

January 30, 2008

To: Greg Bialecki, Undersecretary of Business Development
From: Jim O'Connell, Chair, Zoning Reform Working Group
Re: Response to the "Framework for a 'Land Use Partnership Act'"
from the Zoning Reform Working Group

The Zoning Reform Working Group has sought input from its members, who represent a broad range of communities, organizations, and interests across the state. We have combined and condensed the main ideas into the following memo and have attached two additional concept papers from working group members, which provide insightful perspectives on zoning reform.

"Framework" Is a Positive Development—The Framework furthers the cause of effective land use planning, affordable housing, economic development, and open space preservation. The Zoning Reform Working Group believes that much progress has been made toward shaping beneficial planning and zoning reforms for Massachusetts.

- It makes sense for the state to establish a framework that encourages municipalities to develop master plans that would be consistent with state land use objectives.
- Regional planning agencies can play an important role interpreting and applying statewide standards in different regions and facilitating regional cooperation.
- The provision of state funding for master plans is essential.
- The "opt-in" approach can incentivize communities to achieve planning and development goals that they might not have formerly pursued.
- It makes sense for planning tools, such as impact fees, development agreements, and rate of development controls, to be available to municipalities when they have adopted their master plans. In order for a community to effectively utilize these planning authorities it needs to do the analysis that takes place in a master planning process.

Concerns about a "Land Use Partnership Act"—Despite many strong features in the proposed "Land Use Partnership Act," there are important issues that should be raised:

- The major concern about relying upon incentives for communities to "opt-in" to a reformed planning framework is that the incentives must be enticing enough for a wide range of communities to undertake the process of master-planning and rezoning. The proposed planning reforms may not provide enough incentives to persuade communities to undertake the complicated state-certified master plan process. This may be true for rural communities, which lack the resources to follow the state-mandated planning process, and to cities and larger towns that might not find sufficient incentives in the legislation.
- The double review of master plans and then zone changes by regional planning

agencies (RPAs) and the state (90 days each for master plans and zone changes) is a long process and may discourage participation. Since the RPAs would be checking the master plans for consistency with state goals, perhaps the state review could be shorter and more perfunctory.

- The requirement in the state's "Framework" for by-right zoning for economic development and dense housing may entail a complex planning process, which may cost more for communities than has been envisioned. There is a concern among planners that the state-certified master plans may induce a "cookie-cutter" quality to master plans, as the "eligible locations" seem overly prescriptive.
- Promoting compact and affordable housing is an important state goal, which can be furthered through the master planning process. One of the problems with the "Framework" (6B) is that it may be difficult for many rural communities to create ¼-acre zoning. Title V communities without sewer service and which relying upon septic treatment could not comply with this provision. These communities would need state financial assistance to build sewer systems or the developer would have to build it.

Communities should be required to include affordable housing policies in master plans, but other incentives than those provided in the Framework may be needed to accomplish the state's housing goals.

- Requiring communities to permit at least 50,000 square feet of new commercial/industrial space in an area at least one-mile from another community (6A) might not be feasible for many communities, particularly rural towns.
- Minimal house lot sizes for "environmentally sensitive land" should be higher than 5 acres (8F). If a community can prove an environmental protection need and can provide greater housing density elsewhere, then it should be able to create 20-acre densities in very rural communities.
- Approval Not Required (ANR) and grandfathering are major issues in developing suburbs and rural communities. The problem with allowing only communities that have completed a state-certified master plan to disallow ANRs and limit grandfathering is that the communities that are most likely to adopt certified master plans may not to have problems with these issues, while the rural communities that cannot control ANR-fueled growth are least likely to adopt a state-certified master plan.

The main reason that developers and builders favor ANR development is that it is "predictable." The state ought to encourage ways to make desirable compact development more "predictable," such as making it as easy for developers to build a cluster development as a conventional subdivision.

- If the statewide rules for grandfathering/zoning freezes are not adjusted throughout the state at the beginning of the community master plan process, then property owners may be able to fend off zone changes for up to eight years either during the master planning process or subsequent efforts to change zoning.
- The "decertification" of master plans and the withdrawal of authority to curtail current ANR and grandfathering contemplated in the "Framework" may prove complicated. Therefore, it might make sense not to withdraw that authority and find some other means

to compel communities to meet their commitments to comply with state land use objectives.

- Zoning reform legislation should be framed so that zoning is “not inconsistent” with master plans.

The Case for Statewide Planning Reforms—The “Framework for a ‘Land Use Partnership Act’” has identified several planning tools that would be provided to all municipalities whether or not they adopt state-certified master plans. They include:

- Reduction of statutory limits on transfers of development rights.
- Clear statutory model for site plan review
- Clear statutory authority for form-based zoning
- Clear statutory authority for inclusionary zoning

There are additional planning tools that ought to be provided to all municipalities upfront to insure uniformity in Massachusetts planning and zoning law while providing greater planning flexibility to individual communities. Several of these provisions, which have been part of the Community Planning Act, are not controversial and would probably be regarded by most parties as an improvement over the status quo. They include:

- More flexibility in allowing non-uniform treatment of structures and uses and in granting zoning variances and special permits;
- Updating and clarifying statute language related to the construction and purposes of zoning;
- Providing a process for land use dispute avoidance in advance of formal development applications and the mediation of land use appeals as an alternative to judicial review;
- Amending the Subdivision Control Law to remove the explicit prohibition on requiring dedications of land in subdivisions, allowing a community to require up to 10% of land for parks or playgrounds;
- Allowing any community to adopt a simple majority standard for adopting zone changes;
- Providing clear statutory authority for development agreements.

We thank you for convening the various interest groups concerned with planning, housing, and development in Massachusetts. Much progress has been made toward framing the issues and coming up with appropriate reforms. The Zoning Reform Working Group looks forward to continuing to work with the State’s Task Force on Zoning Reform to bring about the needed legislation.

