

Joint Committee on Municipalities and Regional Government

Testimony of Massachusetts Association of Conservation Commissions (MACC)

On the Comprehensive Land Use Reform and Partnership Act (CLURPA)
Senate Bill 1019

May 18, 2011

My name is Gregor I. McGregor, Esq. I am an environmental attorney and litigator, in practice at my firm, McGregor & Associates in Boston. I also serve as Chair of the Legal Committee for the Massachusetts Association of Conservation Commissions (MACC). I am testifying for myself and for MACC, based on my 40 years of experience with Massachusetts environmental, land use, and real estate laws and related litigation, and based on MACC's expertise in wetlands protection, municipal law, land use planning, and local decision-making for 50 years.

MACC strongly supports passage of CLURPA and requests favorable action by this Committee. MACC has worked hard for enactment since your Committee reported out CLURPA favorably last year. This meaningful, much needed reform should become law in 2011.

Massachusetts has the most antiquated land use laws in the nation. It has among the best environmental laws in the United States, but our land use laws must rank 50 out of 50. They benefit virtually no one except the few who have a stake in the status quo that we have here, namely abstruse, byzantine rules, patched together since the last comprehensive Zoning Act reform in 1975, plus periodic tinkering with the Subdivision Control Act, complicated by court decisions in the Superior Court, Land Court, Appeals Court, and SJC struggling to make sense of it all.

This status quo in our land use laws has left us with disparate procedures and standards for similar kinds of local land use permits, inconsistent deadlines for actions by the various local boards, types of board review not even mentioned in the laws, grandfathering or "vesting" privileges available nowhere else in the known universe, criteria so vague and approvals so uncertain as to be unpredictable for applicants, conflicting scopes and standards of review for the various kinds of court appeals, and a mass of court-made law dealing with what the laws mean.

Sophisticated developers, buyers, lenders, and builders regard the Massachusetts land use zoning and subdivision permit laws as a bad joke, an experience to be endured. Worse, knowledgeable open space and conservation advocates regard our zoning and subdivision laws as divorced from reality, detached from the merits, and not resembling land use planning as it is practiced elsewhere in the US. It is common practice for some to use technicalities to delay for the sake of delay, to kill projects by passage of time, shrunken market, and lost financing. Least of all is the Massachusetts public protected by modern, sophisticated zoning and subdivision procedures and standards.

One consequence of our zoning and subdivision laws not being trusted as predictable and fair is that land use decision-making tends to become "rule by exception," that is, by variances, exemptions, exclusions, vesting, and other ways to escape jurisdiction, limit review, or prevent application of standards. This is instead of the project merits.

A consequence of zoning and subdivision laws not reflecting comprehensive land use planning and goals is that undue stress is placed on other land use laws to function as growth controls, when they are supposed to regulate septic systems, sewer connections, road access, wells and water supplies, and other private or public infrastructure. This strains these health and safety laws to the breaking point.

None of this is new to this Committee, to the legislators and Smart Growth Alliance stakeholders who worked out the terms of CLURPA over the last two years, to the Zoning Reform Task Force led by Secretary Greg Bialecki, or to the Zoning Reform Working Group over the years before. Thank you for your hard work, perseverance and vision.

None of this is new to MACC, whose member Conservation Commissions have witnessed the difficulties of Building Inspectors, Zoning Enforcement Officers, Zoning Boards of Appeal, and Planning Boards, the frustrations of perfectly proper applicants for approvable projects, the exasperation of landowners, developers, buyers, sellers, lenders, investors, contractors, consultants, and engineers, the confusion of environmental and conservation advocates and organizations, the endless board hearings characterized by consternation over what the words of the Zoning Act and Subdivision Control Act mean, and the tendency for stakeholders in zoning bylaws and permits and subdivision regulations and projects to litigate to get a resolution, or at least threaten litigation just to get an answer.

CLURPA balances all the competing considerations to get our basic land use laws right for a change.

This means to direct development mostly to where it already is, make approvals there easier for new development and redevelopment, match infrastructure to development needs, spark less resource intensive development in general, reward greenhouse gas reductions, encourage new housing development, give all municipalities the same basic land use tools, and partner with cities and towns that wish to enjoy more flexibility if they agree to host sustainable development.

MACC urges prompt favorable action on CLURPA.

Respectfully submitted,
Gregor I. McGregor, Chair
MACC Legal Committee

ABOUT THE MACC

The Massachusetts Association of Conservation Commissions was formed in 1961. It includes as members all conservation commissions duly established under the Conservation Commission Act. MACC is supported by annual dues of member commissions, individual and corporate memberships (non-voting), foundation grants, and publication sales and conference fees.

MACC members and associate members total approximately 2,300. MACC is their principal spokesperson on matters of environmental policy and practice within the Commonwealth and, on occasion, their legal resource.

MACC presents research results and testimony to the Legislature, participates in Executive Branch program reviews and promulgation of regulations, sits on government agency advisory committees and task forces, presents professional training courses, pursues appeals in its own right, and conducts semi-annual, statewide educational conferences attended by hundreds of conservation commission members and guests, including scientists, legislators, and agency officials.

MACC also helps to structure and implement numerous state and local land and water use regulatory programs: floodplain and wetland zoning, subdivision control, coastal zone management, environmental impact analyses, wildlife and endangered species protection, the Massachusetts Conservation Restriction Act and Agricultural Preservation Restriction Program, the Watershed Protection Act, and of course the Wetlands Protection Act.

MACC encourages and advises on the use of municipal Home-Rule powers under the Massachusetts Constitution and statutes, supports municipalities doing so, and publishes a model Home-Rule Wetlands Protection Bylaw that has been adopted by many cities and towns and approved by the Massachusetts Attorney General.

MACC has considerable expertise in wetlands, zoning, and regulatory taking law as these matters consistently come before its members. MACC encourages its members to submit comments to state agencies and legislators whenever appropriate.