Massachusetts Smart Growth Comprehensive Zoning Reform Bill On The Fast Track To Passage?

58 Legislators Pushing Comprehensive Zoning Reform Bill

"Inclusionary Zoning" Provision May Expand Controversial 40B Law

With "Smart Growth" advocates strongly behind them, a cadre of Beacon Hill lawmakers are pushing a controversial bill that for the first time in 37 years would comprehensively overhaul state law governing municipal zoning, subdivision control, and planning. Proponents of the bill argue that stalled smart growth projects such as the new Assembly Square in Somerville (shown at right) would be beneficiaries of the new bill.

The bill, H.B. 1859 — unprecedented in its scope and reach — would change Massachusetts zoning and land use law as we know it. Approval not required (ANR) plans and current variance review standards would be gone, while "inclusionary zoning" (another potential iteration of the state's conversional affordable housing 40B law) would be expanded along with the legality of "impact fees" — mandatory payments from developers to towns to mitigate development impacts.

The principal sponsor, Rep. Stephen Kulik, a Worthington Democrat unveiled the bill during an event this week at the Statehouse. Versions of this bill have been introduced before, but I have not seen so many legislators in support of the bill as before. Rep. Kulik said the goal is to pass the bill by the

end of this year's formal legislative session on July 31, 2013.

A summary of the bill is as follows:

- Abolishes ANR plans, a law that allows subdivisions to be built with no planning board review or approval if the proposed homes front an existing road.
- Allows a community to require only a simple majority vote to change a zoning law. Now, a two thirds vote at a town meeting is needed to change a zoning law.
- Authorizes "inclusionary zoning," which allows a community to require that a percentage of homes in a new development be affordable. In exchange, a developer could build more homes on a lot than permitted under zoning.
- Allows a majority vote on a zoning or planning board in order to issue a special permit. Currently, it takes a two thirds vote to approve a special permit. The bill establishes a method for extending a special permit, which now can be issued for up to two years before it needs to be reprocessed.
- Approves impact fees for a community to recoup some of the capital costs for private developments.
- Creates an alternative process to resolve disputes among applicants, municipal officials and the public. Allows for a "neutral facilitator" to work through difficulties in a proposed development.
- Overhauls the current law on issuing variances from zoning ordinances or bylaws. According to supporters of the bill, the current law is too restrictive for property owners and towns, tying the hands of members of zoning boards and preventing them from solving many simple problems for owners. The bill establishes reasonable procedures for variances while still maintaining a community's ability to set conditions or reject a variance.
- Creates the option of consolidated permitting for projects. Developers currently often need multiple permits from boards with different jurisdictions and requirements and reviews that sometimes take years

to complete.

- Rewrites a law that allows for master plans. The bill updates the elements of a master plan to include five requirements: goals and objectives, housing, natural resources and energy, land use and zoning and putting the plan into effect.
- Allows local regulations to require dedicating up to 5 percent of subdivision land for park or playground use by residents.

In my opinion, some of the provisions are great ideas such as providing a consolidated "one-stop shopping" forum for all permitting in a town, reforming the variance standards, and providing a dispute resolution forum for local disputes. Other provisions will be much more controversial such as the inclusionary zoning and impact fees. This is a sweeping change in Massachusetts zoning and land use law, and I will be monitoring it closely.