

**Planning Board/SLPAC Meeting Minutes
March 16, 2021
Zoom Meeting**

PRESENT:

PLANNING BOARD: Margaret Olson (Chair), Lynn DeLisi (Vice-Chair), Gary Taylor, Stephen Gladstone, Robert Domnitz.

SLPAC: Gary Taylor (Chair), Margaret Olson, James Craig, Rachel Drew

STAFF: Paula Vaughn-MacKenzie, Jennifer Curtin,

Town Counsel: Joel Bard, Esq.

Over 60 members of the public attended the meeting.

7:30 PM: Presentation and Discussion by K.P. Law on the Housing Choice Act

Joel Bard, KP Law, presented. There were ten new definitions added to the Zoning Act: Accessory Dwelling Unit; As of Right; Eligible Locations; Gross Density; Lot; MBTA Community; Mixed-Use Development; Multi-Family Housing; Natural Resource Protection Zoning; and Open Space Residential Development.

“As of Right” projects are able to be built without needing any kind of zoning relief.

There are similarities and differences between the new definitions and the definitions in the Lincoln Zoning Bylaw. While Accessory Apartments are similarly defined affordable accessory apartments are unique to Lincoln. In Lincoln, accessory apartments are allowed by Special Permit issued by the Zoning Board of Appeals (ZBA).

Mr. Bard noted that the following question is a common one regarding the new definitions: “Is a Town required to amend its Zoning Bylaws if municipal definitions conflict with the new Chapter 40A definitions?”

Chapter 808 of the Acts of 1975 brought what is now known as the Zoning Act, Chapter 40A. It was previously called the Zoning Enabling Act. After the Home Rule Amendment was passed in the 1960s, it no longer became necessary for the Legislature to enable communities to pass Bylaws. Local Bylaws need not be phrased exactly the same as phrased in State law, but they shall not be inconsistent with what is in State law. In the 1970s, the Town of Dennis adopted a Wetland Protection Bylaw. the Bylaw was challenged in court because it was different than the State regulations. The court ultimately ruled that the Bylaw should stand because it protected wetlands in different ways, so it was not inconsistent with the State Wetlands Protection Act. Mr. Bard said that he believed that there is no need for Lincoln to amend its Bylaw to change its definitions to match the definitions in the Zoning Act since they are not inconsistent.

MO asked that attendees type their questions into the Zoom chat, and she will have Mr. Bard answer them.

BD asked whether the revision to the current accessory apartment bylaw being proposed for the upcoming May Town Meeting will require a 50% vote or a 2/3 vote.

Mr. Bard said that the new law amends Section 5 of the Zoning Act which spells out the quantum of vote required to adopt or amend zoning bylaws. He said that the important part that applies to the Accessory Bylaw Amendment being brought before Town Meeting in May 2021 is: "Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except...by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted ...by a vote of a simple majority of town meeting:...an amendment to a zoning ordinance or by-law to allow by special permit...accessory dwelling units in a detached structure on the same lot". Since Lincoln already allows for accessory dwelling units by special permit in its bylaw, the purpose of the proposed amendment is not a bylaw to "allow" but to make changes to the existing bylaw. Mr. Bard believes that the proposed amendment would thus require a 2/3 vote, but he will have a firm opinion by Town Meeting.

Mr. Bard went on to talk about "Eligible Locations" and how it is defined broadly in the new law. He said that south Lincoln definitely qualifies, but the definition extends to "existing rural village districts" which is up to interpretation.

MO asked about the definition of Village Center and if the "Flower Pot" 5-way intersection and Pierce Park counts as a Village Center.

Mr. Bard said that he did not think those two locations would count since it is just landscaping but there is no set definition of a village center.

Sara Mattes expressed in the chat that the 5-corner is our historic village center and has been called that for centuries.

MO noted that although it has been called that it has not been its use.

Mr. Bard moved on to an explanation of an "MBTA Community". G.L. c. 40A, § 3A requires a "MBTA Community" to provide at least one zoning district of reasonable size where multi-family housing is permitted as of right. Failure to comply with Section 3A will result in the loss of funding sources, e.g., the Housing Choice Fund, the Local Capital Projects Fund, and MassWorks Funding. The Town of Lincoln is a MBTA Community. The term "reasonable size" has not yet been defined.

Mr. Bard added that the new law is not like Chapter 40B, it is more of an enabling law to promote housing density.

MO said that, even though the law says "shall", a developer cannot come in and say that Lincoln's zoning is illegal and push a development through.

Mr. Bard said that that is correct. He said that "shall" is used in other laws and there are no consequences. "Shall" is directory in those cases and not mandatory. In this situation there is a stated consequence or penalty of noncompliance which is being cut off from certain funds.

MO asked if multi-family zone is permitted as of right, is site plan review allowed.

Mr. Bard said that "as of right" allows for site plan review but the project cannot be denied by discretionary zoning approval. The case law makes clear that under site plan review there is no discretion to deny the project, so it is allowed under this statute.

MO asked if existing multi-family housing counts towards this.

Mr. Bard said that existing multi-family housing does not enter into this. The law states that there needs to be re-zoning under the bylaw to allow for building multi-family housing by right to be considered in compliance.

MO said that, the Town does not currently have by right multi-family zoning at Lincoln Station as required by this new law to be eligible for funding.

PV-M said that the current B2 district allows for multi-family by right but not three or more dwelling units per building or at the required density of 15 units per acre. She added that “zone of reasonable size will most likely be a negotiation with the Department of Housing and Community Development (DHCD) in terms of Lincoln.

Mr. Bard said that the definition of “multi-family” is 3 or more residential dwelling units per building.

Mr. Bard said that the law made a point to state that the requirements are “subject to the Wetland Protection Act and Title 5 Regulations” which he said should be obvious since every project is subject to those regulations. He added that it was unclear as to the purpose of this addition and he will discuss further with his colleagues and look for guidance from DHCD as well.

PV-M said that there are a lot of wetlands and a high water table in South Lincoln which means there will be wetland and septic issues. People are wondering if “subject to” means that it will reduce the density that would be required to account for wetlands or that it will require taller buildings which would potentially go against Town height restrictions.

MO said that the defining “reasonable size” will determine a lot of the discussion moving forward.

Mr. Bard said that “reasonable size” should bear some relationship to the context of the Town. He thinks that Lincoln should get credit for allowing density in the South Lincoln area and this could be an argument that Lincoln could make.

BD said that although site plan review does not give a Town the right to reject a proposal, the zoning bylaw allows the Planning Board to deny a project if they cannot find reasonable conditions that allow a project to conform to the criteria for site plan approval. He asked if this can be exercised in “as of right” zoning or if the bylaw goes too far.

Mr. Bard said he believes that the language goes too far, and the Planning Board does not have the authority to deny an as-of-right project on the grounds of site plan approval in any case.

PV-M asked if design guidelines could be used as criteria or if such guidelines would be seen as violating the by-right requirement.

Mr. Bard said that if the design guidelines are reasonable, they would not violate the by-right requirement as long as the project could not be denied.

MO asked at what point is reasonable size expected to be defined and when clarification on “subject to” language can be expected and is there a timeline from DHCD.

Mr. Bard said that he did not know and believed that it would be a number of months. In the interim things are in a holding pattern. He said that this should not slow down the process of SLPAC and the

Committee should continue their work as they have been doing until there is more guidance from DHCD.

MO noted another question in the chat inquiring whether the 15 units per acre requirement would mean that 3-4 story buildings would need to be constructed. She said that her instincts are that it is possible to get the density without that height.

Mr. Bard said that an acre can be configured in a number of ways to meet the 15 unit per acre requirement. He asked about the density of Oriole Landing.

PV-M said that it is around 10 units per acre. She said that there is currently no development in Town that is 15 units per acre.

MO said Lincoln Woods is 7-8 units per acre.

PV-M said that visualizing another story on Lincoln Woods would give an idea of what 15 units per acre could look like.

MO said that it comes down to how the Town feels about many, lower buildings closer together versus fewer, taller buildings that are further apart.

Mr. Bard said that DHCD, Executive Office of Housing and Economic Development (EOHED) and the MBTA will produce further guidance. For now, all communities are compliant with the new law and grants will not be withheld from communities until further guidelines are developed.

He added that if Lincoln were to re-zone South Lincoln to allow multi-family zoning by right, it would only need a simple majority at Town Meeting.

PV-M said that if the Planning Board comes up with zoning prior to additional guidance it may not qualify under the new law.

Mr. Bard said that that was correct and that there is no telling how strictly the state will enforce the new law. It will be a several-year process until there is an understanding about which towns are compliant.

BD said that the South Lincoln overlay district allows for specific proposals to be approved with a simple majority at town meeting, but not as-of-right.

Mr. Bard quoted the section in the bylaw and said that it is different than as-of-right, but it is interesting that the bylaw allows a zoning change by a majority vote rather than a 2/3 vote in those cases. He added that mixed use could be allowed by special permit, but multi-family has to be as of right under the new law.

The new law also allows a simple majority vote for a zoning amendment that provides for Transfer of Development Rights (TDR) or Natural Resource Protection; or modifies regulations concerning the bulk, height, parking, and dimensional requirements which would allow for additional housing beyond what would otherwise be permitted.

PV-M said that there has been a question raised in a previous meeting asking if a zoning amendment proposing to change Lincoln's residential zoning from 2 acres to 1 acre would require simple majority vote?

Mr. Bard said that that would be correct although this law does not mandate that change.

PV-M asked if Town Meeting can adopt other categories of zoning amendments with a simple majority vote.

Mr. Bard's opinion is that it cannot. The Act is written specifically to allow only the changes listed in the statute.

MO read a question from the chat which asked if, in a mixed use development residential is allowed by right, but the commercial component is not, what prevents the town from denying development based on the commercial aspects.

Mr. Bard said that the intent is to facilitate mixed-use development. There are two separate components which are; 1. the mandate for MBTA communities; and 2. making it easier for communities to allow multi-use projects and denser housing. The latter does not come with a mandate, rather, it allows a lower quantum of vote to enable communities to change zoning that allows mixed-use or denser housing. The two parts are applicable together only in MBTA communities.

The quantum of vote is also changed for certain special permits. A special permit may be permitted by a simple majority of the granting authority for any of the following: Multi-family housing located within ½ miles of a transportation station, provided that not less than 10% of the housing is affordable; Mixed-use developments in centers of commercial activity, including town centers and rural village districts, provided that not less than 10% of the housing is affordable; and reduced parking space to residential unit ratio requirements, provided that a reduction in parking will result in additional housing units.

He added that this is a different kind of approach than 40B. If someone is proposing a multi-family housing project within a ½ mile of an eligible location, and it is allowed by special permit it only requires a simple majority vote provided that 10% of the project is affordable.

GT said that Lincoln's Inclusionary Zoning bylaw currently requires 15% affordable units for any housing project.

Mr. Bard said that an application for a special permit for a housing project would have to satisfy the zoning bylaw inclusionary requirement of 15%.

Mr. Bard then reviewed the addition of Appeal Bonds to the law. "A court, in its discretion, may require a plaintiff appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000, if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs."

GT asked if the plaintiffs forfeit the bond if they lose the case.

Mr. Bard said that it is unclear, and he will look into it.

GT asked if the Town already has a cluster zoning bylaw and want to change it can that be done by simple majority vote.

Mr. Bard said that if the bylaw is changed to allow cluster or open space projects as-of-right then it would require a simple majority vote.

PV-M noted that cluster zoning is currently allowed by special permit.

Mr. Bard said that just amending the existing bylaw would require a 2/3 vote but to amend it to allow it by right would require a simple majority.

BD asked what the reactions have been from other small towns with rural character in terms of giving up their regulatory authority in exchange for funding.

Mr. Bard said that he has not yet spoken with many small towns but there will be further conversations with more communities. Most MBTA communities are in greater Boston. He said that smaller commuter rail stations further west will weigh in.

MO read a question from the chat asking how much money has been received through these grants in the past and how much money the Town can look for regarding future projects.

PV-M said that MassWorks grants are the largest infrastructure grants that cities and towns are given. For instance, replacing a large septic system would be a MassWorks grant project.

GT said that the MBTA will weigh in on what compliance looks like. The Town should take into consideration whether or not the MBTA will consider allocating more money for the Lincoln Commuter Rail stop if the Town is not compliant with the new law.

MO agreed and said that the biggest issue is continued support, scheduling and viability since the station is a significant asset for people in Town.

BD said that MassWorks grants appear to have no upper limits but that towns have received funds that work out to equal about \$10,000 per dwelling unit. He added that the Housing Choice Initiative program's upper limit appears to be \$100,000, regardless of project. There is not much information on the Local Capital Projects Fund.

PV-M said that there is now a One Stop Community Grants system. The State reviews project and puts grants together to fund the project where possible. This is the new way of applying under one application. They are looking specifically for projects that increase housing units.

James Craig asked Mr. Bard's opinion on whether or not clear guidance will come down within a year.

Mr. Bard said that he did not know and would be surprised if it comes before 6 months. There is a lot of content to research to determine further guidance.

LD suggested that the slides be put on Town website. She also reiterated that the Town is in compliance now and will be for a long time.

Andrew Glass asked if the new law has any impact on the Demolition Delay Bylaw and/or Historic District Bylaw? He also asked if they could be bypassed under the Act.

Mr. Bard said that he cannot see how it would interfere with either the Demolition Delay or Historic District Bylaws. Since Demolition Delay is a General Bylaw constraint, not a Zoning constraint, it would not be overridden by "as of right".

Ruth Ann Hendrickson said that if the MBTA decides to discontinue service to Lincoln then it is stuck with dense housing developed because it is an MBTA community. She asked if there is a way to get the MBTA to agree to not discontinue service if the Town complies.

Mr. Bard said that he does not have an answer to that, but it would be a conversation to have with the MBTA.

Sara Mattes said that the MBTA is in the process of cutting stops and that post-pandemic people will be working more from home and using public transportation less. At this point in time there is no requirement that the Town does anything and the lack of compliance just takes away access to certain pots of money. It is not an absolute mandate. Lincoln is not the only town on the commuter rail and everyone along rail line will be impacted by the loss of service and the designation.

Mr. Bard said that that is correct.

MO said that, with the speed this is moving, the Town will have an idea about the post-pandemic conditions and the impacts on the Commuter Rail.

Jennifer Glass asked if there has been any communication from the State regarding their process for clarifying these rules about MBTA communities and if there will be a process that gathers public input. She also noted that the MassWorks grants have been between 1-3.5 million dollars, so it is a large amount of money.

Mr. Bard said he will reach out to his colleagues and see if they have any sense of that.

Ms. Glass said that it is frustrating that this is coming down when MBTA service is being cut.

Buzz Constable said that there is an overlay district which allows a lot to happen by special permit.

PV-M asked if he was talking about the South Lincoln Overlay District. This is a way of changing the underlying zoning for a parcel in the overlay by majority vote of Town Meeting.

Mr. Constable asked if the other Town regulations do not apply since the legislation singles out the Wetlands Protection Act and Title V.

Mr. Bard said that it is unlikely that the legislation meant to limit the enforceability of other local bylaws with that language.

Connie Ohlsten asked if, after this meeting, a summary of what was discussed and the extent to which it will affect our Town policy be produced. That way, when questions come up in the future, we will have a document we can refer to.

PV-M said that the minutes of this meeting will be available and posted online. The video of the meeting will also be posted on the Town's website.

Ms. Ohlsten said that she is looking to see the conclusions that the Planning Board has drawn from this meeting.

BD added that he would like to discuss the parts of the law that clearly do not affect the Town, what we may want to take advantage of, and then discuss the gray areas in between. The discussion would

lead to what policy determinations the Planning Board would like to make.

MO said any policy inclinations would need to be discussed at length and the minutes will reflect the information presented tonight. She added that it is too early to draw conclusions since there are still many unknowns.

GT asked if KP Law will send out literature to their clients about the nature of the requirements of the law to use as a summary of its implications.

Mr. Bard said that he has written down a number of questions and will work to get those answered.

Ms. Ohlsten said that her neighbors submitted questions in advance and asked that they be addressed.

JC said that those were submitted to Mr. Bard prior to the meeting.

Mr. Bard read the questions:

“If we do not comply with the zoning changes, we may lose funding from (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A. How much funding have we received from these 3 programs in the past; and are we planning on requesting any funding from them in the future, at this time? “

PV-M said that there is not an exact amount available but the MassWorks grants are substantial and could be useful to the Town for South Lincoln Planning and other projects. It is up to the Town to decide either comply or forego the grants which is a policy discussion that will take place another time.

Mr. Bard said that the questions are all of a policy nature and not legal but read on:

“The state has stated that ALL communities are considered in compliance at this point until a more detailed compliance criterion is made. All communities are also able to apply for the 2021 round of funding. Why is the planning board and SLPAC trying to change the zoning before the detailed criteria is released?”

PV-M said that revising zoning has been in the works since 2017 and did not come as a consequence of the Housing Choice Act. The legislation is particularly focused on MBTA communities and will affect the quantum of vote on how zoning amendments are passed. This information is important for the public to have to inform future discussions. This is the first of many meetings to discuss this matter further as more guidance is released.

Mr. Bard read the following question:

“Since most of the areas being considered for high density housing (Lincoln Mall, Lincoln Woods, Lewis Street, Ridge Court Condos) are surrounded by wetlands and/or conservation land, please clarify how the limitations imposed by the Wetlands Protections Act would allow any proposed development.”

Mr. Bard said that the Wetlands Protection Act will impose constraints on future developments and may require trade-offs but there are still many unknowns.

Ms. Mattes requested a report be developed with specific information on past grants and what grants the Town may look to apply for regarding future projects as it will be helpful information to know going forward.

MO agreed that is important for Board and the Town to understand that information.

GT said that registration closes tomorrow for the Welcome, Inclusion, Diversity, Equity (WIDE Lincoln) Community Anti-Racist Advocate Training (CARAT). These trainings are on racial equity and inclusion. WIDE is looking for participants from Town agencies and boards and would like to have more than one person from each board participate. He added that he would attend for SLPAC.

PV-M said that the CARAT consists of three evening sessions held on March 25, April 29, and May 13. Funding is provided by Codman Ogden Trust.

Rachel Drew noted she will attend for the Housing Commission and as second representative for SLPAC.

Jessica Packineau said that the WIDE board encourages as many people as possible to join the trainings so that there can be a team for each board. Registration can be done by individuals and affiliation can be listed.

PV-M asked if staff could participate.

GT said that staff is welcome to participate.

MO moved to adjourn for the Planning Board. GT seconded. Roll call: SG aye, BD aye, MO aye,

LD aye, GT aye.

GT moved to adjourn for SLPAC. RD second. Roll call: MO aye, GT aye, RD aye.

Approved as amended April 2, 2021.