



November 29, 2021

Sen. Nick Collins, Senate Chair
Rep. Edward Coppinger, House Chair
Joint Committee on Community Development and Small Business
26 Beacon Street
State House, Room 26
Boston, Massachusetts 02133

Re: Senate Bill No. 157, An Act relative to planning boards' approval of subdivision plans

Dear Senator Collins and Representative Coppinger:

On behalf of the Home Builders and Remodelers Association of Massachusetts, I am writing to inform you of our strong opposition to Senate Bill No. 157, An Act relative to planning boards' approval of subdivision plans. We are opposed to this legislation because it will add further delays and unnecessary costs to the production of desperately needed housing for individuals and families throughout the commonwealth.

Senate Bill No. 157 seeks to amend the Subdivision Control Law (G.L. c. 41, §81U) to allow communities to require a planning board to send notice to all abutters of a proposed subdivision of any action taken on such plan and to inform such persons of their right to appeal the approval of a subdivision plan. This requirement is both unnecessary to protect the rights of abutters and a financial burden upon cities and towns. Further, as a local option provision, it will undermine the uniformity of the procedures for the review of subdivision plans set forth in the Subdivision Control Law.

The Subdivision Control Law (G.L. c. 41, §81T) already provides comprehensive notice and opportunity to be heard by any abutter to a proposed subdivision that may desire to express their support, opposition or suggestions regarding said plan:

Before approval, modification and approval, or disapproval of the [subdivision] plan is given, a public hearing shall be held by the planning board, notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant *by advertisement in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan as appearing on the most recent tax list. (Emphasis added)*

The substantial requirements of the law as set forth above already provide interested and affected property owners ample notice of a potential residential development in their neighborhood. Note, too, that the financial cost of providing such notice is borne by the applicant and not the city or town.

The real-world experience of our members, as well as that of the volunteer members of local planning boards, is that concerned neighbors and abutters almost invariably appear at the initial public hearing on a proposed subdivision plan. If those individuals have concerns about the subdivision, they continue to have the opportunity to express their views at subsequent public hearings on the plan as it typically takes many months and repeated public hearings for even the simplest development to be approved.

The Subdivision Control Law (G.L. c. 41, §81BB) also grants to any person, whether or not previously a party to the proceedings, the right to appeal any decision of a planning board concerning a subdivision plan. That appeal may be taken to the Superior Court for the county in which said land is situated or to the Land Court, provided that said appeal is filed within 20 days after the decision by the planning board is recorded with the city or town clerk or within 20 days after the expiration of the time required for the board to make a decision.

Abutter appeals of the approval of a subdivision plan are oftentimes filed solely for the purpose of delaying a project in the hope that it will not be built due to a loss of financing or a downturn in the market, or to extract further concessions from the developer. Many opponents to housing understand how to use the legal system to “wrap up a builder in paper,” create unconscionable delays and invent leverage out of nothing. The appeals filed by these individuals are not necessarily frivolous, per se, *but they are tactical*—lawsuits brought with no intention of being pursued to trial (the abutters are, in most instances, unable to prove any harm unique to their property from the development), but brought instead to delay or extract concessions.

To enable cities and towns *to require that their planning boards send notice* to all persons that they had given initial notice of the public hearing and inform them of their right of appeal will only invite the filing of more appeals—thereby adding to the legal costs of such municipalities in defending the decisions of their planning boards. Even without Senate Bill No. 157, a planning board so inclined to send notice of its approval of a subdivision plan to parties of interest, or to anyone at all for that matter, is free to do so.

We urge the Joint Committee on Community Development and Small Business to take notice that most communities in the Commonwealth broadcast the meetings of their local boards and commissions on cable access television. Interested citizens who are concerned about a controversial development under consideration by a planning board may monitor the deliberations and decisions of the board from the comfort of their homes.

In addition, pursuant to G.L. c. 30A, §20, as amended by *Chapter 20 of the Acts of 2021, An act extending certain COVID-19 measures adopted during the state of emergency*, local boards and commissions have been able to conduct virtual hearings that allow members of the public to participate via Zoom videoconferencing or similar online platform. Consequently, there is no lack of opportunity for abutters to be informed about the decision of their local planning board to approve a subdivision plan and appeal that decision should they wish to do so.

Finally, Senate Bill No. 157 is contrary to the efforts of the Legislature and the Baker-Polito Administration to encourage cities and towns to adopt measures that will facilitate desperately needed new housing development.

Thank you for your consideration of our views.

Respectfully,

A handwritten signature in cursive script that reads "Emerson Claus III".

Emerson Claus III
President

C: Rep. James Arciero, House Chair, Joint Committee on Housing
Sen. John Keenan, Senate Chair, Joint Committee on Housing
Benjamin Fierro III, Lynch & Fierro LLP