

## RELEVANT LEGAL PROVISIONS

### 1. United States Constitution:

Due Process Clause of the Fourteenth Amendment in relevant par states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any state deprive any person of life, liberty or property, without due process of law or deny to any person within its jurisdiction the equal protection of the laws.

### 2. Massachusetts Constitution in relevant part states:

Article 1, as amended by Art. 6 of the Massachusetts Constitution provides:

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

## RELEVANT MASSACHUSETTS STATUTES:

### MGL Chapter 240 Section 14A

The Owner of a freehold estate in possession in land may bring a petition in the Land Court against a city or town wherein such land is situated which shall not be opened to objection on the ground that a mere judgment, order or decree is sought, for determination as to the validity of a municipal,

ordinance, by-law or regulation passed or adopted under the provisions of Chapter 40A or under any special law related to zoning, so called, which purports to restrict or limit the present or future use, enjoyment, improvement or development of such land, or any part thereof of present or future structures thereon, including alterations or repairs or for determination of the extent to which any such municipal ordinance, by-law, or regulation affects a proposed use, enjoyment, improvement or development of such land by the erection, alteration or otherwise as set forth in such petition. The right to file and prosecute such a petition shall not be affected by the fact that no permit or license to erect structures or to alter, improve or repair existing structures on such land has been applied for, nor by the fact that no architect's plans or drawings for such erection have been prepared. The Court may make binding determinations of right interpreting such ordinances, by-laws or regulations whether any consequential judgment or relief is or could be claimed or not.

Chapter 41 section 81U in relevant part:

Before approval of a plan by the planning board, said Board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreational purposes or for providing light and air and not unreasonable in area in relation to the land being subdivided and the prospective uses of such land, and if so determined said Board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

Chapter 41 section 81P in relevant parts:

Any person wishing to cause to be recorded a plan 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 law, may submit his plan to the planning board of such city or town in the manner described in section 81T

---if the Board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon....

...If the board fails to act upon a plan submitted 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

...Such endorsement shall not be withheld unless such plan shows a subdivision....

Chapter 41 Section 81Q in relevant part says:

No rule or regulation shall require and no planning board shall impose, as a condition for approval of a plan of a subdivision that any of the land within the subdivision be dedicated to the public use or conveyed or released to the Commonwealth or to the county, city or town in which the subdivision is located, for use as a public way , public park or playground or for any other purpose, without just compensation to the owner thereof.

Once a definitive plan has been submitted to a planning board, and written notice and written notice has been given to the city or Town Clerk pursuant to 81T and until final action has been taken thereon by the planning board or the time prescribed for such action prescribed by 81U has lapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of submission of the plan

Chapter 184 Section 23 in relevant part states:

Conditions or restrictions, unlimited as to time by which the title or use of real property is affected, shall be limited to the term of thirty years after the date of the deed or other instrument or the date of probate of the will creating them, except in cases of gifts or devices for public, charitable or religious purposes.....

Chapter 184 Section 27

Entire Section

Chapter 184 Section 30

Entire Section with emphasis on the final paragraph which reads:

Nothing herein shall prevent a court from issuing a temporary injunction or restraining order pending determination of enforceability of a restriction.

Chapter 40A Section 6

Any increase in area, frontage, width, yard depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two family residential use which at the time of recording and endorsement, whichever occurs sooner was not held in common ownership with any adjoining land

conformed to the then existing requirements and had less than the proposed but at least thousand square feet of area and fifty feet of frontage.