

Town of Cohasset  
Zoning Bylaw Working Group - Master Plan Implementation Committee  
September 16, 2021 – Virtual Meeting via Zoom

A meeting of the Zoning Bylaw Working Group was held at 9:30 am on September 16, 2021 virtually on Zoom.

In attendance were:

Katie Dugan, MPIC representative  
Tom Callahan, Planning Board representative  
Paul Colleary, Planning Board representative  
Woody Chittick, Zoning Board of Appeals representative  
Peter Pescatore, Open Space & Recreation representative  
Jack Creighton, Cohasset Select Board representative  
John Hallin, Building Commissioner & Zoning Officer  
Jen Oram, Assistant Director of Permits & Inspections  
Carolyn Murray, Land Counsel, KP Law

Absent:

Cassie Malatesta, MPIC representative

The meeting was called to order at 9:30 am.

### **Minutes**

The working group approved the Zoning Bylaw Working Group minutes from September 2, 2021. Katie Dugan will send copies of approved minutes to Town Clerk for posting to the Town website.

### **Informational Discussion with KP Law**

Carolyn Murray from KP Law introduced herself to the working group as new Town Counsel and primary Land Counsel for the land use permitting boards. The ZBWG had asked Carolyn Murray to come present on two topics: comprehensive zoning bylaw redraft & reorganization and building moratoriums.

#### *Comprehensive Zoning Bylaw Redraft & Reorganization*

Carolyn Murray shared her experience regarding communities who have undertaken projects such as the proposed comprehensive zoning bylaw redraft & reorganization. The following are some of her observations around what makes a town successful or less successful in completing such an intensive undertaking:

- First task is to define the scope of the project as a comprehensive zoning reorganization & redraft can be a daunting task. Some towns only tackle “house-keeping” and reorganization or tackle this as phase one. Other municipalities combine into single project reorganization with more substantive changes to the zoning bylaws. It is possible to have a hybrid approach and tackle only a few substantive changes and phase in additional changes up front, but being clear upfront on the overall scope and objective is important.
- Second task is to define the role, if any for consultants in the process. Consultants can be very helpful in the zoning overhaul process as it is an intensive. Roles for consultants can range from drafting bylaw language, to reviewing draft language, to assisting with public forums to build community buy-in. Sometimes communities decide to do the work “in-house” but this requires high level of commitment from all the members of the working group. Regardless of what role a consultant plays, the committee in-charge of the zoning overhaul has to commit to reading the multiple drafts of proposed changes. The worst case is when language is discovered after-the-fact that the working group or Planning Board feels does not reflect intended policies of the town. Finally, Carolyn Murray noted that getting agreement between the Select Board, Planning Board and the Zoning Bylaw Working Group on the process/approval procedure upfront is key. Since the changes will be wide-ranging, there will be situations when multiple

boards may need to “agree to disagree and move on with majority approved language” as no work product will be perfect but it must be viewed as significant improvement from old draft of zoning bylaws.

- Finally, building public consensus and understanding regarding the zoning bylaw overhaul is extremely important. A few towns have passed zoning bylaws amended as part of consent calendar (Eastham in 2020) but more likely a detailed executive summary of the zoning bylaws will be discussed and voted on at Town Meeting which requires significant amount of community buy-in. Multiple public forums by zoning topic are critical to get key stakeholders and those community members who are interested in a particular zoning topic to buy-in to the process and have their concerns and input heard.
- Carolyn Murray also addressed how Town Counsel can be involved in this process. The level of involvement depends on working group preference and the role of the consultant in detailed reviews of work product. Generally, she believes it is more effective to have Town Counsel updated periodically on committee work product and substantive changes so that when reviewing final draft bylaw language Town Counsel has the perspective on the intended policy changes. She will be willing to work with the ZBWG and Planning Board as intensively as needed during this process.
- In terms of interim and final work product the following are best practices and will be required for Attorney General review of the zoning bylaw overhaul:
  - *Master Redline* – Will be required for AG approval after Town Meeting and will be needed for public forums and discussions with legal counsel.
  - *Detailed Executive Summary* of Proposed Changes – AG would prefer that full redline be submitted for Town Meeting review in the warrant but will except a detailed executive summary as long as community can understand by topic/article what has changed. Often a flow chart is helpful in explaining where content has been moved or deleted from comprehensive zoning bylaw redraft & reorganization.
  - *Summary of Timeline & Public Forums* – Detail like this will support working group and elected board’s attempts to engage and solicit community input in the process.
  - *Clean Copy* – Will be important for Town Clerk and others to have in case questions regarding the final language. In addition, Carolyn Murray suggested that a single individual be tasked with keeping the “master copy” for the working group as having chapters written by multiple individuals is problematic in assembling final clean copy.

The working group asked Carolyn Murray some follow-up questions her comments. Tom Callahan informed the group that he has continued to update the draft comprehensive zoning bylaw that he had prepared and was circulated to the group in April 2021. Paul Colleary asked that an updated version of Tom’s work be circulated and Katie Dugan agreed to send the latest draft of the zoning bylaw redraft done by Tom Callahan to the full working group.

### *Building Moratorium*

There are four critical elements of any building moratorium:

- A building moratorium should be adopted as an amendment to a local zoning bylaw or ordinance in accordance with the provisions of Chapter 40A, The Zoning Act.
- A building moratorium should be directed at the type of development needing control and should not prohibit all uses within a zoning district.
- The enactment of a building moratorium should be for the purpose of allowing a municipality an opportunity to study the effects of probable future development.
- The length of a building moratorium must be reasonably related to the amount of time necessary to study the growth problem and implement recommendations.

Carolyn Murray emphasized that (1) reasonable purpose and (3) defined duration of time are two key elements to ensure that proposed building moratorium withstands any legal challenges. Having a study or comprehensive zoning bylaw redraft & reorganization in process is one piece of the reasonable purpose defense but having explicit problem or purpose that building moratorium is trying to give the Town time to study and address is also

critical. She also mentioned that majority of case law supports building moratoriums no longer than two years in duration although there are a few which were as long as three years. Finally, Carolyn Murray discussed that there are often consequences to building moratoriums including spurring developers to act more quickly with filing applications. If a developer applies for a special permit or building permit prior to the date of the first public hearing on the building moratorium they will be exempt from intended zoning freeze of the moratorium. In addition, ANR and Subdivision Plans freeze zoning from the date of the plans being filed up until the date of Town Meeting approval of the building moratorium. So while a building moratorium is being considered, the Town risks having developers prematurely filing plans to ensure that zoning freeze does not apply to their project. The working group agree to read the memo circulated in the packet, while old is still relevant regarding case law and basic principles of building moratoriums. The ZBWG will deliberate further on proposal of a potential building moratorium for specific zoning district or issue at its next meeting as any moratorium would need approval at STM.

### **STM Warrant Articles**

In light of the calendar published by Lauren Lind for STM zoning articles, the working group agreed to meet on Thursday, September 23<sup>rd</sup> to finalize the language prior to the opening of 40A public hearings in October. Woody Chittick will review ZWG 1 – Deletion of 8.3B and 8.3C, ZWG 2 – Changes to Residential Zoning Amendments, and ZWG 3 – Ledge Protection. Katie Dugan will circulate clean copies with agenda and rest of packet materials by early next week. Katie Dugan will also work on finalizing the Notices of Intent due to the Town on Friday, September 24<sup>th</sup>.

### **Administrative**

The meeting adjourned at 10:58 am. The next Zoning Bylaw Working Group will be September 23, 2021 at 2:00 pm.

### **Documents**

Timeline STM Articles

Memo on Building Moratoriums

Comprehensive Zoning Redraft & Reorganization\_PB\_08.11.21