

Approved: May 3, 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, March 26, 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):
Draft Inclusionary Zoning Bylaw - Version 6 March 20, 2021

I. Call to Order & Administration

Carol Jackson, Member, was appointed Zoom host by the Town Administrator. She called the meeting to order at 9:32 A.M.

Zoom meeting link: <https://us02web.zoom.us/j/84066179759> Meeting ID: 840 6617 9759

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

II. Approval of Meeting Minutes

Member Carol Jackson made a motion to approve the meeting minutes of February 17, 2021 as amended by Roy Mirabito via email. Member Victoria Petracca seconded the motion. Both Members voted to approve the meeting minutes as amended.

Member Victoria Petracca stated she was still working on the meeting minutes of March 2, 2021 and intending to submit for approval in order that the Working Group’s minutes are posted for anyone interested.

III. Public Comment

Resident Greg Jackson stated he thought the Working Group’s presentation to the Planning Board at its March 22, 2021 meeting had gone well.

IV. Scheduled Appearance(s)

None

V. Review Feedback

1. Monday, March 22, 2021 Planning Board meeting

a. Discuss any edits to proposed bylaw

The two Members present discussed the presentation and agreed it appeared clear and well received by the Planning Board Members. They discussed the main feedback which came from Planning Board Member Tom Christopher. He shared his opinion that the Inclusionary Zoning bylaw needed to move forward, and he wanted to be sure the Board was facilitating the next step, and for example, whether a public hearing needed to be scheduled, and if materials needed to be submitted to the Select Board.

The two Members present then reviewed the portion of the Planning Board meeting where they reviewed town counsel feedback to three follow-up questions submitted by the Working Group. They reviewed that the Working Group had made the Planning Board aware of the three questions at the prior meeting held on March 8, 2021, and only finally received town counsel feedback at approximately 4:00 pm on March 22, 2012, a few hours before the Planning Board meeting. They reviewed with the Planning Board that town counsel confirmed their course of action for questions one and two. Question one was whether the Working Group had the new bylaw correctly situated in the town's bylaws, i.e. as Section 220-8.8. This is stated on the cover sheet of the proposed bylaw. Town counsel agreed with this placement. Question 2 was whether the Working Group was correct that the Inclusionary Zoning bylaw was applicable when creating six or more ANR lots. This is in Section B – Applicability. Town counsel agreed the bylaw would apply to the division of land via ANR plan.

The Members then discussed the third question posed by the Working Group which relates to Section F – Preservation of Affordability. Member Victoria Petracca recalled this concerns the excess funds received if an income eligible buyer is not identified within the statutory timeframe, and an affordable unit is unfortunately sold at market rate instead to a non-income eligible buyer. She reiterated the Working Group's recommendation to allocate the excess funds for the Affordable Housing Trust, since the Town is losing an affordable unit, and to use the money towards producing another affordable unit elsewhere.

She then screen-shared the Working Group's question and the email reply from town counsel for accuracy and for the benefit of anyone watching the meeting. The email reply from Jonathan Eichman of town counsel is included in blue.

Section F - Preservation of affordability (pages 4-5)

A resident at this week's Housing Trust meeting raised the question of a unit that is up for re-sale. Our goal is to keep the unit affordable, and on the SHI. But in the event we can not for some reason, and it is sold at market rate, there is a price difference between the affordable rate the seller paid initially and the amount they are now receiving. We understand that the seller pays this difference to the Town's general fund. The question is whether the difference could instead go to the Housing Trust to be used for affordable housing – since the Town just "lost" an affordable unit. Does this violate MGL or DHCD terms?

What the Town is paid in that instance will depend on the terms of the required deed rider reviewed and approved by DHCD. DHCD revises these regularly. At present, the model deed rider says that such

funds shall be paid to the municipality for deposit to its affordable housing trust fund. However, I'm not aware that the Legislature has authorized such a direct transfer, or designated such funds as "receipts reserved for appropriation." The general rule, as you have it above, is that all receipts are deposited in the General Fund for appropriation. The Town could take the policy position that such funds are "earmarked" for affordable housing purposes, but in my opinion deposit in the General Fund is required subject to appropriation.

The members reviewed this in detail. Member Victoria Petracca stated she understood town counsel to be saying the funds need to first arrive in the General Fund and could be appropriated from there for affordable housing.

Resident Dick Trussell shared that proceeds from land sold by the Town went to the General Fund, as well, and were then used for other purposes, such as a vehicle purchase.

Member Carol Jackson pointed out that funds received from Payment-In-Lieu-of-Units are payable to the local Affordable Housing Trust, not the General Fund first. She also felt that in the case of net proceeds from the sale of an affordable unit, the Town should be able to indicate where those funds go. She observed that Inclusionary Zoning bylaws "piggy back" on procedures from the MA Department of Housing and Community Development, and the point of the Inclusionary Zoning bylaw is affordable housing production.

Resident Dick Trussell suggested that perhaps the difference between the Payment-In-Lieu-of-Units ("PILU") and the net proceeds from the sale of an affordable unit at market rate is that the PILU is not physical property, and the affordable is akin to a land sale, i.e. a physical asset.

Member Victoria Petracca then referred to Section K of the proposed bylaw that covers PILU contributions and how they are made payable. She screen-shared Section K of the bylaw and read "An applicant may provide a payment to the Lancaster Affordable Housing Trust to be used for the production of affordable housing." She observed the bylaw does stipulate a payment to the Housing Trust. Resident Dick Trussell asked if that had been approved. Member Victoria Petracca confirmed this, too, was reviewed by Attorney Jonathan Eichman and he did not present any issues.

Member Carol Jackson then brought to the Working Group's attention language she had located from the MA Department of Housing and Community ("DHCD") concerning the sale of affordable units. The document is entitled "Selling Your Local Initiative Program Home." She read from the bottom of page 2: "If an eligible buyer is not located during the right of first refusal period, you may sell your home without regard to the income level of the buyer. If the home is sold to an ineligible buyer it must be sold at market value as determined by your appraisal. Any proceeds over the Maximum Resale Price will be recaptured by the local community and earmarked for homeownership programs or assisting other eligible buyers. DHCD will release the deed restriction when a LIP home is sold off the program, after approving the terms of the sale."

Resident Dick Trussell commented that this seemed to confirm the funds given to the Town should be directed to the Housing Trust with some type of approval process. Member

Carol Jackson described the funds going to the General Fund, and then being transferred to the Housing Trust.

There was further discussion of the document from DHCD and the Local Initiative Program. Member Victoria Petracca said she would forward this to DHCD for input, as well. It was decided to wait for DHCD's reply before replying to town counsel on this topic.

She then confirmed she had asked the Town Administrator to have town counsel review the entire document one last time. She had received a reply that the Working Group should submit the version with any edits from today's meeting. It was re-confirmed the Working Group would wait for DHCD's reply and then re-submit to town counsel for a final reading of the entire document.

Discussion followed explaining to resident Stephanie Stanton this detail that the Working Group was exploring. Member Victoria Petracca confirmed she would forward the bylaw to DHCD and inquire about the language contained in the Local Initiative Program guidelines concerning net excess proceeds.

Member Carol Jackson then asked if the Working Group should submit its request to post the next meeting right away (same day) since it was the Town Clerk's last day. Member Victoria Petracca agreed.

b. Discuss Public Hearing proposed for Monday, April 12, 2021

The Members did not discuss the Public Hearing at this time.

2. Discuss any correspondence received

The Members discussed the only correspondence received (town counsel feedback) as part of Item 1 above.

VI. Prepare for April 5, 2021 Select Board Meeting

1. Review reply to Friday, March 20, 2021 email from Working Group requesting:

a. Monday April 5, 2021 presentation

b. "Place Holder" on May 3, 2021 Town Meeting Warrant

Member Victoria Petracca informed that she had not received a reply to the Working Group's email request to appear at the upcoming Select Board regarding the proposed bylaw. She stated that Planning Board Chair had also submitted a request. She confirmed she would check with the Planning Board for a status update before reaching out again to Select Board.

2. Review slides to present

Member Victoria Petracca confirmed she would update the slides presented to the Planning Board on March 8, 2021 with the most current bylaw information and forward to the Working Group Members for review. She added that the Select Board presentation should probably be more of an overview than it was to the Planning Board.

The Members then reiterated the importance of confirming a public appearance on April 5, 2021 and, in particular, confirmation of a placeholder on the town meeting warrant since the deadline is the same day as the scheduled public hearing, i.e. April 12, 2021.

Resident Greg Jackson asked a question regarding the Planning Board meeting on March 22, 2021. He sought clarification of whether the Board voted to endorse the proposed bylaw. Member Carol Jackson confirmed affirmatively. Member Victoria Petracca then explained that the Planning Board Chair did not officially submit the proposed bylaw to the Select Board and instead would wait until the after the public hearing. Members felt this was wise given that the outstanding last point to be settled (F-4) regarding the next exceed proceeds in the case of an affordable unit sold at market rate.

VII. New Business

None

VIII. Communications

1. Schedule and announce next Inclusionary Zoning meeting via Zoom

Discussion to determine best date and time.

Next meeting is Thursday, April 1, 2021 at 9:30 A.M. via Zoom.

Resident Stephanie Stanton asked when annual town meeting would be held. Member Victoria Petracca replied with May 3, 2021 event details.

Resident Greg Jackson asked how the warrant article would be presented, and whether the Planning Board was working together with the Town's Planning Consultant, for example. A lengthy discussion followed, including whether a written summary was needed given the bylaw is seven pages. Member Carol Jackson agreed to submit a draft summary for review by the Working Group. There was also discussion of how best to publicize the warrant article.

IX. Adjournment

The meeting was adjourned at 10:33 A.M.