

February 7, 2020

The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
State House, Room 243
24 Beacon Street
Boston, MA 02133

RE: Proposed Amendments to H.4263, An Act to Promote Housing Choices

Dear Chair Michlewitz:

We the undersigned Massachusetts organizations are writing to you and the House Committee on Ways and Means with our concerns relative to House Bill 4263, An Act to Promote Housing Choices.

The bill seeks to amend the State's Zoning Act so that making zoning changes favorable to higher-density housing are easier to accomplish in cities and towns. This letter does not address those aspects of the bill.

The concern our organizations have is with the bill's references to two zoning techniques that are not directly related to housing, but which have more to do with the protection of natural resources and open space. These are Natural Resource Protection Zoning (NRPZ) and Transfer of Development Rights (TDR).

H.4263 requires that both techniques be density neutral (e.g., same number of resulting housing units as allowed in the underlying or previous zoning), in order to be locally adopted by a simple majority vote. The problem arises with NRPZ and TDR because both of these techniques, to be effective, are generally not employed in a density-neutral manner, and having such a requirement would be confusing and have the unintended consequence of inhibiting their use.

The intended purpose of the NRPZ zoning technique is to reduce overall density and protect open space within designated sensitive natural resource areas. NRPZ is currently being utilized by multiple municipalities within the Commonwealth specifically for this purpose. This true use of NRPZ is inconsistent with the definition in H.4263 and with the limits placed on it in section 4(3)(a) of the bill and will adversely impact the usefulness of this zoning technique in future efforts to protect Massachusetts' most sensitive natural resource areas.

Both TDR and NRPZ do not need to be density-neutral to be attractive to landowners and developers so that more housing units may be built in desirable locations. TDR applied to difficult-to-develop backlands at rates below the normal zoning allowance can funnel more development rights into town centers or locations closer to services. NRPZ, because of its prompt and predictable permitting, design flexibility, and development cost-savings on infrastructure, has been supported by landowners even with a reduced unit count.

We have no such issues with Open Space Residential Development (OSRD), also mentioned in the bill, because that technique is designed to be density-neutral.

Recommendations

Our first preference would be that both techniques remain in the bill as adoptable by a simple majority, but be correctly defined and without a density-neutral stipulation. That would necessitate making two amendments to the bill.

- Amendment #1: Replace the definition of Natural Resource Protection Zoning with the following definition:

“Natural resource protection zoning”, “zoning ordinances or by-laws enacted principally to protect natural resources by establishing lower overall development densities relative to other areas in compact patterns of development, so that a significant majority of the land remains permanently undeveloped and available for agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or other natural resource values.”

- Amendment #2: In bill section 4(3)(a), strike the words “but will not result in a diminution in the maximum number of housing units that could be developed within the municipality”

Should these amendments not be feasible, our recommendation is to strike all references to both NRPZ and TDR in the bill.

Thank you for your attention to our concerns. Please contact Don Keeran at 508-619-3185 x 4 or dkeeran@apcc.org with any questions concerning this letter.

Sincerely,

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Heather Miller, General Counsel and Policy Director
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Massachusetts Municipal Lawyers Association

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Zoning Reform Working Group