

Chapter 40 R

Smart Growth Zoning

Background:

For years it has been evident that the housing problem of the State of Massachusetts has primarily a problem of a “lack of supply”, and that this lack of supply had led to the continuing excessive inflation in home prices in the State. High home prices have caused many difficulties for residents of the state, for their children, and for the business community, which has found it increasingly difficult to attract skilled workers from outside the state.

In the summer of 2002, after moving to Melrose and beginning to ride the commuter rail train into North Station each day, it occurred to Mr. Carman that it might be possible to address the supply problem of the State with a set of incentives to communities to encourage the production of housing in “smart growth” locations. This could specifically be done through the use of zoning overlay districts, a technique that he used in Westford in 2000 to obtain zoning approval for the renovation of the Abbot Mill into market rate housing. By limiting the incentives to housing in smart growth locations, it was anticipated that strong support from environmentalists could be engaged for the proposals.

Having spent several months thinking about the concept, on Columbus Day, in October, 2002, Mr. Carman wrote out a first draft of a paper outlining the nature of the “Lack of Supply” problem (understood to be a lack of high density zoning), and a program to deal with the problem. This paper was then, over the next few months, sent to a number of friends and associates in the real estate community for comment and critique. He attended a number of housing conferences. The paper was revised and expanded based on the feedback received from these discussions.

On January 17, 2003, he was invited to present the ideas and the paper to the Commonwealth Housing Task Force (CHTF), an ad hoc group of housing and real estate leaders, which had been meeting for several years to discuss ways to improve housing in the State. The concepts were received with enthusiasm, and committees were set up for further review. At the suggestion of the Task Force, a proposal was prepared to move the ideas forward. The proposal came from the Center for Urban and Regional Policy of Northeastern University (CURP), and proposed that Mr. Carman, Eleanor White, president of Housing Partners, Inc., and Professor Barry Bluestone, Director of CURP, would work together to expand the paper into a detailed report, including estimates of

costs and with specific recommendations for legislation. The total cost for the work was estimated to be \$42,000.

This proposal and the need for funding were accepted by the CHTF in March, 2003. Over the spring and summer extensive work was done in doing the research and in writing the report. Several meetings to inform the CHTF members as to progress were held. Mr. Carman was the principal author and wrote the initial drafts, which underwent careful and detailed review and modification by Ms. White and Professor Bluestone.

Extensive logistical and financial support for this effort was provided by the Boston Foundation. The Co-chairs of the CHTF were Larry DiCara, partner at Nixon Peabody, Tom Hollister, President of Citizens Bank, Massachusetts, and Jerry Rappaport, President of the New Boston Fund, and Eleanor White, President of Housing Partners, Inc.

On October 30, 2003 the report was issued: **“Building on Our Heritage – A Housing Strategy for Smart Growth and Economic Development”**.

An extensive political strategy was developed with the objective of getting the key recommendations passed into legislation in 2004 – it being clearly understood that this was an unlikely goal, but one worth pursuing.

In January, February, March and April, under the leadership of Larry DiCara, a group of lawyers met periodically (pro bono) to review the recommendations of the report and to assist in the drafting of proposed legislation (Legislative Advisory Committee). Mr. Carman served as staff to this group, maintaining minutes and managing the logistics of the meetings.

In April, the Senate Ways and Means Committee, having heard from many of the senior leadership of the CHTF, said that it would like a draft bill for inclusion in the Senate Budget for 2005. The Budget was being prepared for vote over the next few weeks. Mr. Carman wrote the first draft of the legislation, based on an outline prepared by Jim McGlynn, Counsel to the Joint Committee on Housing and Urban Development. This draft was reviewed, refined, and substantially added to by other members of the Legislative Advisory Committee – particularly Greg Peterson, Mike Giaimo, Jay Wickersham, Brian Blaesser, and Kathleen O’Donnell. An extensive set of discussions / negotiations were held over the next few weeks, primarily with Bob Ross, Counsel to the Senate Ways and Means Committee, as the language in the bill was expanded, and modified.

Eventually the provisions of 40R were included in the Budget that was approved by the Senate. In early June, the House – Senate Conference Committee included most of the provisions in the Budget approved by the House and the Senate, and Chapter 40R was sent to the Governor, which he signed.

The key element that was left out of 40 R was a school cost hold harmless provision for communities passing Smart Growth Zoning Districts. However, almost all the other provisions recommended by the initial report were included in the bill.

In the fall of 2004 work proceeded on three tracks:

1. A committee to advise DHCD on regulations met four times and provided extensive recommendations on the proposed regulations, which are expected to be issued in February, 2005.
2. Mr. Carman and Professor Bluestone have been working on a school cost study to demonstrate the need for and to suggest formulas for the school hold-harmless provisions. It is anticipated that the legislature will take up this issue in the spring of 2005, and will probably address the issue through Chapter 70, the State's school funding program (not 40 R).
3. A group has been considering whether additional amendments are needed for the Chapter 40R legislation. It appears that no amendments (other than the school funding) are needed at this time.