ANRs and Ancient Ways

ANR=Approval not required.

by Alexandra Dawson, *Attorney*

...if someone tells you, **"My land is located on an ancient way,"** the correct response is, **"How nice; but so what?"**

The purpose of this booklet is to help planning boards answer the following questions:

- What is an "ancient way"?
- Is an "ancient way" necessarily a public way for ANR (approval not required) purposes?
- Does being an "ancient way" help qualify a private way for ANR approval?

The Problem

The laws governing the nature and origin of old Massachusetts roads are complex and contradictory in their history. Some of the history makes delightful reading – if you're an attorney or a glutton for punishment. The complexities and contradictions, however, are not so entertaining when planning boards and departments of pubic works (DPWs) have to deal with this material without any guidance or background. In particular, planning boards are faced with decisions about subdivisions and so-called "ANRs" – divisions of land stamped "Subdivision Approval Not Required" and thus exempted from the subdivision control law.

One of the claims that may be made as to these ANR applications is that the road is an "Ancient Way." This claim is usually presented with capital letters, as though it were a term of art meaning "Old Public Way" or at least "Way Entitled to Special Respect."

This booklet is intended to assure planning boards and the public that the term in fact *has no precise meaning* and no legal bearing on whether or not a road is a public way or, indeed, whether it qualifies for ANR approval.

What is an "ANR"?
A primer

As planning boards have learned, most of their business consists of signing off on divisions of land with "frontage" access along existing roads of some kind. The signoff consists of a stamp on the plan indicating "Subdivision Approval Not Required" – hence the common name of "ANR." This kind of plan is exempted from full subdivision review by ss. 81L and 81P of Ch. 41 (APPENDIX C). Hence the plans are also called "P" plans in some towns. In some communities they are called "Form A's." The board does not get to regulate important issues such as driveway placement, road design, drainage and utilities as it does when dealing with a definitive subdivision plan. For an applicant, an ANR process is significantly faster, easier and less expensive than the full review.

The ANR stamp is available for lots:

- on previously approved subdivisions.
- along public ways.
- along ways the town clerk certifies are used and maintained as public ways.
- on ways existing when the town adopted the subdivision control act, provided that the planning board considers them adequate with regard to width, grade and construction.

When reviewing an ANR application, a planning board must inquire as to whether the way is or is not public and at least passable. However, the standards for "adequacy" are much less stringent for public ways than for private. The applicant, therefore, would prefer to prove the road on which the lots lie is a public way. If it is a rundown cart-path, then the argument may be advanced that, being an "ancient way," the road is automatically public so the ANR must be approved.

What Makes a Way Public?
Another primer

***Before 1846*, a road could be made public by:**

- a proper layout and vote of the city, town, or county.
- "dedication" – creation by an individual or group without public cost, followed by "acceptance" in the form, usually, of public use.
- creation of a "statutory private way" – a way, again, created by an individual or group without public cost but laid out by the community, thus gaining some but not all of the characteristics of a public way.
- "prescriptive use," a term describing continued, uninterrupted use of the way by the general public without asking anyone's permission, over at least 20 years.

This loose system created burdens of maintenance on communities for roads *it had never intended to make public*. ***Chapter 203 of the Acts of 1846* changed the whole system, requiring detailed layouts and votes to create a public way** (LORIEL, 1961). This law in modern form is reflected in *General Laws Chapter 84, ss. 23*. Under this law, followed sedulously by the courts in the last century, dedication was not sufficient, and new statutory private ways could not be created. Prescriptive use, however, continued to be at least a possible way for a road to become public. **Hence the importance, to people intent on using the ANR process, of proving the public nature of roads with no layout history.**

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> "Few subjects in real estate law are as difficult to decipher as the nature of an ancient way supposedly extant since the reign of George III."
>
> Complaint made by a land court judge in a 1991 decision (JOHNSON, 1991).

What Is an Ancient Way?

The term "ancient way" is used in dozens of legal decisions; *but it turns out to have no precise or consistent meaning.* Here is a definition from one of the earliest decisions: **"[W]ays used as such from time immemorial, and no record of their origin was known to exist"** (SPRAGUE, 1836). In other words an ancient way is an old road – usually a very old road – but no one is sure how it got there. Thus, it may be a public way whose layout got lost (RICE, 1858), or a "statutory private way," or a purely private way, but the records, if any, have disappeared.

An "ancient way" does not mean that it is a "public way." An ancient way could be a:

- public way whose layout got lost.
- statutory private way.
- purely private way, but the records, if any, have disappeared.

If a landowner is seeking to persuade a planning board that a road shown on an old deed or plan as an "ancient way" is a public way, **it is the job of the landowner to prove that it is public**, just as with any other way on a plan or deed. If the history is not convincing to the board, then a court must decide; and **the burden of proof is always on the applicant**, not the board (WHITTEVELD, 1981).

In reading the many cases where the term is used, it becomes evident that in some early decisions "ancient ways" were taken to be "old public ways" (BAY STATE, 1874; BROOKFIELD, 1898; COLLINS, 1890). However, it is by no means clear whether the term itself was substantiating the issue or merely used as shorthand. One decision, for example, uses the term "ancient" to describe records, plans and deeds as well as roads (CLARK, 1903). In other old cases, ancient ways were found not to be public (MAIN, 1912). In many other decisions, the use of the term is simply irrelevant to the outcome (ALLEN, 1908; DUNHAM, 1879; TURNER, 1866).

Before 1846, courts tended to accept the idea that many well used old roads were public, because it had been very easy before that date to create a public way by "dedication." Thereafter, it was still (barely) possible to show that a way lacking a proper history of public creation was made public by "prescriptive public use." Prescriptive use is the use of land for over 20 years that conveys some rights to the user (FENN, 1979). It is similar to the doctrine of "adverse possession" under which your neighbor may get ownership of part of your lot just by using it for a long time without your objection. **Courts have agreed that individual persons or businesses can get prescriptive rights over private roads and driveways; but it is difficult indeed to prove that the "public" as such has used a road over a long time for reasons explained in the next pages.**

Of course, even after the law was changed, all the pre-1846 roads still remained – some of them large and well-traveled ways. How were the courts to deal with those whose origins were uncertain? The result depended much on the temper of the judge. Some judges maintained the generous views of the pre-1846 era. For example, in one decision soon after the law was changed, the judge remarked that, if there was nothing to show the origin of the way, it would be presumed to be laid out by a public body (RICE, 1858). However, this was definitely the minority view. More and more, the courts agreed, "Age by itself is a neutral factor, there being ancient private as well as ancient public ways" (FENN, 1979; COWLS, 1979). Many more cases are cited on page 11 of Smithers' excellent treatise, "Streets and Ways" (SEE APPENDIX A).

How could a road used by the public "since time immemorial" not be classed as public? Many reasons were given. The commonest was that the road may have been laid out by an individual or group as a "statutory private way." Because this type of old road was built for public use by private individuals, at their own cost and presumably for their own profit, the courts were reluctant to give the STATUTORY private way the full status of a public way (MONCY, 2001). The public is therefore not liable for the upkeep of such a way, and **it does not qualify as a public way under any aspect of the subdivision control law, including the ANR section** (CASAGRANDE, 1979).

The other common argument is that a particular ancient way has become public because of "prescriptive public use." However, if prescriptive public use (before or after 1846) is claimed, "general, uninterrupted, continued" use by the public for 20 years or more must be proved to the court (JENNINGS, 1855); and that use cannot consist only of the friends and invitees of the landowner (RIVERS, 1994). Then and now, this is extremely hard to prove – and it is getting generally harder. It is true that a recent land court case (BELL, 1990) bucks the trend and finds an old cart-path to be a public way due to modern prescriptive use; but in that case the Martha's Vineyard Commission had already found (based on Island practice) that these old roads should be considered public ways. Much more typical is a 1963 decision of the state's top court that "sporadic use by a few individuals" did not create a public way by prescriptive use (PUFFER, 1963).

If, then, a planning board is showered with affidavits, ancient treasure maps and old deeds purporting to prove that a cart-path style "ancient way" is indeed a public way, it should:

- Sit back and take a couple of deep breaths; *do not get hypnotized by historic data.*
- Remember that the fact that this road may have been in existence when the town adopted subdivision control is relevant only to the test for "adequacy" of a non-public way and irrelevant to its public nature.
- Ask for evidence that it was laid out by a public body, before or after 1846; and if it was laid out before 1846, who paid for it?
- Ask for evidence that the road was continuously used by the public for many years without the permission of the landowners along it (FENN, 1979).

If not satisfied on these points, reject the ANR application until and unless better evidence is produced.

"Age by itself is a neutral factor, there being ancient private as well as ancient public ways."
(FENN, 1979; COWLES, 1979)

“Certainly if the board thinks a mistake has been made, it may not be forced to repeat and enhance the effect of the mistake when a different plan is submitted.”

Beware of Applicants’ Enthusiasm for Public Ways

The laws regulating subdivisions and ANRs alike require a planning board to accept access on a public way unless it is “*illusory*” or “*imaginary*.” (GIFFORD, 1978; PERRY, 1983). This test is in stark contrast to the “adequacy” test applicable to non-public ways. Hence the applicants’ enthusiasm for proving ways to be public. The problems set out above therefore apply to even the largest subdivisions. The problems seem, however, more common to ANRs perhaps because there are so many of them.

To Err is Human

Supposing a planning board has made an error and accepted the argument that an ancient way is, merely because of its antiquity, a public way. Are they stuck with that mistake if another landowner comes forward on this or another old road? *Absolutely not.* Our Supreme Judicial Court put it best in a 1964 ANR case: “Certainly if the board thinks a mistake has been made, it may not be forced to repeat and enhance the effect of the mistake when a different plan is submitted” (GOLDMAN, 1964). The once-you-said-it-you’re-stuck-with-it argument, politely termed “estoppel,” simply does not apply to this sort of situation.

ANRs on Private Ways

Ways that are not public are “private.”
There are many kinds of private ways, including:

- “failed” public ways: properly created public ways that have lost their papers. (Many ancient ways fall into this category.)
- “statutory private ways”: open to the public but not publicly maintained.
- private rights of way: (easements) serving specific parcels of land.

Any of these may be entitled to ANR approval if they are shown to have been in existence when the community adopted subdivision control *and* if they are proven “adequate” as to width, grade, and construction as of the date of application (RETTICK, 1955; POULOS, 1992). *The claim that a private way is an ancient way adds nothing to the necessary proof.*

What is a Private Easement?

An easement is the right of one person or group to use land of another. The typical private travel easement is created when **Mr. A** sells his back land to Ms. B and also gives her (and her successors in title) the right to travel over his remaining land to get to the public road. The easement will appear in the deed from **A** to B. Rarely would one buy landlocked land, so this kind of easement is quite common. If Ms. B divides her land into many lots, a large number of people, as well as their guests and invitees, can use the easement. However, it is by definition not a public way, because no one else is supposed to use it unless and until the town votes to accept it as a public way.

If there is an old roadway running through **Mr. A’s** property, he and Ms. B might agree that the easement will make use of that old road. Suppose the claim is made to the planning board that this old pre-existing path is an ancient way? That this ancient way was ever a public way would have to be proved, as set out above; plus, the superimposition of a private easement on top of the ancient way would create at least a presumption that the public nature of the way had been abandoned or discontinued. The landowner would have to rebut that presumption in court.

Proving a Private Easement

A planning board is obviously not obliged to accept a claim of easement on faith alone. Private easements burden the land over which they run; and the owner of the land getting the benefit of the easement (Ms. B) may or may not be entitled to widen, pave, or relocate the easement. There are many types of easements; and easements of "necessity" or "implication" may not demonstrate the clarity and power of a properly deeded easement. Although planning boards are expected, under the subdivision control act, to focus on the physical adequacy of an ANR applicant's road, they will certainly want to pay attention to abutters' rights when dealing with a non-public way. *Inquiring into the source and extent of a private easement is a legitimate exercise.*

What Can Your Town Do to Better Control ANRs?

Obviously the subdivision laws require modernizing. No one could have predicted in 1936, when the subdivision law was created, the abstruse arguments about ancient ways discussed here. ANRs should in general be reined in to insure the safe and sensible division of land.

In the meantime, a community can:

- Discontinue cartpaths and short roads whose origins are uncertain. Discontinuance is legal *(*GENERAL LAWS CH 82, S. 21*)* and if the vote fails it does not establish legally that the way was or is public *(*COWLS, 1979*)*. This will *not,* of course, take care of the issue of "adequacy" of roads for ANR endorsement; but it will terminate arguments about whether an old road – ancient way or not – is public.
- Adopt a zoning amendment requiring that every new lot have frontage on a way laid out and accepted as a public way or a way shown on a definitive subdivision plan. This may be done by defining a "lot" in terms of "frontage" and "frontage" in terms of public/subdivision ways. Although a planning board may be forced to approve an ANR on an "adequate" private way, the lots created along that ANR will not in fact qualify for building permits, because they do not conform to the zoning. Finality of an ANR endorsement "has no bearing on compliance with zoning requirements." *(*GATTOZI, 1978; HAMILTON, 1993*)*.
- If the claim is that the clerk has certified the way as public, investigate the basis of this claim (where did s/he get the information)? Towns often maintain ways that are not in fact public; and the presumption in s. 81P that the clerk's certificate proves the road is public is rebuttable *(*MATELEWICZ, 2002*)*.
- If the road presented for ANR endorsement *is proven public*, consider whether access is "*illusory*" as opposed to merely "*manageable*."
- If the road presented for ANR endorsement *is not proven public*, consider whether it is "*adequate*" in width, grade and construction for the expected use.
- Make sure any such non-public road existed when the town adopted subdivision control.
- Make sure the way submitted for ANR endorsement is adequate *as of the date the application is submitted.*
- Adopt subdivision regulations defining minimum standards for adequacy of both public and private ways used for access to ANR lots. Determining these standards will require the aid of counsel because of

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all the cases on the subject. Note that the subdivision law itself dictates that no standards for subdivision roads can exceed the standards the community uses for its public ways (GENERAL LAWS CH. 41 S. 81Q). Even though ANRs are technically exempt from the law, the need for standards on ANR adequacy can be explained as ensuring consistency in planning board decisions and giving applicants guidance as to what they will have to demonstrate. Courts tend to applaud consistency and clarity in what is expected.

The ANR standards should be based upon practical access rather than ideal convenience or aesthetics. For example, is the road wide enough that a car and a truck can occupy it at the same time? Are the curves and elevations sufficient to avoid accidents at low speeds? Do the grades and width allow for plowing and drainage?

The case list, statutory sections, and References that follow will provide further guidance in difficult situations. The Fenn decision is included as a good example of judicial reasoning. (SEE APPENDIX B)

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APPENDIX A

Case Listings and References

Allen v. Kidd, 197 Mass. 256 (1908)
Use of term "ancient way" irrelevant to outcome of decision. Hilarious reading for other reasons.

Arrigo v. Planning Board of Franklin, 12 Mass. Appeals Ct. 902 (1981)
To be buildable, lots must meet frontage set out in zoning code.

Bay State Brick Co. v. Foster, 115 Mass. 431 (1874)
Uses "ancient way" as synonym for "public highway."

Bell v. Elghanayan, Land Court (Dukes Co. No. 124584, Feb. 6, 1990)
Old track conceded to be ancient way proven to be public way by Island standards.

Brookfield v. Walker, 100 Mass. 94 (1898)
Term "ancient way" used as shorthand for public way.

Casagrande v. Town Clerk of Harvard, 313 Mass. 703 (1979)
Statutory private way is not a way "maintained and used as a public way" under subdivision control law, G.L. ch. 41, ss. 81L and 81P.

Clark v. Hull, 184 Mass. 164 (1903)
Term "ancient" used to describe deeds, records and plans as well as "ancient road."

Collins v. City of Waltham, 151 Mass. 196 (1890)
Use of term "ancient way" irrelevant in case about liability for flooding.

WD Cowls, Inc. v. Woicekoski, 7 Mass. App. Ct. 18 (1979)
Deeds describing way as "town road" plus 1830 map showing road did not constitute conclusive evidence of public way.

Dunham v. Gannett, 126 Mass. 151 (1879)
Use of term "ancient way" irrelevant to outcome.

Fenn v. Town of Middleborough, 7 Mass. App. 80 (1979)
Creation of public way by prescriptive use requires actual public use, general, uninterrupted, continued for at least 20 years.

Gattozi v. Dir. of Inspection of Melrose, 6 Mass. App. Ct. 889 (1978)
ANR designation has no bearing on compliance with zoning code.

Gifford v. Planning Board. of Nantucket, 376 Mass. 801 (1978)
Multi-lot division of land with multiple small driveways to public way did not constitute adequate access under subdivision law.

Goldman v. Planning Board. of Burlington, 347 Mass. 320 quoted at p. 325 (1964)
Past ANR endorsement on road, made in error, did not prevent Board from changing its mind on later application.

Hamilton v. Planning Board. of Beverly, 35 Mass. App. Ct. 386 (1993)
ANR endorsement does not constitute compliance with zoning code.

Jennings v. Tisbury, 5 Gray 73 (1855):
Old decision cited in Fenn to show how hard it is to prove establishment of public way by public use.

Johnson v. Town of Rockport, Land Court (Essex Co. Misc. No. 125023, Sept. 13, 1991)
Quoted to demonstrate Land Court frustration over "ancient way" claims. Since landowners were not paid for laying out way, it was "statutory public way," not public.

continued…

Loriol v. Keene, 343 Mass. 358 (1961)
Technical details of laying out of public ways are essential and not mere formalities.

Main v. Faunce, 212 Mass. 182 (1912)
Ancient way found not a public way.

Matelewicz v. Planning Board. of Norfolk, 438 Mass. 37 (2002)
Clerk's certificate that way is public way is not conclusive on planning board and may be rebutted by showing source of information.

Moncy v. Planning Board. of Scituate, 50 Mass Appeals Ct. 715 (2001)

Perry v. Planning Board. of Nantucket, 15 Mass. Appeals Ct. 144 (1983)
A "paper" street shown on plan but never built is not adequate access under subdivision law.

Poulos v. Planning Board. of Braintree, 413 Mass. 359 (1992)
ANR endorsement requires adequate access at time of application.

Puffer v. Beverly, 345 Mass. 396 (1963):
Eight-foot path along shore never laid out or shown on maps was not made public by sporadic public use.

Rettick v. Planning Board. of Rowley, 332 Mass. 476 (1955)
ANR plan must be adequate as of date of submission but not required to be adequate as of date community adopted subdivision law.

Rice v. Worcester Co., 77 Mass. 283 (1858)
Where nothing showed the origin of old highway, it was presumed to be laid out by public authority.

Rivers v. Warwick, 37 Mass. Appeals Ct. 593 (1994)
Strict evidence of compliance with layout statute is required to make a way public since 1846.

Rubinstein, Lynn and Dawson, Alexandra; Discontinuing Town and County Roads; The Trustees of Reservations' Highland Communities Initiative; 2003. (Available at WWW.HIGHLANDCOMMUNITIES.ORG or 413.268.8219)

Smithers, F. Sydney and Lapham, Rebecca B; Streets and Ways; Cain Hibbard Myers & Cook, PC; 2002

Sprague v. Waite, 34 Mass. 309 (1836)
Very old decision quoted to define "ancient way."

Turner v. Inhabitants of Dartmouth, 95 Mass. 291 (1866)
Term "ancient way" irrelevant to outcome of decision on flooding liability.

US v. 125.07 Acres of Land, More or Less, 707 F.2d 11 (1st Cir. 1983)
Federal court decision discussing history of statutory private ways in Massachusetts and suggesting evidence from maps, surveys, landowners during layout period, and important locations to which way provided access to determine why way was laid out.

Witteveld v. City of Haverhill, 12 Mass. App. Ct. 876, (1981)
Burden of proof that ancient way is public is always on applicant.

APPENDIX B

Summary of Fenn v. Town of Middleborough decision.

Fenn, a Massachusetts appellate case decided in 1979, concerned the circumstances under which a public way (i.e., one that a city or town has a duty to maintain free of defects) can be created by "prescriptive" or "adverse" use. The Fenn Court cited the "settled" standard since at least 1855 that creation of a public way by adverse use depends on a showing of "actual public use, general, uninterrupted, continued for [a 20-year period]." The Court then considered whether, under Massachusetts law, such use could be inferred from several factors, including the age of the way, the presence of street and traffic signs, and connections to a public way. The Court found that such inferential factors were not sufficient for creation of a public way in the absence of direct evidence of actual, uninterrupted public use during the requisite 20-year period.

APPENDIX C

GENERAL LAWS OF MASSACHUSETTS
Administration of the Government, TITLE VII. Cities, Towns and Districts

SUBDIVISION CONTROL
Chapter 41: Section 81L - Definitions

Section 81L. In construing the subdivision control law, the following words shall have the following meaning, unless a contrary intention clearly appears:

"Applicant" shall include an owner or his agent or representative, or his assigns.

"Certified by [or endorsed by] a planning board", as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board.

"Drainage", shall mean the control of surface water within the tract of land to be subdivided.

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Municipal service" shall mean public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

"Planning board" shall mean a planning board established under section eighty-one A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section eighty-one N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.

"Preliminary plan" shall mean a plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing (a) the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan'"; (b) the names of the record owner and the applicant and the name of the designer, engineer or surveyor; (c) the names of all abutters, as determined from the most recent local tax list; (d) the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner; (e) the proposed system of drainage, including adjacent existing natural waterways, in a general manner; (f) the approximate boundary lines of proposed lots, with approximate areas and dimensions; (g) the names, approximate location and widths of adjacent streets; (h) and the topography of the land in a general manner.

"Recorded" shall mean recorded in the registry of deeds of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the recorder of the land court.

"Register of deeds" shall mean the register of deeds of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the recorder of the land court.

"Registered mail" shall mean registered or certified mail.

"Registry of deeds" shall mean the registry of deeds of the county or district in which the land in question is situated, and, when appropriate, shall include the land court.

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"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

"Subdivision control" shall mean the power of regulating the subdivision of land granted by the subdivision control law.

SUBDIVISION CONTROL
Chapter 41: Section 81P
Approval of plans not subject to control law; procedure

Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within twenty-one days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section eighty-one BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within twenty-one days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall forthwith make such endorsement on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized. The endorsement under this section may include a statement of the reason approval is not required.

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