

Kim DeNigro

FYI

From: Don Keeran [DKeeran@APCC.org]
Sent: Monday, March 20, 2006 9:44 AM
To: Don Keeran
Subject: Coalition for Zoning Reform: Announcements

Dear Coalition for Zoning Reform Members:

There are some significant and exciting announcements to make since the last update on the *Massachusetts Land Use Reform Act* (MLURA), including an invitation to save the date of April 12 for an important event. More on that later...

First, in response to recommendations by legislators that MLURA incorporate more affordable housing provisions and that controversial amendments to Chapter 40A, Section 3 (Dover Amendment) be removed, the legislation has been retooled and officially re-filed as the *Community Planning Act*. It has been widely acknowledged that these changes were necessary in order for zoning reform to be adopted by the legislature.

We believe the name change will also benefit the zoning reform effort. It helps legislators understand there is a difference between MLURA and the *Community Planning Act*, and it illustrates how the *Community Planning Act* is a natural sequel to the *Community Preservation Act* (known as the CPA). The CPA, passed in 2000, provides municipalities with a funding tool to help preserve community character. The *Community Planning Act* (or CPA II) complements the CPA by finally providing towns with the necessary planning tools to achieve their community preservation goals. (See the attached "CPA II at a Glance," which summarizes the language changes.)

The CPA II was recently introduced in the Senate by Sen. Pamela Resor, and has been assigned to the Municipalities and Regional Government Committee. On the House side, the bill is before the Rules Committee, which we hope will concur with the Senate and also assign it to Municipalities and Regional Government.

The original MLURA is still being considered jointly by the Municipalities & Regional Government and Community Development & Small Business committees, and action can still be taken on that legislation.

Stay tuned for additional announcements on future hearing dates and other developments.

* * * *

Meanwhile, come to Boston on April 12 and let your state legislators know you support zoning reform!

**Support Community Planning
Day on Beacon Hill**

Wednesday, April 12, 10:00 AM

Room B-1, State House, Boston

Community Planning Day at the State House is being held for Massachusetts citizens concerned about

3/27/2006

zoning reform and the enactment of the *Community Planning Act* to discuss the issue with their state legislators. The event will kick off with remarks from legislative sponsors, an update on the *Community Planning Act* and how it has evolved in recent months, suggestions on how constituents might discuss the issues with their legislators, and a brief question-and-answer period. After the program, participants will meet with their legislators starting after 11:00 AM.

Please RSVP with Chris Skelly, American Planning Association - Massachusetts Chapter Administrative Office, 22 William Street, Shelburne Falls, MA 01370; 413-834-0678; Email: Skelly-MHC@comcast.net. Please let Chris Skelly know whether you would like him to include you in group visits with key legislators, since he is trying to maximize the impact of the day with targeted meetings. Participants are welcome to make their own plans to meet legislators.

Community Planning Day is co-sponsored by the Zoning Reform Working Group, Coalition for Zoning Reform, Massachusetts Chapter – American Planning Association, Association to Preserve Cape Cod, Environmental League of Massachusetts, Massachusetts Association of Consulting Planners, Massachusetts Association of Planning Directors, and Massachusetts Audubon Society.

Hope to see you there on April 12th.

Best Regards,

Don Keeran, Coordinator
Coalition for Zoning Reform

The Community Planning Act

(at a glance)

Massachusetts was recently listed by the American Planning Association as one of the states with the most outdated state land-use laws. While the responsibility for land use planning and regulation rests with each of Massachusetts' 351 cities and towns, the authority to do so effectively is often undermined by confusing and unduly limiting state law. The proposed Community Planning Act is the first major updating of the Commonwealth's zoning and planning/subdivision control statutes in 30 and over 50 years, respectively. The Act encourages communities to adopt or update their local master plans and enables them to develop effective land use regulations that are consistent with those plans. For information visit massmunilaw.org, or call Coalition Coordinator Don Keeran at (877) 955-4142.

Consistency

Two-thirds of the states require consistency between local planning and land use regulations; Massachusetts does not. This causes local master plans to be ignored.

Zoning Consistency with a Master Plan (bill section 11): This addition to the Zoning Act requires that a zoning ordinance or bylaw not be inconsistent with an adopted master plan, thereby increasing the relevance of planning and discouraging *ad hoc* land-use regulation. This requirement is effective five years after this provision is enacted in the General Laws.

Subdivision Consistency with a Master Plan (bill section 32): This addition to the Subdivision Control Law requires that subdivision regulations not be inconsistent with an adopted master plan, thereby increasing the relevance of planning and discouraging development regulations in conflict with an adopted plan. This requirement for consistency is effective five years after this provision is enacted in the General Laws.

Adoption of Master Plans (bill section 24): Currently, a planning board is required to make a master plan for the city or town and then adopt that plan by a majority vote of the board. There is no requirement for a public hearing before their vote. This amendment to chapter 41, section 81D adds the requirements for a public hearing before the planning board may vote and a subsequent simple-majority approval by the local legislative body in order to adopt a master plan. The planning board is still responsible for making the plan and must vote favorably on the plan before it can be voted on by the legislative body. A community may, by a two-thirds vote, increase the majority vote required by the local legislative body to adopt a master plan.

Purpose of Subdivision Control Law (bill section 26): This amendment establishes the furtherance of a master plan as a valid purpose of the Subdivision Control Law.

Grandfathering

Massachusetts provides, early, extensive, and easily-obtained grandfathering protections for landowners in the form of "zoning freezes" which are unmatched in other states. These include a three-year freeze on zoning use changes for roadside building lots, an eight-year freeze on all aspects of zoning for the land shown on subdivision plans (the longest and broadest in the nation), and endless building rights for single substandard lots. These provisions perpetuate the status quo and can be used to trump any local planning effort. The threat of a flood of premature development applications discourages many communities from even attempting to implement their master plans.

Applicability of Zoning (bill section 12): This amendment revises the format, language style and substance of section 6 of the Zoning Act, often referred to as the “grandfathering” section. The current section 6 is difficult to understand and its provisions undermine local planning initiatives. The new section 6 is divided into two logical subsections, one dealing with nonconforming lots, structures and uses, the other with vested rights. Some protections have been eliminated, such as the common-lot exemption and the use protection for ANR plans (see ANR, below). Some protections have been modified, such as the dimensional change protection for a pre-existing one or two family residential lot. Others have been substantially changed, such as the current zoning freeze for the land shown on a subdivision plan. In general, the protections have been trimmed to more basic yet still fair levels so that communities may make meaningful changes to their zoning.

Enforcement (bill section 13): This amendment to the Zoning Act establishes that structures built without the required building permits cannot acquire the status of a protected non-conforming structure unless the local ordinance or bylaw allows it.

Approval Not Required Plans (ANR)

Massachusetts is the only state that allows the unlimited creation of building lots along roadsides without review as a subdivision. This encourages sprawl development on substandard roads.

Approval Not Required (ANR) Plans (bill sections 25, 27, 29, 33, 36, 37, and 38): The Subdivision Control Law virtually exempts the division of roadside properties into building lots from the local review process for a subdivision. This amendment brings Massachusetts into line with the rest of the country by eliminating this statutory exemption. In this way such development along roadways may be subject to reasonable standards and conditions. A new provision has also been added which gives planning boards the discretion to provide expedited review for certain types of minor land divisions which, in their judgment, do not require full review under their subdivision control regulations and the Subdivision Control Law.

Zoning Vote

Massachusetts is the only state to require a two-thirds super majority vote to adopt or amend local zoning. This is a barrier to new zoning initiatives, most of which are developed by local governments.

Adoption of Zoning (bill section 9): This amendment to the Zoning Act introduces a local option to reduce the statutory two-thirds majority vote requirement to pass zoning amendments. A two-thirds vote of the local legislative body is required to make this change.

Affordable Housing

Massachusetts communities lack effective tools to raise local affordable housing inventories.

Affordable Housing in Subdivisions (bill section 32): This addition to the Subdivision Control Law establishes that subdivision regulations may require that residential subdivisions include extra building lots for the required construction of affordable housing units that will be integrated into the new neighborhoods. The local regulations may allow for alternatives such as construction of the affordable units off-site, dedications of land, or payment of funds for the construction of affordable housing.

Affordable Housing in Zoning (bill section ??): This addition to the Zoning Act establishes, for the first time, a section dedicated to inclusionary housing. While similar to its companion piece in the Subdivision Control Law described above, in order embrace a wider array of local zoning approaches, the section is written in a more general manner. While there is no limit placed upon affordability level, communities using this section may require that some or all of the required units be eligible for placement on that community's Subsidized Housing Inventory (for purposes of c. 40B). All affordable units must be deed restricted to remain affordable for at least 30 years.

Subdivision Use Restriction (bill section 30): This amendment to the Subdivision Control Law removes the prohibition on regulating the "use" of land within a subdivision, thereby facilitating the required provision of affordable housing and parks/playgrounds.

Housing Element (bill section 23): This amendment to chapter 41, section 81D adds significant detail and rigor to the minimum requirements for the housing portion of a master plan, placing an emphasis on affordability and diversity in housing. The aforementioned consistency requirement between plans and land use regulations will make the enhanced housing element a powerful driver of local affordable housing initiatives.

Impact Fees

Approximately 60% of all development in the United States is subject to an impact fee to offset the municipal service costs of growth. Massachusetts communities are generally unable to levy impact fees. Use of impact fees is likely to lessen local resistance to new development projects.

Development Impact Fees (bill sections 1 and 18): These new sections in the Zoning Act provide a specific reference to development impact fees and establish requirements and limitations to the use of this growth management technique. Land development projects which create impacts within a community beyond the construction site itself may be required to pay fees to create or improve streets, sewers/water supplies, parks, police/fire facilities, affordable housing, schools, libraries and similar capital facilities. Certain affordable housing enjoys a statutory exemption from impact fees.

Procedural Reforms

Consultant Fees (bill sections 39 and 40): These two amendments to chapter 44, section 53G specifically authorize boards to assess fees of applicants for outside consultants to help review site plan review applications and to pay for the facilitator in a Land Use Dispute Avoidance process.

Date of Submission (bill section 28): This amendment to the Subdivision Control Law clarifies that the date of submission of a plan shall be the date of the next regularly-scheduled planning board meeting following receipt, or 35 days, whichever is sooner. This will ensure that planning boards have the full amount of time allotted to review a plan.

Performance Guarantee (bill section 34): This amendment to the Subdivision Control Law gives a planning board approval authority on the method(s) of performance guarantee (with the exception of a covenant, which shall be accepted).

Site Plan Review (bill section 14): This new section in the Zoning Act establishes an optional statewide framework under which site plan review may be provided for in local zoning ordinances and bylaws. This includes what is covered by such review, which local agencies may undertake it,

what standards are used to evaluate a site plan, enforceable conditions on approval if any, rulemaking to fill in the gaps, and local discretion in laying out an appeals process.

Submission to the Attorney General (bill section 10): This amendment to the Zoning Act omits an outdated requirement for cities to submit zoning ordinance amendments to the office of the Attorney General.

Uniformity (bill section 8): This amendment to the Zoning Act provides some local flexibility to allow for non-uniform treatment of structures and uses within a zoning district if there is a valid planning rationale to do so.

Miscellaneous

Cluster Development (bill sections 16 and 17): These two amendments to the Zoning Act provide a better, less restrictive definition of “cluster development” and expand the range of ownership options for the preserved land.

Construction and Purposes of Zoning (bill section 3): The new section in the Zoning Act affirms the “home rule” powers of municipalities in Massachusetts. It also establishes an illustrative, but not all-inclusive, set of objectives for local zoning ordinances and bylaws, thereby increasing both the utility of zoning to address the land use challenges of today and the likelihood that innovative zoning techniques will be upheld in the courts.

Exemptions from Zoning (bill sections 4-7): These sections amend section 3 of the Zoning Act by helping to address the issue of “mansionsization” by removing the restriction against regulating the maximum interior area of single-family dwellings.

Land Use Dispute Avoidance (bill section 19): This new section in the Zoning Act establishes a process whereby abutters, other parties in interest, and the municipality as a whole have the option to sit down and work out some of the issues in advance of formal development applications. Areas where such a process might be useful include comprehensive permits under chapter 40B, developments of regional impact, large-project special permits or subdivisions. The process will not change existing local procedures but will create a vehicle whereby such procedures could be made more successful.

Mediation of Land Use Appeals (bill section 21): Section 17 of the Zoning Act now provides an avenue for judicial review of decisions made under local zoning; however, no specific provisions are made for a mediated resolution of land use appeals. This new section introduces the concept of mediation and describes a process which stays the appeal pending the outcome of negotiations between the parties. A mediator is selected as an intermediary and is compensated by the parties. There is no loss of right of appeal should the mediation fail to arrive at an agreement on all of the disputed issues.

Parks and Playgrounds (bill sections 31 and 35): These amendments to the Subdivision Control Law remove the explicit prohibition on requiring dedications of land in subdivisions. It further establishes that subdivision regulations may require land set-asides of up to 10 percent for parks and playgrounds be incorporated into the design of new residential neighborhoods.

Rate of Development (bill sections 2, 3, 20, and 22): These amendments to the Zoning Act provide a means for communities to set limits on the number of permits for new construction or approvals of new building lots issued in a stated period of time. Such measures must be in

accordance with an adopted master plan and are subject to limitations and an exemption for certain affordable housing.

Transfer of Development Rights (bill section 15): This amendment to the Zoning Act specifically authorizes intra- or inter-municipal transfer of development rights while removing the current statutory impediments to its use.