

Approved: March 6, 2021

**MINUTES OF THE PROCEEDINGS OF
THE INCLUSIONARY ZONING BYLAW WORKING GROUP (“IZBWG”),
APPOINTED BY THE PLANNING BOARD OF THE TOWN OF LANCASTER**

Meeting conducted via ZOOM internet conferencing
Friday, February 5, 2021

Present: Carol Jackson, IZBWG Member & Clerk of Planning Board
Roy Mirabito, IZBWG Member & Vice-Chair of Planning Board
Victoria Petracca, IZBWG Member & Chair of Affordable Housing Trust

Absent: None

List of Documents:

- Proposed Inclusionary Zoning Bylaw
- Inclusionary Zoning Study (version 2)
- MAPC Inclusionary Zoning Background

I. Call to Order & Administration

Carol Jackson, Member, was appointed Zoom host by the Town Administrator. Carol Jackson announced she had begun recording and called the meeting to order at 2:01 pm.

Zoom meeting link: <https://us02web.zoom.us/j/83765410408> Meeting ID: 837 6541 0408

Administrative discussion by Members of (1) the requirement to publicly post the Working Group’s meeting agenda 48 hours in advance, and confirmation that this had been done properly, and (2) the requirement to post the Working Group’s meeting minutes, and the possibility of using the transcript generated by Zoom internet conferencing services for this purpose.

II. Approval of Meeting Minutes

Not applicable to first meeting

III. Public Comment

None

IV. Scheduled Appearance(s)

Inclusionary Zoning Bylaw Working Group Minutes February 5, 2021

None

V. Discussion of Inclusionary Zoning Goals and Document Review

1. Review purpose of Inclusionary Zoning Bylaw

Victoria Petracca commented she viewed the Inclusionary Zoning bylaw as “a tool that towns can use to increase the affordable housing supply and help ensure that developers are part of the affordable housing solution as they build market rate housing. And it's good for the town because it prevents us from sliding backwards and falling back in our required amount of [affordable] housing that we have to provide under the state's laws. So I think it's just a healthy thing for towns to have in place because as we're building market rate housing, we're also building in the affordable housing.”

Roy Mirabito commented that it also “keeps the diversity of the population in a better state and it's really a management tool so that we can comply with state regulations.” Roy Mirabito mentioned broadly that controversial Zoning practices historically allowed economic and racial segregation called “snob Zoning” and added “that was an economic barrier as much as anything in this, so it levels the playing field. It makes the population more diverse.”

Victoria Petracca agreed and suggested this be included in bullet points of Inclusionary Zoning’s benefits to Lancaster when presenting the bylaw.

Roy Mirabito added that when working on the Housing Production Plan, he saw a need for one- and two-bedroom apartments in Lancaster, not four-bedroom, 3-bathroom housing being constructed. He added “Since that time I've done more thinking, and thinking about an elderly population here in town, and I think it's a real opportunity to give them the ability to live in town, for the rest of their lives without having the overhead of a large house. All the maintenance and upkeep that goes with it. Not only living here, but I think it does improve the overall population by letting people stay here. It can be a birth to grave location, and I think a lot of people would like that. And, as our population is aging, I think it's going to become more and more important that we take care of our elderly population.”

Victoria Petracca agreed. She added that Bolton residents are working on their own affordable housing plan, and described a public outreach video that includes Bolton’s predominate housing stock of 4-bedroom, detached, single family homes, and that it is a very similar issue to Lancaster. She added “that's the predominant housing and we just forget that's not accessible to everyone. And it doesn't end there. Even if it is accessible, it doesn't make sense for a couple - an older couple, or a couple without children. The diversity in housing stock is important, and the more diverse the housing stock is, the more diverse the population. The housing stock... mirrors the population.”

Roy Mirabito then described the adaptive reuse of the Brook School in Weston. “There's a development there. It was an old school that they retro-fitted and it has, I believe, 73 one-bedroom apartments and two-bedroom apartments and it's on a lottery basis. I think 55 units are subsidized out of the total. There's a waiting list. We have one of our friends, an aunt who lives there, and then we had other relatives or extended relatives who have been there. And it's a wonderful place, and I mean that's one situation, one situation with 75 opportunities for people, you know in that situation, but that involves a lot of town involvement, because they were town structures to begin with, that were retrofitted.”

Victoria Petracca shared that the Affordable Housing Trust had it's second meeting the prior evening, and that it was positive to see the group launch and that these various efforts, including Inclusionary Zoning, are coming together.

She added that “underlying all that is this, what you described Roy, an attitude that yes, we do want to address this [affordable housing], and we want to address it as a town, we want to address it in ways that don't wreak havoc on the environment, you know, we want to address it in ways that where we can be proud, and say to the state, we're stepping up, we're doing it, and it's the town that's driving it.”

2. Review background document “Inclusionary Zoning & Payment in Lieu of Units Analysis” prepared by Metropolitan Area Planning Council (MAPC)

Victoria Petracca screen-shared the MAPC background document on Inclusionary Zoning. She commented that it was interesting to learn that 300 towns in Massachusetts have adopted Inclusionary Zoning. Carol Jackson commented that she remembered being told to the contrary in prior months “that not many towns we're doing it because it's not working or something.” Victoria Petracca agreed.

Roy Mirabito commented the first thing he noticed were the towns that were selected, and specifically, Lexington and Concord, where “median incomes are probably one and a half times what they are here when home values are probably close to a million dollars for median home for those two towns and land, the availability of land is probably much more limited.”

Victoria Petracca noted that the study came from a regional housing consortium. She shared that Lancaster recently joined a similar regional consortium, which is beneficial to the Affordable Housing Trust. She commented this could also be beneficial to the Planning Board in as much as this kind of information, such as Inclusionary Zoning resources, are important to share across related town boards. She informed that Lancaster joined the Assabet Regional Housing Consortium (8 towns in total). The group that oversees it is Metro West Collaborative Development.

Victoria Petracca noted the study talks about shifting the costs, and that Inclusionary Zoning asks

developers to share the responsibility of creating affordable housing. She commented, “[T]he more I watch developers make presentations, I guess the stronger I feel, or the more confident I am, in asking developers to participate in a solution. [T]he more I think about it, ... it’s just logical that they’re here to make money, and yet every time they’re making money, it’s increasing the need for affordable housing. Because we as a town are under this mandate, [I]t just doesn’t seem fair. The more I think about it, it’s really not fair, no.”

Carol Jackson commented “The developers know that all the towns and cities all across the state have this mandate, so they’re well aware of it. And they certainly don’t mind asking for a lot of stuff, so it’s just ... you got to work together on it, and they must realize that, as well, that’s why I don’t see any downfall from asking [for] this, you know, and having this.”

Victoria Petracca added she is looking forward to a shift from having to ask a developer to consider including affordable housing to simply including it as policy and part of ensuring the town is meeting its affordability requirements.

Roy Mirabito agreed.

Resident Greg Jackson asked if this report covers the same ideas as the feasibility study, or if the feasibility study was more targeted and more into Lancaster specific numbers – and whether you could you use this report as a guideline as to how to write a local Inclusionary Zoning bylaw.

Victoria Petracca commented that this report was a perfect background document with a good introduction, but that “it didn’t replace a very Lancaster specific study that Judy Barrett was trying to put together that had really our numbers in it.”

Carol Jackson commented it was a good backup document.

Roy Mirabito commented it “defined policies and procedures and things like that, but it was more instructional I thought then and what different routes you could take to achieve Inclusionary Zoning and what to look for. But I don’t think it was a document that you would use to write your bylaw.”

Victoria Petracca commented that the report made her think more about whether Inclusionary Zoning should be mandatory or rather voluntary with a bonus to incentivize developers.

Carol Jackson raised the example of Concord in the report. She shared the report explains Concord doesn’t have a stand-alone Inclusionary Zoning bylaw, instead it has Inclusionary Zoning included in the Town’s bylaws as part of local building rules. She added that if Inclusionary Zoning bylaws are in town rules separately, Inclusionary Zoning is effectively mandatory without stating it separately. She observed the report concluded fewer towns have adopted mandatory Inclusionary Zoning, but however, if towns have included it in their building rules, then it is effectively mandatory, and perhaps not captured as mandatory in the report.

Roy Mirabito commented that the report suggested that even though there were many communities that adopted an Inclusionary Zoning bylaw, it did not always produce affordable units. He cited two of the successful examples from the report, Watertown and Cambridge. He added there were four mentioned, but many did not produce what was intended.

Victoria Petracca commented that the report strongly advised that payment-in-lieu-of-units only be offered in place of constructing ownership units, not for construction of rental units. She pointed out that the current proposed bylaw has it included for both. Carol Jackson agreed. Victoria Petracca recalled difficulty in formulating a payment-in-lieu-of-units calculation for rental units when residents drafted the proposed Inclusionary Zoning bylaw.

Roy Mirabito added it was difficult for him to “get a handle on local rental numbers.” He explained “I tried to duplicate Judy Barrett's numbers, I went on to Rentometer and took a temporary subscription and for the five different types of housing, there were between 5 and 12 data points for each one, but the final comment was that these data points - (I used the 500 Main Street, Lancaster as an address) - these data points will be within a radius of 5 to 10 miles of 500 Main Street, Lancaster, so is a very good possibility that most of these data points were outside of Lancaster. But the numbers that I did get the means they were within \$100 and \$150 of what Judy said, but they're all soft numbers. I'm sure she must have had another database, but using just Rentometer they were very soft numbers.”

3. Review Proposed Inclusionary Zoning Bylaw submitted to Planning Board in September 2019

Victoria Petracca recalled working on the draft proposed Inclusionary Zoning bylaw with fellow residents Greg Jackson and Dick Trussell in 2019.

She commented that the beginning, “Section A - “Purpose and intent” of Inclusionary Zoning appeared clear and in agreement with Judy Barrett’s report. She liked that the proposed bylaw explains at the outset that units created by Lancaster’s Inclusionary Zoning bylaw are “Local Action Units” and that they shall be in state-level compliance with the requirements of the Department of Housing and Community Development. She added that this section further explains the units shall also be compliant with the Town of Lancaster’s local bylaws. “So we're looking to be compliant with DHCD and we're also looking for Inclusionary Zoning to be in concert with our town’s Zoning objectives, our town’s bylaws, as well as, and I love this part, as well as [with] the conservation [of] natural resources, preservation of open space, protection of town character.” She mentioned a few minor edits, but that overall the section seemed fine. “...An article here and...we left out a letter or something like that, but nothing really substantial in that whole first section.” “I thought it really just set the stage that Lancaster wants to implement Inclusionary Zoning in a way that's compliant with the state and complying with our other bylaws and other goals for the town – and that's not isolated by itself.”

Victoria Petracca commented that the next part of the proposed bylaw, “Section B – Applicability”, identifies the number “six” (6) as the threshold that triggers Inclusionary Zoning. She reviewed the bylaw states this applies first to the division of contiguous land held in single or common ownership into division into six or more residential lots. She reviewed the bylaw then applies to the construction of six or more multiple dwelling units, whether one piece of land or one or more contiguous parcels. The language specifies this “shall apply to the construction of six or more dwelling units on individual lots if said six or more lots are held in single or common ownership.” She observed that B1 thru B3 cover the applicability based on parcel, subdivision, and number of units. She commented that B4 thru B5 then prevent “skirting” the Inclusionary Zoning requirements by intentional project segmentation, in the present at the time of filing, or into the future with a net increase of six or more dwelling units measured over a 10-year period.

Roy Mirabito commented this was a “big look back”.

Greg Jackson recalled that at the time this language was drafted, it was drawn from other established Inclusionary bylaws in place for years. Victoria Petracca recalled it was a comprehensive process of looking for the best practices in many local examples of Inclusionary Zoning bylaws and other planning documents.

Victoria Petracca then raised a question related to the next part of the bylaw, “Section C - Special Permits” and how this relates to the Planning Board, in particular. She wanted to clarify how a Special Permit for a developer who wants to build a subdivision will be impacted by Inclusionary Zoning. She observed that Section C states “pursuant to Mass General Law Chapter 40A Section 9, the development of any project [set forth] in subsection B above shall require the grant of a Special Permit from the Planning Board or the Board of Appeals as applicable, [the Special Permit Granting Authority]. The special permit shall be granted if the proposal meets the requirements of this bylaw.” Victoria Petracca commented that she understands this language to mean that anytime a project triggers Inclusionary Zoning, it is also triggering a Special Permit. She recalled this is because there are conditions that go with Inclusionary Zoning, and things that need to be double-checked to make sure they are happening. She gave the example of a developer who opts to do the payment-in-lieu-of-units. She recalled, “So I think the idea here is that we need to have a Special Permit Granting Authority in order to monitor all these different things are happening.”

Carol Jackson agreed and cited the example of directions.

Victoria Petracca added the example of monitoring the schedule of building permits within a project, and phasing of producing the market rate vs the affordable units, as well as ensuring the affordable units are deed restricted.

Victoria Petracca raised the issue that currently conventional subdivisions do not require a special permit whereas Flexible Development and IPOD subdivisions do require a special

permit. Projects with 6 or more units would now require a special permit for the Inclusionary housing component.

There was discussion between Victoria Petracca and Resident Greg Jackson who both worked on the draft proposal regarding the special permit. Victoria Petracca observed that either the Planning Board or the Board of Appeals would be the Special Permit Granting Authority (“SPGA”) ensuring the requirements are met.

Greg Jackson observed that affordable housing is not a requirement of the IPOD or Flexible Development. Victoria Petracca added under Inclusionary Zoning, the affordability component would become a condition of the permit, and similar to other conditions, overseen by the Building Inspector and the Planning Board or Zoning Board of Appeals, depending on the project. She questioned whether this needed a special permit, if not in the IPOD or Flexible Development, and referenced Chapter 40A, Section 9 on special permits.

Carol Jackson then raised a reference to the second paragraph that zoning ordinances or bylaws may also provide for special permits authorizing increases in the permissible density of population or intensity of particular use in a proposed development, provided that the petitioner applicant shall as a condition for the grant have said permit provide certain open space, housing for persons of lower moderate income, traffic or pedestrian involvement improvements.

Victoria Petracca observed that it sounded like the affordability component was provided by the applicant in exchange for a density bonus – “except that we weren't offering the density bonus.”

Carol Jackson agreed and that our current proposal only offers this.

Victoria Petracca agreed.

Greg Jackson recalled there was a density bonus in an earlier version of the Inclusionary Zoning bylaw, and it was removed, but the door was open to the possibility of putting it back in.

Victoria Petracca observed that offering incentives is what happens now with flexible development and the IPOD. She suggested flagging the special permit for more research by Members and interested residents between now and the Working Group’s next meeting.

Carol Jackson suggested putting a question mark next to it to be resolved at the next meeting.

Discussion continued to the next portion, “Section D – Provision of Affordable Housing”.

Victoria Petracca commented that the numbers produced were derived very deliberately from looking at a lot of different ratios in other towns, and comparing them to the required inventory for affordable housing over ten percent, “knowing that we have to be over 10.1%...”

She reviewed the current proposal:

- in developments of six to nine ownership or rental units, at least one of the total proposed dwelling units shall be affordable
- For development of 1 to 19 ownership or rental units, at least two of the total proposed dwelling units shall be affordable
- For development of 20 to 29 ownership units, at least three of the total proposed dwelling units shall be affordable units than
- Development of 30 to 44 total units triggers a minimum percentage of 12.5%
- Development of 145 and more total units, triggers a percentage of 15%.

Victoria Petracca explained the rationale was that this formula keeps us above the 10.1% at all times. She noted that even in the scenario providing three affordable units for 29 units, this keeps the overall project at 10.3%, and Lancaster just above its requirement – and not declining.

Roy Mirabito commented “So we really don't make dramatic progress unless we get into a larger development. We kind of tread water.”

Victoria Petracca agreed, and added that “treading water” was a welcome improvement to more market rate development setting the Town back in meeting its affordability requirement. She cited the recent example of Harbor Homes, where 2 out of 23 total permitted units were negotiated as deed-restricted affordable housing. “The 2 out of 23 at Harbor Homes puts us at 8.7% [for the development]. So that's slightly below. It's definitely better than nothing. But it's still below our [state] requirement. She added that larger projects with 30 units and above, have a higher percentage 12.5% for 30 to 44, and 15% for over 45 units. Victoria Petracca commented that Judy Barrett’s report confirms that larger developments can support higher affordability percentages.

Regarding the calculation of the affordability requirement as proposed, Victoria Petracca added that taking a “higher requirement approach” would definitely reflect the reality that market-rate housing does not bring a substantial benefit to the Town. She explained that the ratios for small to mid-size projects under 30 units were calculated as a kind of “sweet spot”. This means Lancaster “treads water” slightly above the state-mandated requirement, and mindful that if its requirement is set too high, then the project is no longer profitable for the developer. The affordability percentage then increases to a cushion for Lancaster once the project includes 30 or more units – at 12.5% and 15%.

Greg Jackson added that potential pushback from smaller builders concerned about whether they could afford this measure had been discussed, and perhaps at the initial presentation to the Planning Board. Greg Jackson recalled discussions starting at four units and over time, increasing to six units due to this. He added “At one point, when we first wrote this, we might have had a 12.5% percent flat rate or something.”

There was discussion of the Bolton Inclusionary bylaw which begins at eight units. Victoria Petracca and Greg Jackson commented that it does not keep the Town above 10%. They cited the example of building one required affordable unit for 8-15 units. Using the outer limit of 15, this leaves Bolton at 6.7% and “falling behind.”

There was discussion by Greg Jackson and Victoria Petracca of a “sanity check” on the specific tiers in the Inclusionary bylaws, and that it would have been helpful to have this in Judy Barrett’s report, i.e. a review of Lancaster’s proposed bylaw and specifically, the affordability unit requirement proposed by tier of total units to be provided. Victoria Petracca suggested this still might be possible.

Carol Jackson noted the Working Group was asked to present to the Planning Board on March 22, and that timing should probably be moved earlier. Roy Mirabito commented he believed the town meeting warrant was scheduled to close on April 15th. Carol Jackson added that if the proposed needed to be presented to different boards, the timing should be moved earlier. Victoria Petracca agreed.

Victoria Petracca commented that the point seven, the last point under “D – Provision of Affordable Housing” covered the policy for rounding numbers. She had written to the Department of Housing and Community Development (“DHCD”) to confirm its policy and suggested the Lancaster bylaw do the same thing. She was awaiting a reply.

The next section of the proposed bylaw discussed is “E – Preservation of Affordability”. Victoria Petracca explained this section ensures the units provided, whether ownership or rental, are properly recorded and deed restricted as affordable in perpetuity and provides accountability. She only had a minor edit.

Carol Jackson raised the question of the process for selling units and whether this was included. Victoria Petracca commented that an Inclusionary Zoning bylaw could simply refer to DHCD policies for topics such as the resale of units, and it could also give details to be a little more thorough. She explained the current state policy for the re-sale of affordable units, and how towns often lose units from their SHI inventory when there is no local mechanism in place to preserve them, and gave an example from Lancaster Woods. She reiterated Carol Jackson’s question of whether to include the details of the re-sale process in the bylaw, and suggested it strike a balance of some backdrop without citing the entire process. Greg Jackson thought it was good to strike a balance between providing highlighting the information the public should be aware of versus repeating information defined in MGL and/or a DHCD regulation which would need to be updated in the bylaw when/if DHCD changes its policy. He added it is also preferable to be concise.

Victoria Petracca asked if the discussion could return to “Section D – Provision of Affordable Housing.” She wanted to ensure the affordable units are delivered on a defined schedule as a project’s market rates units are being constructed and explained why. Greg Jackson referred to

“Section F – Timing of Applicability” and suggested this could be defined more precisely. Carol Jackson commented she would like the affordable units to be identified on the plans. This was confirmed as included under Section G-4.

Victoria Petracca returned to the phasing of affordable units covered in Section F and suggested it be more clearly articulated in the bylaw. She thought the Planning Board did a good job of connecting the delivery of the two affordable units at Harbor Homes to the timing of the market rate units, and that this was written into the permit. She suggested this approach be used to further clarify the phasing in Section F of the bylaw. Members agreed to add “per the schedule in Sections D(1) through D(7) above” to Section F-1.

There was brief discussion again of the SPGA which will be discussed again at the next working group meeting.

Victoria Petracca commented that the next portion of the bylaw covers “Section G – Siting of affordable units”. She explained that affordable units must be indistinguishable and integrated into the development and may not be less desirable in their construction or location. She believes may be part of the Fair Housing Act. Carol Jackson found this section to be straightforward and clear.

Victoria Petracca moved on to “Section H – Minimum design and construction standards.” She observed this is similar and flows from to Section G [and ensures the exterior appearance of the affordable units is the same, as well as interior features.] She commented that the next part is also similar, “Section I – Minimum Lot Size” and ensures the minimum lot size is the same as for the rest of the development. She stated Sections G, H, and I all ensure the developer’s equitable treatment of the affordable units versus the market rate units.

The working group moved on “Section J – Payment-in-lieu-of-units.” Victoria Petracca commented that Judy Barrett’s report emphasizes the importance of providing the “payment-in-lieu” option and confirmed that Section J includes it as an alternative to the requirements of Section D.

Roy Mirabito questioned whether this only transfers the responsibility to provide affordable units back to the Housing Trust, and whether the Trust is in the position to play the part of the developer.

Victoria Petracca replied the Housing Trust is in a position to receive this payment, and how it does this is more officially defined in its charter. She explained the newly created Housing Trust has begun meeting, and it has broached this same topic. The sentiment expressed so far is that the Trust would like to work with reputable developers that can be vetted (by visiting existing projects, checking backgrounds, litigation, etc.), and to identify project partners with the lowest risk who can work with the Trust and other town boards. She explained the Trust is more like a bank, and it does not permit projects, and this is the role of the SPGA or other board working

with the developer – but that the Trust is making sure that affordable units are getting built.

Roy Mirabito explained he was playing devil’s advocate. Victoria Petracca replied this was important, and agreed the Trust is not acting like a developer by hiring contractors, etc. She clarified that, however, the Trust could work with others to identify a site and overall project. It could also endorse or not endorse a particular project, weighing in with its opinion to the permitting board. She stated the best scenario is the Trust has met with the developer to understand and possibly modify the proposal, and can then recommend it to the permitting board and explain why.

Victoria Petracca then returned to “Section J – Payment-in-lieu-of-units” and explained the calculation proposed in J-2: “75% of the average listing price of comparable market rate units of the same bedroom count within the same development”. She explained this was to cover construction cost only. She referred to Judy Barrett’s report and that it uses a 20% profitability margin assumption for developers. She also referred to the Inclusionary Zoning background document that suggests different approaches to the payment calculation, including this one. She compared this to another approach provided, where the sales price of an affordable unit is subtracted from fair market value – and stated this does not actually recuperate the cost of construction which seemed important and fair. Carol Jackson agreed.

Greg Jackson recalled a lot of prior discussion to derive the calculation and two main conclusions. First, it was important to have the money necessary to build the unit. Second, it was preferable for the Town that the developer provide the unit instead of making a payment, and therefore the payment option does not need to be made overly attractive. He recalled a community at 80%.

Victoria Petracca commented she was not opposed to increasing the payment from 75 to 80% and recommended it be a simple, round percentage. She was opposed to less than 75% as she felt Trust would not have the money to construct elsewhere.

Carol Jackson commented that developers frequently cite standard cost scenario’s, and also cite that the developer’s profitability margin is low, and that therefore 75% is “being nice”. Victoria Petracca asked if the working group members preferred to increase the payment to 80%.

Carol Jackson explained using standard costs provides consistency, as well as using DHCD’s policy on rounding. Victoria Petracca suggested the payment increase to 80%. Roy Mirabito observed this fits with the target profitability of 20%, “so that’s reasonable.”

Victoria Petracca continued to the payment for rental units in J-3. She explained the proposed bylaw attempted to calculate a payment in lieu of rental units, but that she since learned the background document advised against offering developers a payment-in-lieu option for rental units. She then explained how the bylaw calculated the payment for rental units, and why this was more complex and harder to pin down than the payment-in-lieu for ownership units.

Roy Mirabito commented there will also be a management company for the rental units and a need for the additional rentals.

Victoria Petracca was unsure why J-4 was included. Greg Jackson explained this calculates an even, scheduled payment for all of the affordable units required to be delivered. Victoria Petracca then recalled this was included to allow for payment over the development timeline, as opposed to at the start of construction.

Greg Jackson cited the last sentence in J-1 “The fees shall be paid in increments prior to the issuance of the building permit for each and every unit, or otherwise at the discretion of SPGA.” Greg Jackson explained this provide a way of calculating a payment a fee per unit.

Victoria Petracca asked if this needed more clarity. Carol Jackson agreed and suggested the increments be paid at the same as the delivery schedule in “D- Provision of Affordable Housing” and D-1 through D-7. Roy Mirabito agreed. Victoria Petracca added this still ensures the developer has the ability to begin generating income from the project through sales before making a payment. She then added, as devil’s advocate, that one of the bylaw’s benefits as it’s currently written, is the Town receives the payment prior to the issuance of a building permit for each and every unit. Carol Jackson agreed.

Victoria Petracca reiterated it was previously decided not to require a payment at the project’s start, and that the working group could either require it be paid at some point in tier one, which may mean the very end of tier one or not at all – or instead, as it is currently written, prior to the issuance of a building permit for each and every unit.

Roy Mirabito commented the money is provided faster that way. Victoria Petracca added the housing trust is receiving the payments all along, incrementally. Carol Jackson commented she likes this approach.

Victoria Petracca recalled this impetus for this section in more detail. The formula uses the fee for a single affordable unit times the total number of affordable units, then divided by the total number of units in the project, and so the installment payment for each unit, prior to receiving a building permit, is the same amount every time.

Roy Mirabito asked if developer push back would come from not having sold the units yet and if this is a cash flow issue, paying before they get the permit.

Greg Jackson did not recall the whole discussion, but that developers are going to be reluctant to pay money up front.

Victoria Petracca commented developers are only paying an incremental amount before getting the building permit, for example, for the very first unit, and that they do have to pay the first

incremental payment, but can then proceed to construction and sale of the unit.

Greg Jackson added there is nothing prohibiting a developer from including multiple unit fees at once. Carol Jackson added this was her next question because the way it's written that, a developer will have to pay for each house as built.

Victoria Petracca referred to J-1 again, "The fees shall be paid in increments prior to the issuance of a building permit for each and every unit."

Roy Mirabito observed that before a developer breaks ground, he/she will pay a fee in lieu of unit, and so that's going to be some kind of a hardship.

Victoria Petracca used a development example of 23 housing units at an average listing price of \$650,000. At 75%, the payment in lieu is going to be \$487,500 times three affordable units – thus \$1,462,500. Divided by 23 units, the incremental fee will be \$63,587. The developer will either pay this amount each time he/she applies for a building permit, or by batch.

Carol Jackson wondered how the process will be managed. She commented the developer could do one at a time, but that if they do a batch in order to get the building permits, they would have to pay first.

Victoria Petracca confirmed, citing "prior to the issuance of a building permit" and that this ensures the Town receives its money. Carol Jackson agreed.

Victoria Petracca mentioned the risk to the Town if this language is not included.

Greg Jackson referred to a lesson learned from Bolton when the group drafted the proposed bylaw. Victoria Petracca described an anecdote from the Bolton town planner wherein a developer had agreed to build an affordable unit off-site, but it was not clear when or if this was still happening. It was further explained from past experience that a payment-in-lieu can be overlooked or forgotten, unless there is a clear mechanism to require it is paid prior to construction.

Greg Jackson reiterated the importance of the goal which is to make sure the affordable units get built – preferably within the development, and if not, by the payment – and in this case, that it should not get lost in the process.

He also mentioned another technique described elsewhere where large houses with two or three floors are converted into apartments.

He then warned against a provision some bylaws have wherein the developer can opt to provide land elsewhere instead. He commented "because [with the payment-in-lieu] the problem for creating the affordable housing to keep pace has now been transferred to the town - and giving

them a piece of land and say go build a house is probably not going to work out real well so that's why I think we pulled that out.”

Victoria Petracca agreed and cautioned against another option sometimes offered where the developer agrees to build the affordable unit(s) elsewhere in the town, and being “at the mercy of the developer to get around to doing it, we're not in the driver's seat.”

Greg Jackson recalled the Bolton lesson again and that a developer offering land he/she owns elsewhere or to build a unit off-site in the future was not desirable.

Victoria Petracca added, however, that offering a payment-in-lieu option is critical as Judy Barrett points out in her report. Using the same development case in Bolton as an example, she referred to the size of the homes and the large associated living costs and therefore impracticality for income-eligible households – and therefore the importance of the payment-in-lieu-of units option.

Carol Jackson added the significant money earned for the developer.

Victoria Petracca added the corresponding payment-in-lieu on such a large house could potentially equate to the construction of more than one affordable unit, i.e. a two-unit condominium. Carol Jackson agreed.

Greg Jackson commented that Section K that follows this part of the bylaw provides for the combination option for developers, i.e. building some of the affordable units and providing a payment-in-lieu-of-units for the others. Victoria Petracca confirmed.

Greg Jackson added that is another reason why the formula for calculating the payment-in-lieu must derive the incremental payment per unit. Victoria Petracca agreed and suggested the word “incremental” be added at the beginning of Section J-4 on calculating the amount for a single ownership unit.

Victoria Petracca recommended removing the payment-in-lieu-of units for rental units in Section J-3 (and references to it)

Greg Jackson asked if there were projects types that would become exempt from affordability requirements by removing the payment-in-lieu for rental units. He did not recall why it was included originally.

Victoria Petracca commented she recalled since it was offered for ownership, the group thought it must therefore be offered for rentals. However, the background documents is advising against it and so she suggests removing it. Greg Jackson agreed.

Victoria Petracca added the difficulty in calculating an accurate payment-in-lieu for rental units

and ensuing negotiation vs. chart used for ownership units under Section D-6.

Victoria Petracca clarified the working group had reviewed J-1 through J-4, and she then discussed J-5. This stipulates the Housing Trust shall receive the payment-in-lieu prior to building permit issuance for each unit. She then explained J-6 requires the payment-in-lieu amount is recalculated and confirmed per current market conditions within 60 days prior to building permit issuance. This ensures any changes in market value are captured if the project has been delayed due to other permitting requirements, such as environmental, for example. This also ensures modifications to the project resulting in altered home values (subsequent to the previously calculating the payment-in-lieu amount) are captured. The project may have changed around and it is important the payment calculation be fresh.

Greg Jackson agreed and commented that the Poras development has been under construction for two or three years or more. He observed prices have likely increased over that time.

Victoria Petracca added this also prevents a scenario wherein a developer presents a project for residential units at a particular sales point that are subsequently upgraded and sold at a higher amount. This builds in a double-check to ensure Lancaster receives the accurate amount. Roy Mirabito agreed this makes sense.

Victoria Petracca then reviewed J-7 which ensures the payments received are used exclusively for the purposes of providing affordable housing to low- and moderate-income households. It details the variety of means, included but not limited to, allowed under MGL for Housing Trusts.

Carol Jackson observed this was another point that probably isn't required to be included, i.e. detailing what can be done.

Victoria Petracca agreed.

Greg Jackson commented that this highlights important intent for the use of the payments and addresses any concerns of how the Trust is required to use the funds, and that it can not go into the Town's general fund or be spent in other ways.

Carol Jackson added that is clarifies that Lancaster has a housing trust now.

Victoria Petracca commented that she liked that it clarifies the purpose of the payment to a developer, but that perhaps it does not have to be included.

Carol Jackson commented she was fine including it, but repeats what it is the trust and we could just refer to that.

Roy Mirabito commented he thought it could be informative for residents to know the money is being used strictly for affordable housing.

Victoria Petracca explained the last point of Section J on Payment-in-lieu-of-units refers to the scenario where the Housing Trust had not yet been created because it was drafted prior to the Trust's creation. It covers how funds received will be held in escrow for affordable housing. She recommended keeping it, but modifying to cover the scenario wherein the Trust is "dissolved or otherwise no longer in existence" and changing "creation" to "re-establishment".

Carol agreed this should be included.

Victoria Petracca confirmed this was important in the unfortunate event the Trust is compromised or dissolved, Inclusionary Zoning will continue and the funds are to be held in escrow for affordable housing purposes while awaiting the Trust's re-establishment or a new Trust's formation.

The Working Group then reviewed "Section K – Combining construction with payment-in-lieu-of-units". This was clear and there were no edits. It was noted that it contains a reference to the SPGA and this topic will be reviewed at the next meeting.

The Working Group then reviewed "Section L – Local preference". This was clear and there no edits.

The Working Group then reviewed "Section M – Marketing plan for affordable units". Victoria Petracca commented that the marketing plan probably does not have to be included in detail since it must follow DHCD's policy, similar to the re-sale of units. She commented that it was, however, probably wise to mention that the marketing plan must follow all applicable rules. Carol Jackson agreed.

Roy Mirabito commented there were two references to the SPGA.

The working group then reviewed the two final parts, "Section N – Related fees" and "Section O – Conflict with other bylaws." Both were clear and there no edits.

Victoria Petracca commented that she had taken notes for the whole review and offered to provide a red-line version of the working group's edits. Carol Jackson agreed.

Greg Jackson commented he recalled the former town planner had begun a draft in summer 2019, and it appeared to be based on Bolton's bylaw. He recalled this was a starting point for the residents who subsequently provided a proposed draft to the Planning Board. He also recalled the draft was reviewed by MHP. Victoria Petracca confirmed Katie Lacy from MHP had reviewed the draft and provided comments that were then reviewed and incorporated with the other two residents working on the draft.

Greg Jackson commented he thought the September 2019 version of the Inclusionary Zoning

bylaw had the benefit of review by several Planning Board Members, and cited a working meeting with Member Tom Christopher. He thought the difference in the black and blue text may have been indicating edits from these meetings, but that it was no longer important to have that color distinction.

Victoria Petracca suggested the group go to next agenda item, the review of Judy Barrett's report, and to be sure allow time to look at the calendar because Carol Jackson had raised a good point about timing for feedback and meeting the town meeting warrant deadline.

4. Review Version 2 of the Inclusionary Zoning Study commissioned by Planning Board and completed by Barrett Planning Group in January 2021

5. Identify similarities and differences

Agenda items 4 and 5 were discussed together.

Victoria Petracca commented that the second sentence on page one of the report should state "Lancaster's 10.1 percent statutory minimum under G.L. c. 40B, i.e. the statutory requirement for all towns to be over 10 percent.

Victoria Petracca commented she was aware Carol Jackson's concern that figures were still "off" in the report's revised version 2. However, members agreed the report's "Table 1 FY 2020 Income Limits for Eastern Worcester County, MA HUD Metro FMR Area" appeared to now be correct upon double-checking.

Victoria Petracca then referred to "Table 2 Market and Affordable Rent Assumptions" on page 7. The source unfortunately contains an unfinished reference "Note that" without further explanation.

Roy Mirabito commented the affordable rent figures in Table 2 "are within \$100 and \$150 for market rents, and that they are very soft numbers based on the numbers in the locations with a radius of 5 to 10 miles from the phantom address I had on Main Street in Lancaster." He commented it was unclear where the numbers exactly came from, and what he was able to determine just from Rentometer is they are really soft numbers and he would not put any credence behind them.

Victoria Petracca continued to "Table 3 Market and Affordable Housing Sale Prices" also on page 7. She asked if this similar table had the same issue of really soft numbers as Table 2.

She also commented the source referenced "Mass Housing Affordable Rent Schedules, FY 2021" but that the table is titled "Housing Sale Prices". Table 3 also references Rentometer, but again, the table is for sales prices. Like Table 2, it is not clear where the numbers exactly came

from. Roy Mirabito commented the sales data source could just be a duplication of the source used for rental figures in Table 2, although that source includes reference to an update on 1/2/2021. He was concerned it did not make sense.

Victoria Petracca would like to know what source was used for sales data because we do not know where the info came from. Roy Mirabito agreed. Carol Jackson commented she was having a hard time with this, as well.

Roy Mirabito commented that the residents group that produced the Housing Production Plan researched rental and sales pricing through the Warren Group, a subscription database. Victoria Petracca agreed this data was available, and readers should not have to guess where the data used in Lancaster's paid Inclusionary Zoning report came from.

Victoria Petracca continued to the next table titled "Component" on page 8. She found this interesting in light of the proposed bylaw's payment-in-lieu-of-unit calculation. The report states the assumption for the table are four-bedroom single-family dwellings, all market-rate. The table then uses an average sales price of \$685,000, which she found to be not far off, for instance using Hawthorne Lane or the 7 ANR houses carved out of Maharishi on Hilltop Road. The average construction cost, including land acquisition cost, works out to be 79% - which is not included in the table, but helps us understand what the developer is paying and earning. Victoria Petracca pointed out the Working Group had changed the percentage of the average sales price from 75% to 80%, and this table backs that up.

Carol Jackson agreed. She also noted a possible calculation error further down in the table under "Net Sales Income." The table states "6,507,500." The total sales are \$6,850,000 and it is not clear how the table's figure was derived. She noted using \$6,850,000 results in a ROC of 26.7% instead of 20.3%. She noted the profit would be \$1,442,500.

Victoria Petracca redid the calculation, as well. Roy Mirabito and Carol Jackson noted this was the second time it was flagged and remains unchanged.

Victoria Petracca commented on the next table on page 9, also titled "Component" at the top of the page. She commented that the report shows that adding just one affordable unit drops the profitability down to 18.5%. She asked if Carol Jackson double-checked the math here, as well. She did, and replied the profitability actually drops to 18.9%. She commented that the correct LIP price is actually \$263,904 (not \$229,671). Victoria Petracca asked if Carol Jackson located this on the MassHousing website or another similar source. Carol Jackson replied that the \$263,904 figure was from "Table 3 Market and Affordable Housing Sales Prices" on page 7 in Barrett's report. Victoria Petracca confirmed she was looking at it on page 7.

They confirmed the amount indicated for an affordable 4-bedroom house in Table 3 on page 7 does not match the amount used for "Maximum LIP sale price" for a four-bedroom dwelling in "Components" at the top of page 9.

Carol Jackson explained she believes this was corrected in version 2 on page 7 after it was pointed out, but that it was not updated in the subsequent tables in the report.

Victoria Petracca understood this to mean it was not carried through the report. Carol Jackson confirmed.

Victoria Petracca commented that she understood the result [using the correct affordable sales price] is 18.9%.

Roy Mirabito commented the errors are in the developer's favor, making it more difficult to obtain the 20%. Carol Jackson agreed and expressed the difficulty of not knowing if these are actual numbers or mistakes.

Victoria Petracca commented she understood the frustration and uncertainty around whether a future version would be forthcoming, and that the working group is under a tight deadline to submit the bylaw by the town meeting warrant deadline. She commented that Judy Barrett reviewing the proposed bylaw would actually be the most helpful at this point.

Carol Jackson agreed and commented that Barrett's analysis refers to an Excel-based financial feasibility model for this study. She is not sure she can rely on a report containing incorrect numbers.

Victoria Petracca commented she read the upcoming Planning Board agenda includes a space near the end reserved for any preliminary feedback. She suggested providing this feedback, and that unless a version 3 is forthcoming almost immediately, it likely will not help in time to submit our proposed bylaw.

Roy Mirabito commented that if the analysis is on an Excel spreadsheet, Barrett should be able to produce it quickly. Roy Mirabito stated the Chair had sent a copy to her today asking for updates.

Carol Jackson commented the end of the report refers to conversations with a few developers, and one mentioned 12 to 12.5%, and this confirms a willingness to participate.

Victoria Petracca suggested that some of the conclusions such as this [not relying on incorrect calculations] could still be useful and cited.

VI. Follow-Up Plan before Next Meeting

- 1. Review of working group's timeline set forth in Planning Board approval**
- 2. Identify areas of further expert input, if necessary, and how to obtain on time**

Agenda items 1 & 2 were discussed together.

Victoria Petracca offered to make the edits from this meeting and forward revised copy. She suggested the group begin to gather feedback as the Planning Board Chair requested this, including from the Town's planning consultant. Roy Mirabito agreed and reminded that town counsel was also mentioned for including in review.

Victoria Petracca reminded that the next meeting is scheduled on Friday, February 12, 2021 at 9:30 am. She offered to ensure the agenda is posted properly in advance.

There was discussion of how to obtain the transcript of the zoom recording and post as minutes. Roy Mirabito offered to obtain from Town Administrator. There was discussion of the transcript as a timesaving tool, and the need to proofread it, as it relies on phonetic spelling which frequently contains incorrect wording.

Victoria Petracca suggested that the working group create some presentation slides of the proposed IZ bylaw for the Planning Board, rather than only talk about the text. She offered to locate the Fall 2019 presentation as a start. Carol Jackson and Roy Mirabito agreed, and that this promotes more interactive discussion. Victoria Petracca suggested circulating the proposed bylaw to the Planning Board in advance.

There was discussion of the March 22, 2021 date proposed by Planning Board Chair to presenting to Planning Board, the deadline the BOS scheduled for warrant articles, April 12, 2021 and warrant closing date of April 15, 2021. The working group felt this was a tight scheduled and agreed to ask the Planning Board if it could present at the prior meeting on March 8, 2021 instead. Carol Jackson suggested submitting to town counsel for review in advance of the Planning Board presentation for preliminary review. The group agreed it was best to begin circulating for feedback from others after next working group meeting on Friday, February 12, 2021. Allowing a week or so for others' feedback, the working group would then meet again to review on Monday, February 22, 2021. The group agreed to meet at 9:30 am both days. The working group then reviewed again the new timeframe of presenting to Planning Board on March 8, allowing March 22 for a second appearance, if needed, and possibly April 5, if needed - gathering feedback, and submitting warrant article by April 12, 2021 BOS deadline.

Greg Jackson asked if the BOS had scheduled the date for annual town meeting. Carol Jackson confirmed May 3, 2021 according to town's website. There was discussion of the need to confirm a location and if this might change the date, possibly deadline.

Victoria Petracca commented there were no outstanding items on the meeting agenda.

Roy Mirabito asked "without a satisfactory response from Judy Barrett, do we just go forward?"

Victoria Petracca expressed concern that a draft Inclusionary Zoning bylaw was submitted and

presented to the Planning Board by residents in September 2019, that the residents were told there was not enough time to fully review with an outside consultant in advance of the Fall 2019 special town meeting, and that additionally, a new bylaw was better suited to the larger, annual town meeting to be held in May 2020. Therefore, the Board would hire a consultant within this timeframe in mind. This seemed like a reasonable approach at the time, but the outside review was not contracted until March 2020. The paid review was to be completed in six months, i.e. for September 2020. However, it ran well past the deadline, and reportedly contained several problematic errors which have held up its reliability – and moreover did not contain a review of the proposed bylaw itself. In the meantime, projects are coming before the Town for permitting without any affordable units, setting the town back. She felt it would be helpful if the revised study was completed promptly, but that the town should not be held up at this point and could always tweak its Inclusionary Zoning bylaw in the future, if needed. Greg Jackson commented he agreed, “you’re right, it’s holding things up and in the meantime, things are being permitted and Lancaster’s falling further behind.” Carol Jackson agreed and reviewed the timing for the contract. Greg Jackson expressed concern that the report went past the agreed deadline, the end result was flawed, and it was expensive.

Victoria Petracca expressed a “practical” concern that the contracted report does not contain a review of what the citizens submitted, although it was understood the hired professional would do this in to vet the proposal, confirming and/or editing by section. Carol Jackson commented the Housing Production Plan was also available to help inform the Inclusionary Zoning bylaw review.

Victoria Petracca suggested that perhaps MRPC could review the proposed bylaw – not as a contracted, in depth study, but to provide summary feedback.

Roy Mirabito commented the town’s planning consultant’s review would be important, and whether it was best to send to him and town counsel simultaneously.

Victoria Petracca agreed and commented on need for Inclusionary Zoning sooner rather than later. Members discussed the presentation of 40R/village district re-zoning that may occur on Main Street, but that re-zoning and its terms are not definite at this point. It was mentioned that AUC ownership is in the process of changing, possibly leading to a large, new housing proposal, and hence the need to be prepared for residential projects on this site, in North Lancaster, and elsewhere in the town.

Roy Mirabito asked if the bylaw passes, and then goes to the AG’s office, is it in effect if a project is submitted before AG approval.

Victoria Petracca commented she believes the bylaw is retroactive to the date when it passed at town meeting, but to double-check to be certain. Carol Jackson confirmed this was her understanding, as well.

Victoria Petracca confirmed the Working Group's next meeting will be held on Friday, February 12, 2021 at 9:30 am. Roy Mirabito is to obtain the transcript of today's meeting. Discussion of the need to confirm town meeting location with BOS, and whether reserving a venue will potentially impact the warrant closing date, if desired site is unavailable on May 10, 2021.

Preliminary conclusions, if applicable at this time

Did not discuss; for next meeting.

3. Begin to draft presentation slide outline for Planning Board and Board of Selectmen

Did not discuss; for next meeting.

VII. New Business

None

VIII. Communications

Next meeting is scheduled for Friday, February 12, 2021 at 9:30 A.M. via Zoom

IX. Adjournment

Roy Mirabito made a motion to adjourn. Victoria Petracca seconded the motion. Unanimously voted 3-0.

Meeting adjourned at 4:47 pm.