



PLANNING BOARD MEETING

Tuesday, October 24, 2023 at 6:00 PM

Town Hall - 41 South Main Street Randolph, MA 02368

AGENDA

Pursuant to the temporary provisions pertaining to the Open Meeting Law, public bodies may continue holding meetings remotely without a quorum of the public body physically present at a meeting location until March 31, 2025. The public is invited to participate in the meeting via telephone or computer.

A. Call to Order - Roll Call

B. Chairperson Comments

C. Approval of Minutes

1. Minutes of 9-26-23

D. Public Speaks

E. Public Hearings

1. Subdivision - Mill Street (continuation)

F. New Business

1. Zoning Ordinance Report
2. Ponakpoag Pond Project by DCR
3. Land Court Recorder - index Jan-July 2023

G. Staff Report

- *Active Subdivision Review
- *Active Project Review
- *Upcoming Projects

H. Board Comments

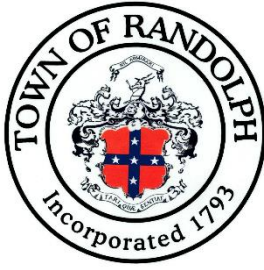
I. Adjournment

Notification of Upcoming Meeting Dates

11-14-23
11-28-23
12-12-23

File Attachments for Item:

1. Minutes of 9-26-23



PLANNING BOARD MEETING

Tuesday, September 26, 2023 at 6:00 PM

Town Hall - 41 South Main Street Randolph, MA 02368

MINUTES

Pursuant to the temporary provisions pertaining to the Open Meeting Law, public bodies may continue holding meetings remotely without a quorum of the public body physically present at a meeting location until March 31, 2025. The public is invited to participate in the meeting in person, via telephone or computer.

A. Call to Order - Roll Call

Called to order at 6:01pm by the chairman.

PRESENT

Alexandra Alexopoulos

Tony Plizga

Peter Taveira

Lou Sahl

ABSENT

Nereyda Santos-Pina

B. Chairperson Comments

None

C. Approval of Minutes

1. Minutes of 9-12-23

Motion made by Alexopoulos, Seconded by Plizga to approve the minutes of 9/12/2023 as presented.

Voting Yea: Plizga, Taveira, Sahl

Voting Abstaining: Alexopoulos

D. Public Speaks

Hearing and seeing no public comments, Chairman Plizga closed the public speaks portion of the meeting.

E. Public Hearings

1. Subdivision - Mill Street (continuance)

The Public Hearing for Mill Street was continued to this evening, however, the applicant is still working on an easement for the waterline and was not prepared for a discussion with the Board tonight. Hearing to be continued to allow the applicant more time.

Motion made by Plizga, Seconded by Alexopoulos to continue the public hearing to October 24, 2023 at 6:15pm.

Voting Yea: Alexopoulos, Plizga, Taveira, Sahl

F. Old/Unfinished Business

None

G. New Business

None

1. 2024 Planning Board Proposed Meeting Dates

The Planning Board reviewed the proposed 2024 meeting schedule. Meetings will be held the second and forth Tuesday of the month, except in the event of a holiday. The months of August and December will only have one meeting date. The consensus of the Board was to keep the meeting time at 6:00pm. Once the meeting schedule is approved it will be posted to the website.

Motion made by Plizga, Seconded by Taveira to approved the proposed 2024 Planning Board meeting dates, as presented.

Voting Yea: Alexopoulos, Plizga, Taveira, Sahl

2. Liberty Street - potential subdivision w/hammerhead

Henry Lee was before the Board for a discussion regarding a potential subdivision off of Liberty Street.

Planner Tyler provided an overview for the Board. Town Council turned a portion of the driveway into the Lyons School into a public way which created Lee Farm Road. Lee Farm Road created frontage for residential development. Mr. Lee rescinded a previous subdivision and paper road that had never been constructed, merged some lots and then created new lots with frontage on Lee Farm Road. At various points, there has been a review of the proposed subdivision of the large easterly lot and how that can be developed into buildable lots. The latest iteration has an undersized right of way, according to our regulations, that ends in a hammerhead instead of a cul-de-sac, which was previously denied by the Board.

Documents received from Mr. Lee include a sketch, fire prevention regulations regarding street access, a list of existing streets with hammerheads, as well as notes from the prior meeting on April 2022. The notes indicated that the access from Liberty Street would require approval from the Norfolk County Commissioners as Liberty Street is part of the County layout. Also, that the proposal for a 20 foot wide private way ending in a hammerhead, is currently prohibited by Planning Board

regulations. Chairman Plizga pointed out that the Board has allowed hammerheads in certain situations, citing Pham Estates for reference.

Mr. Lee said that since the previous meeting, he researched some of the Board's concerns. He found that within the Massachusetts Regulations 527 CMR (Fire Prevention Regulations) a lot created behind an existing building only needs a minimum of a 20 foot passageway. He also provided a list of all the hammerheads in town and asked the Board to take into consideration that all of those had to be approved by the Planning Board and signed off by the Fire Department. Regarding the Norfolk County Commissioner's approval, Mr. Lee noted that he had done a 20 foot wide hammerhead in the past without Norfolk County involvement and that when Lee Farm Road was accepted there was a 20 foot radius easement granted on the west side of the road that did not go through Norfolk County, so asked for clarification. Chairman Plizga asked Planner Tyler what Norfolk County's role is? Planner Tyler said NCC would need to check in on any changes to the layout such as curb-cut. Mr. Lee pointed out that there is an existing 20 foot deeded right-of-way that the hammerhead would be built on. Planner Tyler stated that it is a passageway not a right-of-way under the law.

Mr. Lee pointed out that after Liberty Place and the subdivision off of North Street (behind Sunoco) were developed, the flood plain was raised about 10 inches consuming a good amount of the usable area that now has become water storage. In addition to that, the Town rezoned the area to medium density residential bringing the minimum lot size from 12,000 square feet to 16,000 square feet, further burdening the property.

Mr. Lee said he owns a 66 foot lot on Liberty Street that is not large enough to build on. If the hammerhead is approved, he would plan to take a portion of his sister's land (Lawson Lot) to make the hammerhead work and then combine his vacant 66 foot lot with his sister's lot. Chairman Plizga asked why, if he is combining the land, can't he do a 24 foot passage way? Mr. Lee responded that the terrain is not great.

Chairman Plizga researched lots in Randolph with hammerheads on a 20 foot wide passageway and found 20 in total, none of which were approved in the last ten years. The Board's latest approval, Pham Estates, had a 24 foot wide passageway. Mrs. Alexopoulos feels that the Board needs to adhere to the rules of today which requires a 24 feet. Mr. Taveira is open to 20 feet, but prefers a turnaround over the hammerhead.

Planner Tyler pulled up the sketch plan for the Board to review. Chairman Plizga noted the commentary will be irrelevant of the elevations, as they are not well-defined on the plan. On the left of the plan there is a 38 foot wide portion of frontage on Lee Farm Road that Chairman Plizga wondered if a passageway could go in at with a turnaround possibly creating two lots? Mr. Lee responded that area is an open culvert with a 20 or 30 inch pipe that runs under Lee Farm Road and is within the flood plain. Knowing the area well, Mr. Lee believes the most tactful way to minimize the impact to the wetlands would be to proceed with one lot off of the hammerhead from Liberty Street. He would plan to locate the house straight back at the end of the hammerhead.

The Board discussed in length the topography, the size of the passageway, and debated if there could be a cul-de-sac instead of a hammerhead. They also discussed items to consider when moving forward, such as stormwater management and the water line. Any water lines entering the property could not be dead-ends, they would have to loop for water quality. The Planner suggested running the water line across from lots 4 & 5 and to consider the stormwater management for those lots as well while developing the plans as a more cost effective approach.

Chairman Plizga feels the consensus is that the Board is willing to consider the 20 foot passage way as proposed tonight. Some items that the Board would like to see on future plans include: a single street light, a fire hydrant, curbing on the Kane property side, bring the elevation contours out to Liberty Street (in the immediate area of the driveway), enlarge the road even if it's only to 22 feet wide, and to show a 90 foot diameter cul-de-sac in dash line with the hammerhead in solid line. Mr. Lee thought the sewer and underground electrical could potentially come in via lot 4 & 5 in addition to the water line.

Mrs. Alexopoulos asked Mr. Lee if he reached out to the Kane property owners to see if they could take 2 feet on their side to enlarge the road? Mr. Lee responded that their property is only 66 feet so it is not possible.

Chairman Plizga pointed out that this subdivision would possibly require stormwater and conservation review. He confirmed with Planner Tyler that approval of the 20 foot wide road would fall under subdivision control and would not require Zoning Board of Appeals approval, but that they may need to consider how close the structure on 172 is to the proposed road.

Planner Tyler recommended that Mr. Lee have the plans developed and submitted as a preliminary set for review to allow for changes. Mr. Lee will return to the Board once the plans are updated.

3. ANR - South Street/Desmond Ave

The applicant, Mr. Daly, is asking for a lot line adjustment in order for lot 11 and 12 South Street to be buildable. It is registered land currently before land court, which will become unregistered. In moving the lot lines, lot 9 becomes smaller but is still conforming. Lot 11 will be adequate in size and frontage on South Street and Lot 12 has adequate frontage on both Desmond and South Street. Lot 11 currently has a structure on it to be demolished.

Mr. Taveira asked about a guardrail on the property. Planner Tyler noted that with the ANR the Planning Board is charged with approving it based on lot size and frontage only. He also asked about a hydrant. Chairman Plizga responded that issue will be taken up by the Building Commissioner.

Motion made by Plizga, Seconded by Alexopoulos to approve the ANR based on the plan of land, Lot 9, Parcel 10, Lot 11 South Street, Lot 12 Desmond Avenue in Randolph, MA, dated May 9, 2023 as prepared by Norman Clapp.

H. Staff Report

***Active Subdivision Review**

***Active Project Review**

***Upcoming Projects**

Active Subdivision Review

Planner will be going through the files and providing the Board with status updates for subdivisions.

Active Project Review

Randolph Road - is still before Conservation. They have picked up the ANR but will only record it if they get an affirmative decision from the Conservation Commission.

33 Mazzeo Drive (Splash Car Wash) - progress continues but has slowed. Planner will follow-up.

647 North Main Street (Daycare) - Planner will make arrangements for a site visit. Nothing from Mass DOT regarding the status of the light.

259 Allen Street - the property is incomplete and currently up for sale. Chairman Plizga asked if the Planning Board decision is so that the decision is carried over to the new owner. Planner Tyler doesn't believe it is documented that way, but any changes would need to be filed with the Planning Board for them to render a new decision.

19 Highland Avenue - they have marked out some pavement lining and striping but that hasn't been completed due to the rain over the past few weeks. There is still a punch list.

34 Scanlon Drive - they are still finalizing stormwater the permit. Weston and Sampson required some additional testing that was just finalized. Reports are being consolidated to send to Weston and Sampson for peer review.

Upcoming Projects

Lantana/Lombardo's property - no recent updates. The owner checks in now and then regarding uses. Some of the uses present challenges as High Street is a county layout. The terminus to High is Billings Street which is the frontage for Lombardo's. So there is a number of factors to consider in terms of parcel lines.

MBTA Zoning - Planner Tyler will be holding public workshops on Saturday, October 28 regarding the housing requirements of MBTA communities similar to the tabling sessions done with Town Council. The "save the date" has been posted on the Town's website and in many other locations, it will also be advertised in the Suburban Shopper as well as on RCTV. There will be three sessions available that day: 10:00 am -12:00 pm; 1:00 pm - 3:00 pm; and 4:00 pm to 6:00 pm. They will use the maps that Planning and Town Council came up with to help define the zoning districts.

1. Subdivision - Country Way Lane Status Request

Our last correspondence with Country Way Lane is that all the work would be done by Summer 2022 and it's still not complete. All the Board needs is as-builts to call it a complete subdivision. Communication has been sent asking the developer to provide an update in writing or to appear at the meeting on October 10 for a discussion with the Board.

2. Subdivision Lafayette Estates Status Request

The developers George Pickering and Joe Marotta were not present despite the Board's written request for them to appear before the Board. The subdivision was recorded at the registry of deeds in 2019 with a 3-year completion timeframe, which has expired. Planner Tyler has had conversations with Mr. Marotta regarding an extension. The performance guarantee for the subdivision was secured by a covenant which has restrictions. Lots have been mortgaged off, which the restriction of covenant should have prevented. The road has a binder course, the sidewalks are in and the landscaping is done but there's no lighting. There are three lots remaining with no foundation in.

Late spring, Mr. Marotta assured Planner Tyler the light poles were ordered and awaiting their arrival. Planner reminded Mr. Marotta that he must report directly to the Planning Board, not the Town Engineer regarding these issues. Chairman Plizga feels the lighting is a public safety issue. Mr. Taveira asked if they should consult with the Town Attorney about having the Town put in the lights and having the Developer pay for them? Chairman Plizga feels the Town should not be taking on that responsibility.

Motion made by Plizga, Seconded by Alexopoulos for the applicant to either install permanent lighting or temporary lighting in the grassy strips at lots 11, 14, 6 and 3 on or before November 1, 2023. Any temporary lighting to have equal illumination to the permanent lighting.

Voting Yea: Alexopoulos, Plizga, Taveira, Sahlu

Chairman Plizga asked Planner Tyler to get this out to them as soon as possible and copy any appropriate parties within the Town as deemed appropriate. Planner will send it out via certified mail.

I. Board Comments

J. Adjournment

Notification of Upcoming Meeting Dates

October 10

October 24

November 14

November 28

December 12

Planning Board member Alexopoulos left the meeting at 7:32 pm. Adjourned at 7

Section C, Item 1.

File Attachments for Item:

1. Zoning Ordinance Report



Town of Randolph Zoning Ordinance Review

June 2023
Updated October 2023

Prepared for the Randolph Planning Department
by Barrett Planning Group LLC



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INTRODUCTION

The Town of Randolph asked Barrett Planning Group LLC to prepare an audit of the Randolph Zoning Ordinance (ZO) and related administrative rules and regulations. This report provides the results of the audit, a summary of the review process, and some initial recommendations that should be addressed as early “first step” measures to improve the Town’s regulatory framework. Note that a zoning audit (sometimes called a zoning diagnostic) is *not* a redline markup of the ordinance or bylaw or a section-by-section list of deficiencies. It also is not a compendium of all the comments we received about the ZO and how it has been administered to date. Instead, its purpose is to focus attention on key issues that should be addressed in a recodification and possibly, a comprehensive rewrite.

As a general comment, a well-written and well-organized Zoning Ordinance will guide Randolph’s future development in a manner consistent with the Town’s planning efforts. It will help the Town Council, Planning Board, and Zoning Board of Appeals to make confident findings. It will help the Building Inspector to make consistent determinations, the Planning Director to provide accurate information and clear guidance to the public, and citizens to figure out what is allowable on their properties. With these goals in mind, we conducted the diagnostic with a focus on the following considerations:

- Structure and format
- Navigability, finding aids (such as cross-references), and ease of use
- Clarity of words, phrases, and sections or subsections
- Consistency
- Use and placement of definitions
- Simplicity in approval processes
- Consistency with Zoning Act and judicial decisions
- Obsolete or missing provisions, e.g., technology updates

Our scope of work included the following tasks:

- An initial review of the existing ZO, focusing on the key considerations outlined above.
- Interviews with Town staff and local stakeholders referred to us by the Planning Department in order to understand strengths and weaknesses of the ZO from the perspective of those who administer, interpret, and enforce it. Following the interviews, we met with Planning Board in February 2023 and with members of the Town Council in June 2023.

- Review of Planning Board and Town Council administrative rules and regulations for content, consistency with ZLO, and opportunities to relocate information from the ZO to rules and regulations.

Knowing that Zoning Ordinances are often amended in a piecemeal fashion as specific needs arise over the years, we sought to develop recommendations to create an easy-to-use, readable document with logically ordered sections. This report focuses primarily on the Randolph ZO, but as appropriate, we refer to noteworthy findings in the administrative rules and regulations as well.

TECHNICAL REVIEW: ZONING ORDINANCE

A. Format, Structure, and Organization

1. The Randolph ZO consists of eleven major sections (Articles) and multiple subsections. The major section titles include:

Article

I	General Provisions
II	Districts
III	Use Regulations
IV	Off-Street Parking Regulations
V	Nonconforming Uses
VI	Area Regulations
VII	Administration
VIII	Special Permits
IX	Signs and Advertising Devices
X	Wireless Communications Districts
XI	Site Plan and Design Review

Table of Allowable Activity

Table of Dimensional Requirements

Table of Zoning Map Amendments

2. The organization of the Table of Contents (above) is unusual. Viewed in its entirety, Randolph's ZO contains all of the expected provisions, but information can be difficult to locate because it is not organized in a consistent or predictable way.
3. The current organization is a mix of sections that address specific districts and sections that address a group of similar districts. This means that in some cases, all of the relevant information is included in one place, and in others it is scattered around the ordinance. For example, to retrieve all of the relevant information for the Residential Medium Density District, you must consult Section 200-10 for use regulations, the Table of

Allowable Activities for Special Use permit uses, the Table of Dimensional Requirements, Sections 200-27 through 200-33 for land area regulations and to determine which density district it is included in, and the GIS extension to confirm if it is in the correct district. Meanwhile, this information is all contained in Section 200-14.3 for the Union Crossing Transit District.

4. These kinds of format inconsistencies can be confusing for the user, who cannot predict where to look for relevant information for a given district without reviewing the entire document. This could also lead to needlessly extended approval processes, as applicants have difficulty understanding what must be provided and what regulations they must comply with.

Additional specific comments:

5. Land is organized in a series of overlapping districts, use districts, density districts, and potentially overlay districts. Randolph has an unusually large number of districts, special districts, and overlays. These are only fully identified in the tables attached to the ZO and in a list at the beginning of the ordinance. This makes it difficult for users to understand exactly what zoning governs their parcels.
6. Article III, Use Regulations, is a lengthy compendium of use regulations intermingled with district regulations. It presents use regulations for the Town's many base zoning districts (also known as use districts) and overlay districts, but the Table of Allowable Activity also presents use regulations by class of use and by district. It is hard to know whether to trust Article III or the Table of Allowable Activity. For example, provisions for group homes for people with disabilities can be found in Section 200-10, but the term group home does not appear at all in the Table of Allowable Activity. In addition, Article III occasionally includes dimensional regulations or caps as well, requiring the reader to make a judgment call whether the text or the tables control.
7. The mix of district regulations and use regulations in Article III is confusing. For example, 200-11.1, Exterior Metal Rolling Grates, falls between the Crawford Square Business District (CSBD) and the Industrial Districts.
8. The text components of the ZO include use and dimensional regulations (Article VI), but the reader is also referred to the Tables of Allowable Activity and Dimensional Requirements.
9. Most definitions appear to be in Section 200-3, but definitions are also peppered elsewhere in the ZBL, with some subsections containing their own set of definitions. This makes specific definitions harder to locate and consistency harder to maintain. If cluttering the definitions section with section-specific terminology (such as types of wireless communications tower) is a concern, specialized terms can be sorted by topic or separated into boxes to avoid confusion. Definitions are provided in the following sections that should be consolidated:

- §200-14.4B
 - §200-16B(6)(b)
 - §200-48
 - §200-59
10. Parking regulations are located in various sections of the ZO, not just in Article IV as would be expected. Off-street parking requirements appear in connection with uses throughout Article III, but also in Article IV.
 11. Minimum lot area requirements are listed in different places for different uses. Residential uses are listed under the Minimum Lot Area in Section 200-27, while for other districts, the minimum lot requirements appear in their respective sections.
 12. In a number of places, the ordinance simply says to see the associated chart instead of providing the applicable setbacks, height limits, and other bulk requirements. This makes it difficult for readers to flip back and forth between various documents.
 13. The formatting of terms being defined is inconsistent. Sometimes the terms are in bold, sometimes in italics, sometimes in neither.
 14. Currently, the online (eCode360) Randolph ZO has use and dimensional tables as separate PDF attachments. It would be more user friendly to group all relevant and related information together in the same place. If someone is looking for information on uses, the Table of Contents would logically lead them to Article III, Use Regulations. Once in Article III, they should not then be sent somewhere else in the ZO. The Dimensional Table has the same problems, with the added difficulty of the text and table repeatedly sending the reader back and forth between the two in order to have a complete picture of a district's requirements.

We have provided a suggested reorganization of the ZO in Appendix A.

B. Access and Ease of Use

To the extent possible, a Zoning Ordinance should be laid out in logical order, especially within sections, so that a reader can follow along with permitting and review processes in chronological order.

A Zoning Ordinance should also be as user-friendly and easy to navigate as possible in printed format but especially digital, as this will be the primary method by which many community members will access the document. Randolph currently uses the eCode360 platform to host the digital version of its ordinances. This offers advantages and disadvantages. On the positive side, eCode360 allows users to search a document for any given term, a feature that not all PDFs allow. The formatting is easy to read, and users can manipulate the layout of a page, collapsing and expanding sections as needed. Among

Massachusetts cities and towns, the use of eCode360 is relatively common, so users may already have experience with its standardized formatting when approaching Randolph's ZO.

On the other hand, the use of a third-party digital platform limits the ability to be creative with formatting and largely eliminates the possibility for the use of graphic design elements. Many recommendations that we normally make are impractical in eCode360 and even when possible, they may require additional costs to the Town. For example, the Town may not wish to commit additional resources color-coding, varying font styles, and so forth, but features that make a page easier to navigate can go a long way toward making an ordinance understandable to the public.

Incorporating visual elements such as graphics and color-coded tables can be challenging in eCode360, but it can be done. In the Randolph ZO, it is currently difficult to obtain a link to any of the tables found in the ZO's appendices, for example, and there are no options to imbed images within the text. However, we still make the following recommendations, to the extent that they are possible to implement within Randolph's budget for eCode360 services. The ZO would benefit from several navigation aids:

1. An alphabetized index at the end of the ZO to supplement the existing search feature on eCode360.
2. More liberal use of cross-references where appropriate, especially if hyperlinked. For example, whenever a Special Permit or Site Plan review is mentioned, reference the relevant section so readers can easily find more detailed information about the procedure. (This happens sometimes in Randolph's ZO, but not predictably.)
3. All relevant tables should be easy to find and included with any online version of the bylaw to reduce the amount of searching necessary. The eCode360 version of the ZO has a PDF attachment that includes the tables, but the references to these tables do not link to this PDF. For example, clicking on the heading for "Table of Dimensional Requirements" does nothing to point a reader towards the actual table.

Likewise, graphical upgrades and visual aids could be enormously helpful in the following areas:

4. Redesign of the Table of Allowable Uses and Table of Dimensional Regulations to make them easier to read and interpret. For example, applying a color code to the Table of Allowable Uses would make it easier to tell at a glance which body acts as the special permit granting authority for a given use.
5. Graphics to illustrate key dimensional requirements. There are a few images and figures in the current ZO, whereas illustrations would aid readers in understanding dimensional standards such as measuring frontage (especially on corner lots), yard requirements, building coverage and impervious coverage, and building height for different types of roof forms.

6. Permitting flowcharts showing the sequence of steps and timelines involved with various approval processes could be very helpful. This is especially true for application types requiring multiple approvals; i.e. for a Site Plan Review requiring Design Review and a Building Permit, what happens when, and what order should applications be submitted?
7. The Zoning Ordinance should be kept up to date, incorporating changes approved by Town Council on as possible after they occur. The ZO made available to the public should provide them an accurate description of current zoning regulations without needing to seek out Town Council agendas to check for amendments. eCode360 has a “New Laws” feature for this purpose.
8. Attention should be paid to the spacing and page formatting of the printed / PDF Bylaw.

Other comments pertaining to ease of use:

9. The zoning districts listed in Section 200-4 are not presented in the same order in the Use Regulations (Article III). For example, in the list of Districts at both Section 200-4 and Section 200-6, Crawford Central Business District is the first District listed. Residential Districts then come before Crawford in Section 200-10, and within Section 200-11, where the relevant zoning information is written, Crawford is the third district discussed, listed behind the Business and Business Professional Districts. This makes the District information difficult to use, and someone attempting to find the regulations that relates to them cannot rely on the order presented in the beginning of the document to help them navigate the rest of the document.

C. Clarity of Words, Phrases, and Sections

This section presents examples of unclear language and undefined or poorly defined terms that serve to illustrate persistent issues throughout the Randolph ZO.

1. The ZO contains many examples of undefined technical or legal jargon that would likely be understandable by professionals in engineering or planning fields but not by the average citizen. This specific language can remain if properly defined in the definitions section or be rephrased to be more straightforward with the option of referencing a source (such as MGL, DEP, etc.) that uses the technical language.
2. Beyond unfamiliar terms, there is “jargon-y” phrasing. For examples, the word “such” is found 311 times in the ZO and “said” is used 68 times. “Herein” appears 48 times. “Hereinbefore” appears three times. Not all (or even most) uses of these words are necessary.
3. Comma use is inconsistent. The confusion caused by missing commas, extraneous commas, and misplaced commas has led to more land use litigation than one might imagine. Serial commas are customary in zoning. In many places, the Randolph ZO exhibits correct comma use; in some places, it does not, and at times, commas are used in

sentences where a semi-colon or a period would be more appropriate. These kinds of errors happen when a zoning ordinance or bylaw is updated by different authors over a period of years.

4. Here are some selected examples of confusing text:

200-10G: The phrasing in this section implies that no matter where the trailer is stored on the lot, the front setback measurement applies. If this is the purpose, it should be more directly stated; if it is not, it should be clarified.

200-34C: Green area/open space refers the reader to the definitions section. However, there is no definition.

200-14.1D(3): The text currently reads as follows:

Building height requirements. Any buildings in a Multifamily Affordability Overlay District may contain a maximum of four (4) stories and shall not exceed fifty-five (55) feet in height, provided that the respective building or buildings are not within sixty-five (65) feet of a residential district within the Town of Randolph or a lot located within the Town of Randolph used primarily for residential purposes. All height measurements shall conform to the requirements of the State Building Code, 780 CMR 502.

As written, this section does not provide an alternative if the building is within 65 feet of a residential district or another residential property. Does it revert to the underlying height, or another height? Additionally, does the 65-ft requirement apply to other buildings built within the overlay district or only to residential districts outside of the district?

§200-34D: The text currently reads as follows:

Maximum lot coverage. The total lot non-green area/open space may not exceed the maximum coverage specified in the Table of Dimensional Requirements.[4] In order to fulfill the intent of maximum lot coverage, an applicant may shift a percentage of the building lot coverage requirement and the impervious lot coverage requirement . . .

What does it mean to “shift a percentage of the building coverage requirement and the impervious lot coverage requirement”? This is a non-standard provision and should be rewritten for clarity. Perhaps a graphic or an illustration would help to convey the meaning of this section.

5. The definition of “Abandonment” should not include “replacement of a nonconforming use or building by a conforming use or building.”
6. In Section 200-8, the ZO provides for “agriculture, horticulture, floriculture or viticulture ...” on five or more acres of land. There is no definition of agriculture in the ZO, however. This term should be added to the definitions section of the ZO, and it should conform to the definition found in G.L. c. 128, § 1A.

7. Alcoholics Anonymous (AA) and Narcotics Anonymous (NA are defined in Section 200-3, but the terms do not appear anywhere in the ZO. Since AA and NA are not a land use, they should be removed from the ZO.
8. An assisted living facility is not a boarding house and should not be defined as such. (See definition of Assisted Living in Section 200-3.)
9. A nursing home is not a lodging use and should not be regulated as such. (See Table of Allowable Activity.)
10. Throughout the Zoning Ordinance, there are sections in which something is being mandated or prohibited, but the text uses the word “may”. For anything that is specifically mandated or prohibited, the correct word to use is “shall.”
11. Different terms are sometimes used for the same concept. For consistency, each idea or entity should only ever be called by a single name. For example, the term “Building Inspector” is used nine times in the ZO while the term “Building Commissioner” is used 52 times.
12. Massachusetts General Laws are referenced inconsistently, sometimes as “Chapter 40A of the General Laws”, sometimes “M.G.L. c. 40A,” etc.
13. The ZO still refers to itself as “Bylaw” in several places:
 - §200-41A
 - §200-41C
 - §200-46B(6)(b)
 - §200-46B(11)(l)
 - §200-46B(14)(a)[7]
 - §200-80
 - §200-10D(3)
 - §200-16B(2)(b)
 - §200-16B(3)(e)
 - §200-16B(6)
 - §200-16.2B(3)
14. The Ordinance refers to (and separately defines) Day Care, Child-Care Facility, and Day-Care Center. These terms should be consolidated as “Child Care Center” as that term is defined in G.L. c. 15D, Section 1A. In addition, the Town may want to provide for and define the following related terms:
 - Early education and care program
 - Family child care home
 - Group care facility

- These uses are subject to different rules under the Zoning Act, so it is best to define them as separate terms and regulate them accordingly.
15. The Ordinance defines “Duplex Dwelling” as a building with two side-by-side units joined by a common wall, and “Two-Family Dwelling” as simply a building with two units. For simplicity, these terms should be consolidated as Two-Family Dwelling.
 16. The definitions of “Office for Executive or Administrative Purposes” and “Office or Professional Use” are almost identical. It is unclear how treating these terms as separate uses benefits the Town given how they are defined in the Ordinance.
 17. Similarly, the terms Convention Center and Convention Center/Exhibit Hall have the same definition. They should be consolidated.
 18. The purpose of Section 200-16, Expedited Permitting, is unclear. Section 200-16 appears to have stemmed from the amendments to G.L. c. 43D approximately 20 years ago, encouraging cities and towns to identify ways to streamline their permitting procedures for economic development. Section 200-16 has noble intentions, but it is not really a zoning provision. It would be more appropriate to relocate the Expedited Permitting regulations to a separate, non-zoning section of the Town Code.

D. Administration; Procedures

1. Administrative procedures appear in some places throughout the Zoning Ordinance, but mainly in Articles VII, XIII, and XI. Provisions such as application submittal requirements and Boards’ procedural rules are best suited to Administrative Rules and Regulations. For the most part, Randolph follows this approach.
2. The Special Permit and Site Plan Review provisions in Randolph are unusually complicated, with multiple tiers or classes of permit types and different entities with authority to grant them. It appears that Randolph has made a conscious choice to leave small or relatively low-impact projects to the Planning Board and leave larger projects with the Town Council, and this is true both for special permits and site plan and design review.
3. Section 200-97 directs appeals of the Planning Board’s “Tier 2” site plan decisions to the Board of Appeals. This practice is generally frowned upon, as it does not promote good relationships between town boards if one can effectively veto the decision of another. As a rule, appeals of site plan decisions should be made under G.L. c. 40A, Section 17, i.e., an appeal filed with the Land Court or Superior Court (as is the case with Tier 3 appeals).
4. Section 200-94 outlines the Town’s site plan review standards or criteria – that is, the elements of a plan that Randolph prefers and, in many cases, requires. At times, the standards are broad and seemingly discretionary; in other cases, the standards are written as requirements, using words such as “shall” or “must” as opposed to “should.”

5. Similarly, the Special Permits section (Article XIII) is complicated, with multiple permitting authorities. It would benefit from some streamlining. In addition to the procedural requirements for special permits (which one would expect to find in Article XIII), this section also lists specific requirements for several special permit uses. Usually, conditions or criteria associated with special permit uses would be found in the Use Regulations. Again, this is an example of how difficult it can be in Randolph to find all of the information one needs to apply for and satisfy the requirements for a particular land use.

E. Incomplete or Outdated Provisions

1. Parking requirements in general appear outdated and unhelpful in many respects. For example, requiring parking on a linear basis (one space per N square feet of area, for example) as Randolph currently does often leads to oversized parking area. As commercial spaces get larger, the demand for parking is lessened on a square foot basis, but Randolph's parking requirements do not currently reflect this fact.
2. The Zoning Ordinance has a number of outdated terms. Randolph could certainly consider omitting them. Some examples include Call Center or Day Laborer. On a related note, the Town's definitions distinguish terms such as "Machine Shop, Large" and "Machine Shop, Small," but the use is not really different. Instead, the difference is the size of the use and that is a regulatory matter, not a definitional matter. The definitions section, 200-3, has other instances where uses have the same definition except for a size threshold, e.g., N square feet. These kinds of anomalies should be cleaned up in a zoning recodification process.
3. Many Massachusetts towns find their existing zoning inadequate for addressing the proliferation of short-term home/room rental services such as Airbnb. Traditional terms such as "bed and breakfast" or "lodging house" do not work well for Airbnb activity. Randolph may want to consider some form of short-term rental regulation, but only in consultation with Town Counsel. We find that town attorneys and city solicitors do not always agree about the best way to approach these uses.
4. There are many references throughout the Ordinance to MGL and CMR regulations. All of these references need to be checked to determine if they remain accurate.
5. Article V, Nonconforming Uses and Structures, requires more review to assure conformance with state statutes and most up-to-date court decisions on nonconformities.
6. Section 200-14.1 allows up to 20 percent of the required parking in the Multifamily Affordability Zone to be compact spaces. However, very few compact cars are sold today. Over 60 percent of vehicle sales in the U.S. are pick-up trucks and SUVs. The Town may want to reconsider this provision.

F. Legal Questions or Inconsistencies

1. Section 200-25, Effect on building or special permits, is out-of-date. It currently reads: "Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within a period of not less than six (6) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable." However, G.L. c. 40A, § 6, provides for a 12-month period rather than the six months stated in the ZO.
2. In some cases, the Zoning Ordinance contains provisions that may violate the uniformity clause of G.L. c. 40A, Section 4. A good example is in Section 200-14.3, Union Crossing Transit District. Under Section C, Applicability, the ZO provides the following:

(1) This chapter shall apply to parcels that meet the criteria outlined in Subsection B, above.

(2) This chapter shall *only apply to a parcel once an applicant/parcel-owner has submitted a Special Permit request to the Special Permit Granting Authority (SPGA) and that Special Permit has been granted or granted with conditions.*

The intent of the italicized text may be that an applicant cannot take advantage of the benefits of the Union Crossing Transit District without applying to the Town Council to develop under the rules of the district. However, as written, Section C indicates that the district itself does not apply until someone submits a special permit application for transit district development. It is, at least, confusing.

3. It is unclear when Article X, Wireless Communications Facilities, was last updated. It appears to be out-of-date with all of the FFC rules and regulations adopted in the last twelve years. Interviewees we spoke with for this report suggested that this section needed updating.
4. Article VIII, Special Permits, is out of date. "Lapse" states that "Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval." However, this timeframe was increased from two years to three years by § 30 of Chapter 219 of the Acts of 2016.
5. The Town should exercise caution in applying § 200-46 Requirements for particular uses/activities to special permit reviews and decision-making. Among the requirements listed in this section is "fiscal impacts, including impacts on Town services, the tax base and employment." In recent reviews of Town bylaws submitted for review, the Attorney General has advised against the inclusion of "fiscal impact" as a consideration in permit decisions, particularly for housing. Below is an excerpt from these decisions.

“The Town should be aware of recent Land Court decisions analyzing the question whether a potential impact on essential public services, including education of children, is a lawful consideration in the context of multi-family housing. In two recent decisions, the Land Court determined that consideration of potential increased costs for educating school-aged children is not a lawful consideration when reviewing a special permit application for multi-family housing. In Bevilacqua Co. v. Lundberg, No. 19 MISC 000516 (HPS), 2020 WL 6439581, at *8–9 (Mass. Land Ct. Nov. 2, 2020), judgment entered, No. 19 MISC 000516 (HPS), 2020 WL 6441322 (Mass. Land Ct. Nov. 2, 2020) the court ruled that the Gloucester City Council’s denial of a special permit to construct an eight-unit multi-family building based on the potential fiscal impact of the proposed development on the Gloucester public schools was “legally untenable.” Id. at *9. Because the right to a public education is mandated and guaranteed by the Massachusetts Constitution, (see McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 621 (1993) and Hancock v. Comm’r of Education, 443 Mass. 428, 430 (2005)) “[a denial of] a special permit to build housing because the occupants of that housing might include children who will attend public schools is [a denial of the children’s] constitutional right under the Massachusetts Constitution to a public education.” Id. at *8 (citing McDuffy and Hancock). “Therefore, notwithstanding the fiscal impact to a municipality from the construction of housing that may result from the obligation to educate children in the public schools, fiscal impact, as a reason for denying permits to construct housing, must give way when it runs afoul of the constitutional obligation of Massachusetts municipalities to provide a public education to all children.” Id. at *9. . . .

Similarly, in 160 Moulton Drive LLC v. Shaffer, No. 18 MISC 000688 (RBF), 2020 WL 7319366, at *13-15 (Mass. Land Ct. Dec. 11, 2020), judgment entered, No. 18 MISC 000688 (RBF), 2020 WL 7324778 (Mass. Land Ct. Dec. 11, 2020) the court rejected the town’s argument that the financial impact of educating the number of school-aged children projected to live in the apartments would be greater than the increased tax revenue, thus making the apartment use “substantially more detrimental” (in the language of the applicable by-law) than the existing restaurant use. “The Town cannot deny a permit on the grounds that its own property tax scheme is insufficient to provide for the needs of its inhabitants. Whether the Town has enough funds to provide public education for its school-aged children is simply not a matter for the Board to consider in reviewing special permit applications.” Id. at *14 (citing Bevilacqua at *8-9).

6. On a similar note, the Crawford Square Business District (CSBD) limits multifamily dwellings to two bedrooms. This could constrain housing options for families with children. “Familial status” is one of the groups protected under the federal Fair Housing Act.
7. It is not necessary to have separate severability statements throughout the Bylaw when there is a broad severability statement in Section 200-2. The extra sections should be removed.

G. Topics for Further Consideration

1. A vitally important recommendation for the Town to consider is a reassessment of the existing districts. Randolph has *many* districts – so many that one must question whether all are needed to accomplish the Town’s planning objectives. An effort to consolidate or simply eliminate some districts should be considered,
2. The statute gives communities great flexibility to regulate or not regulate nonconformities. A comprehensive zoning update would be a good opportunity for Randolph officials to review the existing language, understand options, and decide how to proceed on this topic.
3. The Town should consider areas where Special Permit requirements can be eliminated in order to streamline application procedures, improve consistency in the interpretation and application of zoning requirements, and streamline procedures. Randolph has many, *many* uses that require a special permit. While special permit authority lies primarily with the Town Council, the Planning Board also has jurisdiction over a few special permits, and the Zoning Board of Appeals can exercise special permit authority in cases of nonconforming uses and structures. More broadly, the Town should consider a more traditional approach to special permits in which the legislative body (the Town Council) sets land use policy by enacting zoning ordinances, and the Planning Board carries out those policies as the Town’s primary permitting agency. These decisions are often political, and the purpose of this report is not to advocate for any particular political resolution. However, we would be remiss if we did not comment on the multitude of special permits in Randolph and the unusually complex scheme of special permit granting authority found in Article VIII of the Zoning Ordinance.
4. Any and all zoning maps should be made available online alongside the Zoning Ordinance for easy reference. At last check, Randolph’s Zoning Map was not available online, which makes it very difficult for residents to find out the district that controls their property. Having the map available only in the Town Clerk’s office is a problem.
5. There are several uses that the Town should consider adding to the Table of Allowable Activity (regardless of whether such uses will be allowable or not), including: pet grooming establishments, animal or pet day care, charging stations, portable storage units, and other new uses emerging from new technologies or market trends.
6. Randolph should consider whether large-scale nonconformities are an issue that needs addressing. In many towns and cities, historic or older neighborhoods were rezoned in the 1960s, 70s and 80s with suburban-style zoning, resulting in entire areas of a town being made nonconforming. A few municipalities have either reverted to older zoning requirements to reflect the development character, or created new town center, village center, or village neighborhood style zoning to reduce or eliminate the conformities.

TECHNICAL REVIEW: ADMINISTRATIVE RULES AND REGULATIONS

The Planning Board's Rules and Regulations Governing the Issuance of Site Plan and Design Review and Special Permits cover fairly standard territory for administrative regulations. The same appears to be true for the Town Council's Rules and Regulations as well. We have only a few comments:

1. In the Planning Board's rules, it is difficult to determine which requirements or standards apply to Site Plan and Design Review applications vs. Special Permits. A cleaner separation in the rules and regulations would help to clarify how the Board applies them. For example, it is not clear whether the Development Impact Statement (DIS) applies only to projects requiring a Special Permit or if the Board prefers a DIS for site plan submissions as well.
2. The lapse provision in Section 8.8 and Rule VI, Part I, is out of date, but the Zoning Ordinance would need to be updated before the administrative rules and regulations could be changed.
3. The filing fee schedule should be appended to the Planning Board's rules and regulations, as it is with the Town Council's rules.
4. It is generally advisable to include a board's permit application package as part of the administrative rules and regulations, usually as an appendix or attachment.

APPENDIX A. SUGGESTED REORGANIZATION OF ZONING ORDINANCE

New Section	Include Existing Content
Article 1. Purposes and Authority	Sections 200-1 and 200-2 <u>Add</u> Applicability Section 200-41, Amendments
Article 2. Definitions	Section 200-3 Section 200-14.4(B) Section 200-48 Section 200-59 Section 216(B)(6)
Article 3. Establishment of Districts	Existing Article II <u>Divide</u> Section 200-4 by separately listing or categorizing use districts, special districts, and overlay districts Include district purpose statements that currently appear in Article IV. <u>Add</u> a new section, Zoning Map Interpretation
Article 4. Use Regulations	<u>Add</u> General Provisions <u>Add</u> a list of Uses Allowed in All Districts (e.g., exempt uses or municipal uses) <u>Add</u> a list of Prohibited Uses in all districts <u>Remove</u> text-level use regulations except when necessary to outline special requirements for selected uses; otherwise, leave all use regulations to the Table of Allowable Activity <u>Relocate</u> all overlay district regulations to new Article 9.
Article 5. Dimensional Regulations	<u>Add</u> General Provisions <u>Include</u> instructions for measuring dimensional requirements, e.g., building height, yards, etc.

New Section	Include Existing Content
	<u>Remove</u> text-level area and other lot regulations and leave them to the Table of Allowable Activity
Article 6. Nonconforming Uses, Structures, and Lots	Article V <u>Update</u> provisions that are out of sync with Chapter 40A Add regulations concerning nonconforming lots <u>Create</u> a clear separation between nonconforming <i>uses</i> and nonconforming <i>structures</i>
Article 7. General Regulations	Article IV Article IV
Article 8. Special Regulations	Section 200-14.4. Planned Residential Development Section 200-16.1 Expedited Permitting (or remove this entirely from the ZO)
Article 9. Overlay Districts	Multifamily Overlay Districts Union Crossing Transit District Watershed and Wetland Protection Overlay Districts Great Pond Commerce Center Overlay District MBTA Communities District
Article 10. Other Special Districts	Sanitary Facilities District
Article 11. Administration and Enforcement	Article VII Article VIII Article XI Relocate 200-41 to new Article 1

File Attachments for Item:

3. Land Court Recorder - index Jan-July 2023

Cumulative Subject Matter Digest–July 2023

Attorney's Fees**Contempt Proceedings**

Justice Michael D. Vhay found that a Provincetown restaurant violated a modified injunction and judgment no less than 78 times after its issuance with respect to a parking easement and assessed \$7,800 in fines based on \$100 per violation. The decision absolves the Contempt Defendants of liability for other beach related claims where the relevant line's true locations were unclear or misunderstood. Justice Vhay declined the Plaintiffs' request to jail certain defendants but did require them to prepare a plan for his approval which would prevent future violations and give customers and vendors adequate notice of the location of the parking easement. *Deckelbaum v. Hailey (Findings of Fact and Conclusions of Law and Order)*, [Vhay] 31 LCR 443 (2023).

Complaint**Frivolous**

Justice Howard P. Speicher dismissed a complaint over title to a Newton residential property where the pleading was devoid of any reasonable factual support and lacked any statement of the legal basis of the Plaintiff's title claim. Shockingly, Justice Speicher also found that the Middlesex South Registry of Deeds had accepted the Plaintiff's lis pendens on the property despite the fact that it lacked any judicial endorsement whatsoever and that the attorney's affidavit failed to notice "allowance thereof." The lis pendens was dissolved. *Sharari v. Laura Road Holdings, LLC (Memorandum and Order on Defendants' Emergency Motion to Dissolve Lis Pendens)*, [Speicher] 31 LCR 425 (2023).

Justice Robert B. Foster declined to dismiss as frivolous a complaint arising from a land swap between sophisticated commercial real estate professionals where neither party was prejudiced by the Plaintiff's omission of material facts or documents which did not change the substance of the claims or render them devoid of any legal or factual basis. *SW-NEC UP LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens)*, [Foster] 31 LCR 409 (2023).

Contempt Proceedings**Fines**

Justice Michael D. Vhay found that a Provincetown restaurant violated a modified injunction and judgment no less than 78 times after its issuance with respect to a parking easement and assessed \$7,800 in fines based on \$100 per violation. The decision absolves the Contempt Defendants of liability for other beach related claims where the relevant line's true locations were unclear or misunderstood. Justice Vhay declined the Plaintiffs' request to jail certain defendants but did require them to prepare a plan for his approval which would prevent future violations and give customers and vendors adequate notice of the location of the parking easement. *Deckelbaum v. Hailey (Findings of Fact and Conclusions of Law and Order)*, [Vhay] 31 LCR 443 (2023).

Contracts**Assignment**

Ruling on a land swap dispute between real estate professionals, Justice Robert B. Foster found that collateral assignments of marketing fees had never been released with respect to the parcels in question and that the borrower's assignee's license to execute these agreements had been automatically revoked in favor of the lender upon default. *SW-NEC UP*

LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens), [Foster] 31 LCR 409 (2023).

Consideration

A right of first refusal accorded buyers of an East Falmouth residence due to the Seller falling grievously ill was not found by Justice Jennifer S. D. Roberts to constitute an unlawful restraint on alienation at the time it was initially triggered because the Seller then wished to sell the property and the Buyers could have insisted on their rights to conveyance under the Purchase and Sale Agreement. Justice Roberts also concluded that the agreement for a right of first refusal between the parties did not lack consideration given that it ended the threat of litigation by the Buyers in exchange for the Seller executing the agreement. *Tucker v. Adams (Memorandum of Decision After Trial)*, [Roberts] 31 LCR 451 (2023).

Estoppel**Judicial**

The doctrine of judicial estoppel barred Defendants in a dispute over a South Weymouth land swap from arguing that the Plaintiff had no legal interest in the locus or marketing fees pursuant to collateral assignments where the Defendants had taken a contrary position in a prior Superior Court action. *SW-NEC UP LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens)*, [Foster] 31 LCR 409 (2023).

Foreclosure Sale (See also Mortgages, Service Members Civil Relief Act, Tax Title and Liens)**Notice of Sale**

Justice Robert B. Foster found that a notice of sale in a foreclosure properly identified the inclusion therein of collateral assignments and a land swap agreement and these were not excluded from the sale. *SW-NEC UP LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens)*, [Foster] 31 LCR 409 (2023).

Land Court Jurisdiction**Collateral Assignment**

The Land Court did indeed have jurisdiction over collateral assignments that formed a part of a land swap agreement because these are interests in real estate that encumbered title and were recorded against parts of the locus. *SW-NEC UP LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens)*, [Foster] 31 LCR 409 (2023).

Lis Pendens**Motion to Dissolve**

Justice Howard P. Speicher dismissed a complaint over title to a Newton residential property where the pleading was devoid of any reasonable factual support and lacked any statement of the legal basis of the Plaintiff's title claim. Shockingly, Justice Speicher also found that the Middlesex South Registry of Deeds had accepted the Plaintiff's lis pendens on the property despite the fact that it lacked any judicial endorsement whatsoever and that the attorney's affidavit failed to notice "allowance thereof." The lis pendens was dissolved. *Sharari v. Laura Road Holdings, LLC (Memorandum and Order on Defendants' Emergency Motion to Dissolve Lis Pendens)*, [Speicher] 31 LCR 425 (2023).

CUMULATIVE SUBJECT MATTER DIGEST—JULY 2023

Special Motion to Dismiss

In an action between real estate professionals over a land swap involving a large parcel formerly a part of the South Weymouth Naval Air Station, Justice Robert B. Foster denied the Plaintiffs' motion for a lis pendens as this was a transaction between sophisticated commercial parties, advised by counsel at every step, and because their agreement included a contract provision discouraging the use by either party of this tactic. *SW-NEC UP LENDER, LLC v. Rockland Meadows, LLC (Memorandum and Order Denying Plaintiff's Motion for Lis Pendens)*, [Foster] 31 LCR 409 (2023).

MassHealth**Recovery of Beneficiary Assets**

Justice Robert B. Foster rejected a claim from MassHealth for the recovery of a beneficiary's assets in the form of a property in Cambridge he owned at the time of his death in 1994. The property has since passed through multiple owners. The claim was time barred under both the current MUPC and pre-MUPC law and the Plaintiff was able to show that MassHealth had been given notice of the probate sale. Justice Foster declined to invalidate the 1995 probate sale on the grounds that the Probate Court had not granted a license to sell the property, where the license had been requested and a retroactive authorization of the sale would not prejudice MassHealth because it was on notice at the time of the conveyance. *Matveyev v. Rebelo (Memorandum and Order on Cross-Motions for Summary Judgment)*, [Foster] 31 LCR 428 (2023).

Motion Practice (See also Summary Judgment, Reconsideration)**Failure to State a Claim**

A challenge to a 2011 mortgage foreclosure of a Holliston residence by its former owner was dismissed by Justice Kevin T. Smith for failure to state a claim where it included allegations of wrongdoing against the current lender-assignee defendants who were not involved with the foreclosure or its immediate aftermath. *Mitri v. Marge (Decision)*, [Smith] 31 LCR 438 (2023).

Municipalities**Boundaries**

Justice Diane R. Rubin concluded after extensive testimony by experts regarding the historical record that an island in Boston Harbor named Graves Ledge, a former federal lighthouse, was not shown to have been conveyed to the municipality of Hull in colonial grants or otherwise, but declined to rule on whether it constituted unincorporated land as there was no claim pending before her on that issue. The litigation began when a private party bought the island at auction from the federal government and Hull assessed real estate taxes. *Graves Light and Fog Station, LLC v. Town of Hull (Decision)*, [Rubin] 31 LCR 458 (2023).

Res Judicata (See also Collateral Estoppel)**Identity of Subject Matter**

Justice Kevin T. Smith dismissed a challenge from a former Holliston homeowner to the 2011 foreclosure of his home where *res judicata* barred the action given its prior litigation in federal court where the integrity of the foreclosure proceeding was upheld and the subject matter was the same. *Mitri v. Marge (Decision)*, [Smith] 31 LCR 438 (2023).

Restraint on Alienation**General**

A right of first refusal accorded buyers of an East Falmouth residence due to the Seller falling grievously ill was not found by Justice Jennifer S. D. Roberts to constitute an unlawful restraint on alienation at the time it was initially triggered because the Seller then wished to sell the property and the Buyers could have insisted on their rights to conveyance under the Purchase and Sale Agreement. Justice Roberts also concluded that the agreement for a right of first refusal between the parties did not lack consideration given that it ended the threat of litigation by the Buyers in exchange for the Seller executing the agreement. *Tucker v. Adams (Memorandum of Decision After Trial)*, [Roberts] 31 LCR 451 (2023).

Special Permit**Findings****— Buffer Zones**

On appeal from a Woburn automobile dealership's failed petition to modify its special permit in order to allow the repair of motor vehicles, Justice Michael D. Vhay annulled the denial that had been made without findings after expert testimony established that the City Council's noise concerns were without merit and it abandoned its purported concerns with traffic. *Lawless, Inc. v. Tedesco (Decision)*, [Vhay] 31 LCR 449 (2023).

Grounds for Denial or Approval**— Noise**

On appeal from a Woburn automobile dealership's failed petition to modify its special permit in order to allow the repair of motor vehicles, Justice Michael D. Vhay annulled the denial that had been made without findings after expert testimony established that the City Council's noise concerns were without merit and it abandoned its purported concerns with traffic. *Lawless, Inc. v. Tedesco (Decision)*, [Vhay] 31 LCR 449 (2023).

Modification

Justice Michael D. Vhay annulled the Woburn City Council's denial of the modification of a special permit regulating activities of a Woburn auto dealership and took pains to note that, upon remand, the applicant had no obligation under Chapter 40A to show that "changed circumstances" had necessitated the modification. *Lawless, Inc. v. Tedesco (Decision)*, [Vhay] 31 LCR 449 (2023).

Tax Title and Liens**Foreclosure Proceedings**

No bad faith was shown on the part of the tax-title assignee following foreclosure merely because it took no action during the one-year redemption period. *Ithaca Finance, LLC v. Rodriguez (Memorandum of Decision on Cross-Motions for Summary Judgment)*, [Roberts] 31 LCR 432 (2023).

Justice Jennifer S. D. Roberts entered judgment in favor of a municipal tax-title assignee that it had absolute title to a Lawrence residence following a tax-title foreclosure and dismissed the claims to title from an assignee of the original mortgage. The decision concludes that the assignee-lender was given adequate notice of the tax lien foreclosure process, notwithstanding the misspelling of the homeowner's name, and that no bad faith was shown on the part of the tax-title assignee simply because it took no action during the one-year redemption period. Also dismissed as unreasonable was the assignee lender's reliance on a lien release from an entity unrelated to the tax case. *Ithaca Finance, LLC v. Rodriguez (Memorandum of Decision on Cross-Motions for Summary Judgment)*, [Roberts] 31 LCR 432 (2023).

CUMULATIVE SUBJECT MATTER DIGEST–JULY 2023

Notice

Justice Jennifer S. D. Roberts entered judgment in favor of a municipal tax-title assignee that it had absolute title to a Lawrence residence following a tax-title foreclosure and dismissed the claims to title from an assignee of the original mortgage. The decision concludes that the assignee-lender was given adequate notice of the tax lien foreclosure process, notwithstanding the misspelling of the homeowner's name. *Ithaca Finance, LLC v. Rodriguez* (Memorandum of Decision on Cross-Motions for Summary Judgment), [Roberts] 31 LCR 432 (2023).

Undue Influence (See also Deeds, Fraud)**General**

In a textbook case of familial undue influence, Justice Robert B. Foster voided a deed executed by a 81-year-old Danvers woman in favor of her son's two six-year-old daughters after finding that the disposition was unnatural and that the elderly woman was mentally fragile and showing signs of paranoia and anxiety at the time of the deed's execution. This fact pattern was particularly egregious because it was clearly the mother's intention to leave the property to her daughter who had lived there for 35 years, maintained the property at her own expense, and was a paraplegic. *Erikson v. Erikson* (Decision), [Foster] 31 LCR 417 (2023).