

Land Use Reform – Coming Soon to a Community Near You!

By James M. Burgoyne, Esq.

Based upon recent rumors emanating from Beacon Hill, the stars appear to be aligning themselves for some significant changes in the statutes regulating land use in Massachusetts. The Zoning Act (Chapter 40A), the Comprehensive Permit Law (Chapter 40B), and the Subdivision Control Law (Chapter 41) have each been the subject matter of much debate in recent years. The Romney administration appears poised to support several of these initiatives to foster its “smart growth” approach to real estate development.

On March 10, the Joint Committee on Local Affairs held a hearing on legislation that would comprehensively amend the state’s zoning and subdivision control laws. The proposal, known as the Massachusetts Land Use Reform Act (LURA), would encourage communities to adopt or update their local master plans and enable them to devise land use regulations that are consistent with those plans. LURA has been in the works since 1999 and is the product of a collaboration among planners, municipal officials, legislators, environmentalists and housing advocates calling themselves the “Zoning Reform Working Group.” In June 2003, the Massachusetts Municipal Association Board of Directors voted to support LURA and amendments that will “enhance the capacity of cities and towns to make effective land use and zoning decisions.”

LURA includes some radical revisions to existing law. In part, it is designed to strengthen the powers of local boards and officials to control development and to regulate land use. Key provisions in the bill would, for example:

- Affirm the “home rule” powers of municipalities in Massachusetts and allow cities and towns to use zoning for a broader range of purposes than currently recognized by the state’s courts;
- Eliminate grandfathering protections for approval-not-required (“ANR”) plans and reduce the current 8 year zoning freeze obtained by definitive plan approval;
- Eliminate ANR plan approvals and require all plans creating new lots to obtain formal subdivision approval;
- Allow cities and towns to impose “impact fees” on developers for projects to pay for related utility and infrastructure costs, transportation, educational and other municipal expenses;

- Remove the requirement that municipalities provide density bonuses to developers who use transfer-of-development rights; and
- Increase the ability to regulate uses which are the subject of special legislative protection under current law such as religious and educational uses, group homes and child day care centers.

In 2002, the Real Estate Bar Association for Massachusetts (REBA), formerly the Massachusetts Conveyancer’s Association, formed a new Zoning and Land Use Committee, an ad hoc committee of land use practitioners from throughout the state. The Committee, which meets monthly at the Framingham conference center of Fletcher, Tilton & Whipple, P.C., has been carefully reviewing LURA and other land use legislation. The REBA Zoning and Land Use Committee has invited Senator Pamela Resor, Chair of the Senate Natural Resources Committee and sponsor of LURA, to meet and discuss LURA, as well as other pending legislation, to ensure that the consequences of the new legislative initiatives to property owners, developers and the entire real estate community are carefully considered.

Both the courts and practitioners readily acknowledge that certain statutory provisions regulating land use are in need of revision. In the past, periods of economic prosperity creating development pressures were followed by slowdowns which balanced the supply and demand and cooled off the pressures for land use reform. The more recent economic downturn has not slowed the pace, however, primarily due to low interest rates. This trend will sustain the cry for reform. However, LURA’s sweeping changes, particularly those which amend or repeal provisions that are designed to facilitate the use of land for residential purposes, may well exacerbate an already acute shortage of reasonably priced housing. From the practitioner’s vantage point, several key provisions have the potential to greatly protract and further complicate the permitting process for land use in Massachusetts which many already view as far too rigid, subjective and expensive.

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