetlands, and access to public way provided by a common driveway, ANR endorsement required. "The existence of interior wetlands, that do not render access illusory is unlike the presence of distinct physical impediments to threshold access or extreme lot configuration that do."

B. What is lot? Bloom v. Planning Board of Brookline, 346 Mass. 278 (1963).

Two parcels shown on plan. One parcel, with inadequate frontage, contains notation on plan disclaiming the status of parcel as a binding lot. Held, parcel is not "lot", which statute defines as land "used or available for use as the site of one or more buildings." Because plan does not show a second "lot", plan does not show "subdivision", which requires two or more "lots".

To the same effect: Cricones v. Planning Board of Dracut, 39 Mass. App. Ct. 264 (1995).

C. The Two Building Exception. Citgo Petroleum Corp. v. Planning Board of Braintree, 24 Mass. App. Ct. 425 (1987). Plan showing division of land into two proposed lots, each of which had "substantial buildings" that existed at the time the subdivision control law went into effect in the Town of Braintree, must be endorsed "approval not required" regardless of sufficiency of frontage.

## II. Limits of Planning Board Action or Approval?

### A. Grounds for Disapproval.

1. Canter v. Planning Board of Westborough, 4 Mass. App. Ct. 306 (1976). Planning board disapproved plan because development proposed would have the effect of creating dangerous traffic conditions on adjacent public ways. Appeals Court ordered plan approved, holding, (where there is no evidence of Board of Health disapproval or violation of Town Zoning By Law) that Planning Board could not disapprove plan unless it was shown to violate rules and regulations of the Board. Board could not argue on appeal that there were violations that were not the basis of the Board's decision.

2. Fairbairn v. Planning Board of Barnstable, 5 Mass. App. Ct. 171 (1977). Good discussion of the relative rules of the Board of Health and Planning Board. Affirms disapproval of plan on the ground that plan did not conform to recommendations of Board of Health, holding that Planning Board's options in such circumstances, or limited to either disapproval or modifying plan so as to bring it into conformity. Court also holds that Planning Board may not independently of Board of Health act on the subject matter of sewage disposal.

Discussion of procedural requirement of Board of Health action. If developer requests a hearing, and the Board is inclined to disapprove, it must afford developer notice and opportunity to be heard, including presentation of evidence and cross-examination of witnesses.

B. Modification of Plan/Approval With Conditions.

1. J & C Homes v. Planning Board of Groton, 8 Mass. App. Ct. 123 (1979). Planning Board's approval of plan contingent upon developer agreeing to observe "such conditions which would show due regard for the concerns expressed at the public hearing" invalid. Any such conditions must be made known and susceptible of being determined based on action in public hearing. Decision based on determination that conditions were agreed to in private meeting that violated Open Meeting Law.

2. Campanelli v. Planning Board of Ipswich, 358 Mass. 798 (1970). Acceptance of conditional approval without appeal deemed acquiescence in its terms even if conditions not authorized by Subdivision Control Law.

C. Waiver.

1. Arrigo v. Planning Board of Franklin, 12 Mass. App. Ct. 802 (1981). Procedurally complicated decision, but often cited. With respect to Subdivision Control Law, held Planning Board decision to grant waiver must be sustained unless petitioner can show "substantial derogation" of intent and purpose of Subdivision Control Law; separate standard for the public interest necessarily gives large amount of discretion to Planning Board; (2) waiver need not be supported by written findings.

2. Wheatley v. Planning Board of Hingham, 7 Mass. App. Ct. 435 (1979). Waiver of requirement that developer guarantee installation of municipal services inconsistent with intent and purpose of Subdivision Control Law, and therefore decision annulled.

III. Limits on Scope of Planning Board Regulations.

A. Castle Estates v. Park and Planning Board of Medfield, 344 Mass. 329 (1962). Most important general statement in dictum of legal limitation of rule making power of planning boards. Regulations "should be comprehensive, reasonably definite, and carefully drafted, so that owners may know or advance what is or may be required of them and what standards and procedures will be applied to them."

B. North Landers Corp. v. Planning Board of Falmouth, 382 Mass. 432 (reversing the Appeals Court, 9 Mass. App. Ct. 193 (1980)). Important Case. Very large subdivision (447 lots) with off site access provided by 18 foot wide public way. Board disapproval upheld. Held (1) Planning Boards may by regulation require demonstration

of the adequacy of adjacent public ways in connection with review of subdivision and (2) regulation requiring "adequate access" not impermissibly vague under Castle Estates doctrine. Decision remanded, however, because the Board did not detail the respects in which the public way was adequate.

## FURTHER SOURCES

### TEXTS:

Bobrowski, Handbook of Massachusetts Land Use and Public Law. (Little Brown 1993 w/annual supplements). Chapters 14-17. Indispensable for Massachusetts land use attorneys. The four chapters cited are the best single source for analysis of Massachusetts subdivision law.

MCLE, Massachusetts Zoning Manual. 1995. Chapter 17 contains a good discussion of subdivision topics.

Brien C. Levy Edition, Massachusetts Zoning and Land Use Law. (Michie 1996). Chapter 9.