

CRACKDOWN IN MASSACHUSETTS

The following is an abridged version of a compilation by P. D. Kingman, Esq. and R.L.S., which first appeared in *The Massachusetts Surveyor*. Vol. 17, No. 1.

The recently decided case of *K. Dunn Gifford vs. Planning Board of Nantucket* illustrates very decisively that from now on registered land surveyors in Massachusetts are going to have to comply with the spirit of the law as well as the written law. In this case Justice Kaplan said, "There was no more than a purely formal or technical compliance with the frontage requirements."

The court stated, "Tristam's Landing, Inc., owner of a forty-nine-acre parcel of land on Nantucket Island, submitted to the Planning Board of the town of Nantucket a plan to divide the parcel into forty-six lots, and asserting the belief that the plan did not constitute a 'subdivision' within the Subdivision Control Law, it applied for an endorsement by the Board of 'Approval under the Subdivision Control Law not required.' The Board the next day endorsed the plan as requested. On December 6, 1976, the plaintiffs herein, 15 residents of the town, commenced an action seeking to annul the Board's endorsement. As grounds, the plaintiffs alleged that the plan constituted a subdivision within the law. The trial judge referred the case to a master who, after a hearing, recommended that judgement enter for the plaintiffs. The trial judge accepted the recommendation without further opinion.

As a preface to considering the substance of the master's recommendation, we note that a "subdivision" is defined as "the division of a tract of land into two or more lots," but there is excepted from this definition, and regarded as not a subdivision for the purposes of the law, such a division of a tract of land "if, at the time when it (the division) is made, every lot within the tract so divided has frontage on a public way." Section 81L continues: "Such frontage shall be of at least such distance as is then required by zoning by-law." The Nantucket zoning by-law requires for the present district a frontage of 75 ft.

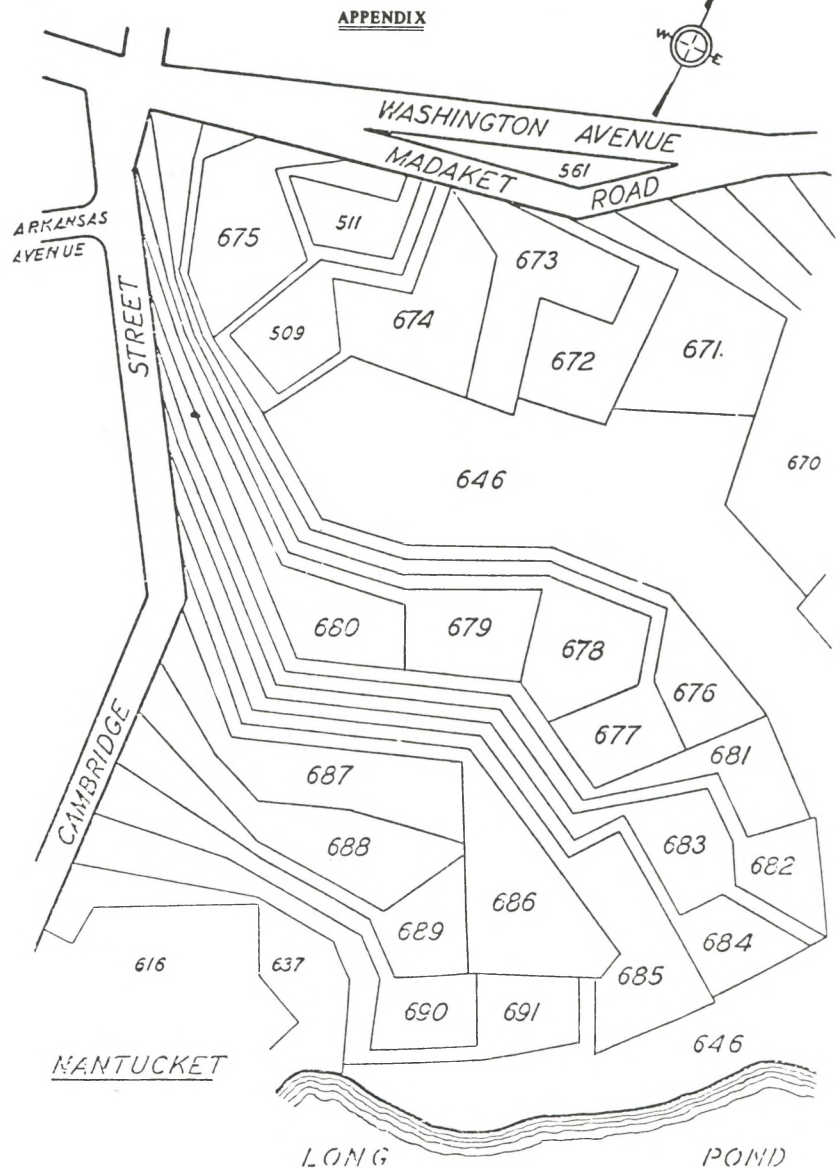
In the master's view there was no genuine issue of fact. Each of the 46 lots did extend to a public way and bordered thereon for not less than 75 ft. But it

plainly appeared that the connection of each of a number of lots to a public way was "by a long narrow neck turning at an acute angle to provide frontage on the way," so that "it would be most difficult, if not impossible, to use this neck as a way because of the angle and its width." Practical vehicular access to the main or buildable parts of these lots was thus inadequate. There was no more than a

purely formal or technical compliance with the frontage requirement. The master concluded that the plan was "an obvious attempt to circumvent the purpose and intent of the Subdivision Control Law". What was disclosed was a subdivision that must meet the exacting requirements of the law and the "Rules and Regulations Governing the Subdivision of Land."

Agreeing with the master's approach to the case, we first set out the undisputed facts in somewhat greater detail and then commented on the law.

The locus is at the western end of the island in the village of Madaket, some five to six miles from the center of town from which police and fire protection and certain other necessities must emanate. Access to the locus is primarily by Mada-



ket Road, a paved road in good condition; there is additional access by Cambridge Street which intersects Madaket Road and is unpaved and in relatively poor condition. The parcel is bounded on the north by Madaket Road, on the west by Cambridge Street, and on the south and east by Long Pond.

Examining the skeletal map appearing as an appendix to this opinion, the reader will see the pattern of the proposed division of the westerly portion of the parcel including the 21 lots numbered 671 to 691. The lots would severally extend either to Madaket Road or Cambridge Street and border on one or the other of these public ways for 75 ft. But take lot 677 as one of the more extreme examples; it has a neck 1,185 ft. in length, with several changes of direction until it reaches Madaket Road, it narrows at one stage to 7 ft., a width less than that of any fire vehicle in use on Nantucket, and at the first change of direction there is insufficient turning radius. Lot 682 (with a neck 1,160 ft. long, six changes of direction, and insufficient turning radius) illustrates a further problem: The neck reaches Cambridge Street at so acute an angle, twelve degrees, that access and egress are greatly impeded and rendered hazardous. More generally, the land use planner finds for the whole parcel with 46 lots that the necks range from 40 to 1,185 ft. in length; 29 are over 300, 16 over 500, and five over 1,000 ft.

Thirty-two necks change direction twice or more: nine change three times; one, four times; five, five times; one, six times; and two, seven times. There are three instances of necks that narrow to 10 ft. or less, and six to not more than 12 ft. In a considerable number of cases, the neck debouches on the public way at a bad angle. The report singles out eight lots as "either too narrow or because of directional changes (having) insufficient turning radius within the lot to accommodate emergency or service vehicles." Ten lots which "because of their configuration and intersection with the public way servicing them do not provide adequate access to or egress . . . in either direction of the public way"; and nine lots which (to add a collateral factor not already mentioned) "have inadequate and unsafe sight distances at the intersection of lot and public way."

The chief of police states that structures on the "building or main portions" of 17 lots could not be adequately observed from the abutting roads by police officers conducting regular patrols. He points to the confusion and loss of time officers responding to emergencies might encounter at certain locations on the public ways in determining which

neck served the particular structure aimed at, and then in extricating themselves if they should start down the wrong neck. The assistant fire chief states in his affidavit that "suitable access . . . does not exist" for passage of fire vehicles (all 8 ft. wide) to the main portions of six lots because of the narrow necks or their "acute angular changes in direction"; and there are other lots that "would be difficult to navigate within their lot lines."

Where our statute relieves certain division of land of regulation and approval by a planning board (approval . . . not required), it is because the vital access is reasonably guaranteed in another manner. The guarantee is expressed in the statute in terms of a requirement of sufficient frontage for each lot on a public way. In the ordinary case, lots having such frontage are fully accessible, and as the developer does not contemplate the construction of additional access routes, there is no need for supervision by the planning board on that score. Conversely, where the lots shown on a plan bordered on a road "not in any practical sense . . . in existence as a way," and thus incapable of affording suitable access to the lots, we insisted that the

relevant plan was a subdivision under the then current law.

If the purpose of the frontage requirement is to make certain that each lot "may be reached by the fire department, police department, and other agencies charged with the responsibility of protecting the public peace, safety, and welfare" then in the plan at bar, frontage fails conspicuously to perform its intended purpose, and the master and the judge were right to see the plan as an attempted evasion of the duty to comply with the regulations of the planning board. The measure of the case was indicated by the master in the observation that the developer would ultimately have to join some of the neck to provide ways from lots to the public way, but that is an indication that we have here a subdivision requiring antecedent approval.

We stress that we are concerned here with a quite exceptional case: A plan so delineated that within its provisions the main portions of some of the lots are practically inaccessible from their respective borders on a public way. To hold that such a plan needs approval is not to interfere with the sound application of the "approval . . . not required" technique.

Ottawa to Host 1981 Commonwealth Surveying Conference

OTTAWA, Jan. 21 - Canada will host the General Assembly of the Commonwealth Association of Surveying and Land Economy for the first time in September, 1981 in Ottawa, it was announced today.

CASLE, with more than 50,000 members in 36 Commonwealth countries through their national professional societies, was founded in 1969 through the Commonwealth Foundation with the primary aim of furthering higher standards in the developing nations.

T. D. W. McCulloch of Burlington, Ontario, Chairman of the six-day conference said that surveying, mapping, hydrography, quantity and building surveying and land economy are core skills essential to development.

"Canada has taken a leading role over the years in sharing its high levels of skills and technology within the Commonwealth," he said. Canada has been a major contributor to the more than \$7 million spent by the Foundation in increasing interchange between Commonwealth professionals and their organizations.

Canada's international agencies are expected to participate in the conference program. Private sector equipment manufacturers and professional service companies interested in international business are planning exhibits and displays at the conference.

NOTICE A CONFERENCE IN INDUSTRIAL AND ENGINEERING SURVEYING

Will be held on the 2nd to the 4th September, 1980 under the auspices of Commission V (Non-Topographic Photogrammetry) of ISP and Commission 6 (Engineering Surveying) of FIG. Further details and booking forms available from

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