

Approved: April 23, 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
Tuesday, March 2, 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 (Meeting Materials):

- Proposed Inclusionary Zoning Bylaw – Version 3 2.18.2021

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 9:34 am.

Zoom meeting link: <https://us02web.zoom.us/j/84825199182> Meeting ID: 848 2519 9182

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

II. Approval of Meeting Minutes

February 5, 2021 minutes have been distributed to Members. It was decided to review and approve them at the next meeting instead to allow Members more time.

III. Public Comment

Resident Greg Jackson reminded the Working Group he had submitted comments, and asked if he should review them now, or as the Working Group reaches each relevant section. The Working Group replied it would review his comments as the Group arrived at each relevant section.

IV. Scheduled Appearance(s)

None

V. Discussion of Feedback to Proposed Inclusionary Zoning Bylaw

Member Victoria Petracca summarized she was aware of feedback to review from four sources: Town Counsel (KP Law), the Town's Planning Consultant (Michael Antonellis), the Affordable Housing Trust (Frank Streeter, Member), and Greg Jackson (Resident). The other Members confirmed this was correct. She then suggested reviewing the feedback in that order.

1. Town Counsel

The feedback from Town Counsel was forwarded to the Inclusionary Zoning Bylaw Working Group on Thursday, February 25, 2021 by the Town Administrator. Two attorneys from KP Law provided comments, Jonathan Eichman and Jonathan Murray. The Town Administrator forwarded an email containing Attorney Eichman's comments. Attorney Murray's comments are contained in the same Town Administrator's email as an attachment. They are shown in a red-line copy of the latest version of the bylaw.

The Group Members reviewed Attorney Murray's feedback first. His red-line copy of the bylaw was shared on the screen. His first comment appears on page 2 and concerns Subsection B4 regarding Assisted Living facilities. Member Victoria Petracca read the comment aloud. It concerns the lack of definition for such facilities (and related facilities) in the zoning code. She raised a suggestion submitted by Housing Trust Member Frank Streeter wherein he recommended adding a "Definitions" section to the bylaw. Member Victoria Petracca agreed this would address this issue. Member Carol Jackson supported this.

The Working Group discussed the differences between assisted living units and other categories of senior living in detail. There was discussion of Chapter 220-9 of the zoning code, and how it only references senior living categories in general terms. The Working Group reconfirmed a detailed "Definitions" section in the bylaw is important, and to refer to the Commonwealth's definitions when drafting. The Working Group also discussed at length the physical building attributes for each category, and how they function under these categories. It was decided that long-term health care and rehabilitation units are not eligible as this is akin to a "step-down unit" from a hospital setting – and not leased or owned units. It was decided that the most pertinent senior living facilities would be defined.

Member Victoria Petracca then referred to a feedback comment from Frank Streeter since it relates to this part of the bylaw. There was a lingering reference to Assisted Living units under the Subsection on Flexible Development. The Working Group clarified this language was only referring to Flexible Development units, and modified the text accordingly.

While reviewing the Subsection on Flexible Development, Resident Greg Jackson suggested cross-referencing 220-15 of the zoning code in the bylaw, as this covers Flexible Development. The Working Group adopted this suggestion.

The Working Group then moved on to Attorney Murray's next point which relates to Subsection B7's prevention of segmentation. Attorney Murray flagged the 10-year time length and how this is measured. After lengthy discussion, the Working Group agreed to a 10-year horizon from the

issuance of the special permit, and then a separate 10-year period from the certificate of occupancy.

The Working Group then read Attorney Murray's third feedback which relates to Subsection C, and where he suggests a Special Permit Granting Authority (SPGA) where the zoning code is silent. This led to a discussion of the SPGA's role and ultimately adopting Attorney Murray's revisions. He also suggested removing the reference to MGL with special permit granting authorities, and after a long debate, the Members concurred with Attorney Murray and this was removed.

The Working Group discussed the new "Definitions" section at this point, and what is important to include, as well as bylaws reviewed by Group Members that contain a "Definitions" Subsection.

The Working Group then discussed Attorney Murray's feedback on Subsection E on the preservation of affordability. He explains that the DHCD deed rider grants the Town's right of first refusal, and it is not necessary to include this. The Working Group members removed this language as a separate subsection, and instead included a more simple reference to it in E1 and E2. Attorney Murray also proposed a re-write of E1 and E2 covering the regulatory agreement for ownership and rental units respectively. The Group adopted this with a few minor modifications, such as the reference to the right of first refusal.

The Group then continued to the next feedback from Attorney Murray which covers G4 and the requirement of identifying affordable units on a site plan. He asked about the intent of this Subsection, and stated that if intended as he understood it, it suggested a site plan review needs to be included. This led to discussion of how best to incorporate this, and Subsection C related to the Inclusionary Housing Special Permit was modified, as well as Subsection G related to identifying the affordable units.

The Working Group then reviewed Attorney Murray's next feedback which relates to J2. He suggested rewriting in a manner that the SPGA makes the final determination of the payment-in-lieu-of units (PILU). As presented, it inadvertently appeared the SPGA was setting the price of the affordable units. The Working Group adopted this change.

The Working Group then discussed Attorney Murray's final comment which covers Subsection N on related fees. He commented the Planning Board and ZBA should adopt regulations for the use of applicant funds for outside consultants. The Group Members discussed the peer review process that is the financial responsibility of the applicant, and felt comfortable this was already covered.

Having completed the review of Attorney Murray's feedback, the Members then reviewed the email from Attorney Eichman. He flagged Subsection C on Inclusionary Housing Special Permit (IHSP) for its reference to an IHSP from the Planning Board or Zoning Board of Appeals "as applicable." The Group reviewed the concerns with using this phrase, and then the new language adopted under the review of Attorney Murray's feedback for this same Subsection.

The problem presented by Attorney Eichman was resolved with Attorney Murray's rewriting this Subsection.

The Working Group had submitted a question regarding penalties for not following the Inclusionary Zoning bylaw, once adopted, in the future. Attorney Eichman answered that this would follow the same process as other zoning code violations and provided specific measures already in place. No changes are required to the bylaw to allow for enforcement as above.

2. Town Planning Consultant, Michael Antonellis

The Group then reviewed the Memorandum received from Michael Antonellis, the Town's Planning Consultant. The Memorandum begins with two differences between (a) the report contracted by the Town with Judi Barrett and (b) the proposed bylaw.

First, the Town Planning Consultant refers to a suggestion that Inclusionary Zoning be implemented in the IPOD or a small district therein vs. town-wide. Members discussed that this approach typically uses a much higher percentage in a designated area as seen in research materials, and that this leads to concentrating affordable housing in one area rather than woven into the community at large. The Working Group prefers to distribute affordable housing within Lancaster wherever new housing development occurs by market forces.

Second, the Memorandum indicates that the ratio of affordable to market rate units is different, and specifically that the Barrett reports suggests single family homes do not meet the necessary threshold for Inclusionary Zoning. The Group discussed this in detail, and whether this is critical to the intent of the bylaw. The Lancaster approach is two-pronged: one, to keep pace with development, including single family homes, using percentages above 10% to "tread water" with small projects – and two, to include larger percentages for medium to large projects, typically denser multi-family projects, and in this case, to not simply "tread water" but to raise the percentage (feasible with economies of scale in larger projects), and to help close the gap on the Town's Subsidized Housing Inventory (SHI) shortage.

Related to this, the Working Group also discussed the net negative financial impact of housing in general on the Town. Member Victoria Petracca raised the issue of a developer who may not pursue a residential project if he/she concluded the cost of Inclusionary Zoning was not worth it. It was noted that a slowing in residential development overall would not be financially detrimental given housing is a net loss to municipalities. Resident Greg Jackson then raised Judi Barrett's remarks on high land costs making it difficult to apply Inclusionary Zoning to single family homes, and another study which discusses how land costs actually adjust to the market, refuting this.

This flowed into the Planning Consultant's next observation related to the two differences he raised (listed above) between the Barrett report and the proposed bylaw. Member Victoria Petracca shared that the Town's Planning Consultant remarks in the Memorandum that if the main intent of the proposed ratio is to keep pace with residential development and not lose ground (vs structuring the bylaw based upon the Barrett report), that this is certainly "an understandable and worthy goal."

The Working Group then continued to the second part of the Town's Planning Consultant's Memorandum which is a "Review of the Flexible Development Bylaw" and whether there are any contradictions between the proposed bylaw and Section 220-15 of the local zoning code. The Working Group discussed the Memorandum's 3-part findings in detail and the Town's Planning Consultant's conclusion that the proposed bylaw is not contradictory.

The Working Group then reviewed the last part of the Town's Planning Consultant's Memorandum as relates to "the proposed bylaw language" and the three specific comments provided. A few possible changes were considered for two points, but other existing language covering the same topics led the Working Group to ultimately not make the edits. The third point concerning ANR lots was noted as a question to submit to town counsel. Finally, the last comment (that appears alone) suggests that any reference to MGL be part of town counsel's review. The Working Group agreed.

3. Other

Next the Working Group covered the other feedback it had received, namely from Frank Streeter of the Affordable Housing Trust and from Resident Greg Jackson. The Group reviewed Frank Streeter's feedback first. His comments were displayed via screen share.

First, Frank Streeter recommended the addition of a "Definitions" section to the bylaw and explained why. He then suggested several terms that needed clarification. Member Victoria Petracca offered to draft a first "Definitions" Subsection for review.

He next suggested removing A4 that references how the Inclusionary Zoning exists in the broader context of town goals, citing open space, town character, etc. This led to much discussion of pro's and con's and ultimately removing A4 in favor of clear focus on the bylaw's main purpose and intent, i.e. the inclusion of affordable housing in new residential development.

He next raised comments pertaining to the Assisted Living and senior housing which were previously addressed under the town counsel review and modifications.

Next, the Working Group noted he flagged the 10-year time horizon under parcel segmentation. Member Victoria Petracca had reviewed Frank Streeter's comments with him, and that he had made it clear this was something he flagged for the Working Group to discuss, but that he was not necessarily opposed to the 10-year timeframe, simply flagging it for discussion to confirm. She added that he stated his main priority was to include a "Definitions" section to the bylaw. Member Carol Jackson had referred to the discussion of this section earlier in the meeting, and edits made. Member Victoria Petracca agreed this section was fine now.

The next comment from Frank Streeter suggested including in Subsection C that the bylaw applies to projects of six or more units. The Working Group agreed it was helpful to re-state this more than once as relates to other portions of the document in order to make the threshold even more explicit. The Working Group adopted this suggestion.

The next comment relates to the table indicating the provision of affordable housing. Frank Streeter suggested replacing the percentage with a number of units, as is done for the first three tiers of small projects. The Working Group debated this, and found that percentages are best given the wider range in project size, i.e. the actual number varies considerably within each tier.

Frank Streeter then suggested to replace certificate of occupancy with building permit for increased protection of receiving payments in lieu of units. Member Carol Jackson explained this change had already been made. There was further discussion and this replacement was made in the document where it had not yet been made.

The Working Group then reviewed Frank Streeter's suggestion that wherever "Lancaster Affordable Housing Trust" appears, to add "it's agent or its successor organization." The Working Group agreed and made the change throughout the document.

The Working Group then reviewed a suggestion to offer the developer the option of meeting a requirement at either the building permit or occupancy permit at one point, but the Working Group preferred to keep the existing language in place for stronger protection.

The Working Group then approved a small correction in wording to the payment-in-lieu-of-units.

The Working Group then approved Frank Streeter's suggestion to replace any symbols with words, i.e. a percentage sign (%) becomes "percentage."

Members then discussed his suggestion that payments be placed in escrow. This was debated and not adopted as funds are held in a sperate interest-bearing account by the Town.

Members then discussed his next suggestion that the final calculations may be adjusted based on market factors. The Working Group agreed and discussed that this was already included with the "sixty days" clause.

The Working Group then reviewed Frank Streeter's suggestion to provide an example of "local preference" in that section of the bylaw. The group read this section in the screen share, and referenced the examples cited. It was discussed if an even more specific example of local reference should be included, but the Working Group decided against doing this in a bylaw.

The Working Group then reviewed Frank Streeters comment that the marketing plan language contradicted an earlier portion of the bylaw under Subsection E, and this was corrected. There was discussion of the lottery process and how this is regulated.

Members discussed the next comment which suggested the developer's funds for the affirmative fair housing marketing plan be placed in escrow to ensure availability. Members felt this was an overreach and that DHCD has specific language about the marketing plan in any event. Members did not adopt this suggestion.

Related to this, Frank Streeter provided a suggestion to provide applicants an estimate of the marketing costs. The Members did not feel this was necessary, was unknown at this point, and opted not to adopt.

Members then reviewed proposed expanded language in the Severability clause under Subsection P. This was discussed and adopted.

The Working Group next reviewed Frank Streeter's last comment that there was no mention of application fees. Member Carol Jackson reminded the Working Group that the bylaw includes a site review, and this has associated applicant fees. She provided the fee amount and details. Members discussed and felt this was sufficient.

The Working Group publicly expressed appreciation for Housing Trust Member Frank Streeter's comprehensive input.

Next the Members reviewed comments submitted via email by Resident Greg Jackson on February 26, 2021. These were displayed via screen share.

The first comment covers whether the bylaw is proposed to be inserted at the appropriate location within the local zoning code, i.e. as 220-8.8. Greg Jackson believes this is accurate, but suggested verifying. Member Victoria Petracca agreed, but offered another alternative under residential zoning. Member Roy Mirabito suggested this be added to follow-up questions for town counsel.

Resident Greg Jackson then presented his second comment which was whether the bylaw should reference the subdivision rules or whether this was understood and therefore not necessary. The Working Group felt this was understood.

He then presented his third comment and suggested change regarding the wording of Sections vs. Subsections. This was accepted.

Next Greg Jackson raised the issue of incentives and the Working Group discussed this. Member Victoria Petracca reminded the Working Group this was discussed the prior meeting and it was agreed the bylaw would focus on "basics" and getting these right, and that a future amendment could introduce incentive bonuses. This led to a discussion and decision to add the word "mandatory" to the provision of affordable housing units to differentiate from future incentive-based bonuses. This was changed in the cover sheet of components, and in the body of the document itself.

Greg Jackson then presented a formatting correction so the document would be consistent. This was adopted.

The Working Group then reviewed a comment from Greg Jackson suggesting the bylaw strive for a balance of referencing enough of other relevant statutes and bylaws without providing too much unnecessary detail.

This concluded the Working Group's review of feedback received to date.

VI. Review of Draft Presentation for March 8, 2021 Planning Board Meeting

1. Review of slides
2. Summary of edits, additions
3. Timeframe for completion

Items VI-1 and 2 were tabled by Members due to the time already spent in the meeting reviewing feedback. The Agenda items VI-1 and VI-2 will be discussed at the Working Group's next scheduled meeting instead.

The Working Group discussed VI-3 and the timeframe for completion. It was confirmed by Members that presenting to the Planning Board on March 8, 2021 made sense and to then return to the following Planning Board meeting on March 22, 2021 for follow-up discussion after everyone has read the article. This also allows the Group time to research any questions raised at the March 8, 2021 meeting.

The Working Group also discussed the importance of appearing before the Select Board for a brief overview presentation. It was agreed the Group would ask the Select Board if this would be appreciated, and suggested the first meeting in April as the two Planning Board meetings will have taken place by then.

VII. New Business

None.

VIII. Communications

The next meeting initially proposed for Thursday, March 4 at 9:30 A.M. on the Agenda was moved to Saturday, March 6, 2021 at 9:00 A.M. via Zoom due to Member availability (scheduling change made via email).

IX. Adjournment

The meeting was adjourned at approximately 12:45 pm.