

Approved: March 26, 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
Wednesday, February 17, 2021

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

Absent: Roy Mirabito, IZBWG Member & Vice-Chair of Planning Board

List of Documents (Meeting Materials):

- IZ Presentations for Assabet Regional Housing Consortium
 - KL Presentation
 - JB Presentation
- Draft Inclusionary Zoning Bylaw 2.7.2021

I. Call to Order & Administration

Victoria Petracca, Member, was appointed Zoom host by the Town Administrator. Carol Jackson, Member, called the meeting to order at 1:02 pm.

Zoom meeting link: <https://us02web.zoom.us/j/88624398096> Meeting ID: 886 2439 8096

Meeting Materials: <https://www.ci.lancaster.ma.us/planning-board/pages/meeting-materials>

Administrative discussion of the Working Group’s minutes for its first meeting held on February 5, 2021. Member Victoria Petracca gave an update that these minutes were 90% complete and that she would circulate them as soon as possible for the other Members to review in advance of the next meeting. Resident Greg Jackson asked for clarification of the date of the minutes since today’s Agenda referred to meeting minutes of February 4, 2021. It was confirmed the Working Group’s first meeting was held on February 5 (not 4), 2021, and that today’s Agenda should have referenced meeting minutes of that same date. Member Victoria Petracca apologized for this typo on the Agenda.

Member Carol Jackson updated the Working Group that she requested the Board of Selectmen hire assistance with producing meeting minutes for town boards. She explained that now that written transcripts of recorded Zoom meetings are available, it is much easier for an assistant to produce the minutes.

II. Approval of Meeting Minutes

Not applicable

III. Public Comment

Resident Greg Jackson asked if it was best to make comments now or during the review of each portion of the bylaw. It was confirmed it was preferable to discuss his comments as the Working Group discussed the relevant subsection of the bylaw.

IV. Scheduled Appearance(s)

None

V. Discussion of Inclusionary Zoning Goals and Document Review

1. Review edits made to revised Draft Inclusionary Zoning Bylaw

2. Review two IZ presentations from Metro West Collaborative Development

3. Discuss incentive zoning

4. Review additional edits before sending for feedback

All of these four agenda items followed one another in the Working Group's discussion of each consecutive subsection of the bylaw. Portions of the bylaw were revisited as it made sense and was needed in the discussion.

Member Victoria Petracca asked for confirmation that the other Members had received the latest version of the proposed bylaw. This version reflects everything discussed at the Working Group's prior meeting held on February 5, 2021. All edits to this version are shown in red on the document.

It was clarified that the document being reviewed is posted on-line on the Planning Board's webpage under the Working Group's "Meeting Materials" for February 17, 2021, and available to the public.

Member Victoria Petracca brought up a change from the term "fee" to "payment" on page one as she believes this term more accurately represents the option offered to developers. This allows developers to provide funds equivalent to the construction of affordable ownership units. She explained the funding is more substantial than a "fee" which she believes to be more administrative in nature. She also found "payment" used more frequently than "fee" in the Inclusionary Zoning research. For these two reasons, she modified the term from "fee" to "payment" in the names of Subsections J and K on page one. She also explained she added "a" on page two under Subsection A(1). There was then discussion of removing what might be an extra "or" on page two under Subsection A(2), but it was determined by Members this was actually explicit and required for the proper understanding of the Subsection. After some discussion, the second use of "local" in Subsection A(3) was removed.

Member Victoria Petracca suggested adding "in perpetuity" to the first sentence in Subsection A(1).

Member Victoria Petracca discussed using the term “Inclusionary Housing Special Permit (IHSP)” rather than simply “Special Permit.” She found this term to be more precise and accurate and thus better suited. It has appeared in research since the last meeting, and it clarifies to the Special Permit Granting Authority the particular role of this permit versus other special permits that currently exist for flexible development, as well as for the IPOD. It also helps explain why a Special Permit Granting Authority is needed, i.e. that there are specific Inclusionary Zoning requirements under the bylaw to be followed and tracked with a recorded permit. Having a clear name for this permit related specifically to affordable housing requirements also makes it easier to locate the relevant information in the future.

Resident Greg Jackson added support for this modification and that the name really does help explain the need for the Special Permit Granting Authority’s oversight, i.e. from whichever board is responsible for reviewing the project. He discussed that this level of detail is needed to properly implement Inclusionary Zoning requirements versus other special permit requirements.

The use of “Special Permit” in the bylaw was replaced with “Inclusionary Housing Special Permit (IHSP).

Resident Greg Jackson asked to return to Subsection B on Applicability and specifically to add the reference to “Assisted Living Facilities” which are frequently constructed as medium to large size projects in total residential units delivered. There was a group discussion. Resident Dick Trussell asked what types of housing Inclusionary Zoning applies to and it was clarified the bylaw’s Applicability section confirms all residential development of six or more units. Resident Dick Trussell then asked why it would be important to specifically mention Assisted Living. Member Victoria Petracca thought applicability to Assisted Living could be ambiguous. She thought it was better not to leave the reader to guess the bylaw’s intent in the future, and simply state it as clearly as possible now. Member Carol Jackson raised the topic of Continuing Care facilities. There was group discussion of the differences between elderly housing communities, including over 55, Independent, Assisted, and Continuing Care. Over 55 and Independent are clearly already included as ownership and rental units. After discussion, it was agreed to add “Assisted Living” as this might not be as clear to future readers. Continuing Care is a hospital-like “bed setting” similar to Rehabilitation facilities, and is thus not included under the bylaw. The following language was added to Section B on Applicability: “Assisted Living. This bylaw shall apply to any life care facility development that includes six or more assisted living units and accompanying services.”

Member Victoria Petracca thanked Member Carol Jackson for circulating the Natick Inclusionary Zoning bylaw as it is especially clear and well-written. Specially, she noted the Natick bylaw included two additional clauses under its section on “Applicability” that further prevent intended or unintended circumvention of the bylaw’s applicability. She suggested adding both of them to Lancaster’s bylaw. After group discussion of the additional protection Natick’s bylaw had achieved by adding these two clauses, the following language was added to Section B on Applicability: “B(7) To address the possible segmentation of projects over time, any construction that results in additional dwelling units from the date of issuance of the Inclusionary Housing Special Permit (IHSP) or from the issuance of the certificate of occupancy over a 10-year period shall be subject to this bylaw. B(8) If the Special Permit Granting

Authority (SPGA) determines that an applicant has established surrogate or subsidiary entities to avoid the requirements of Subsection B, then an IHSP shall be denied.”

Under the next portion of the bylaw covering the special permit, Member Victoria Petracca re-addressed that the replacement term “Inclusionary Housing Permit (IHSP) discussed earlier on page one should be used here and throughout the document.

Resident Dick Trussell then asked whether the bylaw should define low- and moderate-income housing. Member Carol Jackson expressed concern that the annual amount does change and that it was better to refer to it generically, and then apply the most current calculation from DCHD which is always available to the public on-line. There was further comment from Resident Dick Trussell of adding more explicit references to low- and moderate-income requirements. The Working Group and Resident Greg Jackson then cited references to this requirement specifically at the outset in the “Purpose and Intent” portion of the bylaw and elsewhere. Resident Dick Trussell clarified he was reading the bylaw looking for any areas open to interpretation and wiggle room and to close these gaps. The Working Group appreciated this assistance.

While re-visiting the “Purpose and Intent” portion of the bylaw, Member Carol Jackson remarked that Subsection A(1) stated “At a minimum, affordable housing produced through this regulation should be in compliance...” She suggested changing “should” to “must” in order that Lancaster receive credit for the units produced. Member Victoria Petracca agreed. The edit was made.

Discussion returned to Resident Dick Trussell’s concern that the bylaw be explicit enough in the strict requirement for low- and moderate-income eligibility. There was a reminder the bylaw does contain an entire section on preservation of affordability which refers to these requirements. It was also pointed out that the Subsection A(1) under on Purpose and Intent refers to MGL c. 40B, §§ 20 through 23, and the Working Group then read this together, and it refers explicitly to “low- and moderate-income,” as well. It was also confirmed in a related question that the bylaw requires the affordable units be identified on plans for full transparency in the review process. After much discussion, it was decided to add “eligible” to Subsection A(1) as follows “...is affordable to eligible low- and moderate-income households in perpetuity.”

Member Carol Jackson then suggested the document be consistent with vocabulary and employ the word “shall” throughout the document (and not synonyms). Member Victoria Petracca agreed and replaced this elsewhere in document.

Returning to Subsection B on Applicability, Member Victoria Petracca then asked if the bylaw was clear enough regarding applicability to all zoning districts, including the IPOD and flexible development. It was pointed out that flexible development is not a zoning category. Member Carol Jackson suggested modifying Section B as follows: “Applicability. In all zoning districts, including overlay districts, the Inclusionary Zoning provisions of this section shall apply to the following uses...” and then include flexible development under Subsection B(3). Resident Greg Jackson suggested adding the reference to the flexible development from the zoning code. The Working Group confirmed these edits.

There was also discussion of whether the “affordability” bonus allowed under flexible development would be applicable to both (1) units actually constructed as well as (2) the PILU’s. The Working Group preferred this only be applicable to units actually delivered, and not payments for it elsewhere, as the primary objective of inclusionary zoning is to produce affordable housing. The Working Group adopted the following modification (see second sentence): “B(3) Flexible development. This bylaw shall apply to any Flexible Development (Lancaster Zoning Code Chapter 220, Article IV, Section 15) that includes six (6) or more dwelling units. Subsection B. (2) (b) “Affordability” of Chapter 220-15 shall apply to Affordable Housing Units (AHU’s) created, and not to Payments-in-lieu-of-Units (PILU’s).”

Member Victoria Petracca stated she had replaced the term “home-ownership unit” with simply “ownership unit” throughout the document as it is more streamlined. Member Carol Jackson agreed.

Member Carol Jackson then suggested the Working Group revisit the rounding policy contained in Subsection D on “Provision of Affordable Housing.” Member Victoria Petracca provided an update that she had exchanged emails with Mr. Phil DeMartino at DHCD on this topic since the last meeting, and to ask how DHCD rounds fractions. She stated she had forwarded the email exchange to the Working Group members. Prior to contacting Mr. DeMartino, she thought DHCD used “standard rounding,” meaning the agency rounds up to the next whole number for any amount equal to 0.5 and above, and it rounds down when below 0.5. She was surprised to learn otherwise. The email response from DHCD states they always round up because of a concern of not meeting percentages required by MGL, such as the 25% affordability requirement for 40B projects.

Resident Dick Trussell asked for clarification. In reply, Member Victoria Petracca read aloud her email to DHCD, and then the DHCD response from Mr. DeMartino which is written as follows: “Hello, I checked with legal and since you can’t have a fraction of a unit, DHCD requires any fraction to be treated as a whole unit; otherwise, the required percentage of affordability would not be achieved. For example, take a 41 unit development-- 25% is 10.25. 11 units would be required. If only 10 units were required, then the affordable percentage would be below 25.0% (we also don’t round up to 25%).”

Resident Greg Jackson commented that this seemed specific to 40B requirements, and questioned its applicability to the Inclusionary Zoning bylaw.

Member Carol Jackson raised the issue of an affordable unit calculation that results in 10.1 units, and using DHCD’s approach, the requirement this sets to produce another unit, i.e. 2 total units. Member Victoria Petracca raised the issue of why DHCD approaches it this way, and what happens if instead rounding down results in going below a threshold requirement. Member Carol Jackson pointed out that in Lancaster’s proposed bylaw, this only impacts the developments of 30 to 44 units which require 12.5% affordability and 45 and greater units at 15% affordability, since below 30 units, the number of homes is pre-determined. She thought this wouldn’t drop below 10.1%. Member Victoria Petracca agreed and added that rounding up at 0.5 and above would be easier to explain to a developer because its standard rounding.

Resident Dick Trussell pointed out that under 40B a developer would be required to follow the state's rounding, i.e. any fraction is rounded up. Discussion occurred around the fact that 40B has state-level requirements whereas Inclusionary Zoning is a local bylaw and the Working Group can adopt a different rounding policy. There was concern from Resident Greg Jackson about asking developers to provide an entire additional unit for calculations at 0.4 and below. Member Victoria Petracca expressed concern the Planning Board may have a difficult conversation with a developer that all fractions round up versus only 0.5 and above rounding up. After discussion, the Working Group kept the rounding policy at 0.5 and greater only, and agreed to add an example of rounding both ways, up and down, in the bylaw.

Continuing with Section D on "Provision of Affordable Housing," Member Victoria Petracca then asked a question concerning "mandatory" vs. "voluntary" inclusionary zoning. She referred to two inclusionary zoning presentations provided by Metro West Collaborative Development (MWCD) that she had circulated and posted on-line under the Working Group's "Meeting Materials." She explained Lancaster is now a member of the Assabet Regional Housing Consortium (ARHC) run by MWCD, and that the Affordable Housing Trust is in contact with them, and had asked for any available information on inclusionary zoning. MWCD provided two presentations given to ARHC members. One presentation was given by Katy Lacey from Mass Housing Partnership and the other is believed to be from Judi Barrett of Barrett Consulting, who Lancaster hired for its Lancaster-specific Inclusionary Zoning report. Member Victoria Petracca reports she had learned more about the differences between mandatory and voluntary inclusionary zoning in these presentations, and then also noticed the differences in examples of local bylaws. Some municipalities offer "incentives" to developers in exchange for increasing the number of affordable units, and this is often done through "voluntary" participation. Some municipalities use both mandatory and voluntary provisions, and some municipalities only use voluntary. She asked if the Working Group would like to add "mandatory" to Section D's title on the "provision of affordable housing" to differentiate from bonus incentive options that could be added as a new, additional Subsection E, i.e. "voluntary provision of affordable housing."

There was then discussion of the range of incentive options and how the state's template and local municipal bylaws have included these different options in inclusionary zoning over time. After consideration of the complexity of getting the incentives done well locally, and the rapidly approaching deadline for annual town meeting, the Working Group decided to continue its focus on best practice for the basics of "mandatory" inclusionary zoning for this bylaw. It was agreed "voluntary bonus incentives" could be studied in detail separately and best served as a future bylaw amendment. The Working Group decided to add the word "mandatory" to the title of Subsection D listed on page one and in the subsection itself.

Resident Dick Trussell then asked to review the calculation for Payment-in-Lieu-of-Units. There was a lengthy discussion with Mr. Trussell explaining that the calculation is based on 80% of the sales prices due to the standard 20% profit margin from developers, and working through various development examples given by Mr. Trussell to ensure the outcome is compliant. This was agreeable to Mr. Trussell.

There was some then some discussion of other ways of calculating PILU's that other municipalities use, but that none of these methods are based on the cost of unit construction. The Working Group agrees construction cost is the fairest, most direct approach to calculating a PILU amount because the Town's goal is tangible affordable housing production.

There was also a short discussion of the "off-site" option some municipalities have included. Member Victoria Petracca expressed she understood from her research that this was not always positive in practice and can put the Town at a disadvantage for getting the units built in a timely fashion. Resident Dick Trussell expressed his agreement that this was not likely to benefit Lancaster. He then asked why not just build a less expensive home in the same development. Member Carol Jackson explained this was not allowed under state rules.

Member Victoria Petracca suggested the discussion now continue with Subsection E on "Preservation of Affordability." She suggested adding in the first sentence that the units shall be counted toward Lancaster's subsidized housing inventory, as Natick's bylaw states. Member Carol Jackson agreed.

She added an edit on page five to reflect "Inclusionary Housing Special Permit."

There were no further suggested edits until Subsection M on "Local Preference." Member Victoria Petracca was concerned that the proposed bylaw's language concerning teachers and students could become contentious if not more clearly defined. She cited the passage from Subsection M "...families of students attending Lancaster schools shall be included as part of the lottery and marketing plan for the affordable units." She asked what "Lancaster schools" means specifically, i.e. does Nashoba Regional High School not count since it is physically not in Lancaster. Meeting participants asked about other schools Lancaster students attend such as Minuteman Regional High School and Norfolk County Agricultural School. There was a lengthy discussion on the intent and how to resolve the ambiguity. This also included discussion of the regulated lottery process for affordable housing applicants. The Working Group adopted the following solution: "M. Local preference. To the maximum extent permitted by law, including the regulations of DHCD, any IHSP granted hereunder shall include a condition that a preference for income eligible Lancaster residents, Town of Lancaster employees, employees of schools and businesses located within Lancaster, and families of students attending schools within Lancaster shall be included as part of the lottery and marketing plan for the affordable units."

There were no proposed edits to Subsection N concerning "Related Fees" nor to Subsection O concerning "Conflict with Other Bylaws". Member Victoria Petracca then suggested adding a Subsection P on "Severability" that she had discovered in the Natick bylaw. She explained how this clause upholds the bylaw fully and/or partially in a case of invalidity found in the bylaw or elsewhere in the local zoning code. The Working Group agreed to adopt this.

Member Victoria Petracca suggested the group continue with the next Agenda item if there were no more comments regarding edits. There being none, the Working Group then continued with the remainder of the Agenda.

VI. Follow-Up Plan before Next Meeting

1. Confirm plan for submitting for feedback

2. Review presentation slide outline for Planning Board and Board of Selectmen

3. Review schedule

The Working Group discussed its plan for submitting the proposed bylaw to town counsel and the town planning consultant for their feedback. The Working Group Members agreed they would submit the revised bylaw proposal (containing this meeting's agreed upon edits) to the Chairman of the Planning Board as the lead contact for the Working Group, with the Town Administrator in copy, and request that it be sent to town counsel and the town planning consultant for review and feedback.

Resident Dick Trussell then asked what the penalties are for not following the affordable housing requirements set forth in the bylaw. There was some discussion about how the bylaw would be enforced in practical terms, and the Working Group agreed this question warranted to be submitted to town counsel at the same time as the request for feedback on the bylaw.

The group then had a lengthy, related discussion about Subsection F's timing requirements for building the affordable units. There was also discussion of Subsection F's requirements for issuing building permit(s) for affordable unit(s). No edits were found necessary upon discussion.

Member Victoria Petracca agreed to submit the revised bylaw as discussed. She then suggested the most recent version also be given to the Affordable Housing Trust since the Trust had begun to discuss this at its last meeting and was scheduled to meet again soon. The Trust is mentioned several times in the bylaw. Member Carol Jackson agreed.

Member Victoria Petracca then confirmed she would ask that feedback from town counsel and the town planning consultant be submitted on or before Friday, February 26, 2021 to ensure the Working Group could review it at its meeting together in advance of presenting a preliminary update to the Planning Board on Monday, March 8, 2021.

The Working Group then reviewed its overall timing leading up to Annual Town Meeting scheduled on Monday, May 3, 2021. Members scheduled the next Workng Group meeting for Tuesday, March 2, 2021 at 9:30 am.

Resident Greg Jackson then asked permission to review a few details. He reminded the Working Group Members that they had added a new Subsection on Severability at the end of the bylaw and this should be referenced on page one under with the other contents. He also had suggestions about the document's footer, and particularly the importance of recording version numbers, and eventually an approval date, in order to provide optimal clarity. These suggestions were accepted and appreciated by the Members.

Resident Dick Trussell then asked permission to ask a question related to the portion of the proposed bylaw on rounding fractions. He wanted clarification on whether the bylaw needed to indicate whether two decimal points were used. He gave the example of "4.49" and asked how

this would be rounded. The Working Group stated this would be rounded down and did not think it was necessary to state “one decimal point” vs. “two decimal point” rounding in the bylaw since it states “0.5.”

VII. New Business

None

VIII. Communications

Next meeting is scheduled for Tuesday, March 2, 2021 at 9:30 A.M. via Zoom.

IX. Adjournment

The meeting was adjourned at 4:30 pm.