

The Community Planning Act

(At a Glance)

The Community Planning Act (CPA-2) is a comprehensive re-write of the Massachusetts outdated statutes governing local land use planning (Chapters 40A and 41). It follows the successful Community “Preservation” Act, which helps provide cities and towns with funds for affordable housing, historic preservation, and open space acquisition. The CPA-2 is the next step, encouraging communities to adopt or update their local master plans and providing them the tools necessary to implement effective land use regulations consistent with those plans. For information visit www.massmunilaw.org or call Coalition Coordinator Don Keeran at (877) 955-4142. The CPA-2 bill, while extensive, is organized around a number of its objectives, which are:

Improve the Local Planning Process

Zoning Consistency with a Master Plan (bill section 9): 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 34): This similar addition to the Subdivision Control Law requires that subdivision regulations not be inconsistent with an adopted master plan, thereby discouraging development regulations in conflict with an adopted plan. This statutory requirement is also effective five years after enactment.

Adoption of Master Plans (bill section 26): Currently, a planning board is required to make a master plan for the city or town and then, without a required public hearing, adopt that plan by a majority vote of the board. 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. A community may, by a two-thirds vote, increase the majority vote required by the local legislative body to adopt a master plan.

Adoption of Zoning (bill section 7): 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.

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.

Purpose of Subdivision Control Law (bill section 28): This amendment establishes the furtherance of a master plan as a valid purpose of the Subdivision Control Law.

Uniformity (bill section 6): 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.

Close Loopholes Which Undermine Planning

Grandfathering (bill section 10): 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 protections for pre-existing residential lots, others substantially changed, such as the zoning freeze for the land shown on a subdivision plan. Generally, the protections have been trimmed to more basic yet fair levels so that communities may make meaningful changes to their zoning.

Approval Not Required (ANR) Plans (bill sections 27, 29, 31, 35, 38, 39, 40): 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.

Enforcement (bill section 11): 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.

Foster Housing Affordability and Diversity

Housing Element (bill section 25): 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.

Consistency with a Master Plan (bill sections 9, 34): The aforementioned consistency requirements between plans and land use regulations will make the enhanced housing element a powerful driver of local affordable housing initiatives.

Affordable Housing in Zoning (bill section 21): This addition to the Zoning Act establishes a section dedicated to inclusionary housing. While similar to its companion piece in the Subdivision Control Law described below, in order embrace a wider array of local zoning approaches, the section is written in a more general manner. 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.

Affordable Housing in Subdivisions (bill section 34): 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.

Subdivision Use Restriction (bill section 32): 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.

Mansionization (bill section 4): This section amends section 3 of the Zoning Act by helping to address the issue of “mansionization” by removing the restriction against regulating the maximum interior area of single-family dwellings. Communities may use this to discourage some tear-downs of perfectly serviceable, but more modest homes.

Affordable Housing Exemptions (see impact fees and rate of development, below)

Increase Flexibility in Zoning and Permitting

Zoning Variances (bill section 22): Currently, the standard for granting a lawful zoning variance in Massachusetts is extremely strict. Communities that adhere to this standard grant very few variances; others may grant variances of questionable legality. This section entirely rewrites c. 40A, §10 so that variances become a more useful and legitimate tool communities may use to provide zoning flexibility for landowners.

Special Permit Approval (bill section 16): The Zoning Act now specifies a super majority vote to approve any special permit, making them difficult to obtain. This amendment creates a local option to reduce the vote to a simple majority.

Special Permit Duration (bill section 17): The Zoning Act now imposes a two-year maximum duration on special permits. Larger commercial/industrial land development projects may need some level of permitting in place for a longer period of time. This amendment gives the local granting board the ability to approve a longer duration.

Provide Communities with Effective Planning Tools

Development Impact Fees (bill sections 1, 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 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. Affordable housing is exempt from impact fees.

Rate of Development (bill sections 2, 3, 20, 24): 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 a master plan, are subject to limitations, and exempt affordable housing.

Cluster Development (bill sections 14, 15): These two amendments to the Zoning Act provide a less restrictive definition of “cluster development” and expand the range of ownership options for the preserved land.

Site Plan Review (bill section 12): 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, conditions of approval, rulemaking to fill in the gaps, and local discretion in laying out an appeals process.

Land Use Dispute Avoidance (bill section 19): This new section in the Zoning Act establishes a process whereby abutters, parties in interest, and the municipality 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, 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.

Parks and Playgrounds (bill section 33): This amendment to the Subdivision Control Law removes 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.

Transfer of Development Rights (bill section 13): This amendment to the Zoning Act clears up the current statutory impediments to the use of this effective planning tool and specifically authorizes intra- or inter-municipal transfers of development rights.

Consultant Fees (bill sections 41, 42): These two amendments to chapter 44, section 53G authorize local boards to assess fees of applicants for outside consultants to help review site plan applications and pay for the facilitator in a Land Use Dispute Avoidance process.

Improve Local Regulatory Procedures

Date of Submission (bill section 30): 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 36): 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).

Mediation of Land Use Appeals (bill section 23): 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.

Submission to the Attorney General (bill section 8): This amendment to the Zoning Act omits an outdated requirement for cities to submit zoning ordinance amendments to the office of the Attorney General.