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Letters To The Editor

Time for Legislature, court to act on permitting issue

To the editor:

The development community and the editorial board of Massachusetts Lawyers Weekly agree that the more efficient movement of land use cases through the court system is a "laudable goal" ("A 'Permit Division' would be radical and unnecessary," May 8).

Releasing the thousands of housing units and many other development projects stalled in the court system would help relieve the shortage of affordable homes in Massachusetts and greatly benefit the commonwealth's economy.

As ever greater numbers of employees flee the commonwealth due to the inadequate supply of housing, and businesses look elsewhere for more hospitable permitting environments, it's time for the Massachusetts Legislature to act.

House Bill No. 4741 establishes a Permit Division of the Superior Court populated by four judges who have particular skills related to environmental and land use permitting and/or litigation. No additional judges would be hired; rather, the chief justice for administration and management would designate these judges from sitting justices.

The Permit Division would have original jurisdiction concurrently with the Superior Court over civil actions involving, among other things, appeals from the decisions of various permit-granting authorities. Land use disputes may be transferred to the Permit Division upon motion of any party. Sessions of the Permit Division would be held in designated counties by the chief justice of the Superior Court.

Cases in the Permit Division would be assigned to various tracks subject to defined timelines. The final disposition of cases would also be subject to timeframes. The not-so-well-kept secret is that the delay inherent in the judicial review of a project, rather than the merits of the appeal itself, is the opponent's greatest ally. In the world of land use litigation, justice delayed is commonly justice denied.

The clogged calendars of the judicial branch result in delays — often many months or even years — in the scheduling of dispositive hearings and trials, as well as the issuance of decisions. This should not be acceptable. The existence of the Business Litigation Session, a standing order allowing for special assignments to a single judge, and the categorization of zoning appeals as fast-track litigation have all proven to be ineffective in solving the land use docket dilemma.

Lawyers Weekly proposes as the "simplest solution" the expansion of the Land Court and its jurisdiction. We concur with this proposal. However, rather than ask for additional funds and resources, the development community proposes a more modest and less costly remedy.

The Permit Division does not mandate any of the resources listed in the Lawyers Weekly editorial. The proposed legislation does not call for a central location for the Permit Division, nor does it require the hiring of additional clerical and administrative staff, or even new courtrooms and physical facilities for clerks' offices. To the contrary, the Permit Division would exist within the Superior Court department. Justices already sitting on the bench would simply be reassigned to hear land use litigation under stricter timeframes.

In short, the time has come for the Massachusetts General Court to take action to assist those who would help relieve the shortage of affordable homes in the commonwealth and generally benefit the economic climate of Massachusetts.

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