Massachusetts Land Court Reporter

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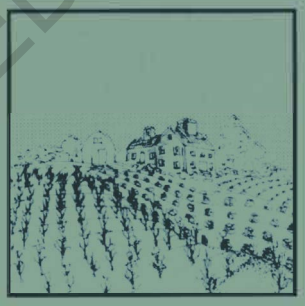
1993-2022



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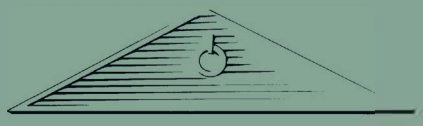

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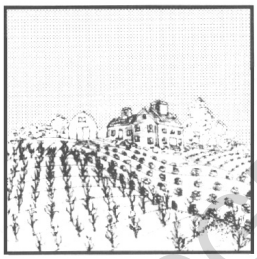

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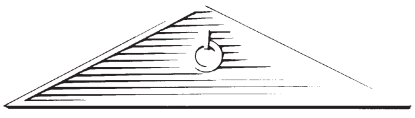

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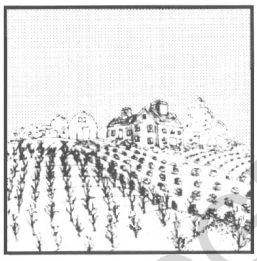

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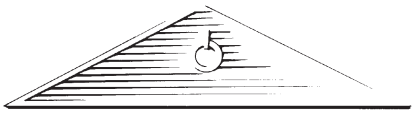

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CUMULATIVE SUBJECT MATTER DIGESTS

Cumulative Subject Matter Digests

ANR PLAN

Adequacy of Access

Justice Jennifer S.D. Roberts found that the Natick Planning Board had wrongfully refused to endorse an ANR plan on the grounds that the lots could only be accessed over land previously dedicated to open space in a 1992 definitive subdivision plan. Justice Roberts found that the language of the earlier subdivision documents did not prevent the installation of a driveway over the open space area and that the Town of Natick had no express grant of any rights in that open space area. Critical to the ruling was Justice Roberts' conclusion that the term "structure" in the Natick zoning bylaws and the subdivision easement agreements did not include driveways. *Natick Residential Realty, LLC* v. *Planning Board of Natick (Memorandum of Decision), [Roberts]* 28 LCR 462 (2020).

Justice Robert B. Foster dismissed a *certiorari* appeal of a Danvers Planning Board ANR endorsement by neighbors to the locus who claimed the endorsement was flawed because they had adverse possession claims to a part of the parcel and because the plans failed to show their fence and garage as encroachments. Justice Foster ruled that the Plaintiffs lacked standing to challenge the endorsement under *certiorari* because neither of their purported injuries related to adequacy of access or sufficiency of frontage on an appropriate way. He went on to rule that even if the Plaintiffs had standing, he would have affirmed the Danvers' Planning Board's endorsement as being buttressed by sufficient evidence of adequate frontage and access. *Morose* v. *Fitch (Memorandum and Order Allowing Motion for Judgment on the Pleadings), [Foster]* 28 LCR 59 (2020).

Justice Howard P. Speicher annulled the West Newbury Planning Board's endorsement of a four-lot ANR plan where the Applicant had failed to demonstrate present physical access to two of the lots or the right to cross the wetlands to obtain such access. In this case, the developer had not obtained Conservation Commission Orders of Condition authorizing the crossing before seeking endorsement of the ANR Plan and therefore under case law the access was illusory. *Baker* v. *Town of West Newbury (Decision on Cross-Motions for Judgment on the Pleadings), [Speicher]* 26 LCR 430 (2018).

Chief Justice Judith C. Cutler, on remand from the Appeals Court, again dismissed Middleton landowners' attempt to secure approvals for lots benefiting from a Roadway Improvement Plan as not requiring subdivision approval since they failed to demonstrate that the way providing frontage for the lots was in existence before the adoption of the Subdivision Control Law in 1955 or that the lots themselves existed before that date. As such, the lots in question lacked adequate access. *Country Places Development, LLC* v. *Town of Middleton (Decision Granting Cross Motion for Judgment on the Pleadings), [Cutler]* 26 LCR 54 (2018).

Justice Harry M. Grossman affirmed the Nantucket Planning Board's endorsement of a two-lot ANR plan, rejecting the Plaintiff neighbor's contention that the public way did not provide legal frontage because it failed to meet current subdivision standards. The way in question provided adequate practical access, being 15-feet wide and supplying a paved width of 10 feet. *One Brock's Court, LLC* v. *Rector (Order Denying Plaintiff's Motion for Judgment), [Grossman]* 22 LCR 373 (2014).

In a case filed by a Building Inspector against his own Planning Board, Justice Alexander H. Sands III ruled that the Leicester Planning Board acted arbitrarily and capriciously in approving an ANR Plan without determining the legal status of the street on which approval was based. Justice Sands also concluded that the Planning Board lacked sufficient evidence to conclude that the street provided adequate access. *Taylor* v. *Grimshaw (Decision), [Sands]* 22 LCR 321 (2014).

The Edgartown Planning Board could act quite properly in denying endorsement of a two-lot ANR plan based on the fact that the landowner lacked legal access to any newly created lot from the roadways of the neighborhood association and therefore any claimed access was illusory. *Arundale* v. *Planning Board of Edgartown (Decision), [Long]* 21 LCR 143 (2013).

Justice Charles W. Trombly, Jr., agreed with the Mattapoisett Planning Board's decision denying approval of an ANR plan on the grounds of inadequacy of access. The proposal was for a single-family home to be accessed by an existing 10-foot-wide private gravel driveway, already providing access to another home, that lacked an adequate turnaround for emergency vehicles, sufficient drainage, and acceptable grades. *Leary* v. *Tucker (Decision), [Trombly]* 18 LCR 243 (2010).

Justice Alexander H. Sands III reversed the Boxford Planning Board's denial of an ANR endorsement for a much-litigated, wetlands-impacted locus, finding that revised plans prepared on remand effectively addressed the Land Court's previous access concerns relating to steepness and barriers. Justice Sands also ruled that access was not illusory based on the existence of extensive interior wetlands because these wetlands would not impede threshold access and would, in any event, be regulated by the Wetlands Protection Act. *Walker Development Corp.* v. *Gore (Decision), [Sands]* 17 LCR 344 (2009).

Justice Harry M. Grossman overturned the denial of an ANR-plan endorsement by the Northbridge Planning Board of a four-lot land division where the Planning Board relied on the lack of direct access over the entire length of the frontage of one of the lots in rejecting the plan, but the Court found that actual access had been provided along the public way to the existing house for many years, the town maintained the roadway, the frontage was in no way "illusory," and case law did not require access to be provided along the full length of the frontage or that it be along a roadway that was entirely paved. *Zywien* v. *Planning Board of Northbridge (Decision and Order on Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment), [Grossman]* 16 LCR 120 (2008).

In a certiorari action, Land Court Justice Gordon H. Piper found that the Bristol County Water Authority could show aggrievement arising from the Swansea Planning Board's endorsement of a nine-lot ANR plan due to legitimate water-quality concerns, however, the Authority was unable to show, at this stage in the litigation, much connection between its source of aggrievement and its effort to secure annulment of the ANR endorsement based on a theory of illusory frontage due to wetlands along the access drive. While not granting the motion to dismiss, the Justice did order the Bristol County Water Authority to show, in light of this ruling, what particular harm it would suffer as the result of the specific defect, the illusory access, which the Plaintiff states requires invalidation of the ANR. *Bristol County Water Authority* v. *Planning Board of Swansea (Order Denying in Part and Granting in Part Defendants' Motion to Dismiss), [Piper]* 14 LCR 561 (2006).

Justice Alexander Sands III found that the steep slope and guardrail between lots proposed for creation under an ANR plan and their frontage provided but an illusory access and that the Boxford Planning Board did not act unlawfully in withholding endorsement. The fact that the access might be changed in the future through grading and fill, or removal of the guardrail, did not save the landowner from case-law requirements for present access. *Walker Development Corp.* v. *Gore (Decision), [Sands]* 14 LCR 280 (2006).

Justice Leon J. Lombardi ordered the Framingham Planning Board to endorse two ANR plans covering 12 lots in Framingham where the frontage

was on a subdivision plan approved in 1958 and a view of the road showed it "strained credulity" to suggest that access was illusory. *Albemarle Realty Corp.* v. *Planning Board of Framingham (Decision), [Lombardi]* 14 LCR 45 (2006).

A roadway in Framingham would not be considered inaccessible merely because an emergency vehicle would be unable to pass another vehicle due to the narrow width. While such potential access problems are not desirable, the Planning Board presented no authority in support of its contention that access means two-way access. *Albemarle Realty Corp.* v. *Planning Board of Framingham (Decision), [Lombardi]* 14 LCR 45 (2006).

The Boxford Planning Board exceeded its authority in denying an ANR endorsement for a nine-acre locus based on a utility easement possibly preventing legal access along the frontage, where issues such as easement rights and title disputes, while capable of preventing development, are generally not relevant to the Planning Board's obligation to endorse an ANR plan. Justice Charles W. Trombly, Jr., also found that the issue of adequacy of practical access along the frontage due to severe sloping was one requiring a trial. *Haszard* v. *Planning Board of Boxford (Order Denying in Part and Granting in Part Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment), [Trombly]* 13 LCR 516 (2005).

Justice Leon J. Lombardi found that the Scituate Planning Board had lawfully endorsed an ANR plan and was not obligated to determine whether the landowner owned access rights to the locus, unless a definitive plan were to be submitted for approval. *Duddy* v. *Mankewich (Order Granting Summary Judgment in Misc. Case No. 297366 and Order Denying Summary Judgment in Misc. Case No. 281211), [Lombardi]* 13 LCR 183 (2005).

Land Court Justice Alexander H. Sands III upheld an Edgartown Planning Board endorsement of an ANR plan against a challenge asserting a lack of access, finding the Board had acted rationally in concluding that access to the five lots was both adequate and satisfactory. *Dunham's Corner Residents Association, Inc.* v. *West (Decision), [Sands]* 12 LCR 163 (2004).

A Georgetown property owner could not claim frontage on a private way that was not in existence as of the time of the adoption of the Subdivision Control Law and did not currently provide a proper grade or sufficient width to provide for the needs of vehicular traffic. The landowner also failed to prove erosion damage occasioned by the actions of the town highway surveyor. *Centore* v. *Town of Georgetown (Decision), [Lombardi]* 11 LCR 1 (2003).

On assignment to the Superior Court, Judge Leon J. Lombardi found no misconduct on the part of the Deerfield Planning Board warranting a civil-rights claim under 42 U.S.C. §1983 where the board had withheld an ANR endorsement until changes in the lotting plan assured sufficient physical access to the lots. *Albany Trust* v. *Town of Deerfield (Decision), [Lombardi]* 9 LCR 340 (2001).

The Tewksbury Planning Board properly declined to endorse an ANR plan for a proposed warehouse where the frontage along the existing constructed ways did not provide access because of the presence of a pond. *Atlantic Dracut Realty, L.P.* v. *Planning Board of Tewksbury (Decision), [Green]* 9 LCR 269 (2001).

Judge Mark V. Green held that the Medfield planning board properly refused to endorse plaintiff's ANR plan, because the board had reasonably concluded that the way shown provided inadequate access to the lots proposed, and because plaintiff had failed to show that the way was a "way in existence" when the Subdivision Control Law became effective. *Musto* v. *Planning Board of Medfield (Decision), [Green]* 7 LCR 281 (1999).

A Winchester landowner appealing a zoning board's determination that it was not entitled to a building permit for residential construction on a lot showing frontage on an unnamed road was instructed by Judge Leon J. Lombardi to file an ANR plan with the planning board to allow it to determine whether there was adequate access to warrant plan endorsement. *Rossetti Investment Limited Partnership* v. *Wagner (Order Granting Partial Summary Judgment), [Lombardi]* 7 LCR 267 (1999).

Justice Mark V. Green sustained the Edgartown Planning Board's refusal to endorse an ANR plan for a lot on a narrow dirt road after officials testified emergency vehicles could not safely reach the property. *Hall* v. *Rankow (Decision), [Green]* 7 LCR 158 (1999).

Justice Mark V. Green annulled a Lincoln Planning Board denial of four-lot ANR plan that presented access, safety, and state-regulatory issues where the pleadings showed the lots had direct and actual access to a state highway although Massachusetts Highway Department curb-cut permits had not been obtained prior to the submission of the ANR plan. *Hobbs Brook Farm Property Co. Limited Partnership* v. *Planning Board of Lincoln (Decision on Cross-Motions for Summary Judgment), [Green]* 6 LCR 142 (1998).

Woburn Board of Appeals did not err when affirming the denial of a building permit for a lot that could not be accessed from its frontage due to wetlands restrictions where the local ordinance required driveways to have a certain width measured from the front lot line and there was no provision for common driveways. *Litchfield Co., Inc.* v. *Martin (Decision Granting Summary Judgment), [Lombardi]* 5 LCR 123 (1997).

Concord Planning Board wrongfully withheld an endorsement of a three-lot subdivision based on the insupportable argument that access adequacy was to be determined as of the date of subdivision-control adoption rather than the time of plan submittal. *Barton Properties, Inc.* v. *Hetherington (Decision), [Scheier]* 4 LCR 293 (1996).

Justice Leon Lombardi ruled that Dover Planning Board erred in failing to endorse lots on public way after finding that the board was not entitled to consider frontage access issues while considering a plan under §81P. *Bisson* v. *Planning Board of Dover (Decision Granting Summary Judgment), [Lombardi]* 4 LCR 96 (1996).

Justice Karyn F. Scheier both upheld and reversed decision of Lakeville Planning Board denying endorsement to ANR land division in finding that two streets, but not a third, provided adequate access without further subdivision for houselots. *Striar* v. *Linton (Decision), [Scheier]* 4 LCR 94 (1996).

Nantucket Planning Board erred in considering the adequacy of frontage access when refusing to endorse a three-lot ANR plan where plan did not show a subdivision and access issue would only be relevant when a building permit was sought. *Jaxtimer* v. *Visco (Order and Judgment), [Cauchon]* 4 LCR 71 (1996).

Edgartown ANR plan was properly endorsed by Planning Board where property showed adequate access on town road. *Johnson* v. *Convery (Decision), [Cauchon]* 4 LCR 29 (1996).

Planning Board endorsement of ANR plan did not prevent Ipswich lot from failing to meet bylaw's frontage requirements where access would be provided over dirt cart path that was practically impassible except by four-wheel-drive vehicles. *Ross* v. *Theodosopoulos (Decision), [Cauchon]* 2 LCR 169 (1994).

Endorsement of ANR plan in 1962 and grant of variance did not provide a basis for a showing of adequacy of access for a new plan filed in 1992. *Cresta* v. *Dow (Decision), [Kilborn]* 2 LCR 100 (1994).

Dracut Planning Board's denial of an ANR endorsement upheld where 50' right of way claimed as frontage was not even on paper when the Subdivision Control Law went into effect, the way had never been built, and vehicular access was not assured. *O'Brien* v. *Mason (Decision), [Kilborn]* 2 LCR 74 (1994).

Nonconforming Brewster lot protected by the single-lot exemption of Section 6 would still have to meet the vital-access standard for reasonable access for emergency, fire, and other vehicles. *Clark* v. *Wagoner (Order Granting Partial Summary Judgment), [Cauchon]* 2 LCR 1 (1994).

Danvers Planning Board erred in denying endorsement of three-lot ANR plan in light of adequate vehicular access and sufficient width and grade to provide vital access for police and fire emergency vehicles. *Aulson* v. *Simpson (Decision), [Cauchon]* 1 LCR 150 (1993).

Agency

ANR plan denial by the Boxborough Planning Board was upheld by Justice Leon J. Lombardi after plaintiffs provided no evidence of plan-filing notice being given to the town clerk and survey firm's office manager not shown to have had authority to file plan on behalf of landowners. *Nashoba Valley Nursery, Inc.* v. *Farrington (Decision), [Lombardi]* 5 LCR 163 (1997).

Appeal Period

Justice Charles W. Trombly, Jr., ruled that the executor of an estate had authority to submit an ANR plan for approval to the Harwich Planning Board in 1988 and that the time for challenging the Planning Board's 1988 endorsement of the plan had long since passed based on an application of either the 60-day statute of limitations on ANR appeals or the doctrine of laches. *Morgan* v. *Jozus (Decision), [Trombly]* 16 LCR 194 (2008).

Even if the Haverhill Planning Board had sought to secure a reversal of a constructively endorsed ANR plan from the Land Court as an action for certiorari, dismissal would have been appropriate since the action was brought more than 60 days after the proceeding in question. *Hatem* v. *Burke (Decision on Motion to Dismiss), [Green]* 5 LCR 231 (1997).

Appeal of failure of Merrimac Planning Board to endorse an ANR plan filed as a petition for mandamus was not subject to the 20-day appeal period but was untimely anyway since it was filed 134 days after plaintiff first claimed a constructive grant. *Attitash Acres, Inc.* v. *Evans (Decision on Motion for Summary Judgment), [Green]* 5 LCR 200 (1997).

"Approval Not Required" plan was insulated from attack where it was duly recorded and no appeal was filed against the approval within 20 days as required under G.L. c.41, Section 81BB. *Poirier* v. *Tarallo (Decision), [Cauchon]* 1 LCR 30 (1993).

Authority to Submit Plan

Justice Charles W. Trombly, Jr., ruled that the executor of an estate had authority to submit an ANR plan for approval to the Harwich Planning Board in 1988 and that the time for challenging the Planning Board's 1988 endorsement of the plan had long since passed based on an application of either the 60-day statute of limitations on ANR appeals or the doctrine of laches. *Morgan* v. *Jozus (Decision), [Trombly]* 16 LCR 194 (2008).

Buildability

Chief Justice Karyn F. Scheier ordered the Chilmark Planning Board to endorse a two-lot ANR plan bearing the legend that neither lot was buildable since the fact that the lots shown on the plan were not buildable compelled the conclusion that the plan did not show a subdivision and should therefore be accorded an ANR endorsement. *Bigelow* v. *Osnoss (Decision on Cross-Motions for Summary Judgment), [Long]* 16 LCR 446 (2008).

Conditional Endorsement

A challenge to conditions imposed more than 20 years earlier on the endorsement by the Hopkinton Planning Board of an ANR plan that limited access to the property from an adjoining way was found by Justice Gordon H. Piper to be time-barred. *Murphy* v. *Planning Board of Hopkinton (Decision Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Motion for Summary Judgment), [Piper]* 14 LCR 143 (2006).

Constructive Endorsement

The Georgetown Planning Board could not sue itself to change the result of its failure to act on a three-lot land division within 21 days and the plan was constructively approved. Appeals from ANR denials are by writ of certiorari and are limited to the record below, unlike other Land Court actions which proceed *de novo.* To allow a Planning Board and Building Inspector to appeal from the statutorily mandated consequences of their own inaction would make meaningless the time limits imposed by statute. *Planning Board of Georgetown* v. *Planning Board of Georgetown (Memorandum and Order on Pending Motions), [Long]* 22 LCR 330 (2014).

A memorandum from the Duxbury Planning Director that the Board had voted not to endorse an ANR plan was sufficient to provide the Town Clerk with the notice required under c. 41, §81P; nor was the Board's failure to provide written notice to applicant sufficient to trigger constructive approval. *Goodrich* v. *Planning Board of Duxbury (Order Denying Plaintiffs' Motion for Summary Judgment and Denying in Part and Granting in Part Defendants' Motion for Summary Judgment), [Scheier]* 8 LCR 448 (2000).

Judge Mark V. Green held that for purposes of G.L. c.41, §81P, the date on which an ANR plan was considered "submitted" to the Halifax planning board was, under that town's subdivision rules, the date the plan was delivered at a planning board meeting, and not the day the plan was delivered to the planning board secretary and notice of such delivery was given to the town clerk; thus plaintiff's plan was not constructively approved by the planning board, where the board voted to deny endorsement of the plan within 21 days of its delivery to the board at its meeting. *Maini* v. *Whitney (Decision Denying Plaintiff's Motion for Summary Judgment and Granting Summary Judgment for Defendants), [Green]* 7 LCR 263 (1999).

After Haverhill Planning Board conceded ANR plan had been constructively endorsed by its failure to act, the Board could not then seek reversal of the endorsement from the Land Court pursuant to Section 81Y because such a proceeding is not an enforcement action but an action in the nature of certiorari. *Hatem* v. *Burke (Decision on Motion to Dismiss), [Green]* 5 LCR 231 (1997).

Brookline Planning Board's vote of two-to-two qualified as final action denying endorsement to an ANR plan and plaintiff was not entitled to constructive endorsement based on an unsupported theory that the Planning Board had failed to act. *Saunders* v. *Baine (Order Granting Defendants' Partial Summary Judgment), [Scheier]* 4 LCR 86 (1996).

Curb Cut

Lincoln Planning Board erred in denying an ANR endorsement for four-lot ANR plan with frontage along a state highway on the grounds that a required MHD curb-cut permit had not been obtained prior to the submission of the ANR plan. *Hobbs Brook Farm Property Co. Limited Partnership* v. *Planning Board of Lincoln (Decision on Cross-Motions for Summary Judgment), [Green]* 6 LCR 142 (1998).

Justice Mark V. Green ruled that case-law precedent did not require separate Massachusetts Highway Department curb-cut permits for each of four ANR lots on a state highway in order to assure an ANR endorsement. *Hobbs Brook Farm Property Co. Limited Partnership* v. *Planning Board of Lincoln (Decision on Cross-Motions for Summary Judgment), [Green]* 6 LCR 142 (1998).

Easement

Justice Jennifer S.D. Roberts found that the Natick Planning Board had wrongfully refused to endorse an ANR plan on the grounds that the lots could only be accessed over land previously dedicated to open space in a 1992 definitive subdivision plan. Justice Roberts found that the language of the earlier subdivision documents did not prevent the installation of a driveway over the open space area and that the Town of Natick had no express grant of any rights in that open space area. Critical to the ruling was Justice Roberts' conclusion that the term "structure" in the Natick zoning

bylaws and the subdivision easement agreements did not include driveways. *Natick Residential Realty, LLC* v. *Planning Board of Natick (Memorandum of Decision), [Roberts]* 28 LCR 462 (2020).

Frontage

Justice Charles W. Trombly, Jr., ruled that the constructive approval by Planning Board inaction of a patently frontage-deficient Rutland ANR plan did not determine that the lots contained in the plan met the frontage requirement of the Rutland zoning bylaws, and therefore the Building Inspector had properly withheld building permits. *Elbag* v. *Van Dyke (Decision), [Trombly]* 17 LCR 135 (2009).

Justice Keith C. Long upheld the Town of Egremont's disapproval of an ANR plan showing 10 of 15 lots with only 50 feet of frontage in a district requiring 150 feet, a plan that relied on a bylaw provision allowing lots more than 250 feet from an approved street to be reached by a "corridor right of way" of not less than 50 feet. Justice Long ruled this provision did not waive frontage requirements but only provided for corridor access and that deference should be given to the Board's reasonable interpretation of its bylaw. *Cajun Acres, LLC* v. *Planning Board of Egremont (Memorandum and Order on the Parties' Cross-Motions for Summary Judgment), [Long]* 16 LCR 34 (2008).

An ANR plan showing two lots, one bearing the legend "not a building lot" and the other without a restrictive label, was properly denied by the Aquinnah Planning Board since the lot with no restrictions had neither frontage nor access. Justice Gordon H. Piper noted that case law cited by the *pro se* landowners allowing the endorsement of ANR plans showing nonbuildable lots involved land divisions that included a lot that did provide adequate frontage and access. *Kitras* v. *Rose (Decision Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Judgment on the Pleadings), [Piper]* 15 LCR 188 (2007).

The Duxbury Planning Board erred in finding that one of three lots on an ANR plan was a lot for purposes of triggering the subdivision control law where the lot was marked "unbuildable" on the plan. *Dingley Dell Estates, Inc.* v. *Zachmann (Decision Denying Defendants' Motion for Summary Judgment and Partially Allowing Summary Judgment for Plaintiff), [Sands]* 10 LCR 231 (2002).

Avenue from which a Pembroke landowner claimed frontage could not support an ANR endorsement where the way was not in existence in its current form when Pembroke adopted the Subdivision Control Law but was a meandering gravel way. *Gould* v. *Bean (Decision), [Green]* 7 LCR 78 (1999).

Andover Planning Board properly declined to endorse an ANR plan where the landowner failed to establish that the way on which frontage was claimed was in existence as of the date of the adoption of the Subdivision Control Law in Andover and therefore entitled to a Section 81L(c) exemption for grandfathered roadways. *Coolidge Construction Co., Inc.* v. *Planning Board of Andover (Decision), [Scheier]* 7 LCR 75 (1999).

Lincoln Planning Board erred in denying an ANR endorsement for a four-lot ANR plan where practical access along the entire frontage requirement did not exist but sufficient access was available for a residential driveway. *Hobbs Brook Farm Property Co. Limited Partnership* v. *Planning Board of Lincoln (Decision on Cross-Motions for Summary Judgment), [Green]* 6 LCR 142 (1998).

Obscure provision of the subdivision law allowing the division into separate lots of buildings in existence at the time the town adopted the Subdivision Control Law compelled the Reading Community Planning and Development Commission to endorse Section 81P plan even where applicant did not present a plan that complied with existing frontage requirements to the extent it might have. *Malcolm* v. *Inhabitants of the Town of Reading (Decision Granting Plaintiff's Motion for Summary Judgment), [Kilborn]* 5 LCR 30 (1997).

Chelmsford Planning Board ordered to endorse two-lot ANR plan showing lots that failed to meet current frontage requirements since the endorsement of a Section 81P plan does not mean that lots are buildable. *North Commercial, Inc.* v. *Gilet (Decision on Summary Judgment), [Lombardi]* 5 LCR 27 (1997).

Norton Planning Board's refusal to endorse ANR plan upheld where landowner failed to present any evidence that tract had frontage on a public way or otherwise met the statutory requirements for endorsement. *Pino* v. *Planning Board of Norton (Decision), [Cauchon]* 4 LCR 188 (1996).

Grandfathered Buildings

A Waltham landowner could not take advantage of the exemption to the Subdivision Control Law set forth in Section 81L for buildings in existence at the time of the adoption of the Subdivision Control Law since the building in question was not constructed until 1952 and the Subdivision Control Law was adopted by Waltham in 1944. Justice Keith C. Long was unconvinced by the landowner's argument that the Subdivision Control Law had lapsed in 1952 because the City delayed in filing copies of its regulations with the Registry of Deeds, ruling that the delay merely suspended the application of the law but did not change its adoption date. He also ruled that the "building," the dilapidated remains of a milk plant, was not "in existence" at the time of the filing of the ANR because its roof was missing and it was unused and run down. *Ducey* v. *Creonte (Decision), [Long]* 15 LCR 362 (2007).

Duxbury landowners were entitled to an endorsement of their ANR plan dividing property on which rested two grandfathered, pre-subdivision-control-law buildings under §81L, but the doctrine of infectious invalidity barred the issuance of a building permit for a new building on the zoning-compliant lot because the other lot would be newly created yet nonconforming. *Norton* v. *Donahue (Decision on Cross-Motions for Summary Judgment), [Trombly]* 12 LCR 173 (2004).

Although the record was insufficient to find that a Gloucester landowner was entitled to a special permit for the division of a lot with two pre-subdivision-control-law buildings, the Gloucester Planning Board erred in finding the property unsuitable for division based on the condition of one of its buildings as of the date the subdivision-control law was adopted in the North Shore community. *Curtis* v. *Movalli (Decision on Plaintiff's Motion for Summary Judgment), [Scheier]* 9 LCR 158 (2001).

Hanover landowners effectively froze the zoning applicable to their industrial parcel when filing an ANR plan in 1995 and the applicable zoning for a concrete-batching plant would be that in force in 1995 and not that subsequently voted in 1997. *P.A. Landers, Inc.* v. *Brugnoli (Decision on Motions for Summary Judgment), [Lombardi]* 7 LCR 16 (1999).

Although Section 81L would allow the by-right subdivision of two lots with buildings thereon that predated the adoption of the Subdivision Control Law in Pembroke, the resulting lots would still have to conform with current zoning requirements and their failure to do so would render them unbuildable. *Mignosa* v. *Parks (Decision), [Kilborn]* 6 LCR 279 (1998).

Obscure provision of the subdivision law allowing the division into separate lots of buildings in existence at the time the town adopted the Subdivision Control Law compelled the Reading Community Planning and Development Commission to endorse Section 81P plan even where applicant did not present a plan that complied with existing frontage requirements to the extent it might have. *Malcolm* v. *Inhabitants of the Town of Reading (Decision Granting Plaintiff's Motion for Summary Judgment), [Kilborn]* 5 LCR 30 (1997).

Modifications

Land Court Justice Alexander H. Sands III found that abutters had timely appealed a subdivision modification and were under no obligation to appeal an ANR plan affecting the locus which could not, in any event, prop-

erly modify the subdivision. *Siok* v. *Phoenix (Decision on Defendants' Motion to Dismiss), [Sands]* 22 LCR 233 (2014).

A Totten Pond Road project in Waltham received a boost from Justice Leon J. Lombardi against an opposing abutters group in rulings that found an approved ANR plan was not revoked by the filing of a successor plan for the same property because the successor plan was disapproved and that a revised ANR plan showing an easement extension was permissible under Section 81X since this plan did not show any new "ways." *McNamara* v. *Tarallo (Decision on Summary Judgment After Remand), [Lombardi]* 10 LCR 161 (2002).

Notification of Clerk

An Acushnet landowner was not entitled to a constructive endorsement of an ANR plan after the Planning Board failed to act since her land surveyor neglected to properly notify the Town Clerk that the ANR plan had been submitted to the Planning Board as required by Section 81T of the Subdivision Control Law. *Peters* v. *LaBonte (Decision), [Grossman]* 20 LCR 54 (2012).

A memorandum from the Duxbury Planning Director that the Board had voted not to endorse an ANR plan was sufficient to provide the Town Clerk with the notice required under c. 41, §81P; nor was the Board's failure to provide written notice to applicant sufficient to trigger constructive approval. *Goodrich* v. *Planning Board of Duxbury (Order Denying Plaintiffs' Motion for Summary Judgment and Denying in Part and Granting in Part Defendants' Motion for Summary Judgment), [Scheier]* 8 LCR 448 (2000).

ANR plan denial by the Boxborough Planning Board was upheld by Justice Leon J. Lombardi after plaintiffs provided no evidence of plan-filing notice being given to the town clerk. *Nashoba Valley Nursery, Inc.* v. *Farrington (Decision), [Lombardi]* 5 LCR 163 (1997).

Engineer's affidavit that he had notified the Brookline Town Clerk of the filing of an ANR plan was a question of fact to be resolved at trial where clerk indicated the town had no record of any receipt of such written notice and issue could not be resolved by summary judgment proceeding. *Saunders* v. *Baine (Order Granting Defendants' Partial Summary Judgment), [Scheier]* 4 LCR 86 (1996).

Number of Lots

The Burlington Planning Board wrongfully denied endorsement of a three-lot ANR plan on the ground that the locus had been the subject of a previous definitive subdivision plan where waivers were granted conditioned on a limited buildout of two lots, since the Board had failed to note the condition on the recorded subdivision plan or the agreement referenced in the plan. *Montello* v. *Covino (Decision Granting Plaintiff's Motion for Summary Judgment), [Scheier]* 13 LCR 505 (2005).

Official Map

The Town of Georgetown was required to amend the official map by incorporating parts of a private way shown on a constructively endorsed ANR Plan but the Planning Board could require reasonable grading, surfacing, and drainage improvements before the road could be used for access. The decision finds that a Town Clerk certificate indicating that the ANR Plan was constructively endorsed met the requirements of the Official Map Statute, thereby obligating Georgetown to add the way to the Town Map. *Tolman* v. *Bonavita (Memorandum and Order on Motion for Partial Summary Judgment), [Long]* 28 LCR 192 (2020).

Justice Charles W. Trombly, Jr., affirmed the denial of a Douglas ANR plan based on Planning Board testimony that established that the claimed way was not in existence when Subdivision Control was adopted, buttressed by the testimony of the landowner herself who failed to establish any possibility of vehicular access over the way at the time of adoption as her use was limited to travel by horseback and foot for the 40 years she lived on the property. Justice Trombly also found that the plan was properly denied endorsement because it was not properly labeled to show that Lot 1 was unbuildable nor did she identify the private way as one not depicted on the official map of Douglas. *Lussier* v. *Mungeam (Order Granting Defendant's Motion for Summary Judgment), [Trombly]* 17 LCR 780 (2009).

Out-of-State Land

The Salisbury Planning Board could not deny endorsement to an otherwise compliant three-lot ANR plan along the New Hampshire border in Salisbury merely because it would result in an adjoining parcel in New Hampshire becoming landlocked. Case law arising from illusory access situations or public safety concerns was inapposite because all three lots in Massachusetts created by the ANR were provided with proper access. The fate of the New Hampshire lot would have to be decided by the Town of Seabrook and the state of New Hampshire and was outside the purview of the Salisbury ZBA and the Land Court. *LePere* v. *Planning Board of Salisbury (Memorandum and Order Allowing Plaintiff's Motion for Summary Judgment), [Foster]* 26 LCR 411 (2018).

Private Way

Drawing a sharp distinction between public and private roads, Justice Keith C. Long affirmed the Belchertown Planning Board's refusal to endorse an ANR plan with frontage on a dirt and gravel private way where the roadway provided access to existing dwellings but was nevertheless potholed, narrow, winding, and steeply inclined with sharp curves. Had the road been a public way, the Board would not have been allowed to withhold endorsement. *Libucha* v. *Town of Belchertown (Decision), [Long]* 21 LCR 575 (2013).

A Georgetown property owner could not claim frontage on a private way that was not in existence as of the time of the adoption of the Subdivision Control Law and did not currently provide a proper grade or sufficient width to provide for the needs of vehicular traffic. The landowner also failed to prove erosion damage occasioned by the actions of the town highway surveyor. *Centore* v. *Town of Georgetown (Decision), [Lombardi]* 11 LCR 1 (2003).

The Duxbury Planning Board failed in bid to secure the summary dismissal of a suit brought by the frustrated filer of an ANR plan claiming a way was public by dedication or prescriptive public use since the landowner was not shown to have no reasonable expectation of prevailing. *White* v. *Donahue (Decision Denying Defendants' Motion for Summary Judgment), [Scheier]* 9 LCR 111 (2001).

Pembroke Planning Board's denial of an ANR endorsement of plan showing frontage on private way upheld where the town had not regularly maintained the way and it had not been used as a public way. *Murphy* v. *McGlone (Decision), [Kilborn]* 3 LCR 200 (1995).

Land-use board may not apply a more rigorous standard to a private way than to a public way when determining adequacy of vehicular access pursuant to Subdivision Control Law exemptions. *Aulson* v. *Simpson (Decision), [Cauchon]* 1 LCR 150 (1993).

Property Lines

An ANR plan showing two lots, one apparently included by error without the owners' consent or signature, was properly refused endorsement by the Rockland Planning Board, but a later-filed corrective plan was improperly denied endorsement on the grounds of Board skepticism as to the accuracy of the property lines, because the plan met statutory requirements in that it did not show a subdivision, had proper frontage, and correctly showed the lot in question. *Baggia* v. *Planning Board of Rockland (Decision on Cross-Motions for Summary Judgment), [Trombly]* 16 LCR 633 (2008).

Public Way

In a case filed by a Building Inspector against his own Planning Board, Justice Alexander H. Sands III ruled that the Leicester Planning Board lacked sufficient evidence to determine whether the street in question was a public

or private way. *Taylor* v. *Grimshaw (Decision), [Sands]* 22 LCR 321 (2014).

Relying on 19th-century records showing "damages" paid by the town of Whately to landowners, Judge Mark V. Green concluded from municipal records that the town had discontinued Chestnut Mountain Road in 1888, thereby precluding lots shown on a 1999 ANR plan from endorsement as not requiring subdivision approval. *Zaskey* v. *Town of Whately (Decision), [Green]* 9 LCR 126 (2001).

Judge Leon J. Lombardi dismissed a complaint by a disappointed Scituate landowner seeking ANR endorsement in finding that the way on which frontage was claimed was not proven to have been laid out and accepted in the 1720s but was laid out as what is now known as a statutory private way. *Moncy* v. *Planning Board of Scituate (Decision), [Lombardi]* 6 LCR 322 (1998).

Endorsement of ANR plans and finding that way was adequate for such endorsement would not transform it into a public way. *Lay* v. *Inhabitants of the Town of Merrimac (Decision), [Lombardi]* 4 LCR 153 (1996).

Recording

Justice Michael D. Vhay ruled that a sketch plan showing a land division in Weymouth that had neither been approved under the Subdivision Control Law or blessed with an ANR endorsement should never have been accepted for recording by the Norfolk Registry. Since the locus included both recorded and registered land, Justice Vhay ordered the landowner to withdraw the parts of the locus from the registered side and correct this conveyancing imbroglio by putting on record a confirmatory deed covering the entire locus. *Hedlund* v. *Calpine Fore River Energy Center, LLC (Decision), [Vhay]* 26 LCR 141 (2018).

Signatures and Consents

An ANR plan showing two lots, one apparently included by error without the owners' consent or signature, was properly refused endorsement by the Rockland Planning Board, but a later-filed corrective plan was improperly denied endorsement on the grounds of Board skepticism as to the accuracy of the property lines, because the plan met statutory requirements in that it did not show a subdivision, had proper frontage, and correctly showed the lot in question. *Baggia* v. *Planning Board of Rockland (Decision on Cross-Motions for Summary Judgment), [Trombly]* 16 LCR 633 (2008).

The Woburn Planning Board properly found an ANR plan improperly filed where the consents and signatures of all the owners did not appear on the application and the owners failed to provide title information required pursuant to the board's regulations. *Burke* v. *Braese (Decision on Cross-Motions for Summary Judgment), [Lombardi]* 8 LCR 346 (2000).

Three Year Use Freeze

Judge Karyn F. Scheier held that a bylaw "front-to-back" rule was a dimensional rather than a use provision. *Cicatelli* v. *Conlon (Decision on Plaintiff's Motion for Summary Judgment), [Scheier]* 9 LCR 281 (2001).

Judge Karyn F. Scheier found that the term "use of land" in the ANR use-freeze provisions of §6, par. 6, of the Zoning Act applies to land as a whole rather than providing use protection to the individual lots. *Cicatelli* v. *Conlon (Decision on Plaintiff's Motion for Summary Judgment), [Scheier]* 9 LCR 281 (2001).

Filing of an ANR plan in connection with the permitting of a Stop & Shop supermarket proposal did not insulate the project from subsequently adopted zoning rules requiring large projects to undergo special-permit and site-plan reviews but not barring such projects outright. *Katzen* v. *Town of Wellesley (Decision Granting Summary Judgment in Favor of Defendant), [Scheier]* 5 LCR 134 (1997).

Weston landowner could not extend the initial three-year freeze period for another three years by filing an identical plan with the Planning Board prior to the running of the first three years. *Kelly* v. *Uhlir (Decision), [Sullivan]* 1 LCR 133 (1993).

Time to Endorse

Dover Planning Board erred in failing to endorse lots on public way and was not entitled to wait 21 days to consider access issues but only to file decision with Town Clerk. *Bisson* v. *Planning Board of Dover (Decision Granting Summary Judgment), [Lombardi]* 4 LCR 96 (1996).

Title Information

The Sudbury Planning Board could not lawfully withhold an ANR-plan endorsement merely because of ongoing litigation concerning the plaintiff's title arising from the town's rights of first refusal under Chapter 61A. *Scott* v. *Keller (Decision), [Kilborn]* 9 LCR 62 (2001).

The Woburn Planning Board properly found an ANR plan improperly filed where the consents and signatures of all the owners did not appear on the application and the owners failed to provide title information required pursuant to the board's regulations. *Burke* v. *Braese (Decision on Cross-Motions for Summary Judgment), [Lombardi]* 8 LCR 346 (2000).

Town Acceptance

The Duxbury Planning Board failed in bid to secure the summary dismissal of a suit brought by the frustrated filer of an ANR plan claiming a way was public as evinced by its dedication by the owner to public use coupled with acceptance by the public. *White* v. *Donahue (Decision Denying Defendants' Motion for Summary Judgment), [Scheier]* 9 LCR 111 (2001).

Ipswich Planning Board's denial of ANR endorsement for Ipswich lots upheld where frontage claimed was on town-owned access drive to cemetery and town meeting had declined to accept the drive as a public way. *Prisby* v. *King (Decision), [Kilborn]* 3 LCR 185 (1995).

Way in Existence

Justice Robert B. Foster refused to find on summary judgment that a private way in existence in Beverly prior to the adoption of subdivision regulation could provide legal frontage because the Planning Board, when approving the ANR for the locus in question, could not be shown to have made any finding of fact as to the sufficiency of the way with regard to width, grades, or adequate vehicular access. As such, an important dispute of a material fact remained outstanding and therefore summary judgment was inappropriate. *Tessier* v. *Frattaroli (Memorandum and Order on Cross-Motions for Summary Judgment), [Foster]* 30 LCR 295 (2022).

Justice Robert B. Foster ruled on summary judgment that an endorsed 1972 Cohasset ANR plan was the result of the Planning Board having found legally sufficient frontage for the three relevant lots and that the relevant way in existence providing the zoning frontage was also found by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic. *O'Pray* v. *Brewer (Memorandum and Order on Cross-Motions for Summary Judgment), [Foster]* 27 LCR 390 (2019).

Chief Justice Judith C. Cutler, on remand from the Appeals Court, again dismissed Middleton landowners' attempt to secure approvals for lots benefiting from a Roadway Improvement Plan as not requiring subdivision approval since they failed to demonstrate that the way providing frontage for the lots was in existence before the adoption of the Subdivision Control Law in 1955 or that the lots themselves existed before that date. *Country Places Development, LLC* v. *Town of Middleton (Decision Granting Cross Motion for Judgment on the Pleadings), [Cutler]* 26 LCR 54 (2018).

Justice Charles W. Trombly, Jr., affirmed the denial of a Douglas ANR plan based on Planning Board testimony that established that the claimed way was not in existence when Subdivision Control was adopted, buttressed by the testimony of the landowner herself who failed to establish any possibility of vehicular access over the way at the time of adoption as her use was limited to travel by horseback and foot for the 40 years she lived on the

property. Justice Trombly also found that the plan was properly denied endorsement because it was not properly labeled to show that Lot 1 was unbuildable nor did she identify the private way as one not depicted on the official map of Douglas. *Lussier* v. *Mungeam (Order Granting Defendant's Motion for Summary Judgment), [Trombly]* 17 LCR 780 (2009).

Zoning Compliance

Justice Robert B. Foster found that an ANR plan affecting a site proposed for a massive solar installation was properly endorsed and rejected abutters' claims that it did not warrant endorsement because the bylaws regulating solar projects might have been flawed. The plan as filed met dimensional and frontage requirements and the Board had no choice but to endorse it. *Nextsun Energy, LLC* v. *Fernandes (Corrected Memo and Order on Cross-Motions for Summary Judgment), [Foster]* 29 LCR 52 (2021).

Justice Robert B. Foster reversed a decision of the Brockton ZBA upholding the denial of a building permit for a vacant undeveloped lot, finding that the lot was lawfully created in 1964 without the endorsement of an ANR plan since it satisfied the existing dimensional rules of the ordinance and was a conforming building lot. As such, the filing of an ANR plan was permissive but not mandatory since the property division did not constitute a subdivision. *RCA Development, Inc.* v. *Galligan (Memorandum and Order on Cross Motions for Summary Judgment), [Foster]* 25 LCR 740 (2017).

Justice Gordon H. Piper concluded that a dwelling on a residential lot in Tisbury, rendered dimensionally noncompliant as the result of an ANR plan creating two lots, was protected from regulatory enforcement by the 10-year statute of limitations. The ANR plan clearly warned that its approval did not protect the lots from zoning enforcement. *Bruno* v. *Kristal (Decision), [Piper]* 24 LCR 587 (2016).

The Granby Planning Board erred in refusing to endorse a three-lot ANR plan that included a lot that was not zoning compliant but had been clearly labeled on the plan as "non-buildable." Justice Alexander H. Sands III found that an endorsement was required because the plan did not show a subdivision and also because the third lot, marked as non-buildable, met the requirements for an exception to the subdivision statute. *Piquette* v. *Town of Granby (Decision), [Sands]* 18 LCR 553 (2010).

The denial of frontage and lot-area variances for two landlocked Winthrop residential parcels, previously accorded ANR endorsements by the Winthrop Planning Board, was affirmed by Land Court Justice Keith C. Long, citing the well established principle that ANR endorsement does not resolve zoning issues and crediting the testimony of the Fire Chief that emergency-apparatus access would be virtually impossible to these small and frontageless lots. *Pellegriti* v. *Baird (Decision), [Long]* 17 LCR 194 (2009).

Landowners in Chappaquiddick failed in their bid to nullify special permits granted to allow the construction one-acre lots of affordable homes for local people in a zoning district requiring a minimum lot area of three acres based on their assertion that the lots did not technically qualify as "substandard" under the Edgartown affordable-housing bylaws because at the time of the recording of the ANR they would not have met dimensional requirements. *Mellendick* v. *Tomassian (Decision Granting Defendants' Partial Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment), [Piper]* 14 LCR 348 (2006).

Obscure provision of the subdivision law allowing the division into separate lots of buildings in existence at the time the town adopted the Subdivision Control Law compelled the Reading Community Planning and Development Commission to endorse Section 81P plan even where applicant did not present a plan that complied with existing frontage requirements to the extent it might have. *Malcolm* v. *Inhabitants of the Town of Reading (Decision Granting Plaintiff's Motion for Summary Judgment), [Kilborn]* 5 LCR 30 (1997).

Chelmsford Planning Board ordered to endorse two-lot ANR plan showing lots that failed to meet current frontage requirements since the endorsement of a Section 81P plan does not mean that lots are buildable. *North Commercial, Inc.* v. *Gilet (Decision on Summary Judgment), [Lombardi]* 5 LCR 27 (1997).

ABUSE OF PROCESS

Lis Pendens

Filing of lis pendens did not constitute an abuse of process in light of the fact that lis pendens does not represent a title defect but merely notices the possibility of one. *Edgartown Forest Estates Association, Inc.* v. *Dodgers Hole Corp. (Decision), [Cauchon]* 4 LCR 173 (1996).

ACCESSORY USE (SEE ALSO USE CATEGORIZATION/VIOLATION)

Agricultural Uses

Justice Robert B. Foster found that processing activities connected to a by right marijuana processing facility and greenhouse were properly accessory to the main principal use. *Valley Green Grow, Inc.* v. *Town of Charlton (Memorandum and Order Allowing Plaintiffs' Motion for Summary Judgment), [Foster]* 27 LCR 409 (2019).

Justice Robert B. Foster overruled the Uxbridge ZBA and Building Inspector in finding that an earth reclamation project affecting 45 acres of a 202-acre farm would be authorized as incidental and accessory to the primary agricultural use. The project involved refilling land that had been previously excavated to restore the grade and to allow the owners to resume farming crops thereon to feed brood cows. Justice Foster distinguished this case from others where massive earth movement operations have been proscribed as not accessory because of the relatively small size of the excavated parcel in this case compared to the entire farm and the fact that the purpose of the project was to restore it to its previous condition. *Richardson-North Corp.* v. *Knapik (Decision), [Foster]* 27 LCR 136 (2019).

Justice Gordon H. Piper affirmed a Northborough ZBA decision finding that a fill and grading operation on a 16-acre parcel was not sanctioned by the Dover Amendment where nearly all the income derived from the property came from accepting earth materials from elsewhere and processing cobblestones. Only a tiny sliver or revenue came from the sale of animals. He also found that the earth-processing activities could not be characterized as incidental to the agricultural use where there was simply no reasonable relationship between dumping and grading over 100,000 yards of soil and earth materials and raising livestock. In addition, the two activities were spatially incompatible at the locus. *Ward* v. *Rand (Decision), [Piper]* 25 LCR 463 (2017).

The operation of a riding academy at a Westfield horse farm devoted primarily to breeding and boarding horses would be protected either as a primary agricultural use under Section 3 or as one incidental to the boarding and breeding of horses, and as such did not require a special permit to be maintained or expanded, ruled Justice Alexander H. Sands III. In contrast, extensive earth-removal operations proposed at the farm, that would involve the sale and removal of approximately 145,000 cubic yards of fill, could not be so classified given their intensity, duration, and extensive profits. The ZBA could therefore subject the proposal to a discretionary site-plan review. *Coggin* v. *City of Westfield (Decision), [Sands]* 17 LCR 592 (2009).

The Norwell ZBA erred in concluding that a horse farm operated on a property that also served as the owner's residence was not a protected agricultural use under Section 3, but the landowner would require a special permit under the bylaws to construct a new barn. In so ruling, Land Court Justice Gordon H. Piper rejected the Plaintiff's argument that the barn should be allowed by right as an accessory use since clearly the riding operation was

not accessory to the residential use given that it consumed no less than seven acres of a nine-acre parcel. *Volandre* v. *Opdyke (Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment), [Piper]* 13 LCR 465 (2005).

Aircraft

Justice Howard P. Speicher upheld the Edgartown ZBA's affirmance of a cease-and-desist order barring the use of a residential lot for helicopter landings and takeoffs. The homeowner argued that the use should be permissible as an accessory single-family residential use, claiming that such use had become "customary and incidental" in Edgartown and that the zoning bylaw should not regulate ingress and egress to her property. *Boch* v. *Tomassian (Decision on Plaintiff's Motion for Summary Judgment), [Speicher]* 23 LCR 175 (2015).

Apartments

Justice Howard P. Speicher dismissed a lawsuit for lack of standing brought by abutters against an elderly Edgartown ZBA member who received a special permit to add an accessory apartment to her residence where she would live full time while her daughter occupied the main house. The abutters' grievances relating to noise, privacy, light pollution, and increased off-street parking were all found to be either speculative, unsupported by evidence, or unrelated to interests protected by the bylaw. *Kende* v. *Whipple (Decision), [Speicher]* 30 LCR 461 (2022).

The complaint challenging the Planning Board's grant of a special permit for an accessory apartment under Bolton's Barn, Stable, and Carriage House Preservation Bylaw by a former Planning Board member (and current Selectman) was dismissed for lack of standing. The Selectman/Plaintiff was not a party in interest and claimed standing based on a general civic interest. In his complaint, he alleged the Defendants received special treatment from the current Planning Board and were not entitled to a special permit. *Keep* v. *Neyland (Decision), [Smith]* 29 LCR 423 (2021).

The decision of the Falmouth Board of Appeals allowing the continued residential use of an apartment in an accessory structure on a single-family lot was reversed by Justice Charles W. Trombly, Jr., who found that the apartment size exceeded the square footage allowed for an accessory use. He also ruled that an apartment use in a separate structure from the principal dwelling was not "subordinate and attendant to" the principal use of the locus as a two-bedroom home. *Witter* v. *Swartz (Decision Allowing Plaintiff's Motion for Summary Judgment), [Trombly]* 19 LCR 96 (2011).

Chief Justice Karyn F. Scheier annulled the decision of the Lexington Board of Appeals allowing the by-right construction of an accessory apartment in a garage because the specific provisions of the Lexington accessory-apartment bylaws did not allow by-right apartments where the structure containing the apartment had not been in existence at least five years and the principal dwelling had been enlarged by new construction in connection with the apartment. *Hanson* v. *Smith (Decision), [Scheier]* 17 LCR 319 (2009).

Arts and Crafts

Justice Alexander H. Sands III ruled that craft and hobby projects conducted in a garage, such as woodworking, rock sculpting, and painting, were common and permissible activities accessory to residential use. *Guarino* v. *Lynds (Decision), [Sands]* 19 LCR 547 (2011).

Auto Repair

An attempt by a Falmouth landowner to obtain a special permit for an illegal automotive-repair business on the theory that it constituted a permissible expansion of a prior nonconforming use was properly denied by the ZBA since the various trucking and auto repair activities at the site were never legally accessory to the principal single-family use. In fact, the commercial trucking operations and auto-repair activities at the locus had long since overwhelmed and superseded the principal residential use of the property and could hardly be considered "accessory." *Falmouth Auto Care, Inc.* v. *McNamara (Decision), [Speicher]* 23 LCR 268 (2015).

A longstanding automobile-repair business operated from a home in Scituate did not qualify as a permissible accessory use under the local bylaws where the summary-judgment materials left unclear whether a three-vehicle limitation was being violated or whether the use was "clearly incidental and secondary" to the use of dwelling as a residence. *Carrison* v. *Arcand (Decision), [Sands]* 11 LCR 295 (2003).

Barn

Justice Alexander H. Sands III found that a substantial 40' x 60' foot barn was nevertheless properly accessory to a single-family residential use despite its large footprint and floor area. In addition, its use in furtherance of a hobby of automotive restoration and the storage of seasonal items was also properly incidental to the primary residential use of the property. *Miller* v. *Zoning Board of Appeals of Haverhill (Decision), [Sands]* 20 LCR 262 (2012).

By Right

Justice Mark V. Green ruled that Danvers land-use authorities erred in denying a building permit to a Price Costco buying club for the purpose of expanding its food-service operations since these did not qualify as "fast-food" uses under the local bylaw and were, in any event, permitted by right as accessory to Price Costco's principal retail business. *Price Costco, Inc.* v. *Zoning Board of Appeals of Danvers (Decision), [Green]* 6 LCR 107 (1998).

Reasons given to justify barring the issuance of an occupancy certificate to homeowner who had completed a by-right accessory building were legally impermissible because the board was motivated by concern with possible future zoning violations and prejudiced against plaintiffs' legally permissible project. *Phelan* v. *Delaney (Decision), [Kilborn]* 2 LCR 60 (1994).

Existing 40-seat restaurant in Truro did not qualify as an accessory use to a four-unit motel. *Sverid* v. *Town of Truro (Decision), [Cauchon]* 1 LCR 159 (1993).

Common Driveway

Judge Karyn F. Scheier upheld the Tewksbury ZBA's determination that a common driveway providing access to three lots, shown on a plan as a 25-foot-wide easement across the lot on which plaintiff sought to build, was not an accessory use to that lot under the bylaw, which required that an accessory use be conducted on the same lot as the primary use. *Mangano* v. *Town of Tewksbury (Decision Denying Plaintiff's Motion for Summary Judgment and Granting Summary Judgment for Defendants), [Scheier]* 7 LCR 305 (1999).

Argument that residential common driveways were implicitly authorized as accessory residential uses roundly rejected by Justice Mark V. Green in a decision highlighting the Duxbury bylaw's lack of express authorization of common driveways and general requirement that accessory residential uses be located on the same lot as the primary use. *RHB Development, Inc.* v. *McBain (Decision on Motion for Summary Judgment), [Green]* 5 LCR 166 (1997).

Docks

The accessory use of a Barnstable lot for a pier and boardwalk was a pre-existing nonconforming use and could be reviewed by the Barnstable zoning board for a special permit to allow expansion and replacement. *Stratouly* v. *Zoning Board of Appeals of Barnstable (Decision), [Kilborn]* 9 LCR 415 (2001).

Earth Removal

The construction of an outdoor recreational facility on a 70-acre parcel requiring the excavation of 475,000 cubic yards of fill would require a special permit under the Plymouth zoning bylaws because the extraction of

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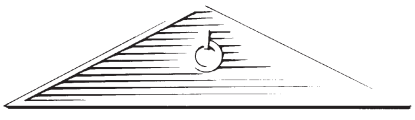

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