



# NAIOP Government Affairs Roundup Zoning “Reform” Legislation – The Good & The Bad

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## Background and General Observations

- In the last session, House Bill 1859, an Act Promoting the Planning and Development of Sustainable Communities (the “Bill”), somewhat unexpectedly received a favorable report from the Joint Committee on Municipalities and Regional Government.
- The first time since 1975 that an omnibus zoning bill had advanced this far in the legislative process.
- The Bill was poorly drafted and was an amalgam of concepts and changes to Chapter 40A from various zoning reform efforts of the last five years including (a) the Greg Bialecki Zoning Reform Task Force; (b) CPA II; (c) LUPA; and (d) changes being advocated by the Smart Growth Alliance.



# Background and General Observations

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- Proponents have been mostly planners and smart growth advocates.
- No involvement by development or investment community.
- Strong opposition from Homebuilders, GBREB and NAIOP.
- The Bill did not come to a vote before the end of the legislative session due to the serious concerns of the real estate industry about the impact that the Bill would have on development in Massachusetts.



# Background and General Observations

- Some changes proposed to Chapter 40A would encourage and facilitate real estate development.
- Other proposed changes would not and could make development and investment more difficult and costly.
- Contrary to its title, the Bill would not appear significantly to increase affordable or moderate income housing, smart growth, preservation of open space or historic preservation.



## Potentially favorable provisions of the Bill

- Less stringent standards for the issuance of a variance (“physical characteristics”, not just soil conditions, topography or lot shape).
  - Variances and extensions of variances would be for longer time periods (2 years instead of 1 year; 12 months instead of 6 months).
  - Problems with transferability/“run with the land” issues, at least for use variances.
- Special permits and building permits would be valid for longer periods of time (3 vs. 2 years) and could be extended for longer periods of time.



## Potentially favorable provisions of the Bill

- Building permit and special permit freezes would be easier to effectuate (permit filing as the triggering event, not permit issuance).
- By local option, zoning amendments could be effectuated by majority vote instead of by a 2/3 vote.
- By local option, special permits could be granted by less than a super majority vote.
- Easier transfer of cases to the Permit Session of the Land Court.



## Unfavorable or problematic provisions

- Elimination of Approval Not Required (ANR) plans, including the 3-year protection against use changes.
- Substitution of a minor subdivision plan regulatory approval process (for 6 lots or less).
- Elimination of the full 8-year zoning freeze for “the land shown on” a definitive subdivision plan.
  - Would limit the zoning grandfathering protection to the particular development configuration shown on the subdivision plan (basically overruling the Mass. Broken Stone SJC decision).



## Unfavorable or problematic provisions

- Would explicitly authorize Development Impact Fees.
  - Municipalities would not be barred from imposing permit conditions involving financial obligations for other community needs or benefits beyond the listed categories of infrastructure.
- Would explicitly authorize Inclusionary Zoning.
  - No density bonuses.
  - No minimum project size to trigger requirements.



## Unfavorable or problematic provisions

- Would explicitly recognize Site Plan Review.
  - The limitation on conditions which could be imposed would be limited to only “as of right” uses (i.e. would not address special permits with site plan review).
  - Approval criteria and mitigation language appear to be unduly subjective and vague.
  - Appeals to be reviewed on a certiorari standard.
- Optional consolidated hearings (not a consolidated permit) for projects above a certain size.
  - Risks of each board having only a single designee to hear the testimony.
  - Multiple appeals of multiple permits still possible.



## Unfavorable or problematic provisions

- Optional mediation of land use disputes.
- Chapter 40Y, Planning Ahead for Growth Act.
  - Concept of a “certified” community which engages in comprehensive planning, including creating certain districts with minimum densities for housing (like 40R).
  - More power for regional planning authorities.
  - These communities would qualify for enhanced zoning and subdivision regulatory powers (e.g. the 8 year subdivision freeze period would be only 5 years).
  - Would also receive priority for state funding.



## Unfavorable or problematic provisions

- Question – Will these be communities where market forces would otherwise want growth to occur? Gives more power to restrict growth.



## Important Topics Not Addressed

- Non-conforming uses and structures.
- Requirement of a super-majority vote for special permits in all municipalities.
  - The Bill would allow a lesser vote only by local option.
- Limits on appeals – posting of bonds; judicial standard of review similar to 40R.



## Looking Ahead

- NAIOP's latest information is that the proponents are unlikely to refile the Bill in its present form. They will attempt to work with a broader group of stakeholders including, presumably, the real estate industry to achieve enough support for passage of some type of zoning reform.
- NAIOP will continue to review proposals put forward by various groups and to provide feedback to ensure that concerns of the industry are understood by advocates and legislators.