Nadia Khan

From: David A. Olson
Sent: Wednesday, June 08, 2016 3:06 PM
To: citycouncil; Setti D. Warren
Cc: Nadia Khan
Subject: FW: please do not support current ORR block development and please do not support S.2311

From: lbwro [redacted]
Sent: Wednesday, June 08, 2016 2:43 PM
To: David A. Olson; David Kalis
Subject: please do not support current ORR block development and please do not support S.2311

Please mail to all city councilors and his honor the mayor etc

thank you
Lynne wr

Critique of S.2311

- The bill mandates education and training for local planning and zoning boards but shifts the cost to localities, rather than providing state aid for the important educational effort that any change in the law would require.
- The provision for DHCD, a state agency, to determine what a certified community is, and effectively require different kinds of zoning to comply, together with priority in funding for such communities from state grants, marks a significant shift in authority from municipalities to the state, with wide discretion in the state. Massachusetts has a proud tradition of local control, which would be undermined by this arrangement.
- Having a maximum state threshold of 120 per cent of median income for inclusionary zoning may make it infeasible for communities where regional housing costs may make it necessary to go higher.
- The bill speaks of upholding home rule authority, but enacts new mandatory requirements for local zoning. These provisions are contradictory.
- The provision for by-right accessory dwelling units in single family zoning districts effectively allows what some might view as mandated two-family zoning statewide, since 900 square feet can be a reasonable second unit. Also, allowing this use subject to “reasonable regulations” may invite litigation. Also, how will a community sort out a quota, especially if some accessory units are undisclosed to avoid dual safe egress required under the state building code? Where accessory apartments are allowed only by special permit where the unit is large or in a separate structure, which often is located near, a lot line, the bill would have these become as of right, not a wise change if a neighbor is affected. It is a mistake to pre-empt these local choices.
- The provision for as-of-right multi-family zoning is also unwise, as well as setting a 15 units an acre density. In a built up community, where will a zone of the requisite size be found? And who decides if it is not adequate? Will DHCD make that call since it will decide if such a zone is infeasible? Cluster

subdivisions are a good idea but by special permit; where are they to go in an already developed community if as of right?

- Why require a local legislature to enact conforming zoning by a simple majority where such uses are not yet provided for? Who will enforce this provision if the local legislature disagrees? It appears to be a court, which can order appropriate injunctive or other relief, which seems to contravene the idea of separation of powers.
- Why change the rule for special permit votes to a simple majority rather than allow a community to opt-in? A two-thirds majority for special permits and zoning amendments

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make sense because they command consensus or close to it, and produce much better projects as a result. A slim majority also may invites adversely affected parties to litigate.

- Why extend the terms for special and other permits? The law already allows up to two years.
- A local body now must have a three-quarters vote if there is a landowner protest; the bill reduces this to two-thirds. What is the rationale?
- The 120-day rule for site plan review may be too short for large projects, especially if now as of right, as provided above.
- Why limit development impact fees to only 300 feet of infrastructure impacts?
- According to the bill, a development impact fee is supposed to cover impacts of a proposed development, but is also supposed to benefit the proposed development? That is not consistent. If a public improvement is a benefit, it would be the subject of a betterment assessment, for which there is existing local authority under GL chapter 80.
- The development impact fee provision is complex, and appears to require significant local study, without apparent resources for that study. Also, the bill does not allow prepayment, which may be important to get the needed infrastructure constructed in advance of a development.
- Requiring a possible $15,000 bond for abutter appeals changes the rules to deter legitimate concerns from being raised in court. Massachusetts enacted the SLAPP suit law to protect citizens who raise concerns from intimidation. This provision seems a step backwards.
- The comprehensive plan provision gives the plan to the local legislative body to adopt, but requires a supermajority, rather than a simple majority, for amendments if different from the planning board recommendation. This gives extraordinary power to what is often an unelected body, and is unwise. If a plan is proposed, it should be adopted, and if needed, revised, by the same legislative majority that ultimately must approve the plan.
- There is a complex appeal provision, which appears to put into court all appeals from any local land use decision. This does not seem wise. For example, included in the list are local historic district decisions. Those are appealed in the first instance now to a special administrative body, which is much simpler than going to court.
- The general import of the bill, however, is to use the legislature to bypass what should be debated and decided locally according to local conditions. The state does not have the resources to undertake local land use planning and zoning, but depends on local elected or appointed officials, many of whom are citizen volunteers. Communities need support

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for this work, and this legislation, unfortunately, only seems to compound the problem with more unfunded mandates. While some communities have law and planning departments to help sort out new rules, other cities and towns do not. Also, the Massachusetts Municipal Association (MMA) seems to have been bypassed in drafting this legislation, when in the past it was part of the conversation, an omission that seems to be a mistake.