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Alternative Framework for Planning and Zoning Reform in Massachusetts  
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Zoning Reform Working Group

The Planning and Zoning Model herein described is a significant departure from standard practice today in Massachusetts which is characterized by the *ad hoc* adoption of land use regulations in a piecemeal fashion. Planning as a necessary prerequisite is viewed as an optional and expensive exercise, and one that need not guide local land use regulations. Consequently, despite a “paper” statutory mandate, many Massachusetts municipalities have no master plan. This plan-regulatory disconnect paves the way for important plan elements, such as housing or natural resource protection, to be overlooked in local land use practices or regulations. Even for communities who elect to plan, the statute that describes the required elements of a local master plan is outdated and makes no reference to regional planning. Adoption of master plans is by the planning board only, without requirements for a public hearing or local legislative approval, and not subject to any review against regional interests or plans.

This new model goes significantly beyond the Community Planning Act by integrating state, regional, and local interests to improve and elevate the local planning process, bind land use regulations to adopted plans, incorporate regional interests for the first time, facilitate plan implementation, and offer strong incentives for sustainable, smart growth planning.

**Key components:**

1. The statute now describing the content of master plans (c. 41, § 81D) is rewritten to a) rename its subject matter a “land use and zoning plan” (hereinafter, Plan); b) include a new regional planning element; and c) incorporate the Commonwealth’s Sustainable Development Principles throughout.

For example, the existing housing element in today’s planning statute contains but two sentences. The new housing element would read as follows:

“A housing element that shall consist of identification and analysis of existing and forecast housing needs; an inventory of local housing; local housing goals, objectives and policies; and implementing measures. Where they are applicable, existing local housing plans may be included by reference.

As a percentage of the total housing stock, the local housing inventory shall include an estimate of: i) housing units by physical type (e.g. single-family, two-family, multi-family, etc.); ii) affordable housing and subsidized housing, including subsidized housing that qualifies as such under chapter 40B; iii) housing available for rental; iv) residential

community programs; and v) senior, assisted living, and special needs housing. The inventory shall analyze existing local policies, programs, laws or regulations that encourage the preservation, improvement, and development of such housing and shall assess whether they are adequate to achieve their stated objectives.

The element shall enumerate local goals, objectives, and policies so as to provide a diversity of housing stock meeting the housing needs of residents from a broad range of income levels and age groups, including those with disabilities and special needs. The element shall identify and evaluate specific measures for inclusion in the implementation element of the land use and zoning plan necessary to accomplish this purpose, including strategies, programs, and assistance for: the preservation of existing housing stock; the financing of additional housing; the construction or rehabilitation of housing; and for the adoption or amendment of local laws and regulations permitting, encouraging, or requiring diversity in housing locations, types, designs, and area densities that offer complements or alternatives to larger single-family detached housing that are compatible with a community's character and vision.”

Some Plan elements continue to be required for all cities and towns; some are required only if certain planning tools are later to be used (such as development impact fees); and others become optional.

The required elements are:

- goals and policies
- housing
- natural resources and energy
- regional planning
- land use
- implementation

The optional elements are:

- economic development
- cultural resources
- open space and recreation
- services and capital facilities (required for development impact fees)
- transportation

2. Plans are prepared and adopted by the local planning board after a public hearing.

3. Plans are then reviewed by the applicable regional planning agency (RPA) against the requirements of the new c. 41, § 81D statute and the adopted regional plan, if any, prior to local adoption. The RPA review must be completed in 90 days. The review process could well be interactive and iterative between the RPA, the planning consultants, and the local planning board. Agreed-upon changes to the plan may be made during the review,

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and extensions to the 90 day period could be agreed upon. A Plan that has been favorably reviewed by the RPA will enjoy an active presumption of compliance with c. 41, § 81D. The Commonwealth will commit to reimbursing the RPAs for work accomplished under this program.

4. Once review by the RPA is completed, with or without comments or outstanding issues, the Plan may be brought to the local legislative body for adoption, ensuring maximum community awareness and support. A simple-majority vote is required for local legislative adoption.

5. The Plan then becomes the basis for the local land use regulations (zoning and subdivision) for the next ten years. For the first time, there is a statutory requirement that these local land use regulations may not be inconsistent with the adopted Plan. A grace period of at least five years is provided to meet this requirement. Thereafter, a community without a Plan, or with a Plan but inconsistent land use regulations, will be in a weakened legal position should their zoning bylaw or subdivision regulations later be challenged.

6. Cities and towns under this regime not only have the responsibility, but now adequate authority and tools to regulate land use. Unreasonable, statutory restraints on local land use regulation are lifted so that communities can effectively implement their adopted Plans.

The following list of statutory changes would apply to all communities:

- The current “approval not required” (ANR) exemption in the Subdivision Control Law is stricken. Thereafter, all divisions of land into building lots are considered to be subdivisions, except that divisions along certain types of existing roadways shall be reviewed within a compressed timeframe and without a public hearing. A planning board may also adopt procedurally or qualitatively less stringent regulations for categories of land division they deem to be “minor subdivisions.”
- Section 6 of the Zoning Act is re-written for clarity. The ANR use protection is eliminated. The subdivision zoning freeze is modified to protect only the proposed subdivision plan (not the land itself) for a period of five years. The all-important trigger point for “grandfathering” protections against subsequent zoning changes is standardized for building permits, special permits, and subdivision plans. Complete applications for any of the three types of approvals receive protection if duly submitted prior to the first notice of the public hearing on a zoning change. This change curbs the protections available for subdivisions while liberalizing those for building and special permits; the result is a uniform standard statewide.
- The statutory vote majority for zoning adoption or amendment is reduced to a simple majority of the legislative body. A community may, by a two-thirds vote

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of its legislative body, increase the vote majority required for zoning adoption or amendment.

- The current prohibition on the regulation of maximum interior floor area of residential structures is removed
- Implementation of an adopted Plan is added as a purpose of the Subdivision Control Law.
- The current restrictions upon requiring “parks and playgrounds” within new subdivisions is removed and replaced by limited authority in that area.
- A new “Construction and Purposes” section is added to the Zoning Act.
- The variance section in the Zoning Act is re-written to increase the usefulness of the zoning variance for all landowners in the Commonwealth.
- The special permit section of the Zoning Act is adjusted to reduce the statutory vote majority required for approval and to allow for special permits of longer duration. A community may, by a two-thirds vote of its legislative body, increase the vote majority required for special permit approval.
- The “uniformity” requirement of the Zoning Act is relaxed so that zoning ordinances may be written to be more responsive to varying conditions within zoning districts.
- As befits a home-rule state, all mention of cluster development, transfer of development rights, planned unit development, shared elderly housing, or any other zoning technique is removed from the Zoning Act unless there is a clear need to authorize or limit it. A possible exception might be a general authorization of inter-municipal use of planning/zoning measures between consenting communities.
- A provision is added to the Zoning Act which prohibits stricter local regulation of open space residential design than for comparable conventional development. Conversely, such a provision would not prevent a community from setting stricter permitting requirements for conventional development.
- A model “site plan review” section is added to the Zoning Act.
- Clear statutory authorization and a model for inclusionary housing is added to the Zoning Act and Subdivision Control Law.
- Models for “land use dispute avoidance” and “mediation of land use appeals” are added to the Zoning Act.

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The following list of statutory changes would apply to communities that have addressed certain subject matter and/or completed certain optional elements in their Plans, and these sections have received a favorable review from the RPA:

- The Zoning Act is amended to include a section on rate of development measures, which may be utilized if such measures are contemplated, analyzed, and justified in the “land use” element of the Plan.
- The Zoning Act is amended to include a section on development impact fees, which may be utilized if an optional “services and capital facilities” element is in the Plan.
- Development agreements, as defined in the Zoning Act, may be used if contemplated and recommended in the “implementation” element of the Plan.

7. Communities which have adopted a Plan favorably reviewed by the RPA and accompanying land use regulations to implement the Plan may seek certification by the Commonwealth. Such certification is with respect to meeting reasonable planning/regulatory benchmarks relating to housing production, economic opportunity, prompt and predictable permitting, environmental protection, and state energy goals. The certification criteria and process is designed with enough context sensitivity so that any Massachusetts municipality, from Cummington to Cambridge, can be successful. The Commonwealth’s expectations are clear and objective in nature so that any community can work toward eventual certification throughout the planning process described above.

Communities with certified Plans and implementing land use regulations receive the following benefits from the State:

- Up to a \$100,000 reimbursement for development of the Plan and/or zoning amendments.
- Beneficial changes to c. 40B, the State’s affordable housing law, which may include:
  - a) reduction in the affordability goal of 10% to a lower percentage of a community’s housing stock;
  - b) an expansion of what housing units a community may count as affordable toward their Subsidized Housing Inventory;
  - c) an increase in the percentage of affordable housing units required under a Comprehensive Permit from 25% to 35% of total dwelling units, such increase to include housing affordable to households earning 80-150% of the Area Median Income;
  - d) greater deference to a community decision-making on Comprehensive Permits; and/or
  - e) streamlining of the State’s Local Initiative Program (LIP).

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- A minimum Commonwealth Capital score of \_\_\_\_\_.

- Further state funding

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