Open Space and Low Impact Development: Are your Bylaws Cutting Edge or Behind the Curve?

Citizen Planner Training Collaborative
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Rural/natural lands provide many benefits

<table>
<thead>
<tr>
<th>Ecological:</th>
<th>Human:</th>
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<tbody>
<tr>
<td>climate regulation</td>
<td>tax revenue</td>
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<td>carbon sink</td>
<td>climate change mitigation</td>
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<td>watershed protection</td>
<td>employment</td>
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<td>nutrient cycling</td>
<td>clean drinking water</td>
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<td>erosion control</td>
<td>clean air</td>
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<td>biodiversity, habitat</td>
<td>local food</td>
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<td>local wood</td>
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<td>hunting, fishing, recreation</td>
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<td>aesthetic enjoyment</td>
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Driver of modern land use change:
residential development

from 1999 – 2005:

47,000 acres of open space developed

87% due to residential development
- 30,000 acres forest
- 10,000 farmland

“Losing Ground” Report, Mass Audubon
Rural land use change, piece by piece…
How do you get what you want?

Land is expensive to buy (and manage)

Average appraised value for recent LAND grant applications:

Fee: $19,000/acre  
CR: $14,000/acre

Acquisition is an important strategy, but this is not an inexpensive or simple way to protect your community
How do you get what you want?
Land use regulations can take you to a different place than this!

Plus, it’s much cheaper to rezone than to buy land
The Rationale for Natural Resource Protection Zoning:

Much of MA is zoned for land consumptive large lot single family development

Cluster zoning has proven to be better, but flawed & seldom used
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Why did EEA develop an NRPZ bylaw and why does it want communities to adopt it?

- Reduced environmental and fiscal impact
  - Reduced costs to construct/maintain roads and infrastructure
  - Less impervious surface and runoff
  - Protection of water supplies, habitat, greenways, productive forest, agriculture, etc.

- Advances EEA objectives while providing housing and treating landowners equitably
• http://www.mass.gov/envir/smart_growth_toolkit/
• Website that is user friendly, comprehensive, and MA focused
• Integrated materials on each smart growth technique to promote understanding and local passage of new zoning bylaws
• Case studies show real world implementation, many in Massachusetts communities
Model Natural Resource Protection Zoning Bylaw/Ordinance

- Accompanied by subdivision regulations & special permit regulations for density bonuses and shared driveways

- Replaced the OSRD model in EEA’s Smart Growth/Smart Energy Toolkit

- Addresses problems with application of Cluster, OSRD, Conservation Subdivision zoning

- Formatted to be easily customized, though municipal counsel should be consulted

- Interaction with other local regulations must be considered (esp. Board of Health)

- Addresses process questions raised by the Wall Street v. Westwood decision
Problems with current practice:
• Special Permit Required – Discretionary
• Process often cumbersome, long, & expensive
• Large parcel size requirements
• Insufficient amount of land protected
• Less than ideal land conservation
• Dimensional standards inhibit use

Open Space Design
• By Right/Mandatory
• Formulaic and quick
• No minimum lot size
• [60%] of land area protected
• Strategic protection via Conservation Analysis & Findings
• Flexible Design Standards – lot size, frontage, setbacks, roads, etc.
Characteristics of Natural Resource Protection Zoning:

• Focused on preserving landscapes & natural resource based uses
• Preserves a lot of open space (65-90%)
• Is by-right; subdivisions must comply or obtain a special permit
• Very Low Density (for MA)
• Development rights calculated by formula, no yield or conventional subdivision plan
• Utilizes a conservation analysis & findings process
• Provides for a great deal of design flexibility for developed areas
• Can enable a diversity of housing types (e.g., multi-family)
• Provides for earned density bonuses
• Has a TDR option
• Optional for ANR development
Applicability:

- **Allowed by right** – permitted via subdivision or site plan review
- Required in designated districts, permitted elsewhere
- Local choice as to which districts and which housing types
- Conventional subdivisions are by special permit
- Does not apply to homes built on existing or ANR lots (could be done voluntarily)
- Could also be applied to non-residential development
- Rate of development cap on non-OSD lots included as an optional incentive

OSD is allowed by right under zoning, subject only to the requirements of the subdivision regulations or site plan review as applicable and any other generally applicable non-zoning land use regulations, and may be proposed anywhere in [CITY/TOWN]. Within the [list designated districts] [all single family housing developments (including residential subdivisions or residential developments where the property is held in condominium, cooperative ownership, or other form where the property is not subdivided)] and within [Districts as designated by the CITY/TOWN] [all housing developments] shall comply with the OSD provisions of this section...
**Yield: Allowable Residential Units**

- Units calculated by dividing the net acreage by the allowed density
- Net acreage calculation accounts for site-specific development limitations

**Net Acreage Calculation**

To determine net acreage, subtract the following from the total (gross) site acreage:

- \( \text{Half} \) of the acreage of land with slopes of \( \geq 20\% \) or greater;
- \( \text{The total acreage} \) of land subject to easements or restrictions prohibiting development, lakes, ponds, vernal pools, 100-year floodplains as most recently delineated by FEMA, Zone I and A around public water supplies, and all wetlands as defined in Chapter 131, Section 40 of the General Laws and any state or local regulations adopted there under, as delineated by an accredited wetlands specialist and approved by the Conservation Commission; and
- \( \text{Ten} \) percent of the remaining site acreage after the areas of A and B are removed to account for subdivision roads and infrastructure.

Note: Does not account for wastewater disposal

**Unit Count Calculation**

- Divide the net acreage by the required acreage (allowed density) for a unit
- Allowed density can vary by zoning district
Practical & Political Considerations:

• **Equity should be a consideration** for political if not legal reasons

  o Yield (# of houses) under OSD vs. prior yield should be understood

  o Acceptable to reduce yield; unreasonable to build currently units in some communities

  o Zoning may not be the critical factor; other regulations may result in reduced yield

    – **OSD applied to ≤1 acre lots with individual lot well and septic a particular concern**
**Dimensional Requirements:**

**Goal:** Make it as easy as possible to conserve land and natural resources by arranging units/lots in as unconstrained a manner as practicable

- **No required minimum lot size**, but water or wastewater needs or other regulations may limit

- **No numerical frontage required**, rather “legally and practically adequate vehicular access”

- [10] foot setback to property lines & [20] feet between principal structures

**Enforcement:**

- Monumentation clearly delineating the open space required to ease enforcement
Open Space:

• Permanently conserves [60%] of land area

• Required % may be reduced by up to [10%] for land devoted to common water or wastewater infrastructure; this land must be subject to a Restrictive Covenant

• Preserved open space required to be contiguous to the greatest extent practicable

• Protection under Article 97 or a permanent Chapter 184 type restriction required
  o Restrictive Covenant under Chapter 184 required if CR not accepted
  o CR must specify permitted and prohibited uses consistent with the zoning

• Allowable and Prohibited Uses addressed in detail
  o Alternate language provided to address active and motorized recreation
  o Small portion [5%] may be paved/built on consistent with open space use
Open Space (continued):

- Ownership options specified; private owner, conservation non-profit or state agency, conservation commission, or homeowners association (HOA)
  - Provisions govern HOA ownership (including a conditional open space grant)
  - Unless held by the conservation commission a CR & access easement with inspection and enforcement provisions are required

- **Maintenance standards established** by Planning Board when approving the OSD
  - Has an enforcement provision, including the potential to place a property tax lien

- Submission requirements specify provision of a Conservation Analysis as per the Subdivision Regulations
Subdivision Regulations:

Design Process

Designer must follow a prescriptive Conservation Analysis based process:

1. Informational meeting encouraged to discuss conservation & development priorities

2. Conservation Analysis delineates Primary and Secondary Conservation Areas
   - Contiguity requirement; can be waived

3. Written Conservation Findings specify areas to preserve and develop

4. Landscape architect lays out the subdivision within the Developable Area

5. Planning Board decision; incorporates Conservation Findings
Open Space Plans should guide land conservation in subdivisions
Planning Assistance Grants: Help Reaching the Cutting Edge!

**Eligibility:** Cities and towns, regional planning agencies, & RPAs on behalf of communities

**Purpose:** Fund the professional help & public process needed to plan & zone for land conservation & development consistent with the Sustainable Development Principles

**Timing:**
- RFR Release – Late March or early April
- Applications Due – Late May
- Awards Made – June
- Work to be completed by June 30, 2021 (end of fiscal year 2021)

**Funding Available:** $500,000 FY20 and $500,000 FY21

**Grant Amount:** Maximum of $50,000 (criteria will favor smaller amounts)

**Match Requirement:** 25%; recipients will also be required to seek appropriate approval
Planning Assistance Grants (cont’d):

**Project Eligibility:** Most land use related activities with preference for “action” & “Set Asides” for projects in a few categories that will compete among themselves:

- Zoning resulting in permanent land conservation (e.g. NRPZ or TDR)
- Zoning for sustainable housing production (e.g. ADUs, 40R, TOD, Mixed-Use)
- Mitigation of climate change through zoning that addresses energy use & GHG emissions

**Evaluation Criteria:**

- Advances sustainable development by directly, quickly, & significantly improving growth;
- Utilizes funding efficiently;
- Implements a Master, Climate Change, Open Space, or other Plan;
- Involves more than one municipality collaborating regionally;
- Provides a match above the required 25%;
- Implements a Smart Growth Toolkit technique;
- Advances a Community Compact Best Practice commitment; and
- Demonstrates consistency with the MA Sustainable Development Principles
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