

**Massachusetts Smart Growth Alliance Response to Real Estate Coalition
Statement
Issued on S. 2311 issues on June 1, 2016**

June 7, 2016

It is disappointing that after years of work to update our state's zoning and planning statutes, the "Real Estate Coalition" (REC), comprising several real estate trade associations, still cannot find their way to support significant reforms to our state's planning, zoning, and subdivision statutes. Senate Ways & Means has developed a carefully balanced bill that will modernize zoning laws that are decades out of date, provide Massachusetts cities and towns with an array of zoning and permitting techniques that are widely available in the rest of the country, and encourage the creation of jobs and homes that are desperately needed to bolster the Massachusetts economy and to increase both state and local tax revenues. All of this is balanced by elements of the bill that will protect the natural resources, habitats, forests, and farms that make Massachusetts special.

Over the past several months, at the request of the Special Counsel to the Office of the Senate President, MSGA and REC met three times to delve into the details of the bill and try to resolve differences. Those meetings resulted in agreement on a number of technical improvements, many of which have been incorporated into S. 2311 – all of which favor the real estate industry. MSGA drafted and supported a number of other pro-developer amendments, which the REC was unwilling to support openly because they didn't wish to strengthen the bill.

Finally, Senate Ways & Means added several housing production incentives and requirements, all of which further strengthen the ability of developers to build housing in Massachusetts. This included recent recommendations of the Joint Committee on Housing & Urban Development, as well as the Senate Special Commission on Housing, where the members of the REC participated. All of these recommendations are designed to encourage clear and straightforward zoning, and are designed to increase the production of housing by requiring by-right zoning that does not require discretionary special permits, something long sought by the REC.

In short, the new draft – S. 2311 – generously accommodates the concerns of the real estate industry, yet inexplicably, the REC continues to oppose the bill. **All of these changes should allow each and every Senator who supports this bill to state in good conscience that the legislation will significantly benefit the real estate industry in Massachusetts.**

At the same time, land use is not the exclusive province of developers alone. Local officials and neighbors have interests too – interests that the General Court always strives to protect. Developers deserve clear and reasonable zoning and permitting procedures. They should get a clear "yes" or "no" after a reasonable period of review. They do not deserve a "yes" that is either automatic or instantaneous.

After literally decades of study and years of writing and re-writing, Senate Ways & Means has produced a bill that introduces far more rational and predictable procedures to the outdated and dysfunctional land use system we have had since the 1970s. The bill carefully balances the legitimate interests of localities, property owners, the real estate industry, and the environment.

Nobody gets everything they want – but everyone gets the changes they legitimately need to do their job. That is often the sign of good legislation. At the end of the day, we must all ask, “Why should we maintain a system that is clearly broken, rather than adopt a more rational and predictable one?”

On June 1, the REC issued an 11-page response to the 45-page bill. We are pleased they found some items to support, but we feel compelled to correct a number of mischaracterizations in their memo.

Site Plan Review: The REC asks that zoning freezes be extended for site plan approvals. As site plans are not a final permit (those are building permits or special permits), it is not appropriate to establish zoning freezes to such approvals.

Development Impact Fees: These fees are commonly used in other states, with no negative impact on housing production. In fact, impact fees will actually benefit developers by clearly indicating what their mitigation requirements will be, up-front, as opposed to our current “system” of ad-hoc, case-by-case negotiated exactions. The proposed legislation actually addresses many of the elements they request in their memo, most notably the constitutional requirements for rational nexus and rough proportionality standards. Line 449 of the bill clearly states that “no fee shall be assessed more than once for the same impact,” which clearly prevents “double-dipping”. Finally, the clause about remedying an existing pre-existing deficiency was added to make it clear that only an exacerbated deficiency would be the developer’s responsibility to address, not any prior existing deficiency.

Inclusionary Zoning: The REC claims the bill’s inclusionary zoning provisions could be vulnerable to constitutional challenges. In drafting this section, local and national best practices were incorporated, as were recent Supreme Court findings. We believe this section is on firm legal ground and will withstand court scrutiny. It will certainly strengthen existing inclusionary zoning ordinances and bylaws, which are based on no state authorizing language at all!

We would note that both the Massachusetts Chapter of the American Planning Association and the Massachusetts Municipal Lawyers’ Association support the zoning reform bill. These professionals would be unlikely to do so if the bill contained the kind of deficiencies suggested by the REC.

In conclusion, we strongly support the redrafted S. 2311 that Senate Ways & Means Committee produced. We believe it more than adequately addresses the legitimate

concerns of the real estate community, while protecting the interests of municipal and environmental partners. It is time to enact clearly needed reforms. We have waited more than 20 years – more study will only result in delay, not any meaningful improvement of the bill. We respectfully urge you to support this excellent legislation, and we stand ready to answer any questions you might have.