



# ZONING

## Reform Legislation: A Misstep for Housing Production

By Mark Kablack



### Robert L. Gaudette

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8 Hampden Ave.,  
Brockton MA 02301  
781.953.7392

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**M**ASSACHUSETTS HOUSE BILL 1859, "An Act Promoting the Planning and Development of Sustainable Communities," is currently before the Massachusetts Joint Committee on Municipalities and Regional Government. Many have touted this proposal as one that will provide much needed modernization of Massachusetts zoning laws, arguing that the current laws are more than 40 years old. Still others, including *The Boston Globe*, have stated that the zoning-reform bill is essential for providing municipalities with incentives and tools to produce more housing. Unfortunately, many aspects of the reform effort will make housing production more costly and more permit intensive, resulting in fewer housing construction starts and more problems for the home-building industry.

The proposed legislation represents an evolution of various zoning initiatives that have been debated in prior legislative sessions. Past efforts were named the Community Preservation Act II, the Land Use Reform Act, and the Comprehensive Land Use Reform and Partnership Act. This alphabet soup of zoning proposals emanated in part from an ad hoc working group known as the Zoning Reform Task Force. The goal of the task force was to create a balanced, comprehensive rewrite of the Zoning Enabling Act (Chapter 40A) and, to some degree, the Subdivision Control Law (Chapter 41).

To its credit, several provisions of the proposed legislation will be helpful, or at least content neutral, to the home-building industry. The codification of site plan review procedures, the establishment of new, more flexible standards for variance relief, the opportunity for expedited permitting for certain projects, and the articulation of greater vesting rights offered through the issuance of a special permit or building permit are all welcomed changes.

The benefits of the proposed legislation, however, are clearly outweighed by other provisions that eliminate certain permitting rights and procedures and add direct costs to development. The most significant negative aspects of the proposal include elimination of approval not required (ANR) plan endorsements in favor of a new, minor subdivision process that could subject lots otherwise fronting existing public ways to the same rules and regulations required for major subdivisions. Other provisions would eliminate certain plan freeze protections afforded to developers following subdivision approval. Current protections would be curtailed to include only those improvements shown on the approved plan (in the case of a major subdivision approval) and eliminated entirely in the case of ANR endorsements.

Development impact fees become fully sanctioned under the proposed law and would in some instances require new developments to incur costs associated with providing general municipal services, such as schools, police and fire protection. Most onerous in terms of potential costs to new development is an "inclusionary zoning" requirement, whereby a developer would need to subsidize the construction of one or more affordable units in any new development. This provision lacks any density bonus and contains no exemption for small projects or numerical standards as to how many affordable units must be constructed.

Those who advocate for this reform state that the costly components are offset by the benefits contained in other sections that encourage municipalities to update their master plans and designate districts for housing production and economic development. These sections, however, fall short of meaningful production goals. For example, the requirement of creating new housing units equal to 5% of a municipality's total housing stock

during a 10-year period results in a small fraction of new housing starts in any one year. Municipalities that take such measures are awarded the right to create natural resource zoning districts (with 10-acre minimum lot size) or enact rate-of-development laws (building permit moratoria). When viewed in this light, the perceived benefits of the proposal fall drastically short of the negative impacts.

The Home Builders Association of Massachusetts is monitoring this proposed legislation carefully. It is too soon to tell how likely it will be for the zoning-reform effort to move out of committee and become law. Prior versions of the proposal have fizzled in years past. Those in our industry, however, should be aware of the threats presented. While certain provisions of the existing law could use updating, a comprehensive rewrite in the manner proposed could have negative impacts across the home-building industry. Whether one supports zoning reform or advocates against it, one must be honest in recognizing that the current proposal does little to promote housing production. ■

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