

Summary of Subdivision Control Law for Subdivision Rules & Regulations Update

TO: Town of Pepperell Planning Board
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In order to help discussions to be their most constructive, the following summary is intended to provide an overview of items that can be addressed by Subdivision Rules and Regulations, as well as some of the items that cannot be addressed by those rules and regulations. Please note that unless text is in quotations, it has been modified from the original source.

What Can Be Regulated

According to MGL, Chapter 41, Section 81M, 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 insuring compliance with the applicable zoning ordinances or by-laws;
- for securing adequate provision 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.

According to MGL, Chapter 41, Section 81Q, rules and regulations may:

- require 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;
- require 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;
- include standards for the orientation of new streets, lots and buildings;
- include standards for building set back requirements from property lines;
- include standards for limitations on the type, height and placement, of vegetation; and
- include standards for restrictive covenants protecting solar access not inconsistent with existing local ordinances or by-laws.

Limitations of Regulations

MGL, Chapter 41, Section 81Q: "Except in so far as it may require compliance with the requirements of existing zoning ordinances or by-laws, 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."

MGL, Chapter 41, Section 81Q: "[...] 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."

The following points have been adapted from the Department of Housing and Community Development's "*An Overview of the Subdivision Control Law, MGL, Chapter 41, Sections 81K-81GG*", Revised December 2009, available at <https://masscptc.org/docs/core-docs/overviewofthesubdivision.pdf>

- Regulations have been held invalid which required subdividers to give "due consideration ... to the attractiveness of the street layout in order to obtain the maximum livability and amenity of the subdivision" and to show "due regard ... for all natural features such as large trees, water courses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision". In *Chira v. Planning Board of Tisbury* (1975), the court found that such regulations failed to set forth clear and objective standards. In this case, the court found that "The regulations fail to fulfill the requirement of apprising owners "in advance what is or may be required of them and what standards and procedures will apply to them.""
- While Section 81Q prohibits the Planning Board from adopting regulations relating "to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon ... ", except for requiring compliance with zoning, it does not forbid the Board from seeking information about those matters or requiring an environmental impact statement.