

**From:** [Susan Murphy](#)  
**To:** [Wentworth, Emily](#); [Silveira, Michael](#)  
**Subject:** Subdivision Control Law question  
**Date:** Wednesday, September 6, 2023 5:03:56 PM

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Hello Emily and Mike,

This email is in response to a question you posed at the request of the Planning Board Chair. The question related to the authority of the Board to impose conditions on a subdivision approval which would require a particular study be done prior to potential blasting on a project site.

In *Sealund Sisters, Inc. v. Planning Bd. of Weymouth*, 50 Mass.App.Ct. 346, 349 (2000), the Appeals Court overturned and remanded the denial of a subdivision that was based on the impacts of blasting from the construction of the subdivision. In doing so, the Court found: “the effect of a subdivision construction process may not be the basis for disapproval of an otherwise conforming subdivision plan unless it violates a “comprehensive, reasonably definite, and carefully drafted” regulation of the planning board. There is no need for us to decide, and we do not intimate, whether any aspect of a subdivision's construction process may be the subject of a planning board rule or regulation.” This cite is further discussed in FN 5 of the decision which states:

We note that the State Board of Fire Prevention Regulations has promulgated comprehensive provisions regarding blasting and the use of explosives under authority of G.L. c. 148, § 9. See 527 Code Mass. Regs. §§ 13 et seq. (1996). Under G.L. c. 148, § 10A, and 527 Code Mass. Regs. § 13.04(11) (1996), a town or city fire chief may issue a blasting permit (“Use and Handling” permit) consistent with rules and guidelines within those regulations. In *Worcester Sand & Gravel Co. v. Board of Fire Prevention Regulations*, 400 Mass. 464, 466, 510 N.E.2d 267 (1987), the court observed that the Board of Fire Prevention Regulations “itself has long interpreted the statute as granting it exclusive and plenary jurisdiction to regulate all aspects of blasting in the Commonwealth. The board's consistent, long-standing interpretation of its own authority is entitled to a large degree of deference.”

If a fire chief's authority over blasting is likewise exclusive, there is analogous authority indicating that a planning board may not limit or prohibit blasting for which the fire chief has issued a permit. See *Sullivan v. Planning Bd. of Acton*, 38 Mass.App.Ct. 918, 919–921, 645 N.E.2d 703 (1995). We need not address whether certain construction events incidental to blasting, such as the hauling away of blast materials and abatement of noise and dust, are within the regulatory jurisdiction of other municipal authorities.

While the question posed was about imposition of a condition related to blasting, rather than denial of the application, the Hingham Subdivision Rules and Regulations do not govern blasting and the Appeals Court decision, particularly the footnote, indicates that such a regulation, if adopted, may not be proper. Based on the foregoing, a condition that would regulate the process that an applicant must follow prior to undertaking blasting would not be appropriate. However, the Planning Board could, if it wishes, impose a condition that all blasting must be done in compliance with applicable state laws and regulations.

Please let me know if you have any questions regarding the above.

Susan

Susan C. Murphy, Esq.  
Dain, Torpy, Le Ray, Wiest & Garner, P.C.  
175 Federal Street, Suite 1500  
Boston, MA 02110  
Direct: [617.542.0424](tel:617.542.0424)  
Main: [617.542.4800](tel:617.542.4800)  
[smurphy@daintorpy.com](mailto:smurphy@daintorpy.com)  
[www.daintorpy.com](http://www.daintorpy.com)

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