

August 5, 2022

Stanley Andrews
Chairman
Town of Bourne
Board of Health
24 Perry Avenue
Bourne, MA 02532

Re: Request for Legal Opinion – 2020 ANR Plan Approvals

Dear Chairman Andrews:

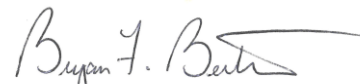
The Town of Bourne's Board of Health has requested a legal opinion concerning the approval process for certain "Approval Not Required" or "ANR" subdivision plans from the calendar year 2020. The issue communicated to our Office is that, for some time in that year, approximately 10 ANR plans were not listed on Planning Board agendas or endorsed by the Planning Board at a Board meeting. What follows is our opinion on the current legal status of those ANR plans.

As with many matters concerning land use and real property, the General Laws prescribe definitive timeframes in which challenges must be raised and, further, timeframes in which the Board must act, or else approval is constructively granted. The purpose of such laws is finality and certainty for real property. ANR plans are no exception to the statutory preference for finality and certainty. Challenges to ANR plan endorsements are limited in time to 60 days following endorsement, see G.L. c.249, §4, and if the Board fails to act on an ANR plan submission, such a plan is constructively approved 21 days after that submission, see G.L. c.41, §81P.

For that reason, it is unnecessary to opine on the adequacy of the Board's practices in the calendar year 2020. Based on the cited statutes, it is our opinion that any court presented with a challenge to one of the ANR plans in question would conclude either that the time to challenge the plan has long since elapsed or that the plan in question—if not properly acted on by the Board—was constructively approved due to the Board's failure to take proper action.

Please do not hesitate to contact me with any further questions or concerns.

Respectfully:



Bryan Bertram
Town Counsel

cc: Ethan Dively, Alexandra Rubin
Marlene McCollem, Jennifer Copeland