

New Zoning Promotes Smart Growth

By Stephanie Pollack

Women's Business April 2, 2005

This month Massachusetts is launching a new program to encourage communities throughout the state to embrace the idea of "smart growth."

Smart growth is a way of building better communities by concentrating homes, jobs and shopping near transit stations, town centers or on already developed sites often referred to as "brownfields."

As described in a new state law, smart growth "emphasizes mixing land uses, increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods, takes advantage of compact design, fosters distinctive and attractive communities, preserves open space, farmland, natural beauty and critical environmental areas, strengthens existing communities [and] provides a variety of transportation choices."

Who wouldn't want such smart growth? For many planners, environmentalists and, increasingly, real estate developers, smart growth is a mom-and-apple-pie concept that can provide Massachusetts with much-needed homes and jobs, reduce driving and traffic congestion and preserve open space.

But city neighborhoods and suburban communities alike have nonetheless resisted large-scale smart growth and transit-oriented development projects and blocked zoning changes designed to encourage smart growth.

Some communities don't want the significant number of homes included in such developments, fearing the municipal costs associated with educating school children who would live in the proposed homes. Others are suspicious about affordable housing that is often included in such projects. Many have a hard time believing that residents of these smart growth urban villages will really walk, bike and use transit and so fear that traffic congestion will continue and even worsen.

Because Massachusetts cities and towns have strong control over local zoning and therefore real estate development, if cities and towns don't want smart growth, then it is not going to happen.

That's where the new law, with the unexciting name of Chapter 40R, comes in.

Last June, when Gov. Mitt Romney signed the state budget, he also approved an addition to the state's zoning laws known as Chapter 40R. Many of the key elements in this law grew out of the work of a broadly based group called the Commonwealth Housing Task Force, which promoted the critical idea that the way to ensure that more housing gets built in smart growth locations is to have more land zoned so that such housing was an "as of right" use that was relatively easy for developers to permit and build.

Ten months after its enactment, this law is beginning to attract attention with the release of regulations by the Department of Housing and Community Development spelling out exactly what cities and towns will have to do in order to gain the benefits of Chapter 40R. And Chapter 40R includes some very enticing benefits for cities and towns who voluntarily choose to participate.

While the Commonwealth cannot tell cities and towns to change their zoning to accommodate smart growth housing, Chapter 40R gives cities and towns some powerful incentives to do so voluntarily.

First, just for enacting such zoning (which must first be reviewed and approved by the Department of Housing and Community Development), the community receives a one-time incentive payment of \$10,000 to \$600,000 (depending on the number of new housing units that would be allowed in the district).

Second, as this housing is built out over time, the community will receive a density bonus payment of \$3,000 for each residential unit that is issued a building permit within the district.

Finally, communities with approved districts are entitled to preferential treatment when state agencies distribute discretionary funding for a wide variety of infrastructure programs including sewer lines, water supply and local transportation improvements.

In order to qualify for these benefits, the community must create one or more Smart Growth Zoning Overlay Districts, following a process of review by the Department of Housing and Community Development. These districts need to be located near transit, in town centers or in other areas of concentrated

development. The community also submits a comprehensive plan describing the housing that would be built in the district and must ensure that at least 20 percent of the new homes to be built in the district will be affordable.

No one knows how many communities will choose to participate in the Chapter 40R program. Many will decide that the benefits are not worth subjecting themselves to the program's requirements with respect to minimum densities, affordable housing and other potentially unpopular requirements. Others may find Chapter 40R enticing but decide to wait and see how the program fares in other places.

Those cities and towns willing to consider early adoption of Chapter 40R will face at least two different kinds of barriers. Communities will need considerable planning and legal resources to put together an approvable housing plan, zoning bylaw and application package. Anticipating this problem, the Commonwealth of Massachusetts is providing grants of up to \$50,000 to allow interested communities to secure outside help in putting together their 40R plans, zoning and applications.

But an even greater challenge than simply meeting the law's legal and technical requirements will be the political challenge of convincing a sufficient number of city councilors or two-thirds of town meeting voters to adopt the new zoning districts. Chapter 40R by itself does not eradicate the concerns that make communities reluctant to permit smart growth housing developments, predominantly kids and cars. Cities and towns will need to tackle these issues head on, with thoughtful and innovative solutions to the fiscal, design and transportation challenges. And, of course, these communities will need to conduct inclusive outreach processes to ensure widespread public acceptance before the new zoning districts come to a vote.

But the effort to implement Chapter 40R is well worthwhile. Smart growth is good for communities, for people, for business, for the environment. Massachusetts needs smart growth and that means the state needs cities and towns that are willing to lead the way in implementing Chapter 40R. Many state agencies, planning groups, advocacy organizations and expert consultants stand ready to assist cities and towns to develop comprehensive, creative campaigns that can bring the benefits of Chapter 40R and smart growth to their communities.

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