January 29, 2013
Medway Planning and Economic Development Board
155 Village Street
Medway, MA 02053

BOARD MEMBERS PRESENT: Bob Tucker, Karyl Spiller-Walsh, Chan Rogers, and Tom Gay.

ABSENT WITH NOTICE: Andy Rodenhiser

ALSO PRESENT: Susy Affleck-Childs, Planning and Economic Town Coordinator
Amy Sutherland, Meeting Recording Secretary

The Chairman opened the meeting at 7:00 pm.

There were no Citizen Comments.

Other Business

Resume Matthew Hayes:
The Board is in receipt of a resume from Matthew Hayes for the associate member position for Planning and Economic Development Board. (**See Attached**) This will be an agenda item for the 2-4-2013 Board of Selectmen meeting as this is a joint appointment by the two boards.

On a motion made by Karyl Spiller-Walsh and seconded by Tom Gay, the Board voted unanimously to recommend Matthew Hayes for the associate member position for the Planning and Economic Development Board.

Petrini &Associates:
The Board is in receipt of a quarterly update on Land Use Law. This was dated January 24, 2013. (**See Attached**.)

Zoning and Planning Legislation:

The documentation provides a summary of the house bill. **(See Attached)**

The Board would like to read through this more thoroughly and have it as an agenda item for next meeting.

OTHER BUSINESS

The Board will act on the plan review fee estimates at the next meeting.

Planning and Economic Development Coordinator's Report:

Thayer House:

The Thayer House site plan public hearing abutter notifications have gone out. The public hearing will be on Tuesday, February 12, 2013.

Tri Valley Commons:
The Tri Valley Commons abutter notices will be going out next week. The public hearing will be held on Tuesday, February 26, 2013.

WICKETT PROPERTY - Informal Discussion:

Paul DeSimone of Colonial Engineering representing Mr. Wickett had asked the Planning and Economic Development Committee for an informal discussion regarding various development options and ideas for the property.

There was a brief notice read by the Vice Chairman prior to the discussion. **(See Attached)**

There was a document dated January 23, 2013 from Colonial Engineering posing questions about possible development on the Wickett property. **(See Attached)**

Mr. DeSimone began his presentation by indicating that the land is currently 136 acres. The applicant has recently received land from Barbara Swan and this land is under agreement. That land is 11 acres. This is not included in the 136 acres. Many people are interested in property now that there is access from Winthrop Street. The Town may be interested in the 98 acres. Realtor Carl Rice will meet with the town soon. Toll Brothers wants the whole piece. There is also a list of local developers who are also interested in this property. The regulations were referenced on page 109. Mr. DeSimone wanted clarification on the open space and the 50 foot buffer and site development needs. He is possibly looking to submit an ARCPUD application. He also wanted to know if he can use pavement in open space. The next question was about if the project needs to be bonded. Susy responded that the project does need to be bonded and there will need to be inspections done by the consultant.

The prospective applicant is also looking to have an over 55 community. If this option is pursued, the applicant will need to go to the ZBA to lower the age to 50. Paul wanted to know with this scenario if the applicant is responsible for required frontage and is they also are subject to length of roads. Susy will get back to the applicant on these questions.

Paul indicated that the only way to develop this land is as a cluster development thus the reason for a 40B or Senior Housing. If the applicant deeds 98 acres to town, they would do this, but if the land is not deeded to the town the intent would be to fully develop the whole piece.

Member Spiller-Walsh wanted to know what percentage of the open space land is wet.

Paul indicated that he does not know this. You can only use 50% of wetlands, but 34.4% meets regulations for open space. This number needs to be confirmed.

Susy indicated that on the westerly side of the site there is 34 acres shown and asked if this area included the needed open space for an ARCPUD.

Paul indicated that he is looking to limit the units to 68. These will be a combination of two and three bedrooms. He will be keeping it under the 15,000 per gallon for sewer and water. The designed sewer lines will be from Buttercup and Lovering. If the entire site is built, there will be sewer put in throughout. There will need to be mitigation measures which will need to be addressed. One idea would be water looping to Fairway Lane. Paul indicated that the 10% of low income and affordable will not be a problem. DPS will need to be consulted on this.

Member Spiller-Walsh wanted to know what will be left in perpruititiy. There are a lot of swamps.

Paul indicated that the older growth includes bigger trees which include Oak and Maples.

Paul Marble – 13 Skyline Dr.
Mr. Marble is a member of the Open Space Committee. He indicated that the OSC had walked the site and there is old growth near Fairway and the Town Hall. The area near Olson Circle has been cut.

Resident Krawczynski, 21 Fairway Lane:
The resident asked a question about how does the sewer work with gas lines and easement crossing?

Paul indicated that when Fairway Lane was created, 4 to 8 concrete slabs were installed and the sleeves were left for the conduit to go in. This has been there since1995. The same was done at Winthrop Street. The sleeves for water gas and sewer are included.

The discussion moved to the trees which will be taken out by the forestry service.

The State is the only agency to do this and the will come in and do the selective cutting and they will take the big trees.

Member Spiller-Walsh responded that if this area is stumps, wouldn't that be negative and be a blight.

Mr. Rice responded that this is difficult to answer, since he has never worked with the forestry service before. He noted they had contacted the Town in 2008 about buying this land. The appraisal was done.

Susy wanted to know the date of the sewer approval he had mentioned. Paul will provide this to Susy.

Susy thanked Mr.DeSimone for coming in and requested that he put all of his questions in writing so she can respond back.

ZONING - Medical Marijuana Moratorium, Village Residential Zone and Parking Regulations:

The Board was presented with a sample model of language for a moratorium on medical marijuana dispensaries from Kopelman and Paige. **(See Attached)**

On a motion made Chan Rogers and seconded by Karyl Spiller-Walsh, the Board voted unanimously to a request a one and a half year moratorium and deferrment until June 30, 2014 to develop the regulations for marijuana centers.

Village Residential District:
Consultant Carlucci has made revisions as indicated from the last meeting. The Board was comfortable with the revisions. There was a recommendation to have the consultant check to check the boundaries near the auto body shop on Village Street.

Member Tucker wants to make sure that the property lines are followed.

Member Gay indicated that there are some odd properties on Cottage Street which need to be checked by Consultant Carlucci.

The changes would still allow for accessory apartments through special permit. In rezoning we do not take away rights. This is an added option and does not create restrictions.

It was recommended that the maps be revised further and look at the updated parcels.

SIGN REGULATIONS - Commercial District I:
The Board was presented with a document entitled Commercial District 1- dated January 29, 2013. **(See Attached)**

The text in bold is the proposed changes. The EDC has had discussions relative to signage. It was recommended that the Design Review Committee provide an opinion on this.

Member Spiller-Walsh will bring the document to Design Review Committee for review and will provide written recommendations.

Parking Regulations:
The Board is in receipt of the draft Medway Parking Regulations dated and revised January 16, 2013. **(See Attached)**

The document was created by a subcommittee which included Susy Affleck-Childs, Gino Carlucci, Claire O'Neill, and Paul Yorkis. The group took the SWAP parking study which included recommendations and drafted the current document.

Consultant Carlucci reviewed a chart comparing various parking standards in surrounding towns. Bellingham developed a standard parking for shopping centers. An overall approach was used. This is simpler administratively.

In the document the word requirement means minimum.

It was recommended to research how many vehicles are actually energy efficient and then base the parking regulation on that percentage. The trends must be looked at. It was suggested to provide illustrations on how this works. It was also recommended that the word "may" be changed to "shall". This is noted on page 4. The Board would also like the section j on page 4 eliminated. The Board would also like the handicap spaces delineated. There was a suggestion to look at the LEED requirements regarding bicycles. The Board also discussed setting aside a green area for future use parking use.

The Board would like to submit the parking regulations as a place holder for the town meeting in the spring.

The document will be revised with the various recommendations. An updated document will be provided at the next meeting.

Meeting Minutes:

January 15, 2013:
On a motion made by Chan Rogers and seconded by Tom Gay, the Board voted to approve the minutes from January 15, 2013.

Adjourn:
On a motion made by Karyl Spiller-Walsh and seconded by Chan Rogers, the Board voted unanimously to adjourn the meeting at 9:15pm.

Respectfully Submitted,

Amy Sutherland
Meeting Recording Secretary

Edited by,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator

PETRINI & ASSOCIATES, P.C.

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To: Board of Selectmen
Town Manager/Administrator/Executive Secretary
Planning Board
Board of Appeals
Building Commissioner
Conservation Commission

From: Barbara J. Saint André

Date: January 24, 2013

Re: Petrini & Associates Client Advisory No. 2013-1
Quarterly Update on Land Use Law

This Quarterly Update on Land Use Law sets forth a brief overview of relevant land use and zoning decisions issued by the Supreme Judicial Court (SJC) and Appeals Court in the months of October, November, and December of 2012, as well as U.S. District Court cases. This memorandum does not include every decision involving land use issued by the Massachusetts appellate courts. Some decisions were omitted if they were purely procedural in nature or did not provide any new substantive analysis. Selected Land Court decisions are also included. Although these are not appellate cases and therefore not binding precedent, they often provide useful guidance.

ZONING

O'Connell v. Vainisi, 82 Mass. App. Ct. 688 (2012)

This case involved the construction of a stone retaining wall along a boundary line. As part of a renovation project, the Vainisis constructed the wall, then filled in behind it to level off the area and put in a stone patio. The Vainisi lot did not meet the minimum area under the zoning by-law, and contained a pre-existing nonconforming house. They also placed a fence along the top of the wall. The abutters, the O'Connells, requested enforcement from the zoning enforcement officer, who concluded that, although structures were generally prohibited in setback areas, the zoning by-law exception for perimeter wall, fence or similar enclosure, not to exceed six feet, applied in this instance, and declined enforcement. The board of appeals disagreed, and ordered the fence be removed and the retaining wall reduced to six feet. The Superior Court dismissed the appeal on a motion for summary judgment, finding that the O'Connells lacked standing.

The Appeals Court reversed the Superior Court finding, determining that the O'Connells asserted concerns about the crowding that resulted from the massive new structure looming over their yard. This constituted a legally cognizable injury, since the setback requirements of the zoning by-law serve to address concerns about crowding. With respect to the merits of the case, the Appeals Court noted that the local board of appeals did not resolve the issue of whether the retaining wall as modified qualified for the exception from the setback requirement under the zoning by-law. The Appeals Court therefore remanded that case back to the board of appeals for a fuller explanation of its ruling. "It is up to the board to give meaning to the zoning by-law it administers, with reviewing courts to give deference to the board's interpretation so long as it is reasonable."

Patenaude v. Zoning Board of Appeals of Dracut, 82 Mass. App. Ct. 914 (2012)

This case examines whether a lot that is unbuildable due to infectious invalidity can be redeemed by the passage of time. Plaintiff's lot was created by a subdivision of a larger tract, and met the applicable zoning requirements at the time it was created. However, by dividing off the plaintiff's lot, the remaining land no longer conformed to the zoning requirements. Some years later, the zoning by-law was amended to increase the dimensional requirements, such that plaintiff's lot became nonconforming. Plaintiff applied for a building permit, claiming the lot was a grandfathered lot. The permit was denied.

The Appeals Court stated that plaintiff's lot was not buildable when created by virtue of the doctrine of infectious invalidity. Infectious invalidity states that a land owner may not form a new building lot by dividing an existing conforming lot if as a result the latter is rendered nonconforming by such a division; the conforming lot is deemed to be "infected" by the nonconformity of the abutting lot. 81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline, 78 Mass. App. Ct. 233 (2010). Plaintiff argued that the lot became buildable when the 10 year statute of repose found in G.L. c. 40A, §7 expired. The court, however, ruled that the running of the 10 year statute, even if it applied to a vacant lot, did not remove the illegality. That statute merely protects an illegal nonconforming structure from enforcement. Accordingly, it affirmed the denial of the building permit.

Buccaneer Development, Inc. v. Zoning Board of Appeals of Lenox, 83 Mass. App. Ct. 40 (2012)

This is an unusual case involving which court has jurisdiction over an appeal of the denial of a special permit that was originally filed in the Land Court permit session. At the board's request, the case was transferred to the Housing Court. Buccaneer's motion to remand the case back to the permit session was denied. Following a trial in the Housing Court, the denial of the special permit was affirmed, and Buccaneer appealed. Buccaneer claimed that the Land Court had exclusive jurisdiction under the state law establishing the permit session, and therefore the Housing Court lacked jurisdiction over the case.

The Appeals Court agreed, finding that there is no provision in the statute allowing the transfer of a pending permit session case from the Land Court to any other court. The fact that the case had already been tried to conclusion in the Housing Court was not relevant. The Appeals Court ordered that the case be remanded to the Housing Court, where the order denying Buccaneer's motion to remand to the Land Court was to be reversed.

SUBDIVISION CONTROL LAW

Ridgelev Management Corp. v. Planning Board of Gosnold, 82 Mass. App. Ct. 793 (2012)

This is an unusual case involving when the Subdivision Control Law becomes effective. The Town of Gosnold voted in 2000 to authorize the board of selectmen to act as the planning board. However, the planning board did not adopt subdivision rules and regulations until 2009. When plaintiff submitted a definitive subdivision plan to the planning board in 2008, the board returned the plan to plaintiff without taking any action, on the grounds that it had no authority to act on the plan because it had not yet adopted rules and regulations. Plaintiff filed suit in Land Court, which dismissed the action on the grounds that G.L. c. 41, §81N requires both the establishment of a planning board and the adoption of rules and regulations in order for the Subdivision Control Law (SCL) to be in effect. The Land Court also dismissed a related lawsuit brought against the town clerk for failure to certify a constructive approval.

On appeal, the Appeals Court agreed and upheld the dismissal of the cases. It found that the statutory language was clear and required that a town both establish a planning board, and that the planning board adopt regulations in order for the SCL to be effective. The court noted that, as a practical matter, subdivision control cannot function without planning board regulations. Further, the court ruled that there could be no subdivision freeze under G.L. c. 40A, §6 for the subdivision plan in the absence of a valid local subdivision process. Finally, it rejected plaintiff's argument that, because plaintiff claimed that the planning board deliberately delayed action on the subdivision rules and regulations, the planning board should be ordered to review the plan under the zoning and board of health regulations in effect at the time the plan was submitted. The Appeals Court noted that, even if some unfairness to the plaintiff resulted from the actions of town officials, the town is not estopped from enforcing the applicable local regulations.

WETLANDS

Amendments to Wetlands Protection Act – Chapter 238 of the Acts of 2012

Sections 48 through 50 of Chapter 238 of the Acts of 2012 made amendments to the Wetlands Protection Act. These amendments became effective on November 5, 2012. One of the more significant amendments is to the notice provisions. The following amendment was added:

> When a notice of intent proposes activities on land under water bodies and waterways or on a tract of land greater than 50 acres, written notification shall be given to all abutters within 100 feet of the proposed project site. For the purposes of this section, "project site" shall mean lands where the following activities are proposed to take place: dredging,

excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways and the installation of drainage, sewerage and water systems, and "land under water bodies and waterways" shall mean the bottom of, or land under, the surface of the ocean or an estuary, creek, river stream, pond or lake. When a notice of intent proposes activity on a linear shaped project site longer than 1,000 feet in length, notification shall be given to all abutters within 1,000 feet of the proposed project site. If the linear project site takes place wholly within an easement through another person's land, notice shall also be given to the landowner.

In addition, the amendments include a new exemption for work required as a result of a severe weather emergency declared by the Commissioner. The declaration issued by the Commissioner will identify the types of work in response to the emergency that will be allowed without requiring the filing of a notice of intent or emergency certification; general mitigation measures that may be required for such work, notification or reporting requirements, the geographic area covered by the declaration, and the length of time in which it will be in effect..

Finally, the amendments add "sewer" to the list of public utilities that are exempt from the WPA for work to maintain, repair, or replace any structure or facility.

Susan Affleck-Childs

From: massplanners-bounces@cs.umb.edu on behalf of Lacy, Jeff (DCR) [jeff.lacy@state.ma.us]
Sent: Thursday, January 24, 2013 7:24 AM
To: massplanners@cs.umb.edu
Subject: [Massplanners] FW: Streamlined Zoning Reform: House Docket #3216, An Act Promoting the Planning and Development of Sustainable Communities
Attachments: Summary Outline.doc; Summary of Consensus Bill Final (1-22-13).doc; ATT00001.txt

Dear MA Planners:

Please see the memo below from Rep. Kulik and Sen. Wolf and the attachments. This is the zoning reform bill for the upcoming legislative session, a bill developed by all supporters of one or more previous zoning reform bills, from CHAPA to MMA. The Representative and Senator are now seeking other legislators as co-sponsors.

Best,

Jeff Lacy, AICP

From: Kulik, Stephen - Rep. (HOU)
Sent: Wednesday, January 23, 2013 1:40 PM
To: Kulik, Stephen - Rep. (HOU)
Subject: Streamlined Zoning Reform: House Docket #3216, An Act Promoting the Planning and Development of Sustainable Communities

Dear Colleagues,

Massachusetts is listed by the American Planning Association as one of the states with the weakest and most outdated state land-use laws; and since 1999 a concerted effort has been underway to reform and modernize the statutes that govern local planning, zoning, and subdivision. This session, all of the previous supporters of zoning reform – municipal officials, planners, regional planning agencies, and environmental, smart growth, housing, and public health advocates – have convened to create a streamlined bill. **House Docket #3216, An Act Promoting the Planning and Development of Sustainable Communities,** blends aspects of previous zoning reform legislative proposals in the first major updating of the Commonwealth's land use statutes in 37 years.

The bill encourages communities to adopt or update their local master plans and provides them the tools necessary to implement effective land use regulations. At the same time many of the existing statutory impediments to the achievement of "smarter growth" in Massachusetts are eliminated so that communities may better manage their growth and shape their futures. We invite you to co-sponsor this bill by emailing Sean Connolly in Rep. Kulik's office, and if you have any questions or concerns he can be reached at extension 7793. Thank you for your consideration.

Sincerely,

Stephen Kulik

Rep. Stephen Kulik

Daniel A. Wolf

Senator Daniel Wolf

Outline of Zoning Reform Bill[i]

"AN ACT PROMOTING THE PLANNING AND
DEVELOPMENT OF SUSTAINABLE COMMUNITIES"
House Docket #3216

Sponsored by:
Representative Stephen Kulik
Senator Daniel Wolf

Chapter 40A: Zoning Act

- Statutory Authority
- Zoning Vote
- Vested Rights
- Special Permits
- Site Plan Review
- Development Impact Fees
- Inclusionary Zoning
- Land Use Dispute Avoidance
- Variances
- Notice to Boards of Health

Chapter 40X: Consolidated Permitting (new)

Chapter 40Y: Planning Ahead for Growth Act (new)

Chapter 41

- Master Plan
- Approval Not Required (ANR)
- Parks and Playgrounds
- Subdivision Roadway Standards
- Appeals (relating to subdivisions)

Chapter 185

- Appeals

Chapter 240

- Master Planning Incentive

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[i] Consensus bill descending from: MLURA, CPA-2, LUPA, LURSEP, and CLURPA

Summary of Zoning Reform Bill

"AN ACT PROMOTING THE PLANNING AND
DEVELOPMENT OF SUSTAINABLE COMMUNITIES"
House Docket #3216

Sponsored by:
Representative Stephen Kulik
Senator Daniel Wolf

1) Statutory Authority

Current Status: Massachusetts is a home-rule state, wherein, subject only to constitutional limitations, all powers in the realm of planning, zoning, and the regulation of subdivision reside at the municipal level unless limited in some way by the legislature. The primary purpose of a zoning act (note: not a zoning "enabling" act) in a home rule state is to guide or place limits on local authority, not to authorize powers communities already possess. Nonetheless, some prior state laws purporting to "authorize" certain planning tools and techniques by calling them out in statute have unintentionally been limiting, not liberating. However, due to some contradictory court decisions, it may be beneficial to define and authorize the use of some planning tools, in particular those that may be constitutionally challenged.

Proposed Reforms: Many definitions and some authorizations are added to the Zoning Act in a manner sufficient to clearly identify the zoning term or technique, but general enough so such language doesn't inadvertently constrain its application. The current Zoning Act definitions of "cluster development" and transfer of development rights" are modified in this manner. In addition to inclusionary zoning, addressed in a more detailed section, natural resource protection zoning is an obvious choice given the checkered Massachusetts case law relating to development density. A definition/authorization of "form-based codes" is provided.

Refer to bill sections: 1, 2, 3, 14, 15, 18, and 19.

2) Zoning Vote [voting majority required to adopt or amend zoning]

Current Status: The current super-majority requirement (two-thirds) to adopt or amend a zoning ordinance or bylaw is unduly burdensome for Massachusetts cities and towns, one that is unique in the U.S. The national norm is a simple majority to adopt/amend local zoning. There is no local ability to choose a different majority. This is another aspect of current law that undermines the incentive for communities to undertake a thoughtful, forward-looking planning and rezoning process.

Proposed Reforms: A provision is added such that communities may lower the vote quantum from the super-majority default anywhere down to a simple majority. Such a vote to reduce the majority must be by whatever vote majority is currently in place. Once reduced, the majority may also be subsequently raised, again, by whatever majority is then in place.

Refer to bill sections: 4 and 5.

3) Vested Rights

Current Status: Even if the zoning laws change, most states offer protection to development projects in the pipeline where a substantial investment of time and money has been made. In Massachusetts these protections are excessive, and more liberal (to landowners) than any common or statutory law in the U.S. The Zoning Act today provides three egregious vesting loopholes which facilitate easy circumvention of local zoning law changes. Such proposed modifications may have come out of a lengthy public process, and the loopholes act to perpetuate zoning no longer deemed in the public interest. At the same time, the current Zoning Act provides unreasonably difficult to obtain and short vesting periods for projects that are seeking a building permit or special permit.

Proposed Reforms: The bill eliminates two vesting loopholes and modifies the third. The vesting periods for building permits and special permits are appropriately extended. Below these changes are named and described:

Three Lots in Common Ownership Dimensional Freeze: Up to three pre-existing adjoining lots in conformance with existing zoning requirements and held in common ownership are automatically protected against any zoning dimensional changes for five years after a zoning amendment. Reportedly, this was added by a legislator in the 1970s at the request of a constituent to address land belonging to the constituent! It has remained to vex cities and towns for over 35 years. It is eliminated.

ANR Plan Use Freeze: Before the date of zoning adoption, the endorsement of a simple ANR plan, even a sham perimeter plan or a plan showing only a slight line change to an existing parcel, freezes any zoning change in allowed "use" for three years thereafter. This device was recently used in the City of Northampton to preserve rights to build a porn store in the face of zoning use changes that would have prohibited such a use at that location. Although ANR is thought of as a rural/suburban issue, this contrivance can be used in any city to protect use. It is eliminated.

Subdivision Plan Complete Zoning Freeze: Before the date of zoning adoption, submission of definitive subdivision plan, or more commonly a simple preliminary plan followed by definitive plan within seven months and eventual approval of the definitive plan, provides a blanket freeze on all zoning changes for eight years after final approval. A Massachusetts court case interpreting this statute further clarified that the freeze attaches to the land itself, not just the subdivision design on the plan submitted. This provides complete insulation against zoning changes no matter what might later be proposed (e.g., once the simple two-lot "fake" subdivision plan is approved, it may be discarded and replaced by any proposed development project, even if not a subdivision). There is no other such gaping loophole in the United States, and no way a community can beat it.

After extensive national research looking at vested rights state statutes on the books around the country and referencing the American Planning Association's Growing Smart model zoning

statute, this section was written to provide reasonable and standardized zoning protections for development projects proposed in building permits, special permits, and subdivision plans. Only the proposed project itself is protected, for periods of 2, 3, and 8 years, respectively. The all important vesting trigger point was set at the date an applicant "duly applies for" a permit, which must be before the first published notice of the public hearing on a proposed zoning change, and the permit must ultimately be approved. There was no evident reason for different trigger points, so they were standardized across the three types of permits. In essence, whoever steps forward first, the municipality or the applicant, is accorded the deference. If a subdivision, the application must be for a definitive plan; preliminary plans are no longer adequate as place-holders for securing vested rights. A minor subdivision similarly applied for enjoys 4 years of protection if approved. There are no vested rights for ANR plans, even for communities which do not take advantage of the new minor subdivision process.

These reforms are in line with the recommendations of the American Planning Association and are the national norm for states that have vested rights statutes.

Refer to bill sections: 6, 7, 8, 9, 10, 11, and 12.

4) Special Permits

Current Status: The current statute requires a super-majority vote to approve a special permit, a high hurdle that communities cannot lower. Not only does this make special permits harder to obtain, many zoning and planning boards find it burdensome to maintain the required number of members present to ensure the required super-majority for hearings and action. In addition, the duration of a special permit may not exceed two years, which does not reflect today's development project schedules. This places unreasonable burdens on applicants, and can force a busy volunteer board to reprocess the same special permit needlessly.

Proposed Reforms: Three significant changes are proposed. The required vote majority necessary to approve a special permit becomes a simple majority, which may be increased by zoning ordinance or by-law up to the current requirements. The effective duration of a special permit is set at no shorter than three years (which matches the period of vested rights for a special permit proposed elsewhere in the bill). Finally, a process for the extension of a special permit is established.

Refer to bill sections: 16 and 17.

5) Site Plan Review

Current Status: Although not included in the Zoning Act, many communities now employ a form of site plan review (SPR) under their home-rule powers. Without statutory guidance, a number of ambiguities have plagued SPR including uncertainty about: 1) the degree of discretional that may be exercised by a review board; 2) the ability to require mitigation; 3) timelines for approval; 4) public hearings; 5) voting majorities; 6) duration of SPR after approval; and 7) an appeal process.

Proposed Reforms: A new section is added to the Zoning Act dealing specifically with SPR. Standardized procedures are established and the above-referenced ambiguities resolved as follows: 1) discretion is limited, but approvals may be subject to conditions; 2) off-site mitigation is permitted, but limited; 3) decisions must be made within 95 days; 4) the ordinance or bylaw may/may not require a public hearing (within the 95 days); 5) a simple majority only is required for approval; 6) the duration shall be no less than 2 years; and 7) SPR decisions may be appealed in accordance with a stated procedure which specifies a review based on the existing record, not new evidence. Two other significant aspects include: 1) a prohibition on requiring separate and distinct reviews when site plan review is coupled with a discretionary special permit (e.g., SPR must be folded into special permit timelines); and 2) establishing that no zoning freezes are triggered by a SPR application or approval.

Refer to bill section 20.

6) Development Impact Fees

Current Status: Impact fees help communities recoup some of the capital costs of private development. Rationally-based impact fees are predictable for developers and can reduce local opposition to some development projects, allowing more types of development to be permitted as-of-right instead of undergoing the lengthy and costly special permit process; this because there is confidence they will bear their fair share of project impacts. Despite being a commonly used regulatory tool in the U.S. (approximately 60% of all development nationally in subject to an impact fee), impact fees are generally unavailable in Massachusetts due to troublesome case law and no mention in statute.

Proposed Reforms: This new section in the Zoning Act establishes that development impact fees are distinct from illegal taxation and are permissible if in accordance with the statute, and it sets out the required steps for adopting a local development impact fee ordinance or by-law. This section is based upon a number of in-state models (Medford and Cape Cod Commission), and out-of-state models, and is mainstream in its scope, reflecting federal case law in this area. Two of the nation's leading impact fee consultants, TischlerBise and Duncan Associates, assisted in the development of this section. Communities following the requirements of this section will have defensible impact fee ordnances or by-laws that should withstand judicial scrutiny. Public capital facilities for which impact fees may be assessed are listed (opt-in communities may assess impact fees to offset costs of a greater array of municipal capital facilities). Municipal expenses ineligible for the application of impact fees, such as routine maintenance or staff salaries, are also listed. Affordable housing subject to a restriction on sale price or rent under the provisions of sections 31-33 of chapter 184 (Affordable Housing Restriction) is exempt from being assessed an impact fee. The planning and study prerequisites to the adoption of an impact fee ordinance or bylaw are detailed, as is fiscal administration of an impact fee program.

Refer to bill section 21.

7) Inclusionary Zoning

Current Status: While a number of examples exist on the books, this essential smart growth tool for towns enjoys no supportive case law in Massachusetts. Inclusionary housing requirements placed upon market-rate housing developments can increase diversity in local housing opportunities and add units to a community's Subsidized Housing Inventory (helping to meet local requirements under the state's affordable housing law, known as "40B"). Although widely used in other states such requirements are akin to impact fees and possibly subject to the same Massachusetts-centric legal problems; therefore statutory underpinnings are needed here so that more communities will consider these measures.

Proposed Reforms: This new section in the Zoning Act, called inclusionary zoning, is designed to authorize and provide some parameters for zoning measures that require the creation of affordable housing in development projects. It is written broadly to encompass the wide array of such techniques in existence today in Massachusetts. Subject to approval, off-site units, land dedication, or funds may also be provided in lieu of on-site dwelling units, and dedicated accounts may be set up for this purpose. Any dwelling units created under this statute must be price-restricted for no less than 30 years. The upper limit of affordability is to households earning no more than 120% of the Area Median Income (AMI). Inclusionary zoning ordinances or by-laws may require all or a portion of the units created be eligible for inclusion on the community's Subsidized Housing Inventory (affordable to household with income not exceeding 80% of AMI).

Refer to bill section 22.

8) Land Use Dispute Avoidance

Current Status: Although informal dispute resolution processes may occur now, there is no set process laid out in the Zoning Act, and no relief from either "discovery" under section 23C of chapter 233, or from the open meeting law under section 21(a)(9) of chapter 30A.

Proposed Reforms: This new section in the Zoning Act offers an "off-line" avenue for applicants, municipal officials, and the public to work through the difficulties in a prospective development project using a neutral facilitator so that the formal approval process may later be successful for all.

Refer to bill section 23.

9) Variances

Current Status: The variance is a common feature of most, if not every state statute, designed to offer the local government a "relief valve" to its own regulations since no zoning ordinance can be written with foreknowledge of every piece of land or personal circumstance. The variance, because it offers a degree of flexibility to otherwise rigid zoning requirements, is also seen as a hedge against takings claims of aggrieved landowners. Many small-scale residential projects, which involve renovations, additions, or infill development, require variances from current

zoning. But the Massachusetts statute as written is overly restrictive for landowners and towns, tying the hands of appointed zoning boards and preventing the resolution of many difficulties for citizens. This has led to widespread abuse in our state, with some zoning boards approving almost no variances while others grant them liberally, but illegally.

Proposed Reforms: This section rewrites the current variance statute in its entirety. It seeks to find a middle ground by setting reasonable procedures and criteria for variances while still maintaining a community's discretion to condition or deny a variance. An explicit ability to deny variances sought because of "self-created" hardship is added. The effective life of a variance is extended from one to 2 years before it lapses if not used, and the permissible extension interval increases from 6 months to one year.

Refer to bill section 24.

10) Notice to Board of Health

Current Status: Section 11 of the Zoning Act does not now require notice of public hearings on zoning permits be provided to local boards of health.

Proposed Reforms: Section 11 is amended to additionally require such notice be provided to boards of health.

Refer to bill section 25.

11) Consolidated Permitting

Current Status: Development proposals often need to receive multiple local permits in order to proceed. The boards have differing jurisdictional and procedural requirements and often development reviews are uncoordinated between the local boards. The various reviews are often serialized, taking years to complete. Consolidated permitting is not currently included in the Zoning Act, though it is possible under home-rule powers provided it does not conflict with the procedures in statute for the individual permits.

Proposed Reforms: This provision, a new Chapter 40X, would help to ensure that for larger, more complex projects, local boards receive common information about the project and that they have the opportunity to bring all decision-making bodies together at the beginning of a project review. Consolidated and more efficient reviews could result, benefitting all parties to the development review process. At the same time, each board would retain the authority to make an independent decision in accordance with its own standards.

The proponent of an Eligible Project (projects consisting of 25,000 or more gross floor area or of 25 or more dwelling units) is allowed to file a concurrent application, which starts a process that includes a consolidated hearing for all boards involved within 45 days of filing, after which the boards may continue their regular process of peer and board reviews per applicable statutes and local regulations. It calls for a concurrent application that contains general project information relevant to all boards.

Refer to bill section 26.

(12) Planning Ahead for Growth Act [opt-in]

Current Status: Current development patterns are not resulting in smart-growth-consistent development that would create adequate new housing and jobs across the Commonwealth, while protecting environmental resources and community character. The "town and country" landscape of Massachusetts s being lost to sprawling suburban development.

Proposed Reforms: A new chapter, 40Y, provides strong incentives for the "plan, zone, invest" framework and provides more opportunities for housing and job growth in appropriate locations, coupled with environmental and open space protections. In exchange for local adoption of zoning districts for new residential and commercial development, preserving open space in subdivisions, and protecting water quality in development projects, municipalities will be granted access to additional regulatory and fiscal resources and tools to realize their plans for sustainable development.

The "opt-in" features of previous bills are worthwhile additions to help fill the void of state involvement in local planning, but are here simplified to omit the duplicative pre-planning steps earlier proposed. The regional planning agencies will be charged with determining if a community has satisfactorily met the listed requirements. Such requirements and resulting beneficial measures are described in detail so that an RPA may readily determine if a community has met the program's requirements and thereafter may "opt-in" to the program's benefits. Oversight, implementing regulations, and resolution of disputes would be through the Secretary of the Executive Office of Housing and Economic Development. $2,000,000 is budgeted for reimbursements to communities that prepare implementing regulations and regional planning agencies that review them.

The following are required to opt-in:

- Establishment of a housing development district(s) that can accommodate, over a ten-year period, 5% of a community's existing year-round housing units by-right. Types of housing are single-family, duplex-triplex, or multi-family at set densities.

- Establishment of an economic development district that permits commercial and/or industrial development using prompt and predictable permitting.

- Mandatory use of open space residential design (OSRD) for developments of 5 units or more on land zoned for a minimum lot-size of 40,000 square feet or more per unit.

- Requirements for the use of low impact development (LID) techniques for developments that disturb over one acre of land.

The following would be authorized and available after opting-in:

• Adoption of natural resource protection zoning (NRPZ) at area densities of 10 acres or more per dwelling unit to protect identified lands of high natural resource value.

• Adoption of rate of development measures (annual caps on building permit issuance) in areas inside and outside of housing development districts.

• Enhanced assessment of development impact fees to additionally consider capital facilities relating to public elementary and secondary schools, libraries, municipal offices, affordable housing, and public safety facilities.

• Reduction of the period of vested rights for a definitive subdivision plan from 8 to 5 years.

• Authorization to enter into development agreements

• Certified opt-in communities enjoy: preference for state discretionary funds and grants; priority for state infrastructure investments, such as water and sewer infrastructure, school building funds, and biking and walking facilities; and requirements that the state take into consideration regional plans and local master plans in its capital spending.

• Eligibility to receive state planning funds to reimburse for costs of developing and reviewing implementing regulations.

Refer to bill section 27.

13) Master Plans

Current Status: The descriptions of the required elements of a master plan in the statute lack focus, resulting in overly-comprehensive and costly plans that often emphasize data collection of dubious value over action planning and implementation. The required nine elements of a master plan are the same regardless of community size or characteristics, and the descriptive language is dated. Adoption of the master plan is solely by the planning board, and without a required public hearing.

Proposed Reforms: The entire section on master plans is rewritten to accomplish a number of objectives: 1) the elements of a plan are described in updated language reflective of the state's Sustainable Development Principles, including public health considerations; 2) all communities must complete five required elements (goals and objectives, housing, natural resources and energy, land use and zoning, and implementation), but are free to choose among the other seven optional elements, and may customize their treatment according to local needs; 3) superfluous data collection unrelated to land use and the physical development of the community is discouraged; 4) all elements required or selected must be assessed against similar material in a regional plan, if any; 5) a public hearing is required before a plan may be adopted by the planning board; and 6) the plan must subsequently be adopted by the local legislative body. Refer to bill section 28.

14) Approval Not Required (ANR)

Current Status: Because of limiting state statutes, it is not possible to effectively plan for or regulate roadside subdivision of land. The resulting unregulated, potentially unlimited development along existing, often substandard roadways is a principal driver of "dumb growth" in the Commonwealth. The inability to regulate such roadside growth actually incentivizes it. Servicing this far-flung development is costly for towns and undermines forward-looking planning. There is nothing comparable in the statutes of other states.

Proposed Reforms: The bill redefines subdivision to include all land divisions and replaces the old c. 41, § 81P with a new section describing the procedures for minor subdivisions (which would include previous ANR roadside divisions). However, until a planning board adopts rules and regulations under the minor subdivision section, the old ANR process remains in effect. The minor subdivision provisions reduce the regulatory burden for smaller projects that currently require the full subdivision review process, while ensuring that all large projects are appropriately reviewed.

The following are features of the minor subdivision section. A planning board may adopt rules and regulations pertaining to minor subdivisions which may be no stricter than for regular subdivisions, including an option to waive or eliminate any requirements under c. 41, § 81U (including requirements for performance guarantees, such as the posting of a bond). Preliminary plans are not applicable to minor subdivisions. Minor subdivisions must be defined in the regulations to include up to six new lots on existing or new ways. Other features include the ability to require improvements to existing ways (previously off-limits under ANR), the discretion to require or not require a public hearing if a new way is proposed, the ability to limit serial applications for minor subdivisions during a set period of time, and a statutory bar on requiring combined roadway travelled lane widths in excess of 22 feet (with exceptions for existing roadways with travelled lanes in excess of 22 feet or new roadways designed to be later extended). The time limit to review a minor subdivision is either 65 or 95 days for an existing way or a new way, respectively. There are also optional provisions which expand upon what may be considered a minor subdivision and the maximum number of lots allowed in an application for a minor subdivision; adoption of these require ratification by the local legislative body.

Communities wishing to retain ANR may do nothing and continue, but those desiring more control of these common land divisions may now regulate them as minor subdivisions. Adoption of rules and regulations for minor subdivisions does mean that smaller projects of six or less lots on a new street, previously subject to full subdivision review, will now be governed by the statutory limits set for review of a minor subdivision. As stated above, repetitive applications for these can be time-limited. In addition, with the exception of a roadway traveled lane width limit of 22 feet and a shorter timeframe for review (95 days instead of 135), these smaller projects may be regulated as before if the planning board so desires. These two concessions are more than compensated for by the ability to genuinely regulate problematic ANRs.

Because the ANR device is routinely used to make small changes to property lines, a suitable replacement mechanism was needed. Section 81X of the Subdivision Control Law was selected

for this purpose because it already covers so-called perimeter plans, allowing them to go directly to the registry. A new section is added entitled "Lot Line Changes," where such plans bearing an opinion from a professional land surveyor and a certificate from the local zoning enforcement official or board may go directly to the registry under certain circumstances. These plans may not create a new lot, change the lines of a street or way, create an illegal lot or structure, or worsen an existing nonconformity. A planning board not wishing to use this mechanism may instead elect to directly oversee these lot-line-change plans as minor subdivisions.

Another frequent use, and some would say abuse, of ANR plans is to modify the lots shown on an approved subdivision plan. These changes can be sweeping revisions to the layout of recently-approved new subdivisions lots with only a cursory review under the 21-day ANR clock. In this bill, and notwithstanding the paragraph above relative to Section 81X, any changes to the number, shape, and size of these subdivision lots must proceed under Section 81W as a formal modification to the subdivision. In the alternative, a planning board may elect to define such modifications as minor subdivisions and adopt less stringent regulations for them.

Refer to bill sections 29, 30, 32, 35, 37, 38, and 39.

15) Parks and Playgrounds [in subdivisions]

Current Status: The Subdivision Control Law does not allow local subdivision regulations to require dedication of any land within a subdivision for park or playground use by the residents without compensation.

Proposed Reform: The prohibition is stricken and the Subdivision Control Law is modified to allow local subdivision regulations to require a dedication of up to 5% of the land in a subdivision for park or playground use by the residents. Note that this provision can't be interpreted to require transfer of ownership of such park or playground to a unit of government (similar to the existing well-accepted requirements to create a roadway right of way, but without also mandating its dedication to the municipality).

Refer to bill sections 34 and 36.

16) Subdivision Roadway Standards

Current Status: To comply with local subdivision regulations many subdivisions roadways must be built to substantially higher dimensional standards than the existing public roadways onto which they connect. This may adversely affect aesthetics, lead to increase roadway runoff volumes, and inflate the costs of housing by imposing undue burdens on the developer. The Subdivision Control law does now prohibit roadway dimensional standards in local subdivision regulations in excess of those applicable to <u>new</u> publicly-financed roadway construction in similar zoning districts. However, since new roadways are seldom built by municipalities, there are no standards in place and the prohibition is meaningless as applied to subdivision roadway standards.

Proposed Reform: Revise the language to reference the standards applicable to the construction or "reconstruction" of publically-financed roadways in similar zoning districts, which does

regularly occur. This new reference would provide specific dimensional measurements to compare against those found in the local subdivision regulations. Rather than a strict prohibition, a rebuttable presumption is established that roadways standards in excess of those applicable to reconstruction of public roadways are unlawfully excessive. Such a presumption could be rebutted for good cause. It is further stated that requirements for total travel lane widths no greater than 24 feet shall be presumed not to be excessive.

Refer to bill section 33.

17) Appeals

Current Status: The permitting process is often lengthy and expensive in Massachusetts, even for projects consistent with the state's Sustainable Development Principles. Once a municipality has made a decision on a proposed project, opponents sometimes turn to the courts in the attempt to delay or stop the proposal even if there is no merit to the appeal. Resolving appeals is often an expensive and slow route, which undermines the predictability and authority of the local process for local agencies, developers, and residents alike.

Proposed Reforms: These reforms streamline the appeals language for site plan review, special permits, and subdivisions; provides for a record-based decision (rather than a decision based on new evidence) by the court evaluating a local approving authority's action; and clarifies the jurisdiction of the Land Court permit session to include residential, commercial, industrial, and mixed-use projects.

Refer to bill sections 20, 40, 41, and 42.

(18) Master Planning Incentive

Current Status: Although a master plan is now required under section 81D of chapter 41, no statute requires regulatory consistency with an adopted plan. Because of this disconnection, many municipalities do not have a current master plan or any plan, and the courts generally do not take master plans into account when assessing the validity of a local zoning ordinance or bylaw.

Proposed Reform: The creation and adoption of a master plan remains an option for municipalities in the new planning section. But in order to incentivize local master planning and better defend consistent local zoning regulations derived from adopted plans, section 14A of chapter 240 is amended by inserting after the first paragraph in section 14A, the following paragraph:

"In any claim challenging the validity of any provision of an zoning ordinance or by-law, the court shall first determine if the provision challenged is consistent with the city's or town's master plan adopted pursuant to section 81D of chapter 41, if any. If the court determines that the challenged provision is consistent with the master plan, then such provision shall be deemed to serve a public purpose. A determination of inconsistency by the court or the absence of an

adopted master plan shall not for that reason alone be determinative of whether the challenged provision serves a public purpose."

Refer to bill section 43.

Matthew J. Hayes, P.E.
12 Canal Street
Medway, MA 02053
Phone: (508) 533-9795 email: mhayes@vhb.com

Education

Bachelor of Science Civil Engineering, Northeastern University 1994
Professional Engineer, Massachusetts 2001

Municipal Experience

Medway Planning Board 2002-2007 (Chairman 2006-2007)
Medway Conservation Commission 2000-2002

Employment History

Vanasse Hangen Brustlin, Inc. - Watertown, MA	1999 - Present
Ammann & Whitney - Boston, MA	1996 - 1999
Maguire Group, Inc. - Foxborough, MA	1992 - 1996

Selected Work Experience

Design experience includes roadway, sidewalk and bike path design; roundabout and signalization design; drainage, telecommunications and utility design; freeway interchange, light rail and site design; environmental permitting and construction services.

Senior Project Engineer/Project Engineer on the following projects:

- Highway improvement project - 2.7 miles of Cranberry Highway (Rte 6&28) in Wareham.
- Highway improvement project - 1.7 miles of Foundry Street (Rte 123) in Easton.
- Highway improvement project - 3.3 miles of Main Street/Palmer Road (Rte 58) in Plympton.
- Signalization and roundabout design on Queen Anne Road in Harwich.
- Multimodal Power Electrification of Commercial Fishing Piers in New Bedford.
- Bike path project - 6.2 mile extension of the Cape Cod Rail Trail in Dennis and Yarmouth.
- Bike path project - 2.5 mile Hummock Pond Road Bike Path on the Island of Nantucket.
- Bike path project - In-Town bike path on the Island of Nantucket.
- Bike path project - 6.0 mile extension of the Shining Sea Bikeway in Falmouth.
- Slope stabilization project - Connecticut River in Northampton.
- Site improvement project - Coombs School parking design Mashpee
- Interchange project - Route 24 at Exit 9 Freetown.
- Telecommunications - 5.1 mile C2C Fiber of Massachusetts, Boston.

OPENING COMMENTS for 1-29-13 Meeting re: Wickett Property

Paul DeSimone with Colonial Engineering and realtor Carl Rice are here tonight as representatives of Medway property owner Henry Wickett. They have asked for an informal discussion with the PEDB re: development options for 100 acres +/- owned by Mr. Wickett in the northeast quadrant of Medway.

The Board has a long standing policy of making itself available to developers/property owners for informal discussions. That we have agreed to do so for this site is not unusual.

The discussion that will take place this evening is not a public hearing. No permit application has been filed for the Board's review and action. Any comments are the perspectives of individual members and do not constitute a formal opinion or determination of the Board, and there is no guarantee that any statements or opinions expressed are accurate. Nothing discussed is binding on the Board or the Town of Medway and is subject to change. Binding determinations can be made by the Board only in response to a proper application filed with the Board.

COLONIAL ENGINEERING, INC.
Surveying and Engineering

11 AWL STREET
MEDWAY, MA. 02053
(508) 533-1644
(508) 533-1645 FAX

January 23, 2013

Medway Planning Board
155 Village Street
Medway, Ma. 02053

Re: Wickett Land

Hi Susy,
Here are a couple of questions we will have.
Pavement length, sidewalks, lighting, cul-de-sac.
Community center, required?
Mitigation: Off site sewerage and water.
Open space, paved access?
Design standards Section 7 subdivision rules?
Open space around unit 15' or 50'?
Thanks Paul

KOPELMAN AND PAIGE, P.C.

ATTORNEYS AT LAW

MEDICAL MARIJUANA UPDATE

TEMPORARY ZONING MORATORIUM

The Medical Marijuana Act went into effect on January 1, 2013. While some legislators will be seeking to postpone implementation of the law, we recommend that each municipality prepare now for the possibility that medical marijuana treatment centers may be registered and ready to open as early as the summer of 2013.

Some municipalities may wish to immediately allow the siting of one or more treatment centers; however, many municipalities may wish to adopt zoning bylaws or ordinances to regulate where and how such a center may be sited. If a proposed bylaw or ordinance already has been developed, then the zoning amendment process should begin as soon as possible.

Some municipalities may desire time to study whether and how to create zoning provisions to regulate medical marijuana treatment centers. If so, the municipality may consider enacting a zoning moratorium that would temporarily prohibit issuance of building and occupancy permits for medical marijuana treatment centers for a specific and limited period of time. Such zoning moratoria have withstood legal challenge. W.R. Grace & Co.-Conn. v. City Council of Cambridge, 56 Mass. App. Ct. 559 (2002) (A two-year moratorium was upheld and found to be reasonable under the circumstances). To withstand a challenge, however, the moratorium must identify the particular issue to be addressed by the moratorium and state the rational basis for its adoption. The moratorium also must be limited in duration and the duration must be reasonable in relation to the planning process necessary to be undertaken.

If a moratorium is challenged, the reviewing court will examine the circumstances under which it was adopted and require the municipality to establish the rational basis for the moratorium. Sturges v. Chilmark, 38 Mass. 246, 252 (1980). More specifically, a municipality must be ready to demonstrate its reasons for adopting the moratorium and be prepared to present the specific, tangible concerns that are to be addressed. For example, a municipality could describe the potential impact that location of a medical marijuana treatment center would have on local law enforcement and public safety needs.

It must be emphasized that the duration of the moratorium must have a rational relationship to the proposed planning process. During the moratorium, officials should undertake a study of the issues and then take the necessary steps to develop and present a proposed bylaw or ordinance to the legislative body, so as to address the identified issues.

We stand ready to assist you and your municipality, should you choose to propose a moratorium or draft a zoning bylaw or ordinance regulating medical marijuana treatment facilities under the new state law.

Attached is a sample moratorium warrant article in both Adobe Acrobat (.pdf) format and in Microsoft Word (.doc) format. Please note that we inserted a proposed moratorium expiration date of June 30, 2014; however, the date may be changed to another date that fits your community's planning needs, provided that the duration of the moratorium period is reasonable. We provided June 30, 2014, as an example because it allows communities slightly over twelve months after the date the Department of Public Health will issue its regulations to formulate bylaws or ordinances regulating medical marijuana treatment centers.

For more information, please contact Attorney Kay Doyle at 617-556-0007.

MODEL MEDICAL MARIJUANA MORATORIUM
WARRANT ARTICLE BYLAW

ARTICLE:
To see if the Town will vote to amend the Town's Zoning Bylaw by adding a new Section ___, **TEMPORARY MORATORIUM ON MEDICAL MARIJUANA TREATMENT CENTERS,** that would provide as follows, and further to amend the Table of Contents to add Section ___, "Temporary Moratorium on Medical Marijuana Treatment Centers:"

Section ____. PURPOSE

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town *[as applicable]* and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

Section _____ DEFINITION

"Medical Marijuana Treatment Center" shall mean a "not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers."

Section _____. TEMPORARY MORATORIUM

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Medical Marijuana Treatment Center. The moratorium shall be in effect through June 30, 2014. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town,

consider the Department of Public Health regulations Regarding Medical Marijuana Treatment Facilities and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses.

Or take any action relative thereto.

DRAFT Proposed Revision
1-29-2013 (sac)

TABLE 2 – Continued

Commercial District I - Route 109 Business Districts					
Multi-Tenant Development – 5 Acres or More *(On a Lot or Lots Comprised of 5 or More Acres such as Medway Commons)*					
	Total Maximum Sign Surface Area *(square feet)*	***Maximum # of Signs***	***Maximum Sign Height*** *(feet)*	***Minimum Setback from any Street Lot Line*** *(feet)*	***Illumination***
Development Sign	***Primary*** 100 not to exceed 75 per sign face ***Secondary*** 30 not to exceed 20 per sign face	1 per approved curb cut not to exceed 1 per street frontage. One sign shall be considered to be the primary sign and all others shall be considered to be secondary signs.	*Primary* 12 *Secondary* 6	*Primary* 15 *Secondary* 10	External
Individual Establishment Wall Sign	Building Sign frontage X 1.0 not to exceed 120 per establishment *	3 for a freestanding establishment not to exceed 1 per façade ~~1 for an establishment located in a multi-tenant building~~ ***2 for an establishment located in a multi-unit building not to exceed 1 per façade*** ***1 for all others***	NA	NA	External Internal
Individual Establishment Projecting Sign	12	1 per establishment	See Paragraph 7 g)	NA	External
Freestanding Directory Sign	16	Per Master Signage Plan	6	See Paragraph 7 k)	External

Multi-Tenant Development – Less Than 5 Acres *(On a Lot or Lots Comprised of Less Than 5 Acres such as Gould's Plaza)*					
Development Sign	60 not to exceed 40 per sign face	1 per development	8	10	External Indirect
Individual Establishment Wall Sign	Building Sign Frontage X 1.0 not to exceed 80 per establishment *	~~1 per establishment~~ **2 for an establishment located in a multi-unit building not to exceed 1 per facade** **1 for all others**	NA	NA	External Internal
Individual Establishment Projecting Sign	12	1 per establishment	See Paragraph 7 g)	NA	External
Freestanding Directory Sign	16	Per Master Signage Plan	6	See Paragraph 7 k)	External

** Unless an establishment has two or more building sign frontages. If so see Paragraph 7, i)*

Medway Parking Regulations

POSSIBLE REVISIONS

DRAFT - 1/16/2013

Delete the existing parking regulations presently included in each individual zoning district (list out) and delete Paragraph 6 in Sub-Section B Area Standards of SECTION V. USE REGULATIONS and include a new Sub-Section H follows:

SECTION V. USE REGULATIONS

SUB-SECTION H – PARKING REGULATIONS

1. **Purpose** - The purpose of this Sub-Section is to establish standards ensuring the availability of safe and convenient parking areas for a variety of motor vehicles. The goal is to provide sufficient parking to meet the needs of businesses and to encourage economic development while respecting the environment and community character. It is intended that any use of land involving the arrival, departure, long term or temporary parking of motor vehicles (not for vehicle sales), and all structures and uses requiring the vehicular delivery or shipment of goods as part of their function, be designed and operated to:

   a) Promote traffic safety by assuring adequate places for parking of motor vehicles off the street and for their orderly access and egress to and from the public way;

   b) Prevent the creation of surplus amounts of parking spaces contributing to unnecessary development and additional generation of vehicle trips, resulting in traffic congestion and traffic service level deterioration;

   c) Reduce unnecessary amounts of impervious surfaces required for parking from being created;

   d) Reduce hazards to pedestrians and increase pedestrian connectivity between and within sites;

   e) Promote access and convenience, in compliance with regulations of the Americans with Disabilities Act (ADA) and Massachusetts Architectural Board (AAB), for people with disabilities;

   f) Increase mobility and safety for bicyclists;

   g) Protect adjoining lots and the general public from nuisances and hazards such as:
      1. noise, glare of headlights, dust and fumes resulting from the operation of motor vehicles entering, exiting and idling in parking lots;
      2. glare and heat from parking lots; and,
      3. lack of visual relief from expanses of paving.

h) Reduce other negative impacts which excessive parking can cause.

i) Provide flexibility to reduce parking standards for businesses that are pedestrian accessible.

2. **Requirement** – In applying for a building permit or certificate of use and occupancy, an applicant must demonstrate that the parking requirements specified herein will be met, unless in reviewing an application for a special permit or site plan review, the Board determines that special circumstances render a lesser provision to be adequate pursuant to Paragraph 10 herein. In such cases, the Board may impose such conditions as it deems necessary.

3. **Parking Schedule – See Attached**

4. **General Parking Requirements**

a) Off-street parking must be provided to service all increases in parking demand resulting from new construction, additions or changes in use.

b) If a parcel includes two or more distinguishable uses/purposes, the minimum total number of required parking spaces shall be the sum of the number of parking spaces required for each individual use except as may be authorized pursuant to Paragraph 10 herein.

c) If any use changes which would increase the parking requirements, such use shall not be permitted until it can be demonstrated that the parking requirements set forth herein with respect to such proposed use have been met.

d) Any existing parking spaces that are removed due to new construction or site alterations shall be replaced in kind unless they are either in excess of the number required or removed at the request of the Town.

e) Parking spaces which also serve as loading areas shall not be credited toward the minimum number of required parking spaces.

f) Calculations - For the purpose of computing the parking requirements of various uses, the number of spaces required shall be the largest whole number obtained after calculating the required parking. Any fractional parking space of .5 and above shall be rounded up to the next whole number.

g) Future changes must demonstrate the ability to meet parking standards.

5. **Location of Parking Areas** - All required off-street parking facilities for uses located on a lot shall be located on:

a) the same premises or
b) on a separate parcel which:

1) adjoins the lot on which the activity or the uses it services is located or is located within practical and safe walking distance from the subject use (WHAT IS A REASONABLE DISTANCE???), and

2) is located in a zoning district allowing the use/activity it serves,

and

3) said parcel is held in common ownership with the principal lot or the owner of the principal lot has a right, enforceable in law or in equity, to utilize an adjoining lot not owned by the applicant as off-street parking and that right is evidenced by an appropriate instrument recorded at the Norfolk County Registry of Deeds.

6. **Parking Space Dimensions** – Off-Street Parking facilities shall be laid out as a rectangle in compliance with the following minimum provisions:

a) Standard Parking Space/Stall – Nine (9) feet wide by eighteen (18) feet long, exclusive of maneuvering and driving lanes.

b) Small Vehicle Parking Space/Stall – Eight (8) feet wide by fifteen (15) feet long exclusive of maneuvering and driving lanes.

c) Parallel/curbside Parking Spaces/Stall – Eight (8) feet wide by twenty-two (22) feet long (Hopkinton)

d) Motorcycle Parking Space/Stall – Four (4) feet wide by eight (8) feet long.

7. **Allocation of Standard, Small and Motorcycle Spaces** - In order to reduce the amount of overall impervious surface of large paved off-street parking areas containing more than forty (40) parking spaces/stalls, up to a maximum of 30% of the required parking spaces/stalls may be designated for small car and up to a maximum of 5% of the required parking spaces/stalls may be designed for motorcycle use and still count toward the overall number of spaces required. Small vehicle and/or motorcycle parking spaces shall be grouped in one or more contiguous locations within a parking area and shall be designated by clearly visible signs. The location of small vehicle and motorcycle parking spaces shall be such that they shall always constitute a minimum of 50% of the spaces *(excluding handicapped spaces)*, distributed proportionately, in closest proximity to a facility entrance.

NOTE – IN Hopkinton, for parking lots of 50 spaces or more, up to 40% of the spaces can be for small vehicles.

8. **Parking Area Design**

a) Surface - Parking areas shall have durable, all weather paved surfaces, and shall provide for the satisfactory management of surface water. Parking areas composed of pervious surfaces are encouraged in low traffic areas such as reserve parking, painted parking lines, parking pullouts, crosswalks, etc. and may be used to meet all or any part of the required parking subject to environmental

limitations. The *Site Plan Rules and Regulations* may include more specific standards for parking surfaces.

b) No parking spaces that comprise the minimum number required may also be used for the storage of materials or equipment, the display of merchandise, or serve as a loading area. Adequate off-street loading facilities and space must be provided and arranged such that no trucks need back onto or off of a public way, travel against one-way traffic, obstruct drive-thru traffic or park on a public way while loading, unloading or waiting to do so.

c) Parking facilities shall comply with the requirements of the Massachusetts Architectural Access Board.

d) Parking areas shall be so designed that no vehicle will be required to back onto a public way in order to enter or exit from a parking space.

e) Further requirements and standards for access/egress, sight distance lines, loading, driveway and maneuvering aisle dimensions, landscaping, screening, buffers, lighting, sidewalks and pedestrian access shall be as specified in the *Site Plan Rules and Regulations.*

f) Parking spaces shall be clearly delineated by white or yellow pavement markings at least four inches (4") in width or the equivalent based on industry standards.

g) Driveways/egresses serving ten (10) or more parking spaces shall have stopping and intersection sight distances based on the AASHTO standards - Geometric Design of Highways and Streets.

h) Location of Parking – To the maximum extent feasible, parking shall be located behind or beside buildings. Motor vehicle parking located between the building and street alignment is permitted only if no other reasonable alternative is available.

i) The design of parking areas shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, property owners, and business tenants. Impacts on scenic roads, historic districts, natural resources and community character shall be minimized.

j) Parking areas of ___ parking spaces or more shall designate employee parking areas located the farthest away from the business entrance. *THIS NEEDS SOME WORK!!*

9. **Bicycles** – Bicycle racks that facilitate locking shall be provided to accommodate one (1) bicycle per twenty (20) off-street parking spaces required or fraction thereof. Bicycle racks shall be securely anchored and wherever possible, shall be located within view of the building entrances or windows.

10. **Flexible Parking Options/Parking Reductions** – A decrease in the number of off-street parking spaces to less than that required by these provisions may be granted *for any use* as part of a special permit application or site plan review. *The Planning and Economic*

Development Board is authorized to issue a special permit for reduced parking for uses that are allowed by right or for uses authorized by special permit from the Planning and Economic Development Board. The Zoning Board of Appeals is authorized to issue a special permit for reduced parking for uses that are allowed by special permit from the Board of Appeals. Such reduction in the number of parking spaces shall not exceed 30%.

a) The Board must determine that a lesser number of parking spaces would be adequate for all parking needs because of special circumstances such as:

1) Potential for Shared Parking – The uses have varying hours and days of operation whereby peak demands occur at different times of day, week or season and do not place coincident peak demands on the parking area. A reciprocal agreement acceptable to the Board shall be executed by all parties in order to ensure the long-term joint use of shared parking.

MORE NEEDED HERE – How to document this?? Bellingham developed a formula. See page 21 – 22 of SWAP study

2) Unusual age or other characteristics of site users.

3) Existence of parking space demand reduction programs such as organized car/van pooling or mobility management programs (shuttle bus from train stations)

4) The extent to which the proponent's development proposal promotes and accommodates other means of transportation to access the site such as pedestrian facilities or bicycle racks.

5) High employment density such as locations where there are 50 or more employees/acre of site.

6) Existence of safe and convenient pedestrian walkways and connections between buildings within in a multi-tenant development/shopping center so as to reduce the number of vehicle movements and re-parking to visit multiple businesses within the multi-tenant development on the same trip.

7) Walkability
   a. The existence of safe and convenient forms of pedestrian connectivity for 100% of the distance between nearby residential neighborhood and the subject site.
   b. The existence of *(some measurement level????)* of residential uses within one half mile of the subject site.

8) The existence of a municipal or private parking lot within 2 blocks/400 feet of the use.

b) To reduce the parking requirements, the Board must determine that the following criteria are met:

1) The provision of parking spaces will be in harmony with the general purpose and intent of this section of the Zoning Bylaw.

2) The amount of off-street parking to be provided will be sufficient to serve the use(s) for which it is intended.

3) The decrease in required off-street parking is based on a parking analysis/ study prepared by a registered professional engineer. Such analysis shall include at a minimum, the following:

   a. size and type of existing uses or activities on site
   b. size and type of proposed uses or activities on site
   c. rate of parking turnover for various uses
   d. expected peak traffic and parking loads for various uses based on customary hours of operation
   e. availability of public transportation
   f. industry parking standards for various uses
   g. other factors such as those itemized above in 10. a).

c) *A special permit for reduced parking may be issued with appropriate conditions, including but not limited to provisions requiring additional parking should uses change over time.*

****

Key Definitions Needed for Parking Regulations

Gross Floor Area (GFA) – The area within the perimeter of the exterior/outside walls of a building as measured from the inside surface of the exterior walls, with no deduction for interior hallways, stairs, closets, thickness of interior partition walls, columns or other interior features *(Definition used in Bellingham & Wrentham).*

NOTE – The Medway Zoning Bylaw DEFINITIONS section does NOT presently include a definition for *Gross Floor Area* even though the Bylaw repeatedly refers to *gross floor space!!!*

The Medway Zoning Bylaw DEFINITIONS section does include a definition for *Usable Floor Space/Net Floor Area* as follows: *The total area of all floors of principal and accessory buildings or structures on a lot, excluding stairwells and elevator shafts, equipment/utility rooms, rooms used for the storage of merchandise not accessible to the public, rooms/areas dedicated exclusively for employee use, interior vehicular parking or loading, and all floors below the first or ground floor, except when used or intended to be used for permitted uses.* HOWEVER . . . the term *Usable Floor Space/Net Floor Area* is used only in the Business/Industrial zoning district.

The SITE PLAN section of the Zoning Bylaw does include a definition of Gross Floor Area as follows: *The sum of the gross horizontal areas of all floors of a building or structure as*

measured from the exterior face of exterior walls, but excluding any floors determined to be not occupiable.

Net Floor Area (NFA) – The total area of all floor of principal and accessory building or structures on a lot, excluding stairwells and elevator shafts, equipment and utility rooms, rooms used for the storage of merchandise not accessible to the public, interior vehicular storage and all floor below the first or ground floor, except when used or intended to be used for permitted uses. *(recommended by Claire)*

Fine Dining – Full service eating establishment with typical turnover rate of at least one hour or longer; generally does not serve breakfast and sometimes does not serve lunch; serves dinner; usually requires a reservation; is generally note part of a chain; may have function space.

Casual Dining – Full serve eating establishment with typical turnover rate of one hour or less; moderately priced; occasionally belongs to a restaurant chain; generally serves lunch and dinner; may serve breakfast or be opened extended hours; generally does not take reservations; may or may not contain a bar.

Fast Food – Characterized by large carry-out clientele; long hours of service; high turnover rates for eat-in customers; no table service by wait staff; typically pay at the cash register before eating; may or may not have a drive-through. Generally considered to be a facility that serves hamburgers, subs/sandwiches, pizza, coffee/donuts, ice cream and various ethnic foods (i.e. Thai, Chinese, sushi, middle-eastern).

Entertainment/Commercial Recreation – indoor or outdoor spaces for leisure activities including but not limited to gold courses, bowling facilities, movie theatres, sports complexes, fitness or health clubs, and recreational community centers.

Shared Parking – A parking area or facility that serves multiple destinations. Often, but not always, the destinations share patrons so that people park once and visit multiple destinations. May also include parking areas that have different time periods when parking demand is highest.

QUESTION – Include these definitions within the PARKING section or within the DEFINITIONS section of the Zoning Bylaw?

Other Types of PARKING Provisions/Requirements We Might want to consider

Electric Vehicle Charging station – Require new developments with a parking area of ___ size or more to install an electric vehicle charging station. What kind of incentive could we provide??

Provide an Option for a Payment in Lieu of Off-Street Parking for Commercial III and IV Zoning Districts - This feels like too much to work out right now. It is something we could add in the future.