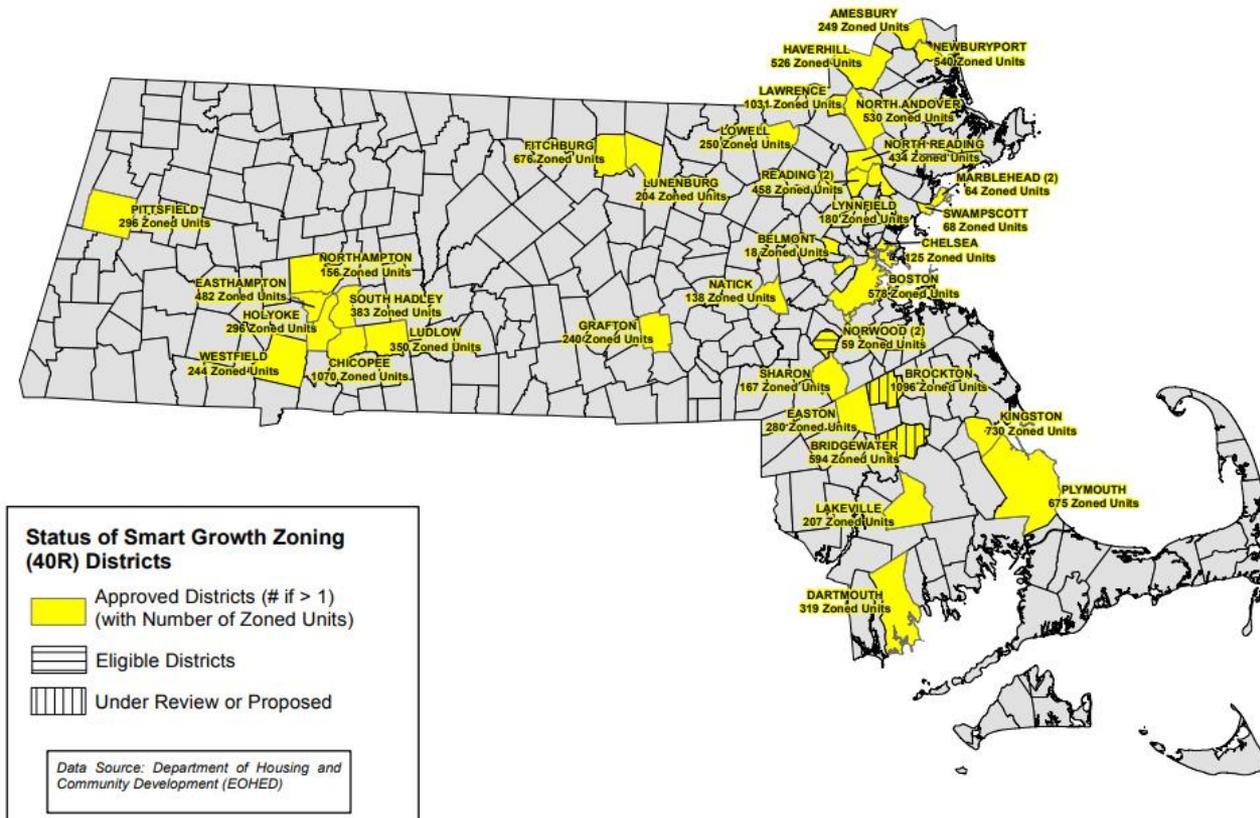


What is Chapter 40R?

Chapter 40R, or the Smart Growth Zoning Overlay District Act, encourages communities to create mixed-income residential or mixed-use zoning districts in select locations where development at certain densities occurs either as-of-right or through a limited plan review process.

Smart Growth Zoning Districts Approved, Eligible, or Under Review or Proposed in Massachusetts



Chapter 40R

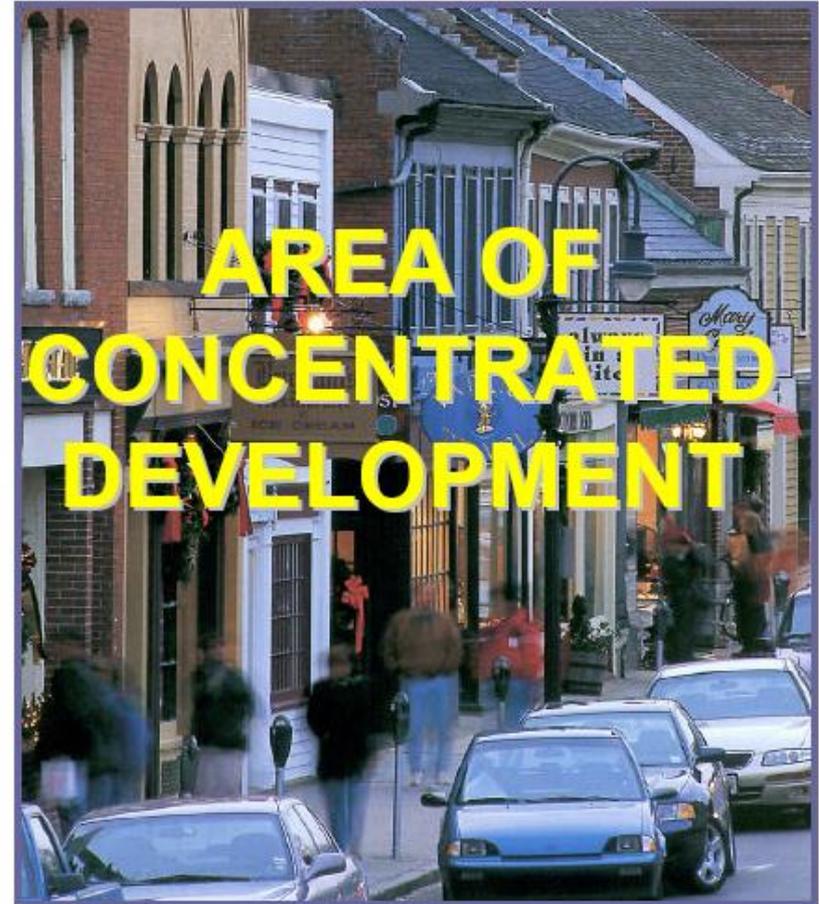
Smart Growth Zoning & Housing Production

Emphasizes...

- mixing land uses
- range of housing
- compact design
- distinctive communities
- resource preservation
- existing communities
- transportation choices
- fair + cost effective process
- stakeholder collaboration



Eligible Locations: Choose One!





Minimum Allowable Densities

SF @ 8 du/acre...



2-3F @ 12 du/acre...



4+ @ 20 du/acre...



Go to DHCD Website for
Updated District Activity

Table 6: Average/Median 40R District Size (Land and Future Zoned Units) and Density

	40R Districts in Cities	40R Districts in Towns	Total 40R Districts
Number of Districts	10	17	27
Total Acreage	396	805	1,201
District Median	28	41	34
District Average	40	47	44
Total Developable Acres	147	348	495
District Median	9.9	10.4	10.4
District Average	14.7	20.5	18.3
Total Future Zoned Units	4,598	5,182	9,780
District Median	296	240	250
District Average	460	304	362
Density (future zoned units per developable acre)			
District Median	31.2	20.0	22.7
District Average	31.2	14.9	31.2

Source: AS A TOOL FOR SMART GROWTH AND AFFORDABLE HOUSING PRODUCTION October 2009
 Prepared by Ann Verrilli, Citizens' Housing and Planning Association Jennifer Raitt, Metropolitan Area Planning Council

Appendix 4: Share of Two- and Three-Bedroom Units by Project

# PROJECTS	MUNI	USED SUBSIDY FUNDS? 1=YES	PROJECT NAME(S)	TENURE	POPULATION	TOTAL U	AFF U	%2BR+	%3BR
PROJECTS IN BOSTON/GATEWAY CITIES									
1	Belmont	-	Oakley Neighborhood	HO	Unr	17	3	100%	100.0%
1	Boston	1	Olmsted Green Rental - Phase III	Rental	Unr*	50	50	84%	16.0%
1	Boston	1	Olmsted Green Rental - Phase II	Rental	Unr*	50	50	84%	16.0%
1	Chelsea	1	Box District	HO	Unr	26	14	100%	53.8%
1	Chelsea	1	Janus-Highland Apts	Rental	Unr	41	41	88%	17.1%
1	Dartmouth	1	Village at Lincoln Park - Bldg I	Rental	Unr	36	36	78%	11.1%
1	Easthampton	1	Cottage Square (aka Dye Works)	Rental	Unr	50	50	78%	18.0%
1	Holyoke	-	Infill units	Mix	Unr	5	0	40%	80.0%
8	SUBTOTAL	6				275	244	84%	25.1%
1	Lunenburg	1	Tri-Town Landing Phase I,II,III	Rental	Unr	131	125	82%	9.9%
1	SUBTOTAL	1				131	125	82%	9.9%
9	TOTAL FAMILY PROJECTS	7				406	369	84%	20.2%
1	Boston	1	Olmsted Green Condos II	HO	Unr	41	11	100%	7.3%
1	Brockton	1	Green Street 102	Rental	Unr	2	2	100%	0.0%
1	Pittsfield	1	New Amsterdam Apts Phase I,II	Rental	Unr	67	67	75%	0.0%
1	Fitchburg	-	Riverside Commons Phase I+II	Rental	Unr	186	38	82%	9.1%
1	Haverhill	1	Hayes Village	Rental	Unr	57	52	81%	0.0%
1	Lowell	1	Mass Mills III - Picker Building	Rental	Unr	70	57	76%	5.7%
1	Lakeville	1	Kensington Ct, Sterling Place	Rental	Unr	204	100	73%	0.0%
1	Lawrence	1	Loft 550 (Malden Mills I)	Rental	Unr	137	134	67%	4.4%
1	Brockton	1	Station Loft Apts	Rental	Unr	25	14	64%	0.0%
1	Brockton	1	Centre 50 (Phase IA)	Rental	Unr	71	29	62%	7.0%
1	Easton	-	Queset Commons - Phase I-Bldg D/E	HO	Unr	60	3	62%	28.3%
1	Amesbury	-	Amesbury Hts 40B	Rental	Unr	240	60	59%	2.1%
1	Pittsfield	1	Silk Mill Apts	Rental	Unr	45	43	58%	15.6%
1	Reading2	-	30 Haven	Rental	Unr	53	11	57%	0.0%
1	Reading	-	Reading Woods	HO	Unr	200	43	54%	0.0%
1	Natick	-	Modera Natick Center	Rental	Unr	138	28	53%	0.0%
1	Northampton	1	Hillside Place (Village at Hospital Hill II)	Rental	Unr*	40	32	53%	5.0%
1	Holyoke	1	Chestnut Park Apts	Rental	Unr	54	54	44%	0.0%
1	North Reading	-	Edgewood Apts	Rental	Unr	406	102	41%	0.0%
1	Lynnfield	-	Market St Apts (fka Arborpoint)	Rental	Unr	180	45	40%	0.0%
1	Dartmouth	-	Village at Lincoln Park Sr Hsg -Bldg G	Rental	55+	48	48	38%	0.0%
1	Haverhill	1	Hamel Mills	Rental	Unr	305	63	37%	0.0%
1	Norwood	-	Courtyard at St. George	HO	Unr	15	3	33%	20.0%
1	Lowell	1	Counting House Lofts (fka 165 Jackson St - Phase I	Rental	Unr	52	26	33%	0.0%
1	Easton	-	Queset Commons - Bldg A	Rental	Unr	50	13	28%	0.0%
1	Ludlow	1	Ludlow Mills Phase I	Rental	55+	75	66	16%	0.0%
1	Brockton	1	Enso Flats (Phase IB)	Rental	Artist live/wk	42	42	14%	0.0%
1	Boston	1	Hearth at Olmsted Green	Rental	Elderly*	59	59	0%	0.0%
1	Chelsea	1	Atlas Lofts	Rental	Unr	53	6	0%	0.0%
1	Chicopee	-	Kendall Apts (rehab)	Rental	Unr	41	41	0%	0.0%
1	Northampton	1	Christopher Heights Assist'd Livg	Rental	Elderly	83	43	0%	0.0%
31	TOTAL ALL OTHER	19				3,099	1,335	45%	2.0%
40	GRAND TOTAL	26				3,505	1,704	50%	4.1%

Source: The Use of Chapter 40R in MA 2018 Update: prepared by Citizens Housing and Planning Association, Inc., May 2018

"Unr" indicates no specific population restrictions

"Unr*" indicates project includes some set-aside units for special populations or homeless

Positive Aspects of 40R

Financial incentives. \$10,000 - \$600,000 to adopt zoning plus \$3,000 per unit built beyond existing underlying zoning. 20.2 million dollars of incentive payments

Financial incentives. 40S education cost assistance 2.2 million awarded 3 out of 5 communities applied for funding and only Chelsea, Lakeville and Lunenburg received payments.

Meet housing needs. Norfolk's HPP established need for more affordable housing in the town.

Help meet 10% affordability requirement. Adopting Smart Growth Overlay District gives town control that 40B does not afford

Design Guidelines can be adopted as part of the 40R district creating regulatory control over design.

The 40R District can require **25 percent affordable units** for rental projects which would allow to count all of the affordable units for Subsidized Housing Inventory (SHI)

Local Control

40R District may be used to deny a 40B project



40B Denial



Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108
Tel: 617.854.1000 | Fax: 617.854.1091
Vo: 866.758.1435 | www.masshousing.com

March 1, 2012

Saw Mill Pond Village, LLC
85 Chestnut Street
Shrewsbury, MA 01545
Attention: Mr. Iqbal Ali

Re: Saw Mill Village
Easton, MA
PE-512
Project Eligibility (Site Approval) Application

Dear Mr. Ali:

This letter is in response to your application for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B and 760 CMR 56 (the "Comprehensive Permit Rules") under the following programs:

- Housing Starts Program of the Massachusetts Housing Finance Agency ("MassHousing")
- New England Fund Program ("NEF") of the Federal Home Loan Bank of Boston.

The proposal is to build 36 affordable homeownership units (the "Project") on approximately 12.94 acres of land (the "Site"), of which 10.72 acres are buildable, located on Foundry Street in Easton (the "Municipality"). The project is located within the Canoe River Aquifer Area of Critical Environmental Concern (ACEC) and adjacent to the Hookomock Swamp ACEC. Much of the land surrounding the site is identified as Bordering Vegetated Wetlands (BVW) and riparian zones.

As a result of our evaluation of the information that was presented and the site reviews conducted by MassHousing staff, we are unable to approve your application for a determination of Project Eligibility.

MassHousing staff has performed an on-site inspection of the Site, which local officials were invited to attend, and reviewed the pertinent information for the Project submitted by the applicant, the Municipality and others in accordance with the Comprehensive Permit Rules and the Guidelines.

Sawmill Village
Easton, MA
PE-512
Page 2

MassHousing staff revisited the Site on February 1, 2012. MassHousing staff also reviewed the revised plan that you submitted that reduces the number of units from 44 in the original proposal to 36 in the current plan in addition to reconfiguring the layout of the previous site plan.

The reasons for our denial of your application for Project Eligibility are as follows:

1. We consider the design of the buildings and the proposed site layout to be inconsistent with the design requirements outlined in 760 CMR 56.04(4)(c) and the related Comprehensive Permit Guidelines ("the Guidelines") dated July 30, 2008. In particular, we focus on the poor relationship to existing building typology and to adjacent streets as factors in our determination. Also, the proposed access and egress to the site is not ideal given the existing road layout of Foundry Street and the volume of traffic typical during peak hours. Regardless of the site's relative proximity to commercial districts, there is no safe means to accommodate pedestrian trips to and from the proposed development. The introduction of a new housing type, fundamentally designed to maximize the number of units it may yield, into this neighborhood is not consistent with local needs, given the Town of Easton's recent progress in meeting affordable housing goals.
2. In accordance with 760 CMR 56.04(4)(b) and the associated Guidelines, we have taken into consideration the previous municipal actions by the Town of Easton. Our review of the Town of Easton's formal response to your application indicates that:

(a) The Municipality has approved a Smart Growth Overlay Zoning District under M.G.L. c.40R. This district permits a total of 158 units of housing by right and includes a requirement to include affordable housing within the district. The developer is currently in the process of preparing a Final Environmental Impact Report (FEIR). This district is in close proximity to the only existing public transit in the Municipality and is located within walking distance of a nearby commercial & employment center.

(b) The Town of Easton also has recently approved a Comprehensive Permit for 113 units within the Shovel Works development in the heart of the Municipality's historic mill village. This site is directly adjacent to a proposed Commuter Rail Station and within walking distance of the mill village commercial and civic district, including the Municipality's main public education complex. Approval of this development has enabled the Municipality to have its Housing Production Plan certified by the Department of Housing & Community Development (one of only four communities statewide currently certified). The Municipality also has made a significant financial contribution to the Shovel Works development, with the commitment of \$7.5 million in Community Preservation Act (CPA) funds and an additional \$3.5 million appropriation for the development of a wastewater treatment facility.

Sawmill Village
Easton, MA
PE-512
Page 3

Taken together, these municipal actions demonstrate to MassHousing that the Town has made measurable progress in creating opportunities for affordable housing and multi-family housing that address the purpose of M.G.L. c. 40B, and has committed significant local resources to advance these efforts.

We do not focus, in our analysis, upon any one factor in isolation. We look at a site as a whole, as well as other factors such as municipal actions, and ask ourselves whether, after considering everything, the development of a site would advance the affordable housing policy that our agency was created to support. We cannot make that conclusion in favor of this Site.

If you have any questions concerning this matter, please contact Greg Watson, Manager of Comprehensive Permit Programs, at 617-854-1880.

Sincerely,

Gina B. Dailey
Director of Comprehensive Permit Programs

cc: Mr. Aaron Gornstein, Undersecretary, Department of Housing and Community Development
Ms. Colleen A. Corona, Chair, Easton Board of Selectmen
Mr. Walter Mirrone, Chairman, Easton Zoning Board of Appeals

Deval L. Patrick, Governor | Ronald A. Homer, Chairman | Thomas R. Gleason, Executive Director
Timothy P. Murray, Lt. Governor | Michael J. Dirrane, Vice Chair | Robert M. Russo, Deputy Director

MARCH 28, 2011

The Road Less Traveled

As the Commonwealth's affordable housing bank, we have supported Chapter 40B, the state's affordable housing law, for many years. That's been more than a mildly controversial proposition from time to time. Of course, along the way we have also backed common-sense changes to its implementing regulations, but we remain convinced that the underlying concept behind 40B is sound and worthy of endorsement.

A recent decision by MassHousing to reject a Chapter 40B proposal in Reading helps to illustrate, however, why new 40B housing isn't always the answer. This decision highlights one of the common sense changes in the 40B regulations that the Agency supports. It also offers the potential for a new path, one that would steer away from much of the controversy that has historically been associated with Chapter 40B.

The case in point involved a proposal to build 20 new affordable home ownership units on 2.16 acres. While new housing stock is needed, there were two primary reasons MassHousing rejected this proposal.

First, Reading has made a good-faith effort to increase its affordable housing stock, most notably by approving two Smart Growth Overlay Zoning Districts under Chapter 40R. These districts – one of which is located in close proximity to where the 20 new units would have been located – permit 458 new units by right. One of the points of emphasis of the Comprehensive Permit Guidelines and Regulations issued in 2008 is that Subsidizing Agencies like MassHousing should, when they are considering applications for site approval, take into account "municipal actions previously taken to meet affordable housing needs." Reading's actions in this instance were substantial.

Second, the parcel of land already included two existing homes that fit in well with the pattern of development in the surrounding neighborhood. To "de-construct" this well-established neighborhood and replace the existing homes with 20 new units of housing, especially in the context of a constrained site plan, was in our opinion ill-advised. We also viewed the site plan as inconsistent with the 2008 guidelines and regulations.

A combination of these factors led us to conclude that a site approval letter should not be issued in this instance.

To be sure, there is still a great need for new, affordable housing. But the Reading case illustrates that there are situations where a new Chapter 40B development is not the best choice, especially where local officials have already shown a strong commitment to affordable housing through channels other than 40B.

It's still too early to tell whether a proactive, planning-based strategy such as Reading's will supplant the more traditional reactive, litigation-based approach that has been the hallmark of 40B controversies through the years. One reason for optimism? Planners are less expensive than lawyers.

CHAPTER 40R ALSO HAS ELEMENTS THAT CAN MAKE IT MORE ATTRACTIVE TO DEVELOPERS THAN CHAPTER 40B.

One relates to profits. Developers using 40B are subject to profit limits and a cost certification process at completion; Chapter 40R requires neither, although developers using conventional housing subsidy programs are still subject to any such requirements those programs impose. Chapter 40R also requires a lower percentage of affordable units than does 40B (20% vs. 25%).⁴⁰ However, many⁴¹ communities below 10% that have adopted 40R bylaws have raised the minimum affordability requirement to 25% for rental developments to ensure that *all* the units in such projects count toward the 10% goal under Chapter 40B. This also helps ensure that they will meet the 40R requirement that 20% of units district-wide be affordable if, as allowed under 40R, their bylaw exempts projects with less than 13 units from affordability requirements.

The other incentive for developers relates to the approval process and abutter challenges. Chapter 40R potentially offers a faster project approval process. Once a 40R bylaw becomes effective, the plan approval authority must issue its decision on a project application within 120 days after the application is filed unless both parties agree to an extension and an application can only be denied if the proposal does not comply with the bylaw or has serious adverse impacts that can't be mitigated. By contrast, the approval timeline under 40B was open-ended until regulations in 2008 limited it to 250 days (from filing to decision).⁴² The 40R statute also makes it costlier for abutters to legally challenge 40R project approvals than approvals granted under other state zoning laws including 40B.⁴³ However, litigation challenging the constitutionality of that provision was filed in Land Court in May 2009 and has not yet been resolved.⁴⁴

⁴⁰ In order to use Chapter 40B at least 25% of the units in a project must be affordable to households with incomes at or below 80% of area median income *or* at least 20% of the units must be affordable to households with incomes at or below 50% of AMI. In addition, for the purpose of determining how many units in a development count toward the 10% goal (whether developed with or without a comprehensive permit), all of the units in a *rental* development count as long as the 25%/20% standard is met. In ownership projects, however, only the affordable units count.

⁴¹ Fourteen of the 27 districts have that requirement in their bylaw (four that reduce the requirement to 20% if the units are affordable at 50% of area median).

⁴² Regulations (760 CMR 56.00) that went into effect in February 2008 require zoning boards to open the hearing no later than 30 days after an application is filed, complete the public hearing within 180 days and render a decision no more than 40 days later.

⁴³ M.G.L. c.40R Section 11 requires the plaintiff to post a bond in an amount equal to twice the sum of the owner's projected carrying costs and legal fees for period of time the appeal is expected to delay the start of construction (no such requirement applies to challenges under 40B or other zoning).

⁴⁴ *The Mills at Natick Corporation v. The Town of Natick, et al.*

⁴⁵ Section 1, M.G.L. Chapter 40R.

Negative Aspects of 40R

Requires approval from Attorney General and Department of Housing and Community Development

The approval process can take 6 to 12 months.

Requires minimum density of 20 units per acre. A density cap may be existed; however, it must meet minimum density requirements for the 40R District

If the 40R District doesn't create any new housing units after a few years the state can request reimbursement of the incentive payment to create the 40R District

The funding of the incentive payments is subject to available funding, as well as, 40S school aid assistance where the development creates a school cost burden to the Town.

A municipality may set dimensional standards such as minimum setbacks, maximum heights, lot coverage, and parking requirements, as well as design standards, in its overlay ordinance, but must prove to DHCD that it will not “unduly restrict” developers’ 40R projects.

Once approved, a district cannot be repealed or amended without DHCD approval.

A provision requires a plaintiff challenging a project to post bond of twice the estimated carrying cost of the property plus defendant’s attorney fees.



Requirements of Chapter 40R

Housing by right. 20 units per acre for multi-family.

At least 20% affordable. At 80% of Area Median Income (\$ 96,250 for 4-person household).

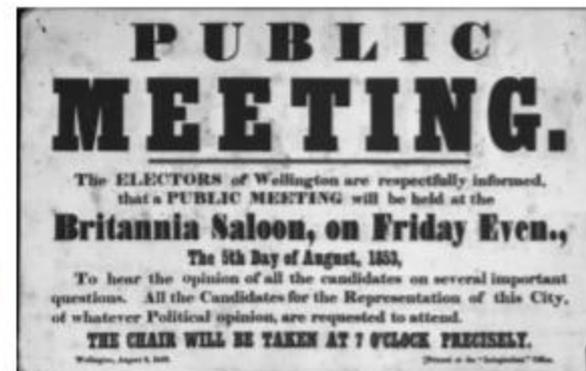
Flexibility to allow other uses. Other uses (retail, etc.) can be included to create vibrant neighborhood with a sense of place.

Optional design standards. Standards can help ensure high-quality projects that meet the Town's vision for Town Center.

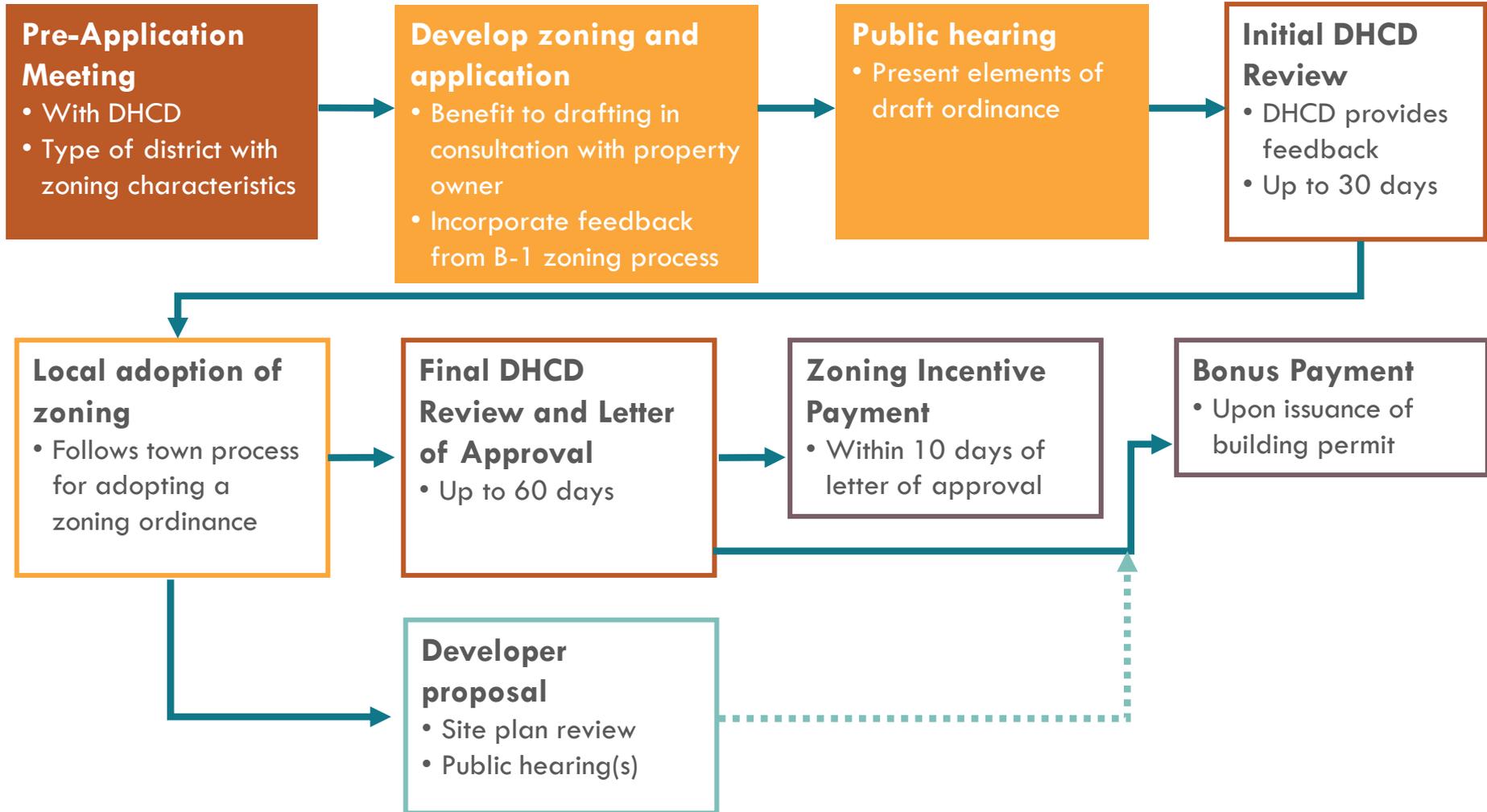


The Process

- Local public hearing
- Application to DHCD
- DHCD Letter of Eligibility
- Local Zoning Adoption
- Evidence of Adoption
- DHCD Letter of Approval
- Local Project Approval



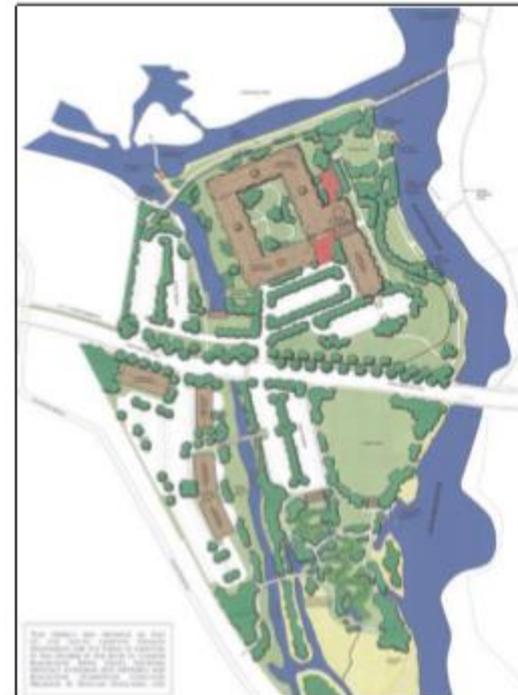
Process





The Application

- Locator Map
- Developable Land Plan
- Existing Zoned Units Plan
- Smart Growth Plan
- Smart Growth Zoning
- Underlying Zoning
- Comprehensive Housing Plan



40R Communities to evaluate for 40R projects

Easton District Size 66 acres, Number of Units 280, Permitted/Building Permit 50

Sharon District Size 11.55 acres, Number of Units 167, Permitted/Building Permit 0

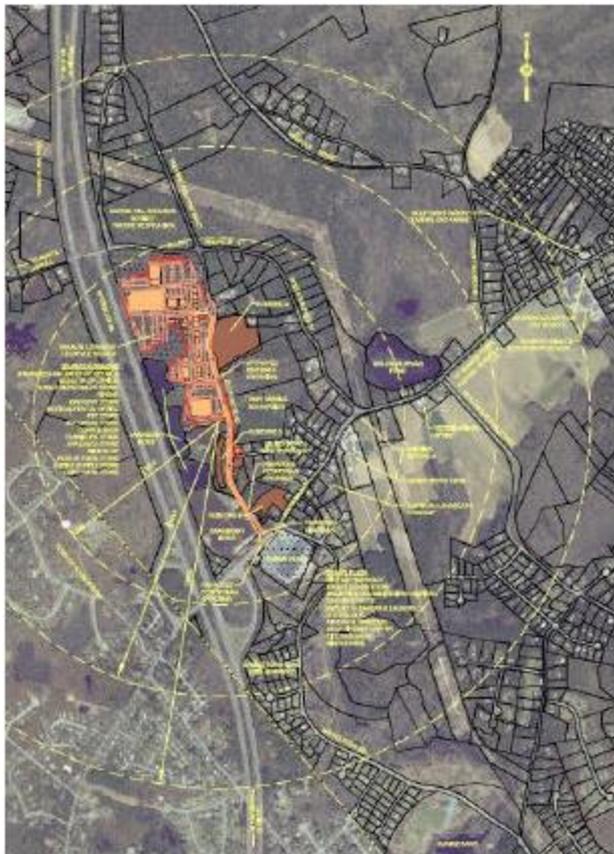
Natick District Size 5 acres, Number of Units 138, Permitted/Building Permit 138

Norwood District Size 1 .78 acres, Number of Units 15, Permitted/Building Permit 15

District Size 2 .57 acres, Number of Units 44, Permitted/Building Permit 0



Sharon Commons



- **167 Units / 11.6 acres**
- **Adjacent to planned lifestyle center**
- **Near existing supermarket**
- **Conditioned on new sidewalks**



Queset Commons, Easton



- 167 Units
- Mixed-Use
- www.Queset.com

