

Building Health into Subdivision and Development Review

Legal Authority of Boards of
Health and Planning Boards

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Legal Authority to Regulate and Protect Public Health and Safety

- Primary Authority – State Police Powers.
- Widely accepted function of government to protect public health even at the expense of individual's freedom.
- *“The right to engage in business must yield to the paramount right of government to protect the public health by any rational means.”* (*Druzik v. Haverhill Board of Health*).

Legal Authority of Boards of Health

- State Legislature delegated its power.
- Extent of delegation varies.
 - Sharing of power.
 - Delegation to Local Board of Health as primary enforcing agent.
 - Most state public health laws are anti-preemptive.
 - Local laws can be stricter, but not less strict.

Premier Statute, Ch. 111, Sec.

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- BOH authority to make “reasonable” health regulations.
 - Authority derives from the Legislature.
 - Same footing as statute, ordinance, by-law.
 - All rational presumptions in favor of validity of regulation.
 - Challenger must prove absence OF ANY CONCEIVABLE GROUND.
 - The reviewing court is not authorized to weigh evidence, find facts, exercise discretion, or substitute its judgment for that of the BOH.

Nuisance Statute, Ch. 111, Sec. 122

- The BOH “shall examine into all nuisances, sources of filth and causes of sickness within its town.”
- Nuisance: a thing, person or act that causes or MAY cause injury to public health.
- BOH’s obligations: “examine, destroy, remove and prevent as the case may require.”

Subdivision Control Law and BOH: Ch. 41, Sec. 81U

- “. . . a comprehensive statutory scheme designed for the safety, convenience, and welfare of the inhabitants of the cities and towns.” *Costanza & Bertolino, Inc. v. Planning Bd. of North Reading (1971)*.
- A copy of a definitive plan of a subdivision shall be filed with the BOH. The BOH or its agent shall report to the planning board “in writing, approval or disapproval of the plan.

BOH and Subdivision Control (cont.)

- If the BOH disapproves:
 - The BOH must make specific findings as to “which . . . areas shown on such plan cannot be used for building sites WITHOUT INJURY TO THE PUBLIC HEALTH, and shall include such specific findings and the reasons therefor . . . and where possible, shall make recommendations for the adjustments thereof.” (Sec. 81U).

Legal Authority of Planning Boards

- Municipalities greater than 10,000 must have planning boards. (Any town may have PB).
- Duties: “to make careful studies and . . . prepare plans of resources, possibilities and needs” of municipalities.
- Public ways must be approved by PB if there is no official map.
- PB shall make a Master Plan of the municipality (comprehensive document).

Planning Boards (cont.)

- Comprehensive Master Plan
 - Public document .
 - Adopted by majority vote of Planning Board following public hearing.
 - Strategies for land uses and policies and plans for long term management of development and growth.
 - Living document – make and amend as needed through broad-based process.

Planning Boards and Zoning

- Chief purpose: “. . . Promotion of the public health, safety, convenience, morals or welfare of its inhabitants.” Lamarre v. Commissioner of Public Works of Fall River. (Police Power).
- Holds public hearing and makes recommendations.
- May be Special Permit Granting Authority.
- May conduct site plan review.

Planning Boards and Subdivision Control

- Determines whether plan is Approval Not Required (ANR).
- Adopt Subdivision Rules and Regulations.
 - Requires a public hearing.
- Review preliminary subdivision plans.
- Review definitive subdivision plans.
 - CANNOT APPROVE A PLAN THAT DOESN'T COMPLY WITH BOH RECOMMENDATIONS.