THE USE OF CHAPTER 40R IN MASSACHUSETTS

AS A TOOL FOR SMART GROWTH AND AFFORDABLE HOUSING PRODUCTION

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EXECUTIVE SUMMARY

IN JUNE 2004, Massachusetts enacted the Smart Growth Zoning and Housing Production Act ("Chapter 40R").[1] Chapter 40R encourages cities and towns to zone for compact residential and mixed-use development in "smart growth" locations by offering financial incentives and control over design. Proponents see it as a way to increase housing production and ultimately bring down housing costs in Massachusetts by creating zones pre-approved for higher density development that will attract developers. It is designed to address municipal fiscal and design concerns, as well as developer concerns.

- It is unique in providing for *direct cash payments* to cities and towns that create zoning overlay districts that meet location and procedural standards set out in the statute. Localities become eligible for a zoning incentive payment when they adopt the overlay and a density bonus payment ($3,000 a unit) if and when units are built using it. There are no restrictions on how municipalities use their 40R payments.
    - The districts must be in "smart growth" locations (near transit or commercial centers, in areas with existing infrastructure, or otherwise highly suitable)[2] and local officials must certify that existing infrastructure (water and sewer) is or will be adequate
    - The district overlay must allow housing to be built as of right at densities of at least 8 to 20 units per acre depending on the type of housing
    - It must also require that at least 20% of the new units be affordable.
- It allows communities to set detailed design standards for projects built in the districts and to reject projects that don't meet the standards. To address fears about school impacts, a companion law offers "school cost" insurance.
- It offers developers a more certain approval process. It makes allowed uses in the district by right, sets a 120 day deadline for project approvals and allows denials only for non-compliance with the bylaw or design standards (or for significant impacts that can't be mitigated by suitable conditions).
- It also an alternative to the Chapter 40B comprehensive permit process[3] in communities that have not met state affordable housing goals. It gives municipalities more control and, unlike 40B, does not impose profit limits on developers.

This report examines how communities have used Chapter 40R in the four-plus years since program regulations were issued in March 2005. The following pages provide summary information. The full report provides more detail on the program and its activity.

- Part I describes why 40R was enacted, how it operates and its interaction with another state law (Chapter 40B) that allows zoning relief for projects with affordable units.
- Part II summarizes the characteristics of the districts and projects approved to date, why municipalities decided to use or not use 40R, the potential cost of 40R incentives, and feedback on the program provided by planners in communities that adopted 40R.
- The Appendix includes profiles of the 27 approved districts and details on Chapter 40S.

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[1] M.G.L. c.40r, Section 1 (Chapter 149 of the Acts of 2004)

[2] Overlay zoning establishes *optional* "alternative land development requirements" in specific districts. Developers can choose to proceed under the overlay rules or the pre-existing underlying zoning.

[3] Chapter 40B allows developers to request zoning waivers for projects in which at least 20-25% of the units in a project are affordable ("subsidized") and to appeal local denials and conditions to the State if less than 10% of the community's year round housing is affordable *(see 2. Context: Chapter 40B on page 20 for more detail).*

CHAPTER 40R UTILIZATION: DISTRICTS CREATED, UNITS BUILT, POTENTIAL INCENTIVE PAYMENTS

As of August 2009, four and a half years after the program regulations (March 25, 2005) were issued, the following has occurred:

DISTRICTS CREATED

27 cities and towns have fully-approved 40R districts that collectively permit the construction of 9,780 housing units if fully developed (including about 2,100 affordable units). This is 9,038 more units than the underlying zoning allowed (in 14 districts, no housing was allowed as of right, though it was allowed by special permit or under existing overlay zoning in some districts). In a number of the larger districts with identified projects, build out is expected to occur over ten years. A number of the early districts (14) were created for or to include projects already in the planning process or approved under other zoning provisions (e.g. Chapter 40B, local overlays and special permits) before the 40R districts were created.

UNITS WITH PLAN APPROVAL AND UNITS BUILT

To date, local boards in 17 districts have given plan approval for a total of 3,200 units and nine districts have seen construction activity with just over of 1,100 units built or in construction (see Table 1). Some of the remaining 2,200 units have been delayed by the housing and capital market conditions that have cut housing starts to historic lows and made it difficult to obtain financing.

DISTRICT STATUS

At present, of the 27 approved districts:

- Two districts are fully built out (one with 15 units and one with 406)
- Six districts have seen some construction (706 units built or in construction and 400 more units with project approvals)
- Nine districts have approved projects totaling 1,578 units (including 240 units in Amesbury approved under Chapter 40B and 180 units in Lynnfield now on hold).
- Seven districts have developers or developer interest for some or all parcels, and a total of 47 units in the plan approval hearing stage (some projects are on hold).
- Three districts (Bridgewater, Holyoke and North Andover) that account for 1,400 of the 9,780 future zoned units have no developer interest (one has 5 units of infill housing).[4]

PIPELINE

A 28th town (Marblehead) has approved two districts and is awaiting final approval of their bylaw by the State Department of Housing and Community Development (DHCD), as required by the statute. Three more districts have applied to DHCD for preliminary approval, including one (the long-planned redevelopment of a naval station into 2,750 housing units in Weymouth and Rockland) created by special legislation.[5] About 20 communities are reported to be planning or considering creating districts.

[4] Five units (one single family, two duplexes) of infill housing have been built in Holyoke. North Andover had a developer for 530 units withdraw.

[5] The eligibility of the South Weymouth Naval Air Station redevelopment area was established by special legislation in 2007 (Chapter 303 of the Acts of 2008 – Section 37). DHCD is in discussion with the developer to determine how many units will qualify as incentive units, as Southfield reuse affordability requirements differ somewhat from 40R.

Table 1: Districts with Approved Projects

						Total Residential Units with Plan Approval				Affordable Units with Plan Approval			
Town	**Project Name(s)**	**Project Status (PA=Plan Approval)**	**District Future Zoned Units**	**District Incentive Units**	**Affordable Units**	**Total**	**Built**	**In Construction**	**Not Yet Started**	**Total**	**Built**	**In Construction**	**Not Yet Started**
Amesbury	Amesbury Hts 40B	PA	249	225	50	240	-	-	240	48	-	-	48
Boston	Olmsted Green		578	434	279	453	70	50	333	*	51	50	*
(Unit	*Homeownership I*	*Built*				*19*	*19*	*-*	*-*	*-*	*-*	*-*	*-*
breakdown in	*Rental I*	*Built*				*51*	*51*	*-*	*-*	*51*	*51*	*-*	*-*
grey/italics)	*Rental II*	*In Constr.*				*50*	*-*	*50*	*-*	*-*	*-*	*50*	*-*
	Rental III	*PA*				*50*	*-*	*-*	*50*	*-*	*-*	*-*	*-*
	Sr Housing	*PA*				*83*	*-*	*-*	*83*	*-*	*-*	*-*	*-*
	Future	*PA*				*200*	*-*	*-*	*200*	***	*-*	*-*	***
Chelsea	Gerrish Avenue		125	90	18	120	67	-	53	61	55	-	6
(Unit	*Atlas Lofts*	*PA*				*53*	*-*	*-*	*53*	*6*	*-*	*-*	*6*
breakdown in	*Box District*	*Built*				*26*	*26*	*-*	*-*	*14*	*14*	*-*	*-*
grey/italics)	*Janus-Highland Apts*	*Built*				*41*	*41*	*-*	*-*	*41*	*41*	*-*	*-*
Haverhill	Downtown		526	526	107	362	305	-	57	113	61	-	52
(Unit	*Hamel Mills*	*Built*				*305*	*305*	*-*	*-*	*61*	*61*	*-*	*-*
breakdown in													
grey/italics)	*Hayes Village*	*PA*				*57*	*-*	*-*	*57*	*52*	*-*	*-*	*52*
Holyoke	Infill Housing**	Built	296	211	60	5	5	-	-	-	-	-	-
Lakeville	Kensington Court	Part Built	207	207	41	100	24	76	-	100	-	100	-
Lawrence	Arlington Mills	PA	1031	1031	206	512	-	-	512	*			*
Lowell	Jackson St Phase I	PA	250	101	50	65	-	-	65	13	-	-	13
Lunenburg	Tri-Town Landing	PA	204	204	41	204	-	-	204	66	-	-	66
Lynnfield	Meadow Walk	On Hold	180	124	40	180	-	-	180	45		-	45
Natick	Natick Paperboard	Abutter Litigation	138	138	27	138	-	-	138	28	-	-	28
No. Reading	Edgewood Apts	Built	434	434	87	406	406	-	-	102	102	-	-
Northampton	Village at Hospital Hill		156	156	32	63	42	-	21	32	32	-	-
(Unit	*Eastview*	*PA*				*12*	*-*	*-*	*12*	*-*	*-*		*-*
breakdown in	*Hillside Place*	*Built*				*40*	*40*	*-*	*-*	*32*	*32*	*-*	*-*
grey/italics)	*Morningside*	*Part Built*				*11*	*2*	*-*	*9*	*-*	*-*	*-*	*-*
Norwood	Courtyard@St George	Built	15	11	2	15	15	-	-	3	3	-	-
Pittsfield	Total		296	217	59	112	43	24	45	112	43	24	45
(Unit	*New Amsterdam Apts*	*Some built*				*67*	*43*	*24*	*-*	*67*	*43*	*24*	*-*
breakdown in													
grey/italics)	*Silk Mill Apts*	*PA*				*45*	*-*	*-*	*45*	*45*	*-*	*-*	*45*
Plymouth	Cordage Park I	PA	675	675	135	150	-	-	150	38	-	-	38
Sharon	Sharon Commons-Phase I+2	PA	167	160	39	29	-	-	29	6	-	-	6
Westfield	Wildflower Estates	PA	244	198	60	60	-	-	60	12	-	-	12
Grand Total			**5,771**	**5,142**	**1,333**	**3,214**	**977**	**150**	**2,087**	**830**	**347**	**174**	**359**

*Number of affordable units not yet determined. **Infill units do not require plan approval or long term affordability

Table 2: Districts Lacking Projects with Plan Approval

Town	Project Name(s)	Project Status (PA=Plan Approval)	Future Zoned Units	Incentive Units	Minimum Affordable	Units in PA Hearing
Belmont	Unnamed Project	PA hearing underway for full build out (17 units)	18	13	4	17
Bridgewater	-	No developer	578	434	279	-
Brockton	Total District		1,096	1,096	219	-
	Renaissance Village	*300 units proposed 7/2009-PA application on hold*				-
	St. Paul/Caritas	*Possible 30-40 unit single-person occupancy rental*				-
Dartmouth	Village at Lincoln Park	Has developer; issued PA for some commercial	319	319	64	-
Easton	Queset Commons	Has developer	280	259	56	-
Grafton	Fisherville Mill	Site remediation nearing completion	240	240	48	-
Holyoke	-	No developer for larger sites (5 infill units built)	296	211	60	-
Kingston	1021 Kingston's Place	Has developer; PA hearing underway for first phase (30 rental units); infrastructure started	730	730	146	30
North Andover	-	No developer	530	530	106	-
Reading	Reading Woods	Has developer – 202 unit project on hold	202	202	41	-
Grand Total			**4,289**	**4,034**	**1,023**	**47**

PROPOSED DISTRICTS THAT DID NOT MOVE FORWARD

At least 11 communities that considered using Chapter 40R (by their own initiative or at the request of a developer) ended up not creating districts for a variety of reasons. These are discussed in more detail in *15. Communities and Developers Who Considered But Did Not Implement 40R* on page 45.

- Three drafted overlay bylaws but fell short of two-thirds approval at town meeting (Hingham, Newbury and Georgetown).
- Two considered using 40R but decided not to go forward because of concerns about school impacts or infrastructure capacity (Auburn, Holden).
- Two decided to pursue negotiated development using Chapter 40B (West Newbury, Shrewsbury)
- Three created their own overlay districts, either because they wanted density limits below the 40R minimum (Hudson, Westport) or wanted more control over the zoning approval (Melrose's district allows up to 35 units/acre with a 10% affordability requirement).
- One put the local vote on hold after reaching 10% under Chapter 40B[6] (Randolph)

In addition, one town, which had already created one 40R district, was unable to reach agreement with a different developer with a proposal for a different site (Easton).

ZONING AND DENSITY BONUS INCENTIVE PAYMENTS

The 27 communities with approved districts are eligible to receive $36.8 million in 40R payments if their districts are fully built out under 40R - $9.3 million for rezoning and $27.7 million in bonus unit funds (see Table 3). This will work out to about $17,100 per affordable unit averages if only 20% of the units are affordable. To date, $10.56 million has been paid out.

[6] Developers cannot ask the State to overrule adverse local decisions on a 40B application in communities where at least 10% of the year-round housing is affordable *(see 2. Context: Chapter 40B on page 20 for more detail).*

SCHOOL INSURANCE PAYMENTS

No payments have been made under Chapter 40S to date. This is due to the limited number of units built to date and the fact that school costs for the built projects are not expected to exceed the trigger point for payments under Chapter 40S. That is, the State payments for education, plus the share of new property and excise taxes from the projects built to date are expected to exceed school costs (most have been rental projects with one or two bedroom units only).

Future 40S payments are more difficult to predict in advance but near-future 40S obligations are expected to be low as well, as most of the projects proposed and districts created to date have characteristics that reduce the likelihood of net new school costs. Many of the sites were under-utilized and some were exempt. Some include commercial uses which will generate new taxes and most of the proposed residential projects are mixed income, multifamily developments that are unlikely to attract many households with children (very few have three bedroom units).[7] Very few districts approved to date allow construction of the type of housing (modest single family "starter" homes) that would be expected to trigger payments under Chapter 40S.

Table 3: Potential 40R Zoning Incentive and Density Bonus Payments

	Future Zoned Units	Incentive Units	Bonus Units	Affordable Units	Zoning Incentive Payment	Estimated Bonus Payment at Full Buildout	Estimated Total Payment
Amesbury	249	225	225	50	$350,000	$675,000	$1,025,000
Belmont	18	13	13	4	$10,000	$39,000	$49,000
Boston	578	434	434	279	$350,000	$1,302,000	$1,652,000
Bridgewater	594	507	507	127	$600,000	$1,521,000	$2,121,000
Brockton	1096	1096	1096	219	$600,000	$3,288,000	$3,888,000
Chelsea	125	90	90	18	$75,000	$270,000	$345,000
Dartmouth	319	319	319	64	$350,000	$957,000	$1,307,000
Easton	280	259	259	56	$350,000	$777,000	$1,127,000
Grafton	240	240	240	48	$350,000	$720,000	$1,070,000
Haverhill	526	526	526	107	$600,000	$1,578,000	$2,178,000
Holyoke	296	211	211	60	$350,000	$633,000	$983,000
Kingston	730	730	730	146	$600,000	$2,190,000	$2,790,000
Lakeville	207	207	207	41	$350,000	$621,000	$971,000
Lawrence	1031	1031	1031	206	$600,000	$3,093,000	$3,693,000
Lowell	250	101	250	50	$200,000	$750,000	$950,000
Lunenburg	204	204	204	41	$350,000	$612,000	$962,000
Lynnfield	180	124	124	40	$200,000	$372,000	$572,000
Natick	138	138	138	27	$200,000	$414,000	$614,000
North Andover	530	530	530	106	$600,000	$1,590,000	$2,190,000
North Reading	434	406	406	102	$350,000	$1,218,000	$1,568,000
Northampton	156	156	156	32	$200,000	$468,000	$668,000
Norwood	15	11	11	3	$10,000	$33,000	$43,000
Pittsfield	296	217	217	59	$350,000	$651,000	$1,001,000
Plymouth	675	675	675	135	$600,000	$2,025,000	$2,625,000
Reading	202	202	202	41	$350,000	$606,000	$956,000
Sharon	167	160	160	39	$200,000	$480,000	$680,000
Westfield	244	198	198	48	$200,000	$594,000	$794,000
Totals	**9780**	**9010**	**9159**	**2148**	**$9,345,000**	**$27,477,000**	**$36,822,000**

PRELIMINARY FINDINGS: WHY AND HOW 40R IS BEING USED

In the current economic climate, it is difficult to predict what the long-term effect of 40R will be. The fact that 27 districts have been created in a variety of locations suggests that the 40R concept is attractive to localities and administratively workable. However, these districts do not yet provide a good test of the premise that pre-approved sites will attract developers, as creation of most of the districts was developer-driven. It is also difficult

[7] 40R zoning cannot regulate the number of bedrooms in a unit. DHCD's 40R bylaw guidance requires that the local 40R bylaw include language requiring that the bedroom count for affordable units be at least proportionate to the total number of bedrooms in a project (page 12 of guidance). However, when districts are created in response to specific developer proposals, the bedroom mix is usually discussed in advance of district creation. One proposed project going through plan approval consists entirely of three-bedroom units but is in a district that was created in advance of developer interest (Belmont).

to predict the extent to which districts will be built out and the types of housing they will ultimately produce (tenure and structure type) as many projects have been stalled by the economy and some developers are revisiting their development concepts and timetables.

MOST DISTRICTS HAVE BEEN PROJECT-DRIVEN

Most (22 of the 27) districts were created in response to specific development proposals and one other (Pittsfield) had a developer interest for part of its district. Four districts (Belmont, Brockton, Bridgewater and Holyoke) were created in advance of developer proposals or firm commitments. Some development has since occurred in one district (5 infill units in Holyoke) and one (Belmont) has a project under review.

MANY DISTRICTS INVOLVE PROJECTS UNDERWAY BEFORE THE 40R DISTRICT WAS CREATED

At least 14 districts[8] involve projects or sites where local planning/rezoning efforts were underway or developers had started the comprehensive permit process before the locality began creating a 40R district. Three of the 14 were created on formerly State-owned land that had gone through long-standing community reuse planning. These 14 districts, if fully developed in a timely fashion, will receive $19 million in incentive payments. In most communities, planning staff indicated that the incentive money was helpful in winning project acceptance by elected officials and local residents.

THE REASONS MUNICIPALITIES CREATED 40R DISTRICTS VARIED

Many municipalities created their district after a developer approached them with a specific project proposal. Others created them as part of an effort to meet affordable housing or planning goals (e.g. downtown revitalization, transit oriented development), sometimes in areas where they had created earlier overlay districts for the same purpose (e.g. Boston, Haverhill, Northampton).

Because 40R is just one of several tools communities can use if they want to encourage higher density and/or affordable housing, a number of other communities that investigated 40R ultimately chose alternate approaches (e.g. 40B, other overlay zoning).

In cities that created 40R districts, planners were more likely to cite the ability of 40R to simplify the approval process (and resolve parking requirements) as a major reason for adoption, as districts tended to be in locations they had already identified as desirable for development. Suburban communities were more likely to cite its advantages as an alternative to 40B; some also cited smart growth goals.

Many planners indicated that the incentive payments were not the major factor in the decision to create a 40R district. However, planners in communities that had already granted project approvals under 40B reported that the incentive payments were the primary motivation for creating 40R districts for the project and one reported that his city would not have created their district without the payments. All felt that the payments were helpful (and in some cases critical) in obtaining local support for the zoning change.

CHAPTER 40B HAS PLAYED AN IMPORTANT ROLE IN THE CREATION OF MANY SUBURBAN 40R DISTRICTS

The existence of Chapter 40B has positioned Chapter 40R as an attractive alternative for municipalities and developers, with its promise of greater local control over siting and design, cash payments for cities and towns, a less contentious approval process and the removal of certain financial restrictions on developers.[9]

[8] Amesbury, Boston, Chelsea, Dartmouth, Grafton, Haverhill, Kingston, Lakeville, Lawrence, North Andover, North Reading, Northampton, Pittsfield, and Sharon

[9] The fact that 40R requires a lower percentage of affordable units was cited less often, perhaps because most communities raised the minimum requirement for rental developments to 25%.

Of the 19 districts created in communities below 10%, at least nine involve sites or projects for which Chapter 40B use was proposed and/or approved.[10] A number of developers also used 40B as a back-up option, recognizing the risk that the proposal to create a 40R district would fail to win the support of local officials or town meeting.

MOST 40R DISTRICTS ARE NOT "TRANSIT" OR "CONCENTRATED DEVELOPMENT" LOCATIONS

The statute sets out three types of smart growth locations: (1) locations that include land within a half mile of a transit terminal; (2) locations that include an area of concentrated development or (3) locations that are otherwise "highly suitable." The majority (15 of 27) of districts approved to date have been qualified under the "highly suitable" standard, including 14 of the 18 districts that primarily involve new construction. Locations are presumed to be highly suitable if they have been identified as an appropriate location for high-density development in a local plan adopted prior to the submission of the 40R application.[11] In some cases, they may have been able to qualify as being within an area of concentrated development.

MOST DISTRICTS ALLOW BOTH RESIDENTIAL AND NON-RESIDENTIAL USES

Of the 27 districts created to date, eight allow residential development only while 19 permit commercial or other non-residential uses (community facilities and galleries in the case of Boston, for example). The projects constructed to date, however, all have been entirely residential. Of the 19 districts that allow a mix of uses, 17 allow residential and non-residential uses within subdistricts; five also have separate commercial subdistricts Restrictions on mixed-use projects vary considerably among the districts. In some, commercial uses cannot be in the same building as residential, while in others they must be part of a residential project. Some districts limit commercial uses to the first floor and/or limit the percentage of the project that can be non-residential. One district limits commercial uses to neighborhood businesses only and then only by special permit.

DISTRICTS VARY CONSIDERABLY IN TERMS OF CONSTRUCTION TYPE, SIZE, AND DENSITY

- In nine districts, most of the new development is likely to involve adaptive reuse of non-residential properties and infill (Brockton, Chelsea, Haverhill, Holyoke, Lawrence, Lowell, Norwood, Pittsfield and Plymouth). The other 18 mainly involve new construction, sometimes on brownfield sites (See Table 4).

- The 27 districts approved to date range from 0.78 to 169 acres in total land area (the median is 34.1 acres) including land that is already substantially developed, land not available for development due to development constraints (e.g., wetlands), land reserved for open space, and street right of ways.

- Developable land in the 27 districts ranges from 0.75 to 70 acres, with a *median of 10.4 acres* (4 acres in adaptive reuse districts and 12.8 in new construction districts).

- The total number of additional units (future zoned units) that can be built in these districts under 40R ranges from 13 to 1,096, with a median of 250. The number of *incentive units* (the increase over the number of units allowed as of right by the underlying zoning) ranges from 11 to 1,096, with a median of 217.

- The 27 districts authorize 9,780 future zoned units or a median of 23 units *per acre of developable land*, but the average masks differences by construction type. The 9 districts that primarily involve adaptive reuse allow much higher density, averaging 53 future zoned units per developable acre (30 median), while the 18 new construction districts allow an average of 19 units per developable acre (20 median).

[10] See *3. Interaction with Chapter 40B* on page 32.

[11] 760 CMR 59.04(1)(a)(3) requires that DHCD "shall presume that a location is highly suitable if it has been identified as an appropriate locus for high-density housing or mixed-use development in a local comprehensive plan, community development plan, area specific plan, regional policy plan, or other plan document, in each case adopted or updated after a public planning process" no more than five years prior to the submission of the 40R application. A few proposed locations have been informally rejected when the sole justification was based on a reference in a local plan. (Districts also automatically qualify if they've been established as a development district for district improvement financing under Chapter 40Q.)

- Overall, the 40R districts authorize more new housing units than the average 40B development. Chapter 40B development approved in Eastern Massachusetts between 2001-2005 *averaged* 75 units (47 for ownership and 141 for rental projects), while the 18 new construction districts authorize an average of 304 future zoned units (242 median). Because of differences in way land area data has been collected for Chapter 40B projects, it is difficult to compare the densities of projects developed under the two laws.[12]

Table 4: Summary Profile of the 27 Approved Districts

(continued on following page)

Community	Type	Total Acres	Developable acres	Future Zoned Units	Construction type	Planned/Allowed Development
Amesbury	HSL	52	9.1	249	New (240U)	240 unit multifamily rental using 40B, housing and mixed-use in other subdistricts
Belmont	HSL	1.51	1.5	18	New	Housing only - 15 townhomes, 2 single family on closed church complex site
Boston	HSL	42.5	18	578	New	New residential community on part of former state hospital site – mix of rental, ownership, senior housing and community facilities
Bridgewater	HSL	128.5	26	507	New	"Residential" development at up to 20-22 units/acre; commercial uses allowed at edge of district. Would allow adjacent apartment complex to expand; near town center
Brockton	Transit	60	47	1,096	Adaptive reuse; new	Downtown revitalization through housing and mixed use development of underutilized buildings and land in and near downtown
Chelsea	Transit	2.8	2.7	125	Adaptive reuse; new	Housing only – 3 specific projects in/near former industrial area
Dartmouth	HSL	41	23	319	New	Housing and retail on former amusement park site – former 40B LIP
Easton	HSL	61	18	280	New	Housing and commercial development of vacant land; 280 housing units (multifamily and mixed use) and up to 30,000 SF commercial uses in commercial zone
Grafton	HSL	14	10	240	New	New multifamily and mixed use housing on remediated site of old mill destroyed by fire
Haverhill	Transit	53	3.9	526	Adaptive reuse	Re-use of downtown industrial/commercial buildings as multifamily and mixed-use housing. 2 blocks from commuter train.
Holyoke	ACD	152	4	296	Adaptive reuse, infill	Infill housing and adaptive reuse along one street in the downtown area
Kingston	Transit	109	70	730	New	730-unit new community on former gravel pit near commuter rail station. Single, multifamily and mixed use zones and up to 300,000 GSF of retail and office. Developer to build entrance to highway. Earlier 40B application by another for part of site denied.
Lakeville	Transit	10.8	10.4	207	New	200 multifamily units on vacant land next to commuter rail station (after approved as 192-unit 40B). Commuter-oriented retail also allowed.
Lawrence	HSL	34	34	1,031	Adaptive reuse	Re-use of 9 historic Malden Mills buildings. Allows townhomes, multifamily, mixed use and retail.

[12] The most comprehensive study of 40B project land area looks at total land (including land reserved for open space, wetlands, etc.), while the 40R densities are based on developable land. 40B developments approved between 2001 and 2005 had an average density of 11 units per acre (8 for ownership and 18 for rental projects).

Lowell	Transit	2.5	2.5	250	Adaptive reuse	Conversion of two historic mill properties in downtown revitalization area next to larger redevelopment project into multifamily, artist live-work and/or mixed use residential.
Lunenburg	HSL	9	9	204	New	204 housing units on edge of town on former drive-in site
Lynnfield	HSL	80	65	180	New	Redevelopment of part of former golf course with 180 housing units in one subzone, up to 530,000 SF office and retail in other.
Natick	Transit	5	5	138	New	138 multifamily units on part of old industrial site; front part rezoned for 12 market rate homes; near commuter rail and town center.
North Andover	ACD	169	26.5	530	New	530 units plus retail and commercial uses on vacant land in former industrial/office park. Owner proposed 650 units, then 300, under 40B.
North Reading	HSL	46	21.7	434	New	406 rental units on former state facility site. Originally proposed as 406-unit 40B.
Northampton	HSL	16.6	8.8	156	New	156 units on a portion of former State Hospital previously designated for housing.
Norwood	ACD	0.78	0.75	15	Adaptive reuse	Conversion of former church buildings to 15-unit condominium
Pittsfield	ACD	10.7	10.7	296	Adaptive reuse, new	Nine sites in/near downtown Pittsfield with housing potential (former church, former factory, downtown upper story housing)
Plymouth	Transit	56.8	33.6	675	Adaptive reuse, new	Mixed use residential/commercial community on former site of rope factory, vacant retail
Reading	HSL	10	8.9	202	New	202 apartments on part of vacated 24-acre Addison-Wesley office park; 160,000 SF of office space and 16 townhomes
Sharon	HSL	11.55	9.32	167	New	100 apartment, 38 multifamily condos, 29 townhomes on vacant land adjacent to office/ retail complex to be developed by same owner. Town originally agreed to negotiate as friendly 40B.
Westfield	HSL	22.3	15.3	244	New	60-unit condominium on vacant land; district also includes underutilized commercial sites that could be redeveloped under 40R.

(Table 4: Summary Profile of the 27 Approved Districts, continued from previous page)

IT TAKES TIME AND MONEY TO CREATE A 40R DISTRICT

The time and cost required to create a 40R district can be significant. Planning and legal costs can run from $35,000- $65,000 (and in some cases more, particularly where significant infrastructure planning is absorbed into the total cost) and can be difficult for smaller communities to fund without state grants or developer funding. It may become easier and less expensive going forward, however, as DHCD published guidance in March 2008 on creating a bylaw (including a sample bylaw) and a guidebook on creating design standards[13] and reports that at least two smaller communities (Weymouth and Georgetown) have put together preliminary applications with little or no use of outside consultants.

Interviews with planners suggest it also takes a year or more to go through the planning, public hearing, application, local zoning approval and final State approval process, though a few districts went through it more quickly. However, once the district is created, developers can expect a relatively quick review process as Chapter 40R requires localities to issue a decision on an application for project approval no later than 120 days after it is filed unless the parties agree to waive that requirement.

40R ZONING ALONE CAN'T ATTRACT DEVELOPERS TO WEAK MARKETS

At least three large cities (Brockton, Lawrence and Holyoke) have created 40R districts in areas they have long struggled to revitalize. They are still struggling with weak market demand and believe they will need to make extensive infrastructure improvements (sidewalks, parking, etc.) before projects can begin to move forward. Infrastructure needs were anticipated when 40R was initially conceived and the statute requires the State to favor communities with approved 40R districts or other policies that encourage affordable housing when awarding certain discretionary State funds.[14]

FEW MUNICIPALITIES EXPECT TO RECEIVE SCHOOL INSURANCE PAYMENTS

Interviews with planning staff indicate that the 40S "school insurance" has been a good marketing tool, but that few of the communities with approved districts expect to receive funds. Most of the projects are expected to generate property taxes in excess of likely school costs for two reasons. First, most of the residential development is not expected to house many school children. (In part due to market conditions, most of the projects that have moved forward to date are multifamily rental developments and few have three bedroom units.) In addition, many districts are expected to be mixed use, including some with significant non-residential components.

PRELIMINARY FINDINGS: PROJECTS BUILT TO DATE

MOST PROJECTS BUILT TO DATE HAVE BEEN MULTIFAMILY RENTALS

Most (94%) of the 1,127 units built or in construction are rental units (1,060), in part due to market conditions that have led developers to change the tenure of or defer projects initially proposed as condominiums. The majority of units (1,075 or 95.4%) built or under construction are in multifamily buildings. Only five units in one- or two-family homes have been built to date – none income restricted - and only 47 townhouse units. Several hundred more are planned in a few districts but are on hold due to weak demand for ownership units.

[13] "Chapter 40R Local Zoning Bylaw Guidance Document" and "Guidebook: Creating Design Standards for 40R Districts," both published in March 2008 and available online at http://www.mass.gov/?pageID=ehedterminal&L=3&L0=Home&L1=Community+Development&L2=Community+Planning&sid=Ehed&b=terminalcontent&f=dhcd_cd_ch40r_ch40r&csid=Ehed

[14] Section 9(c) states that "The executive office of environmental affairs, the executive office of transportation, the department of housing and community development and the secretary of administration and finance shall, when awarding discretionary funds, use a methodology of awarding such funds that favors cities or towns with approved smart growth zoning districts or other approved zoning policies or initiatives that encourage increased affordable housing production in the commonwealth including, but not limited to, inclusionary zoning."

While nine of the 27 districts allow single family detached homes, only 4 have developers who intend to built any single family homes and planned single family detached homes currently total 274 (almost all in Kingston, where the developer can build up to 260 single family homes).[15]

MOST PROJECTS BUILT TO DATE HAVE USED HOUSING SUBSIDY PROGRAMS

Almost half (46%) of the 1,127 units built or in construction are income-restricted. Of the 13 projects[16], three include no affordable units (all small ownership projects)[17], while five are 100% affordable, two more are 60-80% affordable and three are 20-25% affordable. Again, this is in part due to market conditions that have largely halted projects that planned little or no use of conventional housing subsidy programs. All but four of the projects (accounting for 41 of the 1,127 units) used state or federal housing subsidy programs.

CITY DISTRICTS HAVE SEEN MORE CONSTRUCTION TO DATE

While the majority of districts (17 of 27) have been created in towns, city districts have seen more construction activity to date. Nine of the 13 projects with units built or in construction are in six cities (3 in downtown revitalization areas, 1 in another dense revitalization area, 2 on State hospital campuses). They account for half of the units built or in construction to date, 48% of the multifamily units, 55% of the affordable units, 78% of the ownership units and 91% of the three-bedroom units.

FEW PROJECTS BUILT TO DATE INCLUDE THREE-BEDROOM UNITS

Almost all (95%) of units built or under construction have one (46%) or two (49%) bedrooms; of the 5% (57) with three bedrooms, almost all (91%) are in cities. Four of the 13 projects have no three-bedroom units (including two in downtown revitalization districts). While in some cases, this reflects location, in others, it appears to reflect local preferences. DHCD initially required that districts include some 3-bedroom units to meet the statutory requirement that 40R districts allow "a mix of housing such as for families" but stopped in 2006 after some towns/developers argued that the mix should be market driven. Some have noted that creating units targeted to empty nesters indirectly creates housing opportunities for younger families by speeding up the turnover of older single family homes.

[15] In Northampton, a developer has received plan approval for 11 homes; in Holyoke, single family homes are allowed on infill sites and one has been built to date; in Belmont, a proposal going through the plan approval process calls for the development of two single family homes – both market rate.

[16] This discussion uses the conventional definition of project (separate financing and development entity) rather than the 40R bylaw definition which allow localities to treat several development activities as a single "project" for purposes of calculating affordability and granting plan approval.

[17] The eligibility for bonus payments for two of these is still under review by DHCD.

PART I. CHAPTER 40R OVERVIEW AND PROGRAM REQUIREMENTS

The following two pages summarize key elements of Chapter 40R and the balance of this Part I describes the program in more detail.

CHAPTER 40R GOALS

Chapter 40R was proposed by the Commonwealth Housing Task Force (a group of academics, foundations, civic and business leaders and builders) as a way to gradually reduce the high cost of housing in Massachusetts by directly addressing "fiscal zoning"[18] practices (such as minimum lot sizes and the elimination of as-of-right multifamily districts) that raised housing costs and kept supply below demand. The Task Force argued that creating a large number of districts that allow smaller lot single family homes and apartments *by right* would spur production when market demand justified it and act to reduce land values and costs, and thereby the ultimate costs of the housing. The underlying goal was to create a surplus of zoned land so that market needs could be met efficiently and in a timely way when market demand justified new construction or the substantial rehabilitation of existing buildings. Another goal was to moderate home price inflation by enabling supply to track demand more efficiently.

Chapter 40R was designed to encourage communities to adopt such zoning by offering cash payments as well as two important non-financial benefits:

- *Control* over the location, size and other characteristics of new projects through design standards and infrastructure certification, and
- *A way to attract developer interest by creating pre-approved districts* with a fast approval process. (The law also makes it more costly for abutters to appeal 40R decisions compared to other zoning decisions, though this provision is currently being challenged as unconstitutional in a challenge to an approval in Natick's district)

CHAPTER 40R REQUIREMENTS

The statute and regulations set out minimum standards for overlay districts in terms of location, minimum density and affordable housing inclusion, and the steps localities must take to create a district and qualify for incentive payments. It also sets parameters for the local project approval process.

- DISTRICT REQUIREMENTS: The district must be located in an "eligible location," meaning at least part of it must be (1) within a half mile of a transit station or terminal, (2) in an area of concentrated development that is primarily commercial or mixed use or (3) otherwise "highly suitable." The 40R bylaw or ordinance must allow as-of-right residential development at least 8-20 units per acre, depending on building type, and require that at least 20% of the "bonus units" (the increase in as-of-right units) be affordable to households with incomes below 80% of area median for at least 30 years.

- STATE AND LOCAL APPROVAL PROCESS: To create the district, the locality must develop a detailed application - including the zoning bylaw/ordinance and any design standards it elects to impose, hold a public hearing on it after public notice, finalize it and then submit it to the Massachusetts Department of Housing and Community Development (DHCD) for a preliminary determination of eligibility.

- The application must include a certification by a municipal engineer or public works official that development will not over-burden transportation, water, public and/or private wastewater systems, and other infrastructure as it exists or may be practicably upgraded and describe any such planned

[18] See The American Planning Association, "Growing Smart Legislative Guidebook – 2002," page 14-4. "The practice of using the zoning power to achieve fiscal objectives rather than purely land-use objectives is known as 'fiscal zoning'." Under it, "local governments exclude any proposed development they believe might create a net financial burden and will encourage developments that promises a net financial gain" (such as" zoning large tracts of land for commercial and industrial use, whether or not there is a presently demand for such uses").

infrastructure upgrades, including the timing for completion (within five years of the application or other reasonable time approved by the DHCD) and the entities responsible for completion.

- Once DHCD makes a preliminary determination of eligibility for the proposed district and bylaw, the zoning bylaw or ordinance and design standards must be approved locally by two-thirds of Town Meeting or the City Council, then by the State Attorney General (if a town) and finally once more by DHCD.

- After the 40R zoning has received final DHCD approval, developers can apply for "plan approval"[19] of projects. The local approval authority must file its decision within 120 days of the application and projects can only be denied for significant adverse project impacts that cannot be adequately mitigated or noncompliance with the local 40R bylaw/ordinance, including design standards. To help meet this deadline, DHCD recommends that local bylaws include language allowing for a voluntary "pre-application" review of the developer's concept plan.

FISCAL INCENTIVES

The statute authorizes two types of payments to municipalities:

- An upfront *"zoning incentive payment"* (can be requested after DHCD's final approval of the district) of $10,000-$600,000 depending on the increase in the number of new units that can be built in the district as of right compared to the underlying zoning and

- A *"density bonus payment"* of $3,000 per unit when building permits are issued for projects using the overlay zoning or Chapter 40B (see below).

- A companion law (Chapter 40S)[20] enacted in November 2005 provides *"school cost insurance"* as an additional incentive. Under it, communities are eligible to receive payments from the State to fill the gap if approximately half[21] of the new property and excise taxes generated by development in the 40R district plus the Chapter 70 (State school aid) payments for the public school students living in new housing developed in the 40R district does not fully cover the cost (based on the district per pupil average cost) of educating those children. The 40S payment is subject to appropriations. It is up to the municipality to request 40S payments.[22]

SMART GROWTH TRUST FUND

The zoning and density bonus payments are made from a Smart Growth Housing Trust Fund established in 2004[23]. When created, the Trust was expected to be funded by future proceeds from the sale of surplus State properties including hospitals (up to $25 million). By mid-2007, receipts (less than $3.5 million) had fallen below payment obligations (over $7 million). In October 2007, the Legislature authorized the diversion of up to $15 million a year in affordable housing loan repayments from MassHousing to fund 40R incentive payments and other programs. As of September 30 2009, the Trust had received $26.2 million[24] in funds, primarily ($22 million) from MassHousing loan repayments and paid out $10.6 million.

[19] The regulations call this as "plan review" but most 40R bylaws use the term "plan approval" or "site plan approval."
[20] M.G.L. c40S, Section 2 (Chapter 141 of the Acts of 2005) "Smart Growth School Cost Insurance Supplement."
[21] The share of the property and excise taxes generated by 40R development is based on the statewide average share of local revenues (about 50%) that go to support local school districts. This is explained in more detail in Appendix II.
[22] See program regulations at 830 CMR 40S "Smart Growth School Cost Reimbursement Procedures."
[23] Chapter 188 of the Acts of 2004, approved July 19, 2004, allocated a portion of future State property sale proceeds to the Trust (the first $25 million was to go into the General Fund, and the next $25 million into the Trust).
[24] Net of $7 million scheduled for rescission (from recent $7+ million in proceeds from the sale of State property).

1. BACKGROUND

The *Smart Growth Zoning and Production Act* ("Chapter 40R")[25] was enacted in June 2004. It came about through the efforts of an ad hoc group of foundations, members of the business community, academics, nonprofits and others called the Commonwealth Housing Task Force (CHTF)[26]. CHTF formed in 2001 to address the high cost of housing in Massachusetts after numerous studies attributed much of the problem to so-called "fiscal zoning" practices (based on local beliefs[27] about the impact of development on municipal budgets) that kept housing production low and prices high. CHTF commissioned a detailed policy paper in 2003 that reviewed those studies and the way that growth in minimum lot sizes and elimination of as-of-right multifamily zoning encouraged sprawl by pushing development to locations far from employment centers.[28]

The paper, *Building on Our Heritage: A Housing Strategy for Smart Growth and Economic Development*, concluded that "addressing the lack of housing production requires producing an adequate supply of land zoned for housing" and that this required "changing the underlying fiscal constraints facing local communities."[29] The authors recommended that the State reverse current trends by rewarding localities that zone for smaller lot market rate and affordable single family homes and apartments in "appropriate locations" that encourage transit use and discourage "greenfield" development.

Specifically, they recommended that the State create a program to (1) provide one-time payments of $2-3,000 per unit to localities that adopted overlay zoning that permitted specific densities of development in "smart growth" locations and required that at least 20% of units be affordable, (2) assume 100% of the cost of K-12 education[30] for children living in units produced using such zoning, and (3) give those municipalities priority for capital grants for infrastructure improvements (including parking structures and parks) that may be needed to make the district developable. To address concerns over the appearance of such housing, it allowed communities to establish design standards for the overlay districts. The paper estimated that the proposed program would stimulate the creation of districts allowing a total of 50,000 new units and the construction of 33,000 new units in those districts over ten years (19,000 units that would not otherwise be built and 14,000 that would have been built in other locations).[31]

As the result of CHTF advocacy, most of this initial proposal was enacted as Chapter 40R in 2004. Chapter 40R did not provide specific funds for infrastructure, but it requires the State to favor localities with 40R districts (*or* inclusionary or other zoning that promotes affordable housing) when awarding discretionary State grants. Similarly, while not adopting CHTF's recommendation that the State provide $5 million a year for outreach to municipalities ($1 million) and matching grants to localities for planning costs ($4 million), the state's housing finance agency agreed to provide a one-time $1 million allocation for planning grants to localities. Chapter 40R also did not provide funding for school costs, in part due to concerns about the potential cost. However, language was inserted in another outside section of the FY2005 budget requiring that three state agencies issue a study by July 1, 2006 on the number of children residing in units built under 40R, the impact on local school costs and a recommended formula to measure the net cost of schooling these children.

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[25] M.G.L. c. 40R, added by Chapter 149 of the Acts of 2004.

[26] Edward C. Carman, Barry Bluestone and Eleanor White, "Building on Our Heritage: A Housing Strategy for Smart Growth and Economic Development: Report and Recommendations for the Commonwealth Housing Task Force," October 30, 2003, page 2. Members include "housing organizations, the business community, organized labor, the Urban Land Institute, The Boston Foundation, Citizens' Housing and Planning Association ("CHAPA"), elected and appointed officials and many others."

[27] Many studies have found that local estimates of the fiscal impacts of development tend to overstate the cost of development to municipalities. For an extensive discussion of this issue and problems with common methodologies, see Eric Nakajima, Kathleen Modzelewski, Allison Dale, "The Fiscal Impact of Mixed-Income Housing Developments on Massachusetts Municipalities," UMass Donahue Institute, Boston, MA, May 2007.

[28] Carman, Bluestone and White (2003), page 2.

[29] Carman, Bluestone and While (2003), page 3.

[30] CHTF recommended the school cost payments to address the fact that "the cost of educating the students living in new single family homes often substantially exceeds the amount of property taxes and other revenues allocable to education that are collected for the housing," noting that net costs related to multifamily housing, by contrast, are relatively small. See Commonwealth Housing Task Force, Quarterly Report – December 31, 2005, page 2.

[31] Ibid, page 4.

The Legislature's decision to exclude school cost funding from the 2004 statute led CHTF to commission a second study by the 40R authors, this one to estimate the potential impact of 40R on school district costs and the potential cost to the State of reimbursing districts.[32] That study recommended more pared down school cost incentives and was largely adopted by the Legislature in November 2005 (M.G.L. Chapter 40S).[33]

Rather than fully funding all school costs for each student in a 40R district and potentially generating surplus revenue to the municipality (because many communities would receive some reimbursement through State school funding formulas), Chapter 40S provides "school impact insurance." It requires the State to reimburse localities for school costs related to children who live in the 40R district and attend the public schools *to the extent that those costs* (1) exceed the share (approximately 50%) of property tax revenues received from new growth properties in the 40R district that goes to school costs and (2) are not covered by state funding. The formula is generous in that it provides *payments based on a district's average per student cost rather than marginal cost* of adding students. Even so, the CHTF study found that in most communities, 40S payments are unlikely to be triggered except for single family homes.[34]

2. CONTEXT: CHAPTER 40B

The existence of a long-standing state law ("Chapter 40B") that permits flexible zoning approvals for housing with an affordable component helped build support for Chapter 40R in several ways. Chapter 40B encourages communities to permit the development of affordable housing. It also allows developers of such housing to appeal adverse local zoning decisions to the State Housing Appeals Committee in communities where less than 10% of the year round housing is subsidized and the community has not met other standards (described below) that render it "appeal-proof." If a community is not appeal-proof, there are limits to its control over the size and design of a project under Chapter 40B. Chapter 40B creates an incentive for such communities to proactively zone for affordable housing using programs such as 40R. As CHTF noted in its initial proposal, the success of 40R "depends upon the continued existence of a strong Chapter 40B."[35]

Enacted in 1969, Chapter 40B allows developers of projects in which at least 20-25% of the unit will be affordable to apply for a single "comprehensive permit" and request waivers of zoning and other local requirements as needed for feasibility. If the local zoning board denies the permit or imposes conditions that the developer believes will make the project uneconomic, the developer can ask the State Housing Appeals Committee to overturn the decision *except* if the project is very large[36] *or* is located in a community

- That has a subsidized housing count, as defined by the State, equal to at least *10%* of its year-round housing stock[37] *or*
- Where subsidized housing sites exceed 1.5% of the city or town's total land area *or*
- That has a State-approved "housing production plan" *and* has been certified as increasing its subsidized housing count by at least 0.5%-1% of its year-round housing stock within the *past 12-24 months*[38]
- That has increased its subsidized housing count by at a number equal to at least 2% of its year-round housing in the prior year (decisions on any 40B applications filed during the year that follows that attainment cannot be appealed).[39]

Currently about 65 of the 351 cities and town in Massachusetts are appeal-proof, primarily as a result of meeting the 10% goal.

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[32] Ted Carman, Barry Bluestone and Eleanor White, "Chapter 40R School Cost Analysis and Proposed Smart Growth School Cost Insurance Supplement – Report and Recommendations for the Commonwealth Housing Task Force," Boston, MA, May 14, 2005.
[33] Chapter 141 of the Acts of 2005, approved November 22, 2005, enacted Chapter 40S "*Smart Growth School Cost Reimbursement*."
[34] Carman, Bluestone and White (2005), page 3, found while a typical mixed income multifamily development would trigger no payments in 57% of communities and only $320 a unit in the remaining 43% of communities, it would trigger an average payment of $5,000 in a non-foundation aid community for a home assessed at $250,000.
[35] Commonwealth Housing Task Force, "Building on Our Heritage: A Housing Strategy for Smart Growth and Economic Development," October 30, 2003, page 4.
[36] Equal to at least 2% of the community's year round stock or 300 units (with lower thresholds for smaller communities).
[37] Year-round housing units are determined using the latest decennial Census.
[38] Communities become appeal-proof for one year each time they increase their subsidized housing count in a given calendar year by a number equal to at least 0.5% of their year round housing stock. If the increase equals at least 1% of their year-round stock, they are appeal-proof for two years.
[39] See Chapter 40B regulations (760 CMR 56.03).

CHAPTER 40B MOTIVATES COMMUNITIES BELOW 10% TO CONSIDER CREATING 40R DISTRICTS.

If a community feels vulnerable to 40B proposals, 40R offers them a way to create units that count toward the 10% goal under 40B while controlling project location and design.

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, many[41] 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]

3. CONTEXT: DEFINITION OF SMART GROWTH

The statutory purpose of Chapter 40R is "to encourage smart growth and increased housing production in Massachusetts." The statute defines smart growth as "a principle of land development" with the characteristics listed below.

1. Emphasizes mixing land uses,
2. Increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods,
3. Takes advantage of compact design,
4. Fosters distinctive and attractive communities,
5. Preserves open space, farmland, natural beauty and critical environmental areas,
6. Strengthens existing communities,
7. Provides a variety of transportation choices,
8. Makes development decisions predictable, fair and cost effective, and
9. Encourages community and stakeholder collaboration in development decisions."[45]

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[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.

However, its actual smart growth requirements focus primarily on location. The statute and regulations require that *at least part* of any 40R district include an "eligible location" (see below). The program does not *require* many of the elements traditionally associated with smart growth (e.g., mixed-use development, walkability, increased transportation choice, minimized parking).

4. 40R STATUTORY AND REGULATORY REQUIREMENTS

Chapter 40R allows municipalities to receive State funds for creating "smart growth overlay districts" that permit higher density housing development. (An overlay district establishes special rules on top of underlying zoning for specific locations.) Chapter 40R requires that the overlay zoning be optional (i.e. owners must continue to be allowed to build using the underlying zoning), be approved both locally and by DHCD, and meet certain location, density, mixed-use and affordable housing requirements. Communities can create more than one 40R district.[46]

ELIGIBLE LOCATIONS

The statute and regulations limit the areas where 40R overlay districts can be created. Districts must *include* (as part or all of a parcel) land that (1) is near transit, (2) has concentrated development or (3) is otherwise "highly suitable":

- To meet the *transit* standard, the district must include land located within ½ mile of a rapid transit or commuter rail station, bus or ferry terminal; the distance can be ¾ mile if there is (or will be) continuous pedestrian access.

- To meet the "*area of concentrated development*" standard, the district must include land (e.g. existing town and city centers, existing commercial districts and existing rural village districts) where:
  - The primary current use in the district is commercial or mixed use *and*

  - At least 50% of the land area in the district is substantially developed or underutilized (built upon but suitable for conversion, replacement or adaptive reuse), *and*

  - It is currently served or scheduled to be served within 5 years of the 40R application by public sewer or private sewage treatment plants. Rural village districts that don't meet the sewer requirement can qualify if they include land within ½ of the principle road intersection or center point of the district *and* contain two or more facilities (town hall, post office, library, public safety facility) or an existing village retail district *and* at least 50% of the total land in the district is substantially development or underutilized.

- To meet the "*highly suitable location*" standard, the district must include land found suitable by virtue of its infrastructure, transportation access, existing underused facilities or other features.[47]
  - Locations are presumed to be suitable if they have been identified as an appropriate site for high-density housing or mixed use development in a local plan adopted or updated after a public hearing no more than five years before the submission of a 40R application.

  - Otherwise, the municipality must show that creating a district there is consistent with 40R statutory goals.

[46] The law also allows communities to create 40R districts in "existing districts" where the underlying zoning already meets 40R density and other requirements and receive the density bonus and 40S payments (but not the incentive payments associated with zoning adoption). Because no community has had "underlying zoning" that contains the affordability and procedural requirements of 40R, all districts to date have been entitled to the zoning payment.

[47] Areas adjacent to "eligible locations" may be included in the district if they are (1) physically contiguous, (2) offer pedestrian access to at least one "destination of frequent use" in the eligible location (e.g. schools, civic facilities, businesses, transit stops, recreation, post office or bus stop for a bus that runs at least hourly at peak frequency) *and* (3) are currently served (or planned to be served within 5 years of the application) by public sewer(s) and/or private waste water treatment plant(s) and other infrastructure (water and power supply lines, transportation). This provision has not been used so far, since only part of a district needs to fall within an eligible location.

KEY DEFINITIONS (FOR CALCULATING PAYMENTS AND ESTABLISHING COMPLIANCE)

The statute and regulations include several key definitions that control how zoning incentive and density bonus incentive payments are calculated.

Developable Land

Payments are generally based on units that can be or are built on the "developable land" within the 40R district.

The regulations define it as all land within the 40R district than can be feasibly developed into residential or mixed use projects. Developable land:

- Includes "underutilized land" (land that would otherwise qualify as "substantially developed land, but which contains land, buildings, and/or structures that are currently underutilized and may potentially be developed, recycled, or converted into housing or mixed-use development). Land *must* be considered underutilized if no longer necessary to support the current use, based on such factors as current and projected employment levels, vacancy rates, and parking demand.

- Excludes "substantially developed land" (land within a District that is currently used for commercial, industrial, institutional, or governmental use, or for residential use consistent with or exceeding the densities allowable under the underlying zoning and which does not qualify as underutilized land). Land in a historic district is presumed to be substantially developed, unless the city/town can show that all or part qualifies as developable land).

- Excludes current and future open space; rights of ways of existing public streets, ways and transit lines; land in use for governmental functions (except any that qualifies as underutilized land) and areas exceeding a half-acre of contiguous land that are:
    - Wetlands, rare species habitats and steep land or
    - Subject to any other local ordinance, by-law, or regulation that would prevent the development of residential or mixed-use projects at the As-of-right residential densities set forth in the Smart Growth Zoning.

Units Eligible for Incentive Payments

Zoning Incentive Payments and Density Bonus Payments are calculated based on the city or town's approved 40R application, which establishes the number of "future zoned," "existing zoned" and "incentive units."

- FUTURE ZONED UNIT: For a given parcel or area of *developable land*, the maximum number of units that *could* be developed as-of-right *using the 40R zoning* (through new development, substantial rehabilitation of existing buildings or converting existing buildings to residential use).

- EXISTING ZONED UNITS: For a given parcel or area of *developable land* within a district, the maximum number of housing units that could feasibly be developed as-of-right under the *underlying zoning* (through new development, substantial rehabilitation or conversion).[48] For the purposes of calculating incentive payments, underlying zoning is the zoning *which was in effect one year prior to the date upon which the preliminary 40R application* was submitted to DHCD.

- INCENTIVE UNIT *(eligible for a zoning incentive payment):* For a given parcel or area of *developable land*, the number of future zoned units less the number of existing zoned units – i.e. the total additional units that *could* be developed using 40R.

- BONUS UNIT *(eligible for density bonus payment):* Any housing unit developed as part of a project using the 40R zoning *in excess of existing zoned units for the same project* – i.e., the total additional units

[48] Units developable under a comprehensive permit issued *before* a community submits an application to DHCD for 40R preliminary eligibility count as existing zoned units. For purposes of determining the Zoning Incentive Payment and the Density Bonus Payment, the Existing Zoned Units within any District or Project site shall *presumptively be determined upon the basis of the allowable As-of-right residential density per acre shown on the plan* submitted under 760 CMR 59.03(1)(c), multiplied by the acreage of Developable Land area.

actually built. Units in excess of existing zoned units in a project developed using 40B also count as bonus units if the comprehensive permit was issued *after* the locality applied to DHCD to create the 40R district.[49]

DISTRICT AFFORDABLE HOUSING REQUIREMENTS

The bylaw must require that *at least* 20% of the housing units developed district-wide using 40R be affordable (reserved for households with incomes below 80% of area median income at an affordable cost) for a minimum of thirty years. It must also require that at least 20% of the units be affordable in each project with 13 or more units (smaller projects can be exempted). In the case of projects exclusively for the elderly, the disabled or for assisted living, at least 25% of the units must be affordable. (District-wide age restrictions are prohibited under the statute).

Communities can opt to require greater affordability as part of the bylaw (e.g., a higher percentage of affordable units or lower income limits), as long as the requirement doesn't unduly restrict development opportunities.[50] Projects built with state or federal subsidies, of course, continue to be subject to the requirements of those programs, even if they exceed the 40R bylaw affordability requirements in terms of the percentage affordable, length of affordability restrictions, etc.

The statute and regulations require the use of affordable housing restrictions but otherwise leave the details of how affordability requirements will be handled to the locality (e.g., who will monitor compliance, how that activity will be funded, how to treat fractional units when calculating the minimum number of affordable units required).

ALLOWED USES AS-OF-RIGHT AND MINIMUM DENSITY REQUIREMENTS

The district zoning bylaw or ordinance must allow residential development as-of-right on the "*developable land*" within it.[51] It may allow mixed-use development (projects with both residential and non-residential components) as of right.

The bylaw can create sub-districts zoned separately for single-family, 2- and/or 3-family and/or multifamily uses or mixed-use with varying allowable densities for the same residential uses as long as each sub-district meets the applicable *minimum housing density* requirements for that use:

- At least 8 units per acre of developable land for single family homes,
- At least 12 units per acre for two and three unit buildings and
- At least 20 units per acre for multifamily housing (buildings of 4 or more units).

If the community chooses, it can set higher densities; in addition, towns with populations below 10,000 can request permission to use *lower densities* if the minimums would create hardship.[52] The selected density cannot overburden existing infrastructure (plus any anticipated upgrades). The district can also, but is not required to, apply the minimum density standards of 8-20 units per acre to some or all of the "substantially developed land," as long as it does not restrict the development of housing there to densities below the underlying zoning.

[49] Communities can receive a density bonus payment for projects that received a comprehensive permit between July 2, 2004 and March 24, 2005 and treat the project as part or all of a 40R district if it meets basic 40R requirements (e.g., eligible location, at least 20% affordable, subject to plan approval).

[50] M.G.L. c.40R, §6(e) and 760 CMR 59.04(1)(e).

[51] Developable land is defined as all land within the district that can be feasibly developed into residential or mixed-use projects and excludes "substantially developed" land (land already developed under the underlying zone unless designated as underutilized or land in a historic district). It also excludes open space, road right of ways, land used for government functions and areas of more than ½ acre that are protected wetlands, rare habitat, have steep slopes or are protected by other local rules.

[52] M.G.L, c. 40R, §6(f) and 760 CMR 59.04(3) Examples of hardship include finding that the statutory minimum density is highly inconsistent with the existing physical environment of the community or would create water pollution risks due to poor soils or other significant health/safety risks or can't be feasibly served by a piped water system.

OTHER REQUIREMENTS

The statute and regulations set certain requirements that all districts must meet in terms of size and zoning bylaw or ordinance and also includes optional provisions.

District Size

No district can exceed 15% of the total land area in a city or town and the combined area of all districts in a community can't exceed 25% of its total land area (DHCD can waive the 15% limit upon request).[53]

Allowed Uses/Occupancy Restrictions

The bylaw/ordinance must allow residential use as of right, allow housing for a mix of populations and cannot impose age or other occupancy restrictions. However, individual restricted projects (e.g., elderly only, housing for the disabled or assisted living) can be built within the district as long as at least 25% of the units in such projects are affordable. The district can permit non-residential uses as well as housing.

Exemption from Growth Limits

The district cannot be subject to any local limits on building permit issuance (e.g., growth controls or moratoria).

OPTIONAL PROVISIONS

Dimensional Standards

While not required, the municipality can modify or eliminate the dimensional standards in the underlying zoning, for part or all of the 40R district, in order to support the desired densities, mix of uses and physical characteristics including parking requirements, roadway design, setbacks, and height. These modifications can be either as of right or provided on a project specific basis through site plan review.

Design Standards

The community can also adopt fairly detailed design standards for the district, covering items such as the scale of buildings, location of parking, building entrances, street and sidewalk alignment and buffering.

Open Space

The community can zone up to 10% of the district as open space (20% for districts containing more than 50 acres of developable land).

[53] This limit does not apply to the South Weymouth Naval Air Station (Southfield) district which was authorized by special legislation in 2005 that specifically waived the land area limit.

INCENTIVE PAYMENTS

Communities with approved 40R zoning are eligible to receive an upfront State payment when the zoning is approved and additional per-unit payment for units created under 40R when a building permit is issued. They can also receive payments for projects in the district that receive a comprehensive permit (CP) under Chapter 40B as long as the CP is not issued until after the locality filed its preliminary application to create a 40R district.

The one-time "*zoning incentive payment*" of $10,000 to $600,000 is based on the number of additional units that could be created on the *developable land* in the district as of right under 40R *above* that allowed by the underlying zoning. Municipalities can request payment as soon as their district receives final DHCD approval and meets any conditions contained in the approval letter. However, some wait until they are close to construction, as they must *return the zoning payment* if DHCD finds, within its reasonable discretion[54], that construction has not started on a project or planned infrastructure upgrade in the district within 3 years of the payment. Start of construction is defined as activities such as pouring of foundations or footings, utility relocation or site remediation, *as long as* the project continues to completion. (Legislation[55] has been filed to repeal the repayment requirement). The *density bonus payment* is $3,000 for each bonus unit that receives a building permit.

Projected Incentive Units	Zoning Incentive Payment
Up to 20	$10,000
21-100	$75,000
101-200	$200,000
201-500	$350,000
501 or more	$600,000

PROCESS FOR CREATING A 40R DISTRICT

The statute sets out a 3-step district approval process:

- DHCD approval of preliminary application by municipality
- Municipal approval of 40R zoning bylaw or ordinance and design standards
- DHCD final approval of zoning bylaw or ordinance and design standards

Preliminary Application to DHCD

Municipalities that want to create a 40R district must submit an application to the State Department of Housing and Community Development (DHCD). If the proposal meets 40R requirements, DHCD issues a letter of preliminary eligibility. Among other things, the application must include:

- A comprehensive housing plan,
- A description of the proposed district, including boundaries, developable land area, residential development and redevelopment options and parcel by parcel calculations of units that can be built using the underlying zoning and under the proposed 40R bylaw or ordinance, and
- The proposed zoning bylaw or ordinance.

While some larger communities have used in-house staff to develop much or all of their application, most communities use consultants to help them. A 2007 study estimated that these 40R planning costs ranged from $30-35,000 for a midsize district (250 units) to up to $125,000 (including legal fees) for large districts.[56] However, a number of small communities have been able to create districts with little or no use of outside consultants.

- HOUSING PLAN: The locality can submit its housing plan in advance or with the application. If it already has a housing plan, it can just send a description of how the proposed district relates to the plan, along with an estimate of the number of new total units that could be built in the district.

- ZONING BYLAW OR ORDINANCE: The municipality must write a 40R overlay bylaw/ordinance consistent with the statutory requirements regarding minimum density, district size, affordability etc. 40R

[54] The deadline is tolled for delays due to legal or administrative appeals and can be extended for other good cause (e.g. developer is actively pursuing other required permits).
[55] Senate 623, filed in 2009.
[56] Erin Heacock, Kristin Hoffman, Alexandra Kleyman and Amy Kuykendall, "Chapter 40R: An Initial Report for the Town of Ipswich," prepared for the Town of Ipswich, MA, May 2007, page 18.

regulations also recommend that it be consistent with the Comprehensive Housing Plan, any applicable municipal Master Plan, etc. The bylaw/ ordinance can include additional requirements as well, such as parking requirements and dimensional requirements regarding height, setbacks, etc. It should also establish a procedure for plan review for individual projects. It can specify that the affordable units calculations will round fractional units *down* to zero if less than 0.5; if this language is not included, fractional units round up.

- DESIGN STANDARDS: Municipalities can adopt design standards for projects in the district – as part of the bylaw/ordinance or as a separate document - to ensure the project is "complementary to adjacent buildings" and consistent with the comprehensive housing plan. Under the statute, these standards can address "the scale, proportions and exterior appearance" of buildings, placement, width etc. of streets and sidewalks, location of building and garage entrances, infrastructure types and locations, off-street parking, requirements regarding protection of "significant natural site features," landscaping, signage and buffering of adjacent properties. However, they cannot "unreasonably impair the economic feasibility of proposed projects" or add "unreasonable costs." (DHCD can reject standards it finds to be "restrictive and prohibitive of development.")

Local Approval

Once DHCD issues a letter of preliminary eligibility, the bylaw or ordinance can be brought to the city council or town meeting for approval (2/3 vote).

DHCD and State Attorney General Final Approval

After local adoption, towns (but not cities) must submit their bylaw to the Attorney General's office for approval first and then to DHCD for final approval.[57] If the Attorney General finds problems, the bylaw may need to be corrected and locally approved again. Cities submit the ordinance directly to DHCD for final approval.

AMENDMENT OR REPEAL OF 40R OVERLAY ZONING

Localities wishing to amend or repeal their 40R zoning must receive DHCD permission to do so. (As a matter of policy, DHCD has consistently indicated repeals or rescissions will be approved). If a repeal or amendment decreases the zoning incentive payment to which the municipality is entitled (due to a decrease in the number of incentive units that can be developed in the district), the municipality must repay any excess amounts it received before DHCD can approve the amendment or repeal. Amendments to enlarge the district or increase allowable units will be reviewed for compliance with the statutory requirements (eligible location, etc.).

LOCAL PROJECT APPROVAL ("PLAN REVIEW") PROCESS AND APPEALS

Once the zoning bylaw/ordinance has received final DHCD approval, developers can submit an application for project approval by the local "approving authority" designated in the local 40R bylaw/ordinance (usually, but not always, the Planning Board) following the procedures, if any, established in the bylaw/ordinance (including the types of waivers that can be granted). A few 40R bylaws do not require project approval for certain types of projects (e.g. Holyoke exempts small projects). Many bylaws provide for a voluntary "pre-application review" under which applicants are encourage to submit materials to the approving authority for review and discussion before they formally file for plan approval.

Once the applicant has filed for plan approval for a project, the authority must hold a public hearing and make and file its decision within 120 days of the application. Persons aggrieved by the decision can appeal it in the court system but must post a bond in an amount equal to twice the developer's estimated legal costs and carrying costs over the appeal period and if the plaintiffs do not substantially prevail, must pay the actual legal and carrying costs (this constitutionality of this provision is currently in litigation).

[57] This requirement is only applicable to Towns that amend their zoning bylaws. Under State zoning law, cities are not required to submit amendments to the zoning ordinance to the Attorney General.

PART II. DISTRICTS AND PROJECTS APPROVED TO DATE

Chapter 40R program regulations went into effect in late March 2005. Because the State did not fund outreach, members of the Commonwealth Housing Task Force conducted outreach to local communities between March and December 2005 and continued their outreach during the first few years. In addition, several of the state's regional planning agencies (RPAs) also conducted outreach to municipalities, providing explanations of 40R and holding meetings with municipalities.

As of August 2009, twenty seven cities and towns had 40R districts that had received final approval from DHCD. If fully built out under 40R, the districts will add 9,780 housing units (at least 2,100 affordable), almost 9,200 more than the underlying zoning allowed by right. Of those, *nine districts* have units built (953 including 711 in two projects) or in construction (174 units). Of those nine,

- Three (Boston, North Reading and Northampton) are former State hospital campuses where housing development was long planned. These three districts account for 996 incentive units, entitling Boston to $1.652 million (when fully developed), North Reading to $1.568 million and Northampton to $668,000 (when fully developed).[58]
- Eight were created in response to developer proposals for specific sites (two began as comprehensive permit applications).
- Five have additional, approved projects or units (phases) delayed by market conditions (including difficulty selling tax credits).

Of the remaining 18 districts,

- Ten have issued project approvals, including one comprehensive permit (though three of the projects are currently on hold due to market conditions or litigation)
- Three have plan approval hearings underway for the entire district or an initial phase.
- One has received a plan approval application, and
- Four have not received applications for project approvals (two have no developers, the developer of a third has put the project on hold, and one is still completing environmental cleanup).

1. DISTRICT CHARACTERISTICS - DEVELOPMENT CONCEPT, SIZE AND DENSITY

The 27 districts vary considerably in development concept:

- Three create new communities (Boston, Kingston, Plymouth) with hundreds of units, some requiring extensive infrastructure (e.g. a new highway access ramp in Kingston)
- Three promote adaptive reuse of a large mill (Lawrence, Lowell, part of Haverhill)
- Three older city districts have multiple subdistricts/sites based on development opportunities and were established in advance of developer interest or with specific projects identified for just parts of the district (Brockton, Holyoke, Pittsfield).
- Eight are entirely residential, while 19 allow a mix of uses.
- In 18 districts, most development is likely to take the form of new construction, while adaptive reuse is more likely to predominate in nine (through reuse of industrial, commercial and other non-residential properties).

In total acreage, the 27 districts range from 0.78 acres to 169 acres. In terms of developable land, they range from 0.75 to 70 acres (the median was 10.4). The number of new units they will allow ranges from 13 to 1,096, with a median of 250. Urban districts are smaller on average and tend to allow higher density development, reflecting their higher use of adaptive reuse (conversions of mills and industrial buildings).

On average, the approved 40R districts allow more new housing units than recent 40B developments (which tend to be built outside of cities). All but two of the 40R districts allow at least 125 new units and the average will allow 362 units, compared to the average project size of 75 units for Chapter 40B projects approved between 2001-2005

[58] While North Reading's 40R district allowed up to 434 new units, only 406 were built.

(47 for ownership and 141 for rental projects). The median density of the 27 districts (future units divided by developable area) is 22.7 units per acre – 31 units per acre in cities and 20 units per acre in towns. Comparisons with the density of 40B developments are not possible.[59]

Table 5: City and Town Districts by Size (Future Zoned Units Allowed)

Municipality	State Hospital/ School	40R District Acres	Developable Acres	"Future Zoned Units"	Density New Units (Future Zoned Units per Developable Acre)
Urban					
Brockton		60.0	47.0	1,096	23.3
Lawrence		34.1	34.0	1,031	*30.3
Boston	1	42.0	18.0	578	32.1
Haverhill		53.0	3.9	526	*135.9
Pittsfield		10.7	10.7	296	27.6
Holyoke		152.0	4.0	296	74.0
Lowell		2.5	2.5	250	*100.0
Westfield		22.2	15.3	244	15.9
Northampton	1	16.6	9.0	156	17.3
Chelsea		2.8	2.7	125	45.8
Suburban					
Kingston		109.0	69.6	730	10.5
Plymouth		56.8	33.6	675	20.1
Bridgewater		128.0	26.0	594	22.8
North Andover		169.0	26.5	530	20.0
North Reading	1	46.0	21.7	434	20.0
Dartmouth		40.7	23.3	319	13.7
Easton		60.7	18.0	280	15.6
Amesbury		52.0	9.1	249	27.4
Grafton		13.7	10.0	240	24.0
Lakeville		11.0	10.4	207	20.0
Lunenburg		9.0	9.0	204	22.7
Reading		10.0	8.9	202	22.7
Lynnfield		80.3	65.1	180	2.8
Sharon		11.6	9.3	167	17.9
Natick		5.0	5.0	138	27.6
Belmont		1.5	1.5	18	12.0
Norwood		0.8	0.8	15	20.0
Total		**1,201**	**495**	**9780**	**19.8**

*for rehab of existing mill building

[59] A study of recently approved 40B developments in Greater Boston found an average density of 11 units per acre (8 for ownership and 18 for rental projects) but notes that density was calculated on total project land area, unadjusted for water or other features. Lynn Fisher, "Reviewing Chapter 40B: What Gets Proposed, What Gets Approved, What Gets Appealed and What Gets Built," Harvard Kennedy School/Rappaport Institute for Greater Boston," Cambridge, MA, November 2008, page 7. http://www.hks.harvard.edu/rappaport/downloads/policybriefs/40B_final.pdf

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

2. CITY VS. NON-CITY DISTRICTS

Ten of the 27 districts are in cities. Four are "transit" locations, two are areas of concentrated development and four are highly suitable locations. Two of the city districts are on State hospital campuses and one (Westfield) includes an undeveloped area behind a commercial strip; those three are new construction projects and all three qualified as "highly suitable" locations. The other seven city districts are in older areas (mill districts, former industrial areas and downtown areas) and involve redevelopment through adaptive reuse or a mix of new construction and adaptive reuse. Two of the city districts consist of multiple scattered sites.

For some of the larger cities, the 40R district is just one component in a larger redevelopment planning effort that covers more land and includes creating urban renewal districts and multi-year infrastructure and transportation planning (and some face considerable uncertainty regarding the timing and financing for the larger improvements).

The 17 non-city districts include two transit locations, two concentrated development locations and 11 highly suitable locations. They include a mill district, former church, industrial or commercial sites (gravel pit, drive-in movie theatre, amusement park, office park) and two largely open sites. All but one will create units through new construction.

3. INTERACTION WITH CHAPTER 40B

Chapter 40B played an important role in jump-starting 40R. Nine of the 22 districts that had developers when proposed began as possible or actual 40B applications (and two actually received a comprehensive permit in advance of the 40R designation) and a tenth district was also created in response to a proposal for a 40B development.

Table 7: Districts with Projects Proposed or Approved Under Chapter 40B

Amesbury	*Project received CP* (240u) – owner/developer applied for CP before 40R district created; agreed to support Town 40R application but decided to proceed with approval under 40B. The 40R district includes adjacent land as well
Belmont	*Planning begun for potential 40B (no formal application)* 40R district for 18 units created after neighbors objected to Housing Trust proposal to seek developer for slightly denser project using 40B or 40R
Chelsea	*Developer considered using 40B (did not file)* – decided to proceed with special permit for phase I, and work with City to create 40R district for balance of project
Dartmouth	*40B LIP application filed* for 252u/63 affordable; approved using 40R (308 units – no change in affordable units)
Kingston	*CP denied* (200u) for part of site 11/2005; New developer proposed 730 unit 40R on expanded site 1/2006 (and later proposed 44 more units using 40B on adjacent site in 2008 using 40R design standards)
Lakeville	*CP approved (192u)*, rescinded when 40R approved for same site (204 units)
Natick	*Developer considered using 40B*, agreed to 40R
North Andover	*40B proposed* for 650 units when owner became frustrated over delays in starting 40R planning. Owner applied for 40B site approval for 300 units on part of site (7/2006) and filed application with ZBA 3/2007. Town approved 40R for 530 units (4/2007)
North Reading	*40B application filed* for 434 units, 40R district then created for 434 units
Sharon	*40B LIP application proposed* (168 units); Town agreed in writing to work with developer to finalize. Approved 40R district for same site and number of units

*CP=Comprehensive Permit

Chapter 40B has also been a selling point for approving 40R districts. Nineteen districts are in communities that were below the 40B 10% threshold when they began considering 40R (though some were close to 10% due to pending 40B applications). Of those 19, eight created districts for specific projects that could put them over the 10% threshold if built in a timely manner and a ninth (Bridgewater) was designed with the goal of reaching 10% by encouraging the expansion of an existing development.

Chapter 40B has also operated as a back-up method to deal with 40R approval uncertainties (local votes, bylaw details).

- In at least five communities, developers sought approvals using both laws (Amesbury, Lakeville, Dartmouth, Sharon, and Easton).
- In one community with a 40R district (Easton), a second developer filed for project approval under 40B after he was unable to reach agreement with the Town on creating a second 40R district following a year of discussions. In another (Kingston), a developer with a site zoned for up to 730 units under 40R filed a 40B application to build a smaller project on an abutting site (ultimately dropped).
- One town (Shrewsbury) seeking to reach the 10% threshold invited developers to submit proposals. From two, it chose the one using 40B (rather than one using 40R) because it proposed more units.[60]

[60] See *Towns Seeking to Increase Affordable Housing Chose Alternative Approaches*, page 46.

Table 8: 40B Status When Municipality Began Considering Adoption of 40R (19 Communities Under 10%)

	40B % 9/2008	Units Short of 10%	Units 40R could produce*	0.5% Yr Round Units	40R Future Zoned Units	40R to get to 10%	40R Final Approval Date	Appeal Proof for 1-2 Years under Housing Production Plan
Bridgewater	3.2%	(523)	507	38	507	1	11/9/2007	
Dartmouth	8.6%	(150)	112	54	307	1	6/1/2006	
Haverhill	9.1%	(215)	372	118	305	1	2/8/2007	
Kingston	4.9%	(221)	326	22	730	1	4/4/2007	7/5/2007-7/4/2008
Lakeville	8.5%	(52)	100	17	204	1	9/29/2006	11/24/2006-11/23/2008
Lynnfield	7.0%	(127)	180	21	180	1	4/19/2007	
North Reading	2.8%	(350)	406	24	434	1	7/13/2006	
Reading	7.7%	(199)	202	44	202	1	12/6/2007	
Sharon	6.3%	(221)	117	30	167	1	11/14/2008	3/23/2007-3/22/2009
Belmont	3.2%	(673)	3	50	17		10/12/2007	No Production Plan
Easton	3.3%	(512)	235	38	280		4/25/2008	
Grafton	5.3%	(271)	48	29	240		12/8/2006	
Lunenburg	1.9%	(291)	204	18	204		6/1/2006	
Natick	7.4%	(342)	138	67	138		12/6/2006	12/30/2006-12/17/2010
North Andover	6.0%	(396)	346	49	530		4/10/2007	6/24/2008-6/23/2009
Norwood	6.0%	(477)	3	60	15		6/26/2006	No Production Plan
Pittsfield	9.4%	(127)	**	105	296		10/3/2008	No Production Plan
Plymouth	4.4%	(1,057)	**	95	675		5/17/2006	
Westfield	7.0%	(462)	15	77	60		8/15/2008	No Production Plan

*Units that would count toward the 10% under 40B

**potential SHI units unknown at present, due to uncertainties about future project mixes

4. HOW DISTRICTS WERE INITIATED

Districts vary in terms of who initiated them. In some cases, developers or consultants brought the program to the attention of a municipality; in others, the municipality was already exploring potential local use of 40R. Nine districts are areas that had already been approved in concept for higher density housing and developers suggested or agreed to use 40R either because of the direct benefits it offered or because officials believed it would make a project more acceptable locally. These nine districts have had the most development activity so far.

Table 9: How Districts Were Initiated

Initiation	# of Districts	Districts w/ construction	Developable acres	Future Zoned Units	Comprehensive Permit Units Proposed or Approved	Units built*	Units under construction
Pre-existing plan	5	5	55.3	1,819	406	890	-
Approved or Friendly 40B	4	1	52.1	942	852	0	100
Other Developer-Initiated	13	1	298.2	4,719	500	15	-
Municipally-Initiated	5	1	89.2	2,300	-	48	-
Total	**27**	**8**	**494.8**	**9,780**	**1,758**	**953**	**100**

*includes 70 Boston units that started construction before 40R designation approved

PRE-EXISTING PLANS (5)

Five districts cover areas that had already been approved for development. Of these, three (Boston, Northampton and North Reading) were State hospital/State school sites where residential redevelopment plans had been approved as early as 2002 (one was about to be modified under 40B), including two where overlay zoning had already been approved. One (Chelsea) covered projects already approved by special permit and one (Haverhill) covered a downtown area already rezoned for residential redevelopment.[61]

APPROVED 40B PROJECTS OR FRIENDLY 40B APPLICATIONS (4)

In addition to the State school site noted above, four other districts were created in collaboration with developers who had filed comprehensive permit applications. The 40R districts largely follow the development concept originally proposed under 40B (in two cases, there were slight changes in the number of units allowed and in one, the district was expanded to cover another potentially developable site).

- Two (Amesbury, Lakeville) involve projects that had received a comprehensive permit (CP).
- Two (Sharon, Dartmouth) involve projects which had filed or had approval to file for a CP under the Local Initiative Program (LIP). LIP projects are often called "friendly 40Bs" because the chief elected municipal official must approve the project concept before the developer can apply for a comprehensive permit.

DEVELOPER-INITIATED DISTRICTS (13)

Thirteen districts were created in response to specific development proposals. In one town (North Andover), the developer filed a 40B application due to dissatisfaction with the speed of Town efforts to begin the 40R application process.

MUNICIPALLY-INITIATED DISTRICTS (5)

Five districts were created either without a developer or with a developer for just part of the district. This includes three in cities (Brockton, Holyoke, Pittsfield) seeking to stimulate redevelopment of specific sites and/or neighborhoods. Two were in suburbs – one where the landowner was amenable to the rezoning for expansion and one created at the request of neighbors unhappy with a preliminary affordable housing proposal for a closed church site.

5. TYPE OF ELIGIBLE LOCATION

Chapter 40R districts are limited to locations that are close to transit, in an area of concentrated development (ACD) or deemed "highly suitable" by the locality (subject to DHCD review, as described below). To date, 12 of the 27 districts have qualified based on proximity to a transit terminal (8) or including an area of concentrated development (4) and half of the potential incentive payments will go to such areas.

Table 10: Approved Districts by Eligible Location Type

District Type	#	Districts with units built or in construction	Develop-able acres	Future zoned units	Total Units built/in construction	Category Share: Total Districts	Category Share: Future zoned units	Category Share: Units built/ in construction
Transit	8	3	175	3,747	472	30%	38%	42%
ACD	4	3	42	1,137	87	15%	12%	8%
Highly Suitable	15	3	278	4,896	568	56%	50%	50%
Total	**27**	**9**	**495**	**9,780**	**1127**	**100%**	**100%**	**100%**

The majority of districts (15 of 27) have qualified as a "highly suitable location." This is particularly true for districts (14 of 18) which primarily propose new construction (as opposed to adaptive reuse) and those filing initial applications after 2006.

[61] While technically as of right, Haverhill's residential zoning was found to have economically infeasible parking requirements. This was true in at least one other urban district as well.

Table 11: Approved Districts by Location Type – Details

	District Name	Total Acres	Developable acres	Future Zoned Units	Prelim DHCD Eligibility Approval	Final DHCD Approval Letter	Zoning Payment (000s)	Estimated Maximum Bonus Payment (000s)
Transit								
Chelsea	Gerrish Ave	2.82	2.73	125	4/6/2006	7/13/2006	$75	$270
Plymouth	Cordage Park	56.80	33.6	675	5/17/2006	10/12/2007	$600	2,025
Lakeville	Res. At Lakeville Station	11.00	10.35	207	9/29/2006	12/27/2006	$350	$621
Natick	SGOD	5.00	5	138	12/6/2006	4/4/2008	$200	414
Haverhill	Downtown	53.00	3.87	526	12/11/2006	2/8/2007	$600	1,578
Brockton	Downtown	60.00	47	1096	2/27/2007	10/26/2007	$600	3,288
Kingston	1021 Kingston's Place	109.00	69.6	730	4/4/2007	8/28/2007	$600	2,190
Lowell	Smart Growth Overlay	2.50	2.5	250	6/27/2008	10/3/2008	$200	750
Transit Total		**300.12**	**174.65**	**3,747**			**$3,225**	**$11,136**
Area of Concentrated Development (ACD)								
Norwood	St. George Ave	0.78	0.75	15	4/4/2006	6/28/2006	$10	33
N. Andover	Osgood	169.00	26.53	530	4/10/2007	10/26/2007	$600	$ 1,590
Holyoke	Smart Growth Overlay	152.30	4	296	4/4/2008	7/7/2008	$350	633
Pittsfield	Smart Growth Overlay	10.72	10.72	296	6/20/2008	10/3/2008	$350	651
ACD Total		**332.8**	**42**	**1,137**			**$1,310**	**$2,907**
Highly Suitable Location (HSL)								
N. Reading	Berry Center	46.00	21.7	434	5/9/2006	7/13/2006	$350	$1,302
Lunenburg	Tri-Town	8.97	8.97	204	6/1/2006	8/11/2006	$350	612
Dartmouth	Lincoln Park	40.65	23.26	319	6/1/2006	12/5/2006	$350	957
Grafton	Fisherville Mill	13.74	10	240	12/8/2006	8/31/2007	$350	720
Lynnfield	Planned Village Dev.	80.25	65.09	180	4/19/2007	8/24/2007	$200	372
Lawrence	Arlington Mills	34.10	34	1031	5/2/2007	5/2/2008	$600	3,093
Amesbury	Gateway Village	52.00	9.1	249	5/4/2007	7/10/2007	$350	675
Northampton	Sustainable Growth	16.56	9	156	8/21/2007	1/4/2008	$200	468
Belmont	Our Lady of Mercy	1.50	1.5	18	10/12/2007	4/18/2008	$10	39
Boston	Olmsted Green	42.00	18	578	10/26/2007	3/26/2008	$350	1,302
Bridgewater	Waterford Village	128.50	26	594	11/9/2007	4/4/2008	$600	1,521
Reading	Gateway	10.00	8.91	202	12/6/2007	4/11/2008	$350	606
Westfield	Southwick Road	22.20	15.32	244	12/7/2007	8/15/2008	$200	594
Easton	Queset	60.66	18	280	4/25/2008	9/26/2008	$350	777
Sharon	Sharon Commons	11.55	9.32	167	11/14/2008	4/3/2009	$200	480
HSL Total		**569**	**278**	**4,896**			**$4,810**	**$13,518**

The definition of "highly suitable" is more flexible than the definitions for the other two types of eligible location. Chapter 40R regulations[62] require DHCD to "presume that a location is highly suitable if it has been identified as an appropriate locus for high-density housing or mixed-use development in a local comprehensive plan, community development plan, area specific plan, regional policy plan, or other plan document, in each case adopted or updated after a public planning process" no more than five years prior to the submission of the 40R application. (A few proposed locations have been informally rejected when the sole justification was based on a reference in a local plan.) If an area cannot meet that standard, the municipality must provide evidence that designating the area "by virtue of its existing or planned" infrastructure, transit or transportation access, underutilized facilities, "and/or location" is consistent with the statutory goals for smart growth.

[62] 760 CMR 59.04(1)(a)(3).

6. PLANNING COSTS/ FUNDING

Developing a 40R application and writing the zoning bylaw and design standards are time-consuming and most communities hire consultants to help with this process. Some early communities exploring 40R received pro bono help from the Commonwealth Housing Task Force (CHTF) with this process, as part of its early marketing of the program. Others have used State planning grants and/or developer-funded assistance. Some fronted costs in anticipation of 40R incentive payments or review fees to be paid by the developer.

Planning costs vary with the complexity of the project and the availability of in-house planning staff (many small communities lack a full-time planner). Some larger communities were able to use in-house staff for much of the work. Several regional planning agencies have also provided planning assistance. Communities with limited staff or very complex projects have tended to use consultants more, with much of the consultant assistance provided by a handful of planning firms and land use law experts.

STATE PLANNING GRANTS

Initially, CHTF funded planning assistance using private funds; MassHousing subsequently provided funds for planning assistance through the Priority Development Fund (PDF), a program it created in 2004 to provide gap-filler funding for affordable rental projects as well as affordable housing planning grants. It set aside $3 million in PDF funds for planning grants, including $1 million for 40R planning grants of up to $50,000, distributed on a rolling basis.

A review of the PDF awards shows while helpful, many communities have been able to create districts without them (16 the 27 districts created to date). As of early 2009, PDF grants had been awarded to evaluate 24 possible districts.[63] Of those 24 sites:

- Eleven are now 40R districts fully approved by DHCD
- Two are awaiting final (1) or preliminary (1) DHCD approval for their district
- Eight are still working on planning 40R districts or evaluating whether to use 40R.
- Three opted for other approaches (soliciting development through a friendly 40B, using other overlay zoning and pursuing non-residential development).

[63] Includes one PDF grant not funded from the 40R setaside.

Table 12: Use of 40R Planning Grants

Community	District Name	#	State Land	Project Driven	Grant Amount	DHCD Preliminary 40R Approval
Received PDF Grant						
North Reading	Berry Center	1	1	1	27,950	5/9/2006
Plymouth	Cordage Park	1	-	1	50,000	5/17/2006
Haverhill	Downtown	1	-	1	50,000	12/11/2006
Brockton	Downtown	1	-	0	65,000	2/27/2007
Kingston	1021 Kingston's Place	1	-	1	50,000	4/4/2007
North Andover	Osgood	1	-	1	40,000	4/10/2007
Amesbury	Gateway Village	1	-	1	35,000	5/4/2007
Belmont	Our Lady of Mercy	1	-	0	10,000	10/12/2007
Westfield	Southwick Road	1	-	1	38,520	12/7/2007
Holyoke	Smart Growth Overlay	1	-	0	38,520	4/4/2008
Pittsfield	Smart Growth Overlay	1	-	0	50,000	6/20/2008
Totals		11	1	7	454,990	
No PDF Grant						
Norwood	St. George Ave	1	-	1	-	4/4/2006
Chelsea	Gerrish Ave	1	-	1	-	4/6/2006
Dartmouth	Lincoln Park	1	-	1	-	6/1/2006
Lunenburg	Tri-Town	1	-	1	-	6/1/2006
Lakeville	Residences At Lakeville Station	1	-	1	-	9/29/2006
Natick	SGOD	1	-	1	-	12/6/2006
Grafton[1]	Fisherville Mill	1	-	1	-	12/8/2006
Lynnfield	Planned Village	1	-	1	-	4/19/2007
Lawrence	Arlington Mills	1	-	1	-	5/2/2007
Northampton	Sustainable Growth	1	1	1	-	8/21/2007
Boston	Olmsted Green	1	1	1	-	10/26/2007
Bridgewater	Waterford Village	1	-	1	-	11/9/2007
Reading	Gateway	1	-	1	-	12/6/2007
Easton	Queset	1	-	1	-	4/25/2008
Lowell	Smart Growth Overlay	1	-	1	-	6/27/2008
Sharon	Sharon Commons	1	-	1	-	11/14/2008
Totals		16	2	14	0	

[1] Grafton received PDF funds to explore creating a second 40R district, with a small amount for education and outreach for the Fisherville district. However, most of the Fisherville planning was funded with other resources.

Table 13: 40R Status – Other Communities with 40R Planning Grants

Community	District Name		State Planning $	Status	Grant Amount
Easthampton		1	PDF	at DHCD prelim applic	38,520
Marblehead	Downtown	1	PDF	at DHCD for final ok	40,000
Amesbury II	Main St	1	PDF		20,000
Chicopee	Downtown	1	PDF, GC	planning continues	50,000
Fitchburg	Lower Main (downtown)	1	PDF	grant accepted 3/2008	35,693
Fitchburg II	River Street	1	PDF	grant accepted 2/2008	35,000
Grafton II	Depot Street	1	PDF		20,000
Hopedale	Draper Mill (downtown)	1	PDF	undecided –may use 40r	25,000
Medway	Main Street	1	PDF	planning started 2007	15,000
Reading II	Commuter Rail/Main St	1	PDF	in planning	50,000
		10			$329,213
Decided not to pursue 40R					
Westport	Noquochoke	1	PDF	adopted own overlay	25,000
West Newbury	Mullen Property	1	PDF	using 40B LIP	12,000
Wrentham	Wampum Corridor	1	PDF		50,000

7. ABILITY TO ATTRACT DEVELOPERS, LENGTH OF PLANNING AND APPROVAL PROCESS

Table 14: Districts by Year Approved

Community	District Name	Older City	State Land	40B role*	Project Specific		Final DHCD Approval
Norwood	St. George Ave				1	1	**6/28/2006**
Chelsea	Gerrish Ave	1		1	1	1	**7/13/2006**
North Reading	Berry Center		1	1	1	1	**7/13/2006**
Lunenburg	Tri-Town				1	1	**8/11/2006**
Dartmouth	Lincoln Park			1	1	1	**12/5/2006**
Lakeville	Res. At Lakeville Station			1	1	1	**12/27/2006**
Haverhill	Downtown	1			1	1	**2/8/2007**
Amesbury	Gateway Village		0	1	1	1	**7/10/2007**
Lynnfield	Planned Village		0		1	1	**8/24/2007**
Kingston	1021 Kingston's Place		0		1	1	**8/28/2007**
Grafton	Fisherville Mill				1	1	**8/31/2007**
Plymouth	Cordage Park				1	1	**10/12/2007**
Brockton	Downtown	1	0		0	1	**10/26/2007**
North Andover	Osgood		0	1	1	1	**10/26/2007**
Northampton	Sustainable Growth		1		1	1	**1/4/2008**
Boston	Olmsted Green	1	1		1	1	**3/26/2008**
Bridgewater	Waterford Village		0		0	1	**4/4/2008**
Natick	SGOD			1	1	1	**4/4/2008**
Reading	Gateway		0		1	1	**4/11/2008**
Belmont	Oakley Neighborhood		0		0	1	**4/18/2008**
Lawrence	Arlington Mills	1	0		1	1	**5/2/2008**
Holyoke	Smart Growth Overlay	1	0		0	1	**7/7/2008**
Westfield	Southwick Road		0		1	1	**8/15/2008**
Easton	Queset		0	1	1	1	**9/26/2008**
Lowell	Smart Growth Overlay	1	0		1	1	**10/3/2008**
Pittsfield	Smart Growth Overlay	1	0		part	1	**10/3/2008**
Sharon	Sharon Commons		0	1	1	1	**4/3/2009**
Totals		8	3	8	22	27	

*Use of 40B for site development was discussed with local officials or application was filed or approved

One of the goals of 40R was to encourage development by a predictable approval process though pre-approved sites and a strict timetable for plan approval. At this point, it is difficult to determine whether pre-approved sites attract development as most (22 of 27) of the districts approved to date were created *after* a developer expressed interest in the site. Of the other five, one (Bridgewater) was created in consultation with the landowner as possible developer, one (Pittsfield) has completed units in part of the district (the project was previously approved under different overlay), one (Belmont) has a project in the plan approval hearing stage, and one (Brockton) received an application from a developer for one site and has had interest from another for a second site. The fifth (Holyoke) has not attracted developers to its larger parcels. A city-affiliated non-profit has used 40R to build five units of infill housing (1-2 unit homes).

TIME REQUIRED TO CREATE A 40R DISTRICT (PLANNING TO FINAL DHCD APPROVAL)

We lack detailed information on the time required for localities to prepare a preliminary 40R application and receive DHCD's approval for preliminary eligibility, but most communities reported it took 8-18 months. Once that has occurred, however, we found that it took 5-6 months on average (136 days median) for communities to move from preliminary to final approval (hold the local vote, pass the attorney general's review if a town and resubmit to DHCD). To date, one town meeting vote (Kingston) has been subject to litigation.

Once a district has been created, however, plan approvals have moved quickly. Of the 20 projects that have received plan approval to date, the total time from DHCD final district approval (i.e. when the district went into effect) to plan approval averaged 103 days, with a median of 50 days (two projects received approvals within 3 weeks of the final district approval) and the time from applying for plan approval to decision has been even shorter (a median approval time of 42 days).[64] However, some developers still need to obtain other local permits and environmental approvals and some very large projects also require major infrastructure approvals (e.g. permit to build a ramp to a highway). To date, one project approval (Natick) has been challenged in court (by abutters).

Table 15: Status of Projects by Year District Created (DHCD Final Approval)

				Built		In Construction		Approved, not started	
Approval Year	**# Districts**	**Districts with Approved Residential Projects**		**Total Units**	**Affordable Units**	**Total Units**	**Affordable Units**	**Total Units**	**Affordable Units**
2006	6	5	Chelsea, Norwood, Lakeville, Lunenburg, North Reading	512	184	76	76	257	72
2007	8	4	Amesbury, Haverhill, Lynnfield, Plymouth	305	61	0	0	627	183
2008	12	8	Boston, Holyoke, Lawrence, Lowell, Natick, Northampton, Pittsfield, Westfield	160	126	74	74	1150	TBD
2009	1	1	Sharon	0	0	0	0	29	6
Totals	**27**	**18**		**977**	**373**	**150**	**150**	**2063**	**261+**

Table 16: Comparison of Project Approval Steps and Timeframes under 40R and 40B

	Chapter 40R	**Chapter 40B**
Develop 40R application/ obtain DHCD eligibility letter	Time reported varied from 8-18 months	0
Obtain local, final DHCD approval of 40R district	136-173 days to date	Not applicable
Obtain 40B project eligibility letter	0	135-166 days
Obtain subsidy funding commitment	Data not available	Data not available
Zoning approval (filing of application to filing of decision)	Up to 120 days	Up to 250 days
Obtain other local non-environmental approvals	Data not available	0
Environmental approvals	Expect no difference for 40R and 40B	

[64] Based on the 17 projects for which we had all dates.

Given the two-step process (district creation, then plan approval), it is difficult to determine whether 40R speeds up development. While we have data on approval times under Chapter 40B, for example, the differences in the approval processes under the two laws make it difficult to predict whether 40R is faster if the district must be created first. For example:

- The 40B approval process does not begin until a developer has site control, while 40R districts can be created in advance of developer interest.
- 40B developers must obtain a determination of project eligibility from a subsidizing agency before they can file a permit application with the local zoning board. Between 2003 and 2007, the median site approval took 135 days and the average 166.[65]
- 40B hearings in Greater Boston averaged 10 months (about 300 days) between 2003 and 2007 from the start of the hearing until issuance of a decision,[66] though they are likely to be faster going forward as regulations adopted in February 2008 require that decisions be issued within 250 days of the filing of the developer's application.
- 40B developers receive all local non-environmental approvals at once, as part of the comprehensive permit, while 40R project approvals apply to zoning only.

Table 17: Status of Projects in Approved Districts

Community	District Name/ (# projects approved)	State Land	40B role	Project Specific	Preliminary Eligibility Letter	Final DHCD Approval	Project Approval(s)
Amesbury	Gateway Village		CP	1	5/4/2007	7/10/2007	3/8/2007 (CP)
Belmont	Our Lady of Mercy		-	-	10/12/2007	4/18/2008	filed 5/2009
Boston	Olmsted Green (1)	1	-	1	10/26/2007	3/26/2008	10/16/2008
Bridgewater	Waterford Village		-	-	11/9/2007	4/4/2008	-
Brockton	Downtown (1)		-	-	2/27/2007	10/26/2007	filed 7/2009-on hold
Chelsea	Gerrish Ave (3)		1	1	4/6/2006	7/13/2006	5/6/2006
Dartmouth	Lincoln Park (1-part)		1	1	6/1/2006	12/5/2006	6/2008 (commercial)
Easton	Queset		1	1	4/25/2008	9/26/2008	-
Grafton	Fisherville Mill		-	1	12/8/2006	8/31/2007	-
Haverhill	Downtown (2)		-	1	12/11/2006	2/8/2007	4/25 + 6/25/2007
Holyoke	Smart Growth Overlay		-	-	4/4/2008	7/7/2008	-
Kingston	1021 Kingston's Place		1	1	4/4/2007	8/28/2007	filed 4/2009
Lakeville	Residences at Lakeville (1)		1	1	9/29/2006	12/27/2006	1/8/2007
Lawrence	Arlington Mills		-	1	5/2/2007	5/2/2008	10/1/2008
Lowell	Smart Growth (1-part)		-	1	6/27/2008	10/3/2008	11/2008 (Phase I)
Lunenburg	Tri-Town (1)		-	1	6/1/2006	8/11/2006	1/2007
Lynnfield	Planned Village		-	1	4/19/2007	8/24/2007	5/16/2008
Natick	SGOD (1)		1	1	12/6/2006	4/4/2008	4/2009
North Andover	Osgood		1	1	4/10/2007	10/26/2007	-
North Reading	Berry Center (1)	1	1	1	5/9/2006	7/13/2006	8/22/2006
Northampton	Sustainable Growth (3)	1	-	1	8/21/2007	1/4/2008	1/14 +1/25/2008
Norwood	St. George Ave (1)		-	1	4/4/2006	6/28/2006	8/2/2006
Pittsfield	Smart Growth (2)		-	some	6/20/2008	10/3/2008	10/7/08 + 5/13/09
Plymouth	Cordage Park (1-part)		-	1	5/17/2006	10/12/2007	2/25/2008 (Phase I)
Reading	Gateway		-	1	12/6/2007	4/11/2008	-
Sharon	Sharon Commons (1-part)		1	1	11/14/2008	4/3/2009	4/15 + 5/13/09
Westfield	Southwick Road		-	1	12/7/2007	8/15/2008	10/7/2008
Totals		**3**	**10**	**22**			

[65] 760 CMR 59.05 requires a zoning board to open the hearing within 30 days of receiving a complete application, close it within 180 days absent agreement to extend, and issue a decision within 40 days after closing the hearing.
[66] Fisher, page 4.

8. INCENTIVE PAYMENTS

The 27 districts approved to date are eligible to receive $36.8 million in incentive payments if the districts are built out to their full potential. This is approximately $10 million more than the Trust has been funded at to date ($25.4 million), but current market conditions make significant near-term production unlikely, and new revenues from the sale of a state property are expected, so that the gap is not a concern at present.

Table 18: Potential 40R Payments – 27 Approved Districts

	Maximum Possible	Paid	Balance
Incentive Payments	$9,345,000	$8,245,000	1,100,000
Density Bonus Payments	27,477,000	2,166,000	25,311,000
Total	**$36,822,000**	**10,411,000**	**26,411,000**

ZONING INCENTIVE PAYMENTS

To date, 23 communities have received $8.245 million for adopting 40R districts and 7 have at least some construction underway. Under the current law, 13 of the remaining 16 districts will have to demonstrate "start of construction" that is moving toward completion by sometime in 2010 (three districts) or 2011 (ten districts) or return their incentive payment. Legislation has been proposed to strike the repayment requirement.

Table 19: Zoning Incentive Payments Made to Date

Future zoned Units	Zoning Incentive	Total Approved Districts	Paid to Date	Districts w/issued Bldg permits	Permits result in full build-out?		Building permit Deadline	
					Full	partial	2010	2011
Up to 20	$10,000	2	2	1	1	0	0	0
21-100	$75,000	1	1	1	0	1	0	0
101-200	$200,000	6	4	1	0	1	0	3
201-500	$350,000	11	9	2	1	1	2	3
501+	$600,000	7	7	2	0	2	1	4
Total		**27**	**23**	**7**	**2**	**5**	**3**	**10**

BONUS UNIT PAYMENTS

Three districts have also received $2.2 million in bonus unit payments for issuing building permits. Two (Norwood and North Reading) have fully built out their districts while five more (Boston, Haverhill, Northampton, Chelsea, Lakeville and Pittsfield) have issued permits for projects (or phases) covering at least part of the district. Of the latter, only Haverhill has applied for payment to date.

9. AFFORDABLE HOUSING REQUIREMENTS

The 40R statute and regulations give localities considerable flexibility in terms of how they write their bylaw to meet the statutory requirement that at least 20% of units be affordable district-wide and in projects with more than 13 units. The following describes how the 27 approved districts to date vary in terms of their affordable housing requirements.

FRACTIONAL UNITS

In some cases, the affordability requirement falls below 20%. Under 40R, localities can (and most do) include language in their bylaw specifying that *fractional units below 0.5 round down to zero.* When included, the language applies to the district as a whole and to individual projects. Rounding down has a bigger impact on small projects than large projects. For example, if a project has 17 units, the 20% calculation (3.4 units) is rounded down to 3 units (17.6%). Most (21) of the districts round down below 0.5. Of the six that do not, five are suburbs and one is a city above 10%.

SMALL PROJECT EXEMPTION AND 100% MARKET RATE PROJECTS

The 40R statute allows bylaws/ordinances to exempt projects with less than 13 units from the 20% affordability requirement as long as the district-wide requirement is met. It also includes language banning segmentation of projects to get below 13 units. Of the 27 approved bylaws:

- Twenty-four require that *all projects* meet the 20% affordability requirement and 1 (Norwood, created for a single project) simply states a 20% district-wide requirement
- Two make affordability requirements discretionary for small projects (Holyoke, Pittsfield)

The limit on affordability exemptions, however, has not precluded 100% market rate developments within a "project." To date, three cities (Boston, Chelsea, and Northampton) have approved 100% market rate developments in their districts even though their bylaws don't exempt small projects. Boston and Chelsea did so by treating multiple developments as one "project." Chelsea's project approval covered a 23-unit subsidized rental development (100% affordable), a 26-unit ownership development (61% affordable) and a 53-unit loft development (0% affordable).[67] Similarly, Boston's approval covered 151 rental units (100% affordable) and up to 200+ ownership units, including 19 built to date without income restrictions.

Using a broad definition of "project" requires care, however. This is because, while not required by the statute, DHCD recommends 40R bylaws require that the bedroom distribution for affordable units be proportional to that of market units. If so required and not met (e.g. if all of the affordable units in a mixed-tenure project are in the rental component and have fewer bedrooms on average than units in an all-market ownership component), the municipality risks forfeiting its zoning incentive and density bonus payment (the 40R zoning and project approval remain valid).[68]

MINIMUM AFFORDABILITY REQUIREMENTS FOR RENTAL PROJECTS

While the statute sets a minimum affordability requirement of 20%, about half of the communities (14 of 27) have set the minimum at 25% for rental developments. Of these 14, four allow the percentage to drop to 20% if the affordable units are reserved for households with incomes at or below 50% of area median. These 25% requirements ensure that all the units in rental projects in these 14 districts count toward the 10% goal under Chapter 40B (only one of the 14 – Brockton - has reached 10%). It also helps to ensure that at least 20% of units created district-wide are affordable, though none of the 14 communities exempt small projects from 20% affordability.

TERM OF AFFORDABILITY

Chapter 40R imposes a minimum term of affordability and allows municipalities to *opt in* for a longer term. That is, the local 40R bylaw must require that affordability restrictions that have a term of "at least 30 years[69] but can be written to impose a longer minimum. Of the 27 bylaws approved to date:

- Eleven simply require a minimum of 30 years
- Four authorize the plan approving agency to require longer terms
- Twelve require much longer affordability (99 years minimum or in perpetuity or the longest period allowed by law). They include 11 suburbs below the 10% goal under 40B.

Chapter 40B, by contrast, creates an affordability restriction in perpetuity unless the locality *opts out*. While projects only need to must have a use restriction of 15-30 years[70] to use a comprehensive permit, state courts have ruled that comprehensive permits must meet this standard in perpetuity unless the Zoning Board specifies a

[67] The all market project has since been revised in response to market conditions and will be at mixed-income rental development (with 10-20% of the units to be affordable).
[68] 760 CMR 59.07(3).
[69] Chapter 40R allows individual projects in an eligible district to have higher or lower percentages of affordable units but all projects of 13 or more units must be at least 20% affordable.
[70] Prior to 2001, DHCD required a use restriction of at least 15 years for new construction project and 5 years for rehabilitation projects, either to use a comprehensive permit or count toward the 10% goal.

shorter term.[71] Most localities as a general practice require affordability "in perpetuity or the longest period allowed by law" as a comprehensive permit condition.

FUNDING FOR MONITORING COSTS

The statute is silent on the question of how to pay for the cost of monitoring compliance with affordability requirements and the 27 bylaws to date have taken several approaches. Most include language allowing the Approving Authority to require the project applicant to pay for this cost, some require the applicant to pay for this expense and some have language that caps the cost based on a formula (e.g. up to ½% of affordable rents and up to 1% of sales price of affordable ownership units).

10. HOUSING PRODUCTION

As summarized in the table below, 1,127 units have been built or are in construction in nine districts to date. Of those nine districts, six are in cities; three in towns. All but five of the 1,127 units were in planning before the locality created the 40R district and all but 41 units used state and/or federal housing subsidy programs.

Table 20: Profile of Districts with Units Built and/or Under Construction

		Units Built, in Construction or with Plan Approval									
District Location	**Future Zoned Units**	**Total Units**	**Affordable Units**	**Total Rental units**	**Affordable Rental Units**	**Total Ownership Units**	**Affordable Ownership Units**	**Units Built**	**3-BR built**	**In Construction**	**With Plan Approval**
North Reading	434	406	102	406	102	0	0	406	0	0	0
Haverhill	526	362	94	362	94	0	0	305	0	0	57
Boston	578	120	151	151	151	19	0	70	24	50	TBD
Chelsea	125	120	61	94	47	26	16	67	21	0	53
Pittsfield	296	112	112	112	112	0	0	43	0	24	69
Northampton	156	63	32	40	32	23	0	42	4	0	21
Norwood	15	15	3	0	0	15	3	15	3	0	0
Holyoke	296	5	0	0	0	5	5	5	5	0	0
Lakeville	207	100	100	100	100	0	0	24	0	76	0
Total	**2633**	**1303**	**655**	**1265**	**638**	**88**	**22**	**977**	**57**	**150**	**143**

[71] Pursuant to a 2002 State Supreme Judicial Court decision, *Zoning Board of Appeals of Wellesley v. Ardemore Apartments Limited Partnership*, projects permitted under Chapter 40B must meet the minimum affordability standards established under Chapter 40B for as long as they are out of compliance with the underlying zoning, unless local permit-granting authority specified a shorter period when granting the comprehensive permit.

Table 21: Housing Production Status by Date District Created

Town	District Name	Type	Final District Approval Date	Future zoned units	Units Built or in construction	Units with Site Approval	Units in Process*
Norwood	St. George Ave	ACD	**6/28/2006**	15	15	0	0
North Reading	Berry Center	HSL	**7/13/2006**	434	406	0	0
Chelsea	Gerrish Ave	Transit	**7/13/2006**	125	67	53	0
Lunenburg	Tri-Town	HSL	**8/11/2006**	204	0	66	0
Dartmouth	Lincoln Park	HSL	**12/5/2006**	319	0	0	0
Lakeville	Residences at Lakeville Station	Transit	**12/27/2006**	207	100	0	0
Haverhill	Downtown	Transit	**2/8/2007**	526	305	57	0
Amesbury	Gateway Village	HSL	**7/10/2007**	249	0	240	0
Lynnfield	Planned Village Development	HSL	**8/24/2007**	180	0	180	0
Kingston	1021 Kingston's Place	Transit	**8/28/2007**	730	0	0	30
Grafton	Fisherville Mill	HSL	**8/31/2007**	240	0	0	0
Plymouth	Cordage Park	Transit	**10/12/2007**	675	0	150	0
Brockton	Downtown	Transit	**10/26/2007**	1096	0	0	0
North Andover	Osgood	ACD	**10/26/2007**	530	0	0	0
Northampton	Sustainable Growth	HSL	**1/4/2008**	156	42	20	0
Boston	Olmsted Green	HSL	**3/26/2008**	578	120	50	0
Natick	SGOD	Transit	**4/4/2008**	138	0	0	0
Bridgewater	Waterford Village	HSL	**4/4/2008**	594	0	0	0
Reading	Gateway	HSL	**4/11/2008**	202	0	0	0
Belmont	Our Lady of Mercy	HSL	**4/18/2008**	18	0	0	17
Lawrence	Arlington Mills	HSL	**5/2/2008**	1031	0	0	0
Holyoke	Smart Growth Overlay	ACD	**7/7/2008**	296	5	0	0
Westfield	Southwick Road	HSL	**8/15/2008**	244	0	60	0
Easton	Queset	HSL	**9/26/2008**	280	0	0	0
Lowell	Smart Growth Overlay	Transit	**10/3/2008**	250	0	65	0
Pittsfield	Smart Growth Overlay	ACD	**10/3/2008**	296	67	45	0
Sharon	Sharon Commons	HSL	**4/3/2009**	167	0	0	0
Total				**9780**	**1127**	**986**	**47**

*Application for preliminary review or site approval submitted

Table 22: Housing Production Status by Location Type

Town	District Name	Type	Final District Approval Date	Future Zoned Units	Units Built or in construction	Units w/Plan Approval	Units in Process*
Norwood	St. George Ave	**ACD**	6/28/2006	15	15	0	0
North Andover	Osgood	**ACD**	10/26/2007	530	0	0	0
Holyoke	Smart Growth Overlay	**ACD**	7/7/2008	296	5	0	0
Pittsfield	Smart Growth Overlay	**ACD**	10/3/2008	296	67	45	0
North Reading	Berry Center	**HSL**	7/13/2006	434	406	0	0
Lunenburg	Tri-Town	**HSL**	8/11/2006	204	0	66	0
Dartmouth	Lincoln Park	**HSL**	12/5/2006	319	0	0	0
Amesbury	Gateway Village	**HSL**	7/10/2007	249	0	240	0
Lynnfield	Planned Village Dev.	**HSL**	8/24/2007	180	0	180	0
Grafton	Fisherville Mill	**HSL**	8/31/2007	240	0	0	0
Northampton	Sustainable Growth	**HSL**	1/4/2008	156	42	20	0
Boston	Olmsted Green	**HSL**	3/26/2008	578	120	50	0
Bridgewater	Waterford Village	**HSL**	4/4/2008	594	0	0	0
Reading	Gateway	**HSL**	4/11/2008	202	0	0	0
Belmont	Our Lady of Mercy	**HSL**	4/18/2008	18	0	0	17
Lawrence	Arlington Mills	**HSL**	5/2/2008	1031	0	0	0
Westfield	Southwick Road	**HSL**	8/15/2008	244	0	60	0
Easton	Queset	**HSL**	9/26/2008	280	0	0	0
Sharon	Sharon Commons	**HSL**	4/3/2009	167	0	0	0
Chelsea	Gerrish Ave	**Transit**	7/13/2006	125	67	53	0
Lakeville	Res. @Lakeville Station	**Transit**	12/27/2006	207	100	0	0
Haverhill	Downtown	**Transit**	2/8/2007	526	305	57	0
Kingston	1021 Kingston's Place	**Transit**	8/28/2007	730	0	0	30
Plymouth	Cordage Park	**Transit**	10/12/2007	675	0	150	0
Brockton	Downtown	**Transit**	10/26/2007	1096	0	0	0
Natick	SGOD	**Transit**	4/4/2008	138	0	0	0
Lowell	Smart Growth Overlay	**Transit**	10/3/2008	250	0	65	0
Total				**9780**	**1127**	**986**	**47**

11. PROJECT CHARACTERISTICS (FOR BUILT UNITS)

TENURE

Most (94%) units built or in construction to date are rental, in part due to market conditions that have led developers to convert planned condos to rental (Chelsea, Lakeville) or delay some phases (Boston and Northampton). Five districts (Norwood, Northampton, Boston, Chelsea and Holyoke) have built 67 ownership units (17 affordable).

POPULATIONS SERVED

To date, no elderly/disabled only or age-restricted projects have received project approval (Boston has approved one elderly-housing building as part of its overall project). Most projects have only one- and two-bedroom units. Only three of the districts (Boston, Chelsea and Norwood) have built projects with three-bedroom units. Overall, three-bedroom units have comprised 5% of the total units or in construction and about 5% of the units in projects with plan approval but not yet built where we have information on the planned unit sizes.

INCOME MIX

The percentage of affordable units produced to date varies considerably by district and project. While the statute requires that at least 20% of the units in a district produced under 40R be affordable, most of local bylaws have set

a minimum of 25% for rental projects[72] to ensure that the entire project counts towards their 10% goal under Chapter 40B. Some districts have (or plan) a mix of projects with high (>20%) and low (<20%) affordability. The nine districts with projects built, under construction or with building permits include 14 developments – six ownership projects and eight rental projects - plus 5 infill housing units in Holyoke.

- Three of the six ownership projects are 100% market rate and are in districts (Boston, Northampton) with rental projects that 75-100% affordable. The percentage of affordable units in the other three projects ranges from 20% (two projects) to 62%.

- Of the eight rental projects, the percentage of affordable units ranges from 20% (two projects) to 57% (one), 75% (one) and 100% (four projects). A ninth project with site approval is expected to be 11% affordable (Chelsea).

12. OTHER SMART GROWTH ELEMENTS; GREEN DESIGN

As discussed in *4. 40R Statutory and Regulatory Requirements* on page 21, Chapter 40R's smart growth requirements are largely limited to location. Other traditional smart growth concepts related to land use, such as minimal setbacks, street connectivity and subordinated parking are not mandated, though some communities have incorporated them in their design standards.

Chapter 40R addresses land use and does not require green design or energy efficiency. While a few communities have included sustainable design as *requirements* in their design standards (some quite extensively, as in Kingston, Northampton and Boston), they are the minority. Others have language that "encourages" sustainable design or LEED certification. In some cases, it may not matter as projects may become subject to such requirements as a condition for housing subsidy funds (DHCD usually requires or favors green building design and energy efficiency).

13. LOCAL BUILDING CONTEXT

Building activity has fallen steadily in Massachusetts since 2006, reaching the lowest levels in at least 30 years in 2009. Nevertheless, Census Bureau estimates indicate that building permits were issued for 46,993 housing units statewide between 2006 and April 2009. The 1,060 40R units that have received building permits comprise a very small percentage of units permitted statewide during those years. Overall, they make up 11% of the 9,500 units permitted in the 27 communities with 40R districts (16% excluding Boston) especially as the Census data does not include permits for projects involving adaptive re-use. In a few communities with large projects, the percentage was must higher (see Table 23).

14. PERSPECTIVE OF PLANNING STAFF

Discussions with planning staff[73] in the approved districts indicated a high level of satisfaction with 40R, with many lauding the concept of "local control" though a few complained about being subject to 40R statutory and regulatory requirements. A few indicated they felt that the density requirements were too high for their markets (several felt the minimum density for 4-unit townhomes should be 12 units per acre, as it is for 2-3 unit townhome developments, rather than 20). One planner in a city with a very high percentage of subsidized housing felt that affordability requirements should be reduced for communities with large amounts of subsidized housing or high levels of poverty. She suggested that, at the very least, the minimum term of the affordability restriction in districts in such communities should be reduced to 5-10 years.

Reasons for using 40R varied (see the District profiles in the Appendices):

- Many indicated the decision to investigate 40R when a developer began discussions with the municipality about a specific development proposal. In some cases, the project was already well along in the approval process (under 40B or using other zoning tools) when the municipality or developer became aware of 40R.

[72] Under the statute, the determination of what constitutes a "Project" (the unit used to calculate affordability requirements) is up to the local plan approving authority.
[73] See Appendix for list of interviewees.

- Many indicated that the potential of projects to help them reach 10% or interim certification under a 40B Housing Production Plan and "protect against future 40Bs" was also an important consideration. This consideration was usually prominently discussed in materials provided to town meeting members before the 40R vote, including the risk that the proposed site would become a 40B application if a 40R district was not approved.

- Several indicated that the 40R location and density standards fit with their city's long term goals for downtown redevelopment and one noted that 40R made it easier to update standards across a district that had quite varied underlying zoning.

- Several indicated that the decision to create a 40R district was strongly driven strictly by the financial incentives, while others indicated that the projects would have been built anyway because they would put the community over the 10% threshold. Yet others said concern that the Trust might run out of funds reduced the role of the incentives in the decision making process.

- Two said the 40R project approval process provided "transparency" and "certainty" not always present in cities where the City Council was the permit granting authority and subject to political pressures.

- One community reported that they used 40R because of the provisions regarding abutter appeals, as the developer was very concerned about that risk.

15. COMMUNITIES AND DEVELOPERS WHO CONSIDERED BUT DID NOT IMPLEMENT 40R

To date, officials or developers in at least 11 communities proposed or considered using 40R but ultimately did not create districts. The reasons vary and illustrate the challenges inherent in obtaining local approval for zoning changes.

VOTERS DID NOT APPROVE ZONING CHANGE

Three towns (Hingham, Newbury and Georgetown) received preliminary DHCD approval but fell short of two-thirds approval at Town Meeting, getting 55%, 61% and 65% respectively. Hingham and Newbury had developer proposals, Georgetown did not.

- Hingham's district, voted on in March 2008, would have covered two parcels. One covered part (91 of 235 units) of an 18-building project already in phased construction. The 91-unit component had previously been approved under 40B and then revised under a permit that still required that 25% of the units be affordable (it has since been completed). The second parcel consisted of a 3.22 acre of town land that Town Meeting had designated for affordable housing in 2005. Town officials estimated that approval would have resulted in $314,000 in 40R incentive payments and held off on issuing building permit pending the vote.

- The Newbury 40R district covered 99 acres and would have permitted a mixed-use development of 68 apartments, 82 condominiums and retail, office and community space. Planning for this transit-oriented district began in 2004. A majority of voters at town meeting in June 2008 approved the memorandum of agreement between the Town and two developers but the vote on the 40R zoning bylaw fell short of the necessary two-thirds approval. One of the developers has since withdrawn and the project is now being redesigned as a commercial development that will also require a zoning change.

- Georgetown's proposed district, voted on in May 2009, fell short of the two-thirds approval by a handful of votes (91-48). Town officials intend to bring the proposal back for a later vote. The proposed district covered eight acres and would have allowed mixed use (second story housing) development in one subdistrict and multifamily buildings of up to 10 units in another.

TOWN OFFICIALS REJECTED CONCEPT

Four towns decided not to pursue creation of 40R districts because of concerns about local school or sewer capacity, including two that developed alternative bylaws instead.

- The town of Holden was asked by a developer in 2007 to consider creating a 20 acre district to enable development of approximately 70 housing units and some retail uses. The Town ultimately decided not to pursue designating the site as a 40R district because of concerns about sewer system capacity (especially in light of a pending 192-unit Chapter 40B project elsewhere in town). The developer decided to proceed with a 44-lot subdivision instead in 2008.

- The town of Auburn was asked in 2007 by a developer to consider creating a 40R district to permit the development of 67 units of housing on the site of outbuildings put up for sale by a local church (St. Joseph's) but the Board of Selectmen unanimously voted against exploring the concept due to concerns about school overcrowding.

- The town of Hudson considered using Chapter 40R in 2006 to allow the owners of several mill and other buildings in the town center to convert them to mixed-use developments with housing and commercial uses. In the end, concerns about the number of units that would be created under the 40R density requirements led the Town to create an Adaptive Reuse Overlay District (AROD) in 2007 instead. The AROD authorizes the development of up to 351 units (compared to almost 600 initially considered under a larger 40R district), of which 15% must be affordable.

- The city of Melrose created its own "smart growth" overlay district, approved by the Board of Aldermen in April 2008, after deciding that 40R would give the city less control and require greater affordability. Its district is within one quarter mile of an MBTA commuter rail station and covers 15.5 acres of industrially zoned land with several historic mill buildings. Mixed use development is encouraged, at least 10% of units must be affordable in perpetuity and historic buildings must be preserved. The received a special permit application for a 300 unit development in the district at the end of August 2008 and approved it in June 2009. The Town of Stoneham has filed two lawsuits objecting to the approval.

TOWNS SEEKING TO INCREASE AFFORDABLE HOUSING CHOSE ALTERNATIVE APPROACHES

Three towns explicitly seeking to increase their affordable housing supply examined options under Chapter 40R and 40B and ultimately chose to use Chapter 40B.

- The town of West Newbury examined 40R as it assessed development options for a 34-acre parcel of land purchased by the Town for open space and affordable housing ("the Mullen property"). Using a $12,000 PDF grant and town funds, it created a Community Housing Committee in June 2007 and hired a consultant to analyze the site, develop design concepts that would create both housing for the elderly and starter homes and review permitting options under 40R and 40B. In September 2008, the Town decided to solicit a "friendly 40B" for the development of up to 40 units. It wrote an RFP seeking proposals for a very specific housing mix (20 units elderly rental, 12 starter homes and eight age-restricted townhomes) with design standards and 50% open space. Town Meeting voted against surplussing the land and issuing the RFP in April 2009, with opponents citing concern that the Town would not recoup the $1.2 million spent to buy the site.

- The town of Shrewsbury solicited proposals from developers in 2007 for projects that would bring them as close as possible to their 10% threshold under Chapter 40B (at that time, the town was 440 units short and knew the gap would increase after the 2010 census). The two respondents (large rental developers) offered to proceed as either friendly 40Bs or using 40R. One proposed 300+ units, while the other proposed 444 units and a $3.9 million mitigation package. The latter was chosen (after the other developer withdrew) and after negotiating details with the Town received approval to file as a friendly Chapter 40B under the Local Initiative Program. The developer put the project on hold in later 2008, after receiving its project eligibility letter but before filing a comprehensive permit application with the ZBA.

- The town of Westport began exploring ways to develop affordable housing on 24 acres of town land in 2005, when its Housing Partnership obtained CPA funding to assess the site's feasibility. In 2006, the Town approved $750,000 in additional CPA funds to purchase seven abutting acres, creating a 31 acre site called Noquochoke Village. The Partnership proposed that 54 housing units be built on the site and used a $25,000 PDF grant to explore the feasibility of making the site a 40R district prior to issuing an RFP for development. After considering both 40R and a friendly 40B, the Town concluded that 40R density requirements were too high and wrote its own overlay zoning bylaw. In May 2009, Town meeting approved the new zoning. It allows single-, two- and multi-family housing at up to eight units per acre and requires that at least 30% of units in any development be affordable for at least 99 years.

TOWN AND DEVELOPER FAILED TO REACH AGREEMENT

In one town (Easton), discussions to create a second 40R district ended when the developer who initially proposed the district decided to file an application under Chapter 40B after a year of negotiations with the Town failed to produce consensus.

TOWN DEFERRED LOCAL APPROVAL AFTER REACHING 10%

The town of Randolph put its efforts to create a 40R district on hold at least temporarily, after DHCD found its draft proposal eligible. The proposed district would have allowed the development of 457 units on an 88-acre site. The Board of Selectmen withdrew the article from the warrant for Town Meeting approval in June 2008, shortly after learning that it had met the 10% threshold under 40B. It is unclear whether the Town will pursue the district later.

Table 23 Total and 40R Housing Units Permitted in Communities with 40R Districts (2006 through April 2009)

District	Year district final	One family, attached or detached	Two Units	Three or Four Units	MF (5+)	40R Adaptive Reuse	Total plus 40R A/R	40R units permitted	40R Share of total Permits*
Norwood	**Jun-06**	39	9	3	46	15	112	15	13%
Chelsea	**Jul-06**	-	22	3	233	-	258	67	26%
North Reading	**Jul-06**	82	-	-	406	-	488	406	83%
Lunenburg	**Aug-06**	47	2	6	-	-	55	-	0%
Dartmouth	**Dec-06**	153	2	-	-	-	155	-	0%
Lakeville	**Dec-06**	101	-	-	160	-	261	100	38%
Haverhill	**Feb-07**	219	104	8	16	305	652	305	47%
Amesbury	**Jul-07**	72	-	-	-	-	72	-	0%
Lynnfield	**Aug-07**	55	-	8	211	-	274	-	0%
Kingston	**Aug-07**	66	-	6	-	-	72	-	0%
Grafton	**Aug-07**	232	4	-	-	-	236	-	0%
Plymouth	**Oct-07**	511	52	18	40	-	621	-	0%
Brockton	**Oct-07**	170	48	18	8	-	246	-	0%
North Andover	**Oct-07**	67	-	78	201	-	346	-	0%
Northampton	**Jan-08**	63	6	16	54	-	139	42	30%
Boston	**Mar-08**	172	332	292	3,302	-	4,098	120	3%
Bridgewater	**Apr-08**	102	-	4	-	-	141	-	0%
Natick	**Apr-08**	141	-	-	-	-	141	-	0%
Reading	**Apr-08**	56	12	-	-	-	68	-	0%
Belmont	**Apr-08**	58	2	-	-	-	60	-	0%
Lawrence	**May-08**	35	96	6	-	-	137	-	0%
Holyoke	**Jul-08**	25	22	9	10	-	66	5	8%
Westfield	**Aug-08**	104	24	24	-	-	152	-	0%
Easton	**Sep-08**	116	6	-	-	-	122	-	0%
Lowell	**Oct-08**	350	26	-	63	-	439	0	0%
Pittsfield	**Oct-08**	181	-	4	39	-	224	-	0%
Sharon	**Apr-09**	31	-	-	148	-	179	-	0%
Total		**3,248**	**769**	**503**	**4,937**	**320**	**9,814**	**1,060**	**10.8%**
Excluding Boston		**3,076**	**437**	**211**	**1,635**	**320**	**5,716**	**940**	**16.4%**

APPENDIX I: DISTRICT PROFILES

DATA SOURCES FOR DISTRICT PROFILE STATISTICS

The district profiles include tables with demographic, housing, property tax, building permit, school enrollment and other data. Data sources, with caveats, are listed below.

HOUSING, POPULATION AND DEMOGRAPHIC DATA

2007 Population Estimate: Massachusetts Department of Revenue

2000 Census Data: Census Bureau "Fact Sheet" and Profile of Selecting Housing Characteristics (DP-4) for each city and town

1990 Census Data: Census Bureau reports

1980 Census Data on Population: HUD State of the Cities Data Base (www.huduser.org)

HOUSING AND POPULATION DENSITY

Massachusetts Department of Revenue (DOR), Division of Local Services, Municipal Data Bank, "Housing Units and Square Miles by Community." The figures are based on DOR 2007 population estimates. Available online at:

http://www.mass.gov/?pageID=dorterminal&L=4&L0=Home&L1=Local+Officials&L2=Municipal+Data+and+Financial+Management&L3=Data+Bank+Reports&sid=Ador&b=terminalcontent&f=dls_mdmstuf_socio&csid=Ador

SCHOOL DISTRICT ENROLLMENT

Mass. Department of Education "Long Term Trends in Enrollment (FY1989-FY2009) – *the data does not include charter school enrollment*

PROPERTY TAX BASE

Share Paid by Residential Properties (2009): Massachusetts Department of Revenue, Division of Local Services, Municipal Data Bank: "FY2009 Levies by Class" Available online at:

http://www.mass.gov/?pageID=dorterminal&L=4&L0=Home&L1=Local+Officials&L2=Municipal+Data+and+Financial+Management&L3=Data+Bank+Reports&sid=Ador&b=terminalcontent&f=dls_mdmstuf_proptax&csid=Ador

AVERAGE SINGLE FAMILY HOME ASSESSED VALUE AND PROPERTY TAX BILL 2009

Massachusetts Department of Revenue, Division of Local Services Municipal Data Bank, "Fiscal Year 2009 Average Single Family Tax Bill," available online at:

http://www.mass.gov/?pageID=dorterminal&L=4&L0=Home&L1=Local+Officials&L2=Municipal+Data+and+Financial+Management&L3=Data+Bank+Reports&sid=Ador&b=terminalcontent&f=dls_mdmstuf_proptax&csid=Ador

In communities with some very high value homes, the average may be significantly higher than the median home value but the latter is not available.

BUILDING PERMITS

U.S. Census Bureau estimates (reported and imputed) – available online at:

http://www.census.gov/const/www/permitsindex.html

These estimates are based on local reporting of permits issued for new construction (*they do not include units created through adaptive reuse)*. In addition, a review of data for some communities suggest that multifamily (5+) units be underreported. In some cases, we have adjusted the reported numbers to include multifamily projects we know have been permitted (these adjustments are noted in the profile), including large adaptive reuse projects.

SUBSIDIZED HOUSING PERCENTAGE (SHI)

The percentages are from DHCD's Subsidized Housing Inventory as of August 4, 2009. Because updates are the responsibility of the municipality, *the counts are not always timely or complete*. They may be missing newer projects and/or include projects that no longer qualify. (Communities can add projects to the count as soon as they issue a comprehensive permit or 40R plan approval but projects become temporarily ineligible if they do not pull a building permit with 12 months of the 40B/40R approval or receive certificates of occupancy with 18 months of the building permit). In a few cases, we have adjusted the SHI count up based on projects that have been built but not yet added to the SHI.

We have also noted any communities that are temporarily appeal-proof because they are certified under the Housing Production section of DHCD's 40B regulation; however, we may have missed communities that could qualify for certification but have not notified DHCD.

1. AMESBURY: GATEWAY VILLAGE SMART GROWTH OVERLAY DISTRICT

PROJECT NAME(S): Amesbury Heights (240 units – 40B)

Location Type:	Highly Suitable	Units Built/Under Construction	0
DHCD Final Approval	4/4/2007	Future Zoned Units	249
District Size:	52 acres	Planned Units[1]	325
Developed land:	5.2 acres	Incentive Units	225
Developable land	9.1 acres	Bonus Units	225
Pre-40R Use: vacant land, orchard, vacant industrial		Affordable Units	65
Pre-40R zoning :	Office (40B site); commercial; small area residential (R-40)	Incentive Payment	$350,000
Project Initiator:	developer	Maximum Bonus Units Payment	$978,000

Developer: Boston North Properties		
Funding for 40R Planning: PDF, developer	PDF planning grants	$35,000
Construction: New	State and Federal Housing Subsidies	Tax-exempt bonds

COMMUNITY BACKGROUND:
Amesbury is a small, older town located on the Merrimack River 10 miles northeast of the city of Haverhill and 43 miles north of Boston. Established in 1642, it has a long industrial and manufacturing history and many historic buildings. Most of the town was built prior to 1965 around the village core. A State planning grant enabled the Town to begin several long-term planning initiatives in the early 2000s and it completed a Master Plan update in June 2004.

Zoning: Single family minimum lot sizes range from 8,000 to 80,000 square feet. Multifamily housing is allowed in a few districts by special permit. The town also has a Downtown Artist Live/ Work District.

40B Status: Went over 10% with the approval of a 40B project in what became the 40R district.[2] Also has a Housing Production Plan (approved 12/2006) and an inclusionary zoning bylaw.

	Amesbury	**State**
Form of Government	Town	
Population (2007)	16,429	
Land Area	12.4 mi^2	
Population density per square mile (2007)	1,325	810
Housing density per square mile (2000)	534	334
Average Household Size (2000)	2.52	2.51
Population Growth 2000-2007	↓ 0.1%	↑ 1.9%
Population Growth 1990-2000	↑ 9.7%	↑ 5.5%
Household Growth 1990-2000	↑ 15.5%	↑ 8.7%
Housing Growth 1990-2000	↑ 10.5%	↑ 6.0%
School District Enrollment Change (FY2001-2009)	↓ 15.0%	↓ 2.9%
School District Enrollment Change (FY1991-2001)	↑ 17.5%	↑ 16.0%
Percentage of Property Taxes Residential	85.8%	72%
Average Single Family Assessed Value 2009	$332,153	$391,818
Average Single Family Tax Bill (FY2009)	$5,490	$4,250
Median Household Income (1999)	$51,906	$50,502
Per Capita Income (1999)	$24,103	$25,952
Adults Over 25 with at 4-Year Degree	26.4%	33.0%
Poverty Rate (Individual) (2000)	5.9%	9.3%
Total Housing Units (2000)	6,623	
Single family detached as % of 2000 Units	49.5%	52.4%
Multifamily Units (5+) as % of 2000 Units	20.5%	19.6%
Building Permits 2000-April 2009 (total units)	286	166,775
Single family attached and detached units	286	109,574
Multifamily Units (5+)	0	46,241
Median home value (2000)	$183,400	185,700
Median Gross Rent (2000)	$680	684
% of Households That Are Renters (2000)	34.2%	38.3%
Subsidized Housing Inventory % (8/2009)	7.5%	9.7%

SGOD District: Includes 26+ acre site of a 40B project (Amesbury Heights) and 25 contiguous acres (including 10 owned by the 40B developer). "Developable land" in the district is 9.1 acres.

Transit: Area is served by public bus routes; town hoping to develop regional bus center nearby.

Infrastructure: Area is served by public water and sewer

40R PLANNING PROCESS: After Chapter 40R was enacted, the Town began looking at areas where it might use it consistent with smart growth criteria articulated in its new Master Plan (e.g. areas with infrastructure, commercial and traffic corridors and already disturbed). It applied for a $50,000 State Priority Development Fund (PDF) planning grant and was awarded $35,000 (it used CDBG for the balance). While the 40R planning study was underway, a developer (Boston North Properties) applied for a comprehensive permit to develop a 240-unit rental development (Amesbury Heights) on 28 acres at the intersection of two highways near downtown. The Town then proposed creating a 40R district that included that site. Boston North wrote a letter of support for the 40R concept but decided to proceed under 40B. The Town supported the 40B application since the project would enable it to reach 10% under 40B, make future 40B decisions appeal-proof and generate 40R density bonus payments for the bonus units in the project.

The Town began working on development of the 40R district shortly thereafter, expanding the boundaries to allow the development of up to 86 more units in addition to Amesbury Heights. The design standards were largely driven by public input and consultation with Boston North. Boston North agreed to revise its design to match the standards (moving from 5-story to 3-story buildings) even though that left less space for other amenities. Overall, the town planner felt that 40R worked well, though he would like more flexibility to tweak the bylaw if market constraints change without going back to DHCD for approval.

Milestones

Dec 2005	Boston North applies for Chapter 40B site approval letter from MassDevelopment as first step in applying for a comprehensive permit to build 240-unit rental development on a 26.4 acre parcel. MassDevelopment notified the Town, giving it 30 days to provide comments.
March 2006	Boston North submits application for comprehensive permit 3/30/2006.
2006	Planning for 40R, public hearing
March 2007	ZBA approves CP application for 240 units total, 48 affordable (3/8/2007)
April 2007	DHCD approves preliminary 40R application 4/4/2007
May 2007	Municipal Council approves 40R bylaw 5/23/2007
July 2007	DHCD Final Approval 40R district 7/10/2007

District/Project Status: No construction has started. Amesbury Heights (240 units) is the only project in the pipeline and requested a 2-year extension of its comprehensive permit (due to expire 4/5/2009).

Plan Approval Authority: Planning Board

Bylaw features of note: The bylaw establishes 8 subdistricts, one for future open space and 7 residential. In some subdistricts, the residential units must be upper story housing (above street level retail/commercial/live-work) in some or all buildings. Of the seven residential subdistricts:

- 1 is Single/Two Family – allowed units 13
- 1 is Multifamily (allowed uses: buildings with up to 48 units) - allowed units 240
- 2 are Mixed-use (allows all residential types but in one district, residential units in mixed-use buildings can only be upper story) – allowed units 38
- 3 are Substantially Developed Area (allows all residential uses *except* single family, limits residential use in mixed-use buildings to upper stories) – allowed units 34

Allowed Uses

	Subdistrict	SF	2F	2-3F	MF	Mixed-use	Minimum Density	Maximum Units
1	Single or Two-Family (STF)	1	1	-	-	-	8-12	13
2	Multifamily (MF)	1		1	1	-	8-30	240
3	Substantially Developed Area (SDA)	-		1	1	1*	8-12	8
4	Substantially Developed Area (SDA)	-		1	1	1*	8-20	18
5	Substantially Developed Area (SDA)	-		1	1	1*	8-20	8
6	Mixed-use (MU)	1		1	1	1	8-20	20
7	Mixed-use (MU)	1		1	1	1	8-20	18
		4	1	5	5	5		325

*residential upper story only

Allowed commercial non-residential uses are restricted to:

- Artisan Business
- General Retail Sales and Services
- Restaurants
- Professional/ business offices
- Artist live/work space

Design standards are fairly detailed. Energy efficiency requirements are less detailed, however, requiring simply that buildings "reflect environmentally responsible design and construction practices as governed by the Energy Star Program." They also state that buildings are "strongly encouraged" to be certifiable by the U.S. Green Building Council LEED Rating System.

Affordability Requirements: The bylaw requires 20% affordability for all projects, rounds fractional units down if less than 0.5; requires that affordability restrictions have the longest period allowed by law and allow the Town to require project developers to pay for affordability marketing and monitoring.

Projects: AMESBURY HEIGHTS (the only project proposed to date) is a 240-rental development, consisting primarily of one- and two-bedroom units.

Amesbury Heights		**1-BR**	**2-BR**	**3-BR**
Tenure		Rental		
Total Units	240	76	159	5
Affordable Units	48	15	28	5

Affordability: Twenty percent (20%) of the units will be affordable in perpetuity (as required by comprehensive permit). All of the affordable units are reserved for households at or below 50% of area median as the developer is using tax-exempt bonds and 4% low income housing tax credits.

[1] Total units that could be developed including units that could be created in substantially developed areas.
[2] It slipped below 10% when Subsidized Housing Inventory was updated this year as construction has not yet begun.

2. BELMONT: OAKLEY NEIGHBORHOOD SMART GROWTH OVERLAY DISTRICT

PROJECT: proposal pending

Location Type:	Highly suitable	Units Built or Under Construction	0
DHCD Final Approval	4/18/2008	Future Zoned Units	18
District Size:	1.51 acres	Incentive Units/Bonus Units	13
Developable land:	1.5 acres	Affordable Units	4
Substantially developed:	-	Incentive Payment earned	$10,000
Pre-40R Use:	Church, rectory, hall, parking lot	Maximum Bonus Units Payment	$39,000
Pre-40R zoning:	Single family		

Planning funds source	PDF	$10,000
Project Initiator:	Belmont Housing Trust initially, later abutters/town	
Developer/Subsidies:	To be determined – for-profit developer has applied for project approval	

COMMUNITY BACKGROUND: Belmont is a small "streetcar suburb" next to Cambridge and 7 miles northwest of Boston. It is connected to both cities by commuter rail (two stops) and two bus lines. It has high housing costs and a strong school system. Its housing consists mainly of one-, two- and three-family homes.

Zoning: As-of-right residential uses are largely limited to one- and two-family homes (minimum lot sizes range from 7,000 to 25,000 square feet). Multifamily housing is allowed by special permit on a few specific sites. An overlay district approved in 2006 allows mixed-used development.

40B Status: Its Subsidized Housing percentage is 3.7% (excluding a 299-unit 40B rental approved in 2007 that is tied up in environmental litigation). It does not have a Housing Production Plan.

	Belmont	State
Form of Government	Town	
Population (2007)	23,356	
Land Area	4.66 sq mi	
Population density per square mile (2007)	5,012	810
Housing density per square mile (2000)	2,142	334
Average Household Size (2000)	2.45	2.51
Population Growth 2000-2007	↓ 3.5%	↑ 1.9%
Population Growth 1990-2000	↓ 2.1%	↑ 5.5%
Household Growth 1990-2000	↑ 0.7%	↑ 8.7%
Housing Growth 1990-2000	↑ 0.1%	↑ 6.0%
School District Enrollment Change (FY2001-2009)	+ 7.9%	- 2.9%
School District Enrollment Change (FY1991-2001)	+ 25.9%	+ 16.0%
Percentage of Property Taxes Residential	94.2%	72%
Average Single Family Assessed Value 2009 Average Single Family Tax Bill (FY2009)	$752,843 $8,951	$391,818 $4,250
Median Household Income (1999)	$80,295	$50,502
Per Capita Income (1999)	$42,485	$25,952
Adults Over 25 with at 4-Year Degree	63.1%	33.0%
Poverty Rate (Individual) (2000)	4.4%	9.3%
Total Housing Units (2000)	9,980	
Single family detached as % of 2000 Units	46.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	6.2%	19.6%
% of Households That Are Renters (2000)	39.3%	38.3%
Building Permits 2000-April 2009 (total units)	195[1]	166,775
Single family attached and detached units Multifamily Units (5+)	138 40	109,574 46,241
Median home value (2000)	$450,000	185,700
Median Gross Rent (2000)	$1,141	684
Subsidized Housing Inventory % (8/2009)	3.7%	9.7%

SGOD District: The district consists of a church property (Our Lady of Mercy) closed at the end of 2004, including a church, hall, parking lot, rectory and convent.

Transit: The district is on a MBTA bus line with frequent service to Cambridge, a commuter rail station and a subway hub.

Infrastructure: The district has public water and sewer

40R PLANNING PROCESS: Initial re-use planning for the site began in December 2004, when the Belmont Housing Trust (a Town-appointed non-profit) began exploring the feasibility of developing mixed-income housing there as a friendly Chapter 40B or 40R. It used HOME technical assistance funds to assess the minimum project size required for financial feasibility and develop a preliminary design that would re-use the church. After the Trust met several times with neighborhood residents to discuss the initial design concept (27 units – 9 affordable) and ways to downsize it (to 20-24 units), the neighbors, unhappy with the number of units under discussion, formed a neighborhood association (the Oakley Neighborhood Association or ONA) to explore alternatives.

ONA discussed 40R options with the Town Planner and developed an alternative design concept. The Town received a $10,000 state PDF grant to hire a consultant to work with ONA to flesh out a development concept, zoning bylaw and design standards. These parties met over several months and received Board of Selectmen approval in June to submit a 40R application to DHCD, after the Board rejected suggestions by the Housing Trust to allow slightly more units. The Town was able to use its HOME consortium Consolidated Plan to meet 40R planning requirements. Town Meeting approved the rezoning in October 2007, despite a letter of objection by the landowner (Archdiocese).

Milestones

Dec 2004	Church closes, parishioners appeal closing to Vatican
2005-2006	Housing Trust proposes affordable housing; Vatican upholds closing (1/2006), ONA develops alternative plan
Jan-June 2007	Town receives PDF grant, hires consultant, submits 40R application to DHCD (6/30/07)
October 2007	DHCD approves preliminary application (10/12); Town Meeting approves zoning (10/22)
January 2008	AG approves zoning bylaw
April 2008	DHCD gives final approval to district
May-Sept 2009	Developer files for plan approval (hearing opened 5/27; closed 9/10); decision is pending.

District/Project Status: In early 2009, a developer obtained a purchase option for the site and began meeting with the neighborhood association and Town planner on his proposal to build 17 housing units. He filed for plan approval in May. The hearing closed in September and the Planning Board decision is expected in mid-October. ONA believes the proposal does not comply with the 40R design standards.

Plan Approval Authority: The Planning Board.

Bylaw/Design Standard features of note

Subdistricts: The bylaw divides the 1.51 acre site into 4 subdistricts. While the underlying zoning allows 5 single family homes, the overlay allows a total of 18-19 units (18 if the church is torn down, 19 if it is preserved through adaptive reuse). One subdistrict only allows single family homes, one allows two-unit homes, and two allow 2-3 unit townhomes. Multifamily housing (up to 6 units) allowed in one if the church is converted to housing. Mixed-use is not allowed.

Design standards: state that "building and site design should be adequate to achieve compliance with" LEED criteria in effect when the 40R bylaw was adopted. The current project does not intend to seek certification but the developer plans to comply with REScheck and "take steps to increase energy efficiency such as use of Energy Star appliances, high efficiency 92% direct vent furnaces and 13 SEER air conditioning units."

Allowed Uses

Subdistrict	SF	2F	2-3F	Multifamily	Min density	Maximum Units
Church Buildings	-	-	Yes	Yes*	12	9-10
Rectory	-	-	Yes	-	12	3
Senior Center	Yes	-	-	-	8	2
Triangle (Parking Lot)	-	Yes	-	-	12	4
Total Possible Units						18-19

*Up to 6 units if the church is used for housing

Project Details: The proposed project for the district, as described in the plan approval application, would demolish the existing buildings (church, rectory, convent, etc.) and build 17 new units:

- 2 market rate single family homes (2600-2700 SF each) and
- 15 two- and three-unit townhomes (3 affordable). All the townhomes would be three bedrooms.

The overall district density under the proposal is 11.25 units per acre (1.51 acres / 17 units).

Three units (17.6%) are to be affordable to households with incomes below 80% of median for 30 years. (If the developer had proposed 18 units, as allowed under the overlay, four would have had to be affordable).

[1] U.S. Census estimates plus 40 units (multifamily development permitted in 2008) missing from the Census estimate.

3. BOSTON: OLMSTED GREEN SMART GROWTH OVERLAY DISTRICT

PROJECT: Olmsted Green

Location Type:	Highly suitable	Units Built/Under Construction	121
DHCD Final Approval:	3/26/2008	Future Zoned Units	578
District Size:	42.5 acres	Incentive Units/Bonus Units	434
Developable land:	18 acres	Planned Units	523
Substantially developed land:	4 acres	Affordable Units	279
Pre-40R Use:	State Hospital	Incentive Payment	$350,000
Pre-40R zoning:	Enterprise Protection	Maximum Bonus Units Payment	$1,302,000
40R Initiator:	City		

Construction Type: NC (400-500)	Planning funds:	handled in-house by BRA[1]
Developer: Lena Park CDC/New Boston	State and Federal Housing Subsidies	Yes

COMMUNITY BACKGROUND:
Boston is the state capital of Massachusetts and its most populous city. Its population has risen slowly but steadily in recent decades. It has extensive public transit (bus, commuter rail, trolley and subway). Two-thirds of its households are renters. Multifamily housing is allowed in much of the city as are 1-3 unit homes on small lots (3-4000 SF).

	Boston	State
Form of Government	City	
Population (2007)	608,352	
Land Area	48.4 mi^2	
Population density per square mile (2007)	12,561	810
Housing density per square mile (2000)	5,202	334
Average Household Size (2000)	2.31	2.51
Population Growth 2000-2007	↑ 3.3%	↑ 1.9%
Population Growth 1990-2000	↑ 2.6%	↑ 5.5%
Household Growth 1990-2000	↑ 4.8%	↑ 8.7%
Housing Growth 1990-2000	↑ 0.4%	↑ 6.0%
School District Enrollment Change (FY2001-2009)	- 13.9%	- 2.9%
School District Enrollment Change (FY1991-2001)	+ 2.5%	+ 16.0%
Percentage of Property Taxes Residential	36.2%	72%
Average Single Family Tax Bill (FY2009)	not avail	$4,250
Average Single Family Assessed Value 2009	not avail	$391,818
Median Household Income (1999)	$39,629	$50,502
Per Capita Income (1999)	$23,353	$25,952
Adults Over 25 with at 4-Year Degree	.35.6%	33.0%
Poverty Rate (Individual) (2000)	19.5%	9.3%
Total Housing Units (2000)	251,935	
Single family detached as % of 2000 Units	11.7%	52.4%
Multifamily Units (5+) as % of 2000 Units	42.6%	19.6%
% of Households That Are Renters (2000)	67.8%	38.3%
Building Permits 2000-April 2009 (total units)	10,063	166,775
Single family attached and detached units	716	109,574
Multifamily Units (5+)	7,348	46,241
Median home value (2000)	$190,600	185,700
Median Gross Rent (2000)	$803	684
Subsidized Housing Inventory % (August 2009)	19.4%	9.7%

Zoning: Boston is subject to different state zoning and planning laws than all other municipalities in Massachusetts. A non-elected entity (the Zoning Commission) is responsible for adopting and amending zoning. Responsibility for planning and for reviewing proposed zoning amendments rests with the Boston Redevelopment Authority (BRA), rather than a planning board.[2] Allowed land uses vary considerably by location and larger projects must be reviewed and approved by both the BRA and Zoning Commission. The City uses a variety of mechanisms, including urban renewal plans and special purpose overlay districts, called Planned Development Areas (PDAs)[3], to approve uses not allowed under its general zoning.

40B Status: Boston has always been over the 10% threshold and does not use comprehensive permits.

SGOD District: The district covers 40 acres of the former Boston State Hospital campus (the state hospital closed in 1979) and adjoining streets. Most of the development will take place on previously disturbed land (some formerly brownfield land). It has been zoned for residential and mixed-uses since 1997.

Transit: Bus stops at one edge of the district, route runs to rapid transit/commuter rail stop.

Infrastructure: Project buildings will connect to Boston's public water and sewer systems.

40R PLANNING PROCESS: Re-use planning for the State Hospital campus began in the early 1980s under State land disposition rules. A city/state/community committee developed a Master Plan in 1993 and revised it in 2002 after redevelopment stalled. In 2003, the City and State issued an RFP for development of 44 acres and selected Lena Park CDC and New Boston Development to develop about 500 housing units plus service programs for persons with mental illness. All parties signed a land disposition agreement (LDA) in August 2005, spelling out the development program and schedule (to start in 2006 and end between 2008 and 2012).

In early 2006, the Boston Redevelopment Authority approved Planned Development Area[4] overlay zoning for the site, but the BRA decided to pursue creating a 40R district there as 40R could offer a more flexible approval process and 40R incentive payments could help finance infrastructure. In January 2008, it approved zoning articles authorizing the creation of 40R overlay districts (article 87) and established the 42.5 acre Olmsted Green smart growth overlay district (article 87A).

Milestones

2002-5	City/State adopt revised Master Plan (12/2002); issue RFP for development 2/2003 and designate developers (2004). Land Disposition Agreement signed (8/1/2005) for construction of 485-535 units in four phases starting between 2006-2009, including 40-80 senior units
Jan 2006	City approves Planned Development Area (PDA) overlay zoning and development plan[5] to permit construction of over 500 new housing units (1/26/2006).[6]
May 2006	Mayor breaks ground for Olmsted Green (5/24/2006) - will consist of 523 housing units (153 family and 83 senior rental units plus 287 ownership units.[7]
July 2006	City submits preliminary 40R application to DHCD (7/27/2006)
Sept 2006	State awards low income housing tax credits for first 51 units of rental housing
March 2007 (3/29)	BRA approves request to petition Zoning Commission to apply for 40R for Olmsted Green
Oct 2007	DHCD issues preliminary 40R Eligibility Letter (10/26/2007)
Jan 2008	Boston Zoning Commission approves 40R zoning article and map (1/9/2008)
March 2008	DHCD issues Final Approval Letter (23/26/2008)
Oct 2008	City grants project approval for phased development of 453 units ("up to 370 units of rental and for-sale family housing and up to 83 units of low-income supported senior housing") 10/16/2008

District/Project Status: Seventy (70) units were completed in 2008, 51 are in construction and financing has been secured for 50 more. On the East campus, the City is working with a proposed non-profit developer on plans for a 123-bed skilled nursing facility. The timing and mix (rental vs. ownership) of future phases in the district will depend on market conditions and funding availability.

Smart Growth elements: The project was designed from the beginning to include extensive low-impact development features and green building requirements.

Plan Approval Authority: Boston Redevelopment Authority

District Features: The SGOD consists of 3 subdistricts, consistent with the LDA; two allow housing:

- Olmsted East Mixed-use (14.5 acres) – housing (2-3 family, multifamily and senior housing), mental health facilities, gallery, exhibit or museum facilities, food production uses including farm, garden and food-oriented retail; accessory uses (parking, management office)
- Olmsted West Residential (24 acres) – housing (2-3 family and multifamily), parking, management office
- Community (4 acres) - community center, parking and other accessory uses.

Allowed Uses

Subdistrict	SF	TH	MF	Senior Housing	Max Residential Density	Maximum Units
Olmsted East Mixed-Use	-	1	1	1	32 u/a for MF; 46 u/a overall	Not Specified
Olmsted West Residential	-	1	1	-	32 u/a for MF; 27 u/a overall	Not Specified

The mixed-use district allows up to 46 units/acre of developable land, the residential district up to 27.

Projects: To date, project approval has been granted for up to 453 units. Uses planned for the site as of 2006 are listed below though the mix may change in the coming years. To date, 50 rental units and 19 townhomes have been built and 51more rental units are in construction.

- *Olmsted Green Rental I, II:* The 101 rental units are all income restricted (16 for households at 0-30% AMI and 85 for households at or below 60% of median) and financed with multiple subsidy sources, including low income housing tax credits.
- *Olmsted Green Ownership I:* The 19 townhomes (2- and 3-bedroom units) are not income restricted.

Project/Phase	Phase	Status	Total Units	Affordable Units
Built/Under Construction				
Olmsted Green Rental	I	Completed 12/2008	51	51
Olmsted Green Ownership	I	completed 10/2008	19	0
Olmsted Green Rental	II	Under construction	50	50
Future Phases				
Olmsted Green Rental	III	no timetable yet	50	TBD
OG Ownership and/or Rental	later	no timetable yet	200	TBD
Senior Rental Housing	later	no timetable yet	60-83	60-83
Skilled Nursing Facility		no timetable yet	123	

Project/Phase	Total Units	Affordable Units	% Affordable	1-BR	2-BR	3-BR
Olmsted Green Rental I	50	50	100%	6	39	6
Olmsted Green Rental II	51	51	100%	8	34	8
OG Ownership I	19	0	0%	0		
Total	**120**	**101**	**84%**	**14**		

[1] Boston Redevelopment Authority.
[2] Gerald E. Frug and David J. Barron, Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities," Chapter Six (Land Use and Development: Zoning and Planning in Boston), for The Boston Foundation, Boston MA, February 2007 available online at http://www.tbf.org/tbfgen1.asp?id=3459.
[3] Randi J. Eisner, "Working with Article 80 of the Boston Zoning Code" Goodwin Procter, LLP page 3. "A Planned Development Area (PDA) is a special purpose overlay district. The Zoning Commission may approve a request to establish a PDA where a development that is well-suited to its location cannot be accommodated by the general zoning for the area… No project may be built in a PDA unless it is described in detail in an approved PDA Development Plan. The plan describes all of the projects proposed for that land, both those that will be built immediately and those planned for the future. A PDA Development Plan must specify particular public benefits that projects in the PDA must provide…[and] requires the approval of both the BRA and the Zoning Commission." See http://www.naiopma.org/DV/Pages/images/Permitting/EISNER_ARTICLE80.pdf.
[4] Ibid.
[5] "A Citizen's Guide to Development Review under Article 80 of the Boston Zoning Code," City of Boston, page 12.
[6] "BRA Votes to Support Olmsted Green," Boston Redevelopment Authority press release, January 26, 2006
[7] "Mayor Menino Breaks Ground for Olmsted Green," Boston Redevelopment press release, May 24, 2006

4. BRIDGEWATER: WATERFORD VILLAGE SMART GROWTH OVERLAY DISTRICT

PROJECT: to be determined

Location Type:	Highly suitable	Units Built or Under Construction to date	0
DHCD Final Approval:	4/4/2008	Future Zoned Units	594
District Size:	128.5 acres	Incentive Units	507
Developable land:	26 acres	40R Bonus Units	507
Substantially developed:	89 acres	Planned Units	400-500
		Affordable Units	127
Pre-40R Use:	undeveloped	Incentive Payment	$600,000
Pre-40R zoning:	Residential (RD)	Maximum Bonus Units Payment	$1,521,000

Project Initiator:	Town	Planning funds	Town/landowner
Construction Type:	new	State/ Federal Housing Subsidies	not known
Developer:	to be determined		

COMMUNITY BACKGROUND:
Bridgewater is a growing suburb 23 miles south of Boston. It is home to Bridgewater State College (10,000 students including graduate students) and a state prison. Most working residents (78%) work in other cities and towns including Boston (12%) and Brockton (12%). It has a commuter rail stop with service to Boston in its town center. It has limited public sewer (about 65% of residents use septic).

Zoning: The town no longer allows multifamily housing as of right or by special permit. Minimum lot size requirements range from 18,500 SF near the town center to 43,560 in areas without sewers.
40B Status The town's subsidized housing percentage is 3.2% (August 2009). Its Housing Production Plan was approved in 2004.

	Bridgewater	**State**
Form of Government	Town	
Population (2007)	25,514	
Land Area	27.5 mi^2	
Population density per square mile (2007)	928	810
Housing density per square mile (2000)	278	334
Average Household Size (2000)	2.81	2.51
Population Growth 2000-2007	↑ 1.3%	↑ 1.9%
Population Growth 1990-2000	↑18.5%	↑ 5.5%
Household Growth 1990-2000	↑ 26.6%	↑ 8.7%
Housing Growth 1990-2000	↑ 22.7%	↑ 6.0%
School District Enrollment Change (FY2001-2009)[1]	-2.8%	- 2.9%
School District Enrollment Change (FY1991-2001)*	17.7%	+ 16.0%
Percentage of Property Taxes Residential	88.4%	72%
Average Single Family Assessed Value 2009	$354,100	$391,818
Average Single Family Tax Bill (FY2009)	$4,015	$4,250
Median Household Income (1999)	$65,318	$50,502
Per Capita Income (1999)	$23,105	$25,952
Adults Over 25 with at 4-Year Degree	29.6%	33.0%
Poverty Rate (Individual) (2000)	3.5%	9.3%
Total Housing Units (2000)	7,644	
Single family detached as % of 2000 Units	62.9%	52.4%
Multifamily Units (5+) as % of 2000 Units	14.5%	19.6%
Building Permits 2000-April 2009 (total units)	591	166,775
Single family attached and detached units	579	109,574
Multifamily Units (5+)	0	46,241
Median home value (2000)	$196,800	185,700
Median Gross Rent (2000)	$754	684
% of Households That Are Renters (2000)	25.4%	38.3%
Subsidized Housing Inventory % (8/2009)	3.2%	9.7%

SGOD District: The 128 acre district includes Waterford Village (a 588 unit rental complex built in the 1970s) and 26 acres of developable land. It is across the street from the college and has frontage on the Town River.

Transit: The district is within walking distance of the commuter rail station

40R PLANNING PROCESS: The Town completed a Master Plan in 2002. It undertook a study of its zoning with a $30,000 State EOEA Smart Growth Planning Grant in 2005. At the time, it was facing several 40B applications. The study recommended creating a 40R district in the Waterford Village area to help meet smart growth and 40B affordable housing goals and relieve housing shortages for Bridgewater State graduate students and staff. Town officials approached the landowner (AIMCO – a national developer of apartment communities), who was receptive to the concept. The Town community development director worked with the owner to develop the 40R bylaw and application, with some consultant assistance funded by the owner. The community development director reports that incentive payments were not really a factor in the decision to create the district, as he felt receipt of such payments was uncertain. Town officials noted that the $600,000 incentive payment could fill a major revenue gap (municipal layoffs were pending as a $2 million override had failed two months earlier) and full build-out would bring the town to 10% under Chapter 40B.

Milestones

July 2006	Zoning study recommends creating 40R overlay for Waterford Village land
Nov 2007	DHCD approves preliminary application (11/9);
Nov 2007	Town Meeting approves zoning (11/13) by 399 to 20.
March 2008	State Attorney General approved bylaw (3/13)
April 2008	DHCD gives final approval (4/4/2008)

Plan Approval Authority: Planning Board

District/Project Status: No applications for projects have been received. While it was anticipated that the landowner (AIMCO) would develop the site as rental housing with a three-year build out projected at the time of the Town Meeting vote, AIMCO had not committed to any specific project. Timing of future development is highly uncertain, due to the market downtown and its impact on the landowner.

District Details: The district consists of two sub-districts – the New Development sub-district permits residential development at up to 22.5 units per acre and the Substantially Developed sub-district permits up to 20 units per acre. Both require a minimum lot area of 1,000 square feet per dwelling unit. Both allow commercial uses within 200 feet of Route 104.

		Allowed Uses		
		Residential Development	**Mixed-Use**	**Commercial Uses (Local retail, professional offices, day care, eating establishments, etc.)**
1	**New Development**	22.5 units per acres	No	within 200 feet of Route 104
1	**Substantially Developed**	20 units per acre	No	within 200 feet of Route 104

Projects: none proposed yet

[1] Bridgewater is part of a two-town regional school district with the neighboring town of Raynham. These figures reflect enrollment trends for the regional district.

5. BROCKTON: DOWNTOWN BROCKTON SMART GROWTH OVERLAY DISTRICT

PROJECTS: Renaissance Village (on hold), St. Paul's (in preliminary planning)

Location Type:	Transit	Units Built/Under Construction	0
DHCD Final Approval Date	10/26/2007	Future Zoned Units	1,096
Total District Size:	60 acres	40R Incentive/Bonus Units	1,096
Developable land	47 acres	Planned Units	?
Substantially developed	23.6 acres	Affordable Units	219
Pre-40R Use:	mainly industrial/commercial	Incentive Payment	$600,000
Pre-40R zoning :	mainly industrial/commercial	Maximum Bonus Unit Payment	$3,288,000

40R Initiator:	City	Planning funds source: PDF	$65,000
Construction: Expect mix of adaptive reuse, new			
Developer:	None yet	State/Federal Housing Subsidies	TBD

COMMUNITY BACKGROUND:
Brockton is the sixth largest city in Massachusetts and a major regional center for Plymouth County. It is located 20 miles south of Boston, 30 miles northeast of Providence and bordered by seven towns. Commuter rail service to Boston was restored in the late 1990s. It has a diverse housing stock (single family homes make up 47% of units) and has been hard-hit by foreclosures in recent years.

Zoning: Minimum lot sizes for single family homes range from 4,000 to 30,000 square feet. One district permits multifamily housing as of right.
40B status Brockton has been over 10% for at least 25 years.

	Brockton	State
Form of Government	City	
Population (2007)	93,092	
Land Area	21.47 mi^2	
Population density per square mile (2007)	4,336	810
Housing density per square mile (2000)	1,623	334
Average Household Size (2000)	2.74	2.51
Population Growth 2000-2007	↓ 1.3%	↑ 1.9%
Population Growth 1990-2000	↑ 1.6%	↑ 5.5%
Household Growth 1990-2000	↑ 2.5%	↑ 8.7%
Housing Growth 1990-2000	↓ 1.5%	↑ 6.0%
School District Enrollment Change (FY2001-2009)	- 9.2%	- 2.9%
School District Enrollment Change (FY1991-2001)	+ 15.6%	+ 16.0%
Percentage of Property Taxes Residential	66.2%	72%
Average Single Family Assessed Value 2009	$239,460	$391,818
Average Single Family Tax Bill (FY2009)	$2,658	$4,250
Median Household Income (1999)	$39,507	$50,502
Per Capita Income (1999)	$17,163	$25,952
Adults Over 25 with at 4-Year Degree	14.0%	33.0%
Poverty Rate (Individual) (2000)	14.5%	9.3%
Total Housing Units (2000)	34.837	
Single family detached as % of 2000 Units	46.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	21.8%	19.6%
% of Households That Are Renters (2000)	45.4%	38.3%
Building Permits 2000-April 2009 (total units)	960	166,775
Single family attached and detached units	579	109,574
Multifamily Units (5+)	236	46,241
Median home value (2000)	$128,300	185,700
Median Gross Rent (2000)	$625	684
Subsidized Housing Inventory % (8/2009)	12.9%	9.7%

SGOD District: Brockton has the largest 40R district to date in terms of future zoned units and third largest in terms of developable

land. It has five subdistricts - four downtown, including a vacant supermarket/ parking lot site, and one slightly more remote (a city-owned cleared site near a park). Current uses consist primarily of vacant lots and underutilized buildings.

Transit Access: One subdistrict includes the City's transit center

Infrastructure: The district is served by public water and sewer

40R PLANNING PROCESS: The City's planning office initiated the 40R district in advance of specific developer interest to help achieve downtown redevelopment goals laid out in earlier City plans. It expects to solicit proposals by RFP for some sites. It used a $65,000 state planning grant to hire a consultant to help develop the application, ordinance and design standards starting in March 2006. The City Council approved the ordinance in July 2007.

Milestones

March 2006	Consultant begins 40R planning
February 2007	DHCD approves City's preliminary application 2/27/2007
July 2007	City Council approves bylaw (7/23)
Oct 2007	DHCD issues final approval of 40R district (10/26)
July 2009	Developer (Economic Development Finance Corporation) applies for site plan approval for Renaissance Village (mixed-use project with 308 residential units). Massachusetts Secretary of State files civil action against developer alleging it of defrauding investors in a different venture. Planning Board postpones first hearing (7/15/2009)

District/Project Status: A developer filed for plan approval for a 308-unit mixed-use rental/retail/parking project (Renaissance Village) on 3.4 acres in the downtown area. The Planning Board postponed the first hearing scheduled for July 15 due to legal issues raised about the developer and the developer has since put the application on hold. A local non-profit is working on a proposal to develop 30-40 units of single-person-occupancy housing in a second subdistrict using 40R but has not yet filed for plan approval.

Plan Approval Authority: Planning Board

Ordinance/Design Standard features of note: The district has five subdistricts with varying allowed uses based on the city's vision for each.[1] Minimum lot sizes are 4,000 square feet/unit for single family detached, 2,500 SF/u for 2-3 unit buildings; there are no minimum lot sizes for multifamily and mixed-use.

1. Downtown Core (14.4 acres) – current land uses include larger scale commercial, office and industrial/ warehousing properties and many surface parking lots. Most buildings (18 of 29) were built before 1940 and there are 8 publicly owned parcels. The City hopes to attract large scale redevelopment there.

2. Corcoran (15.4 acres) – mixed commercial and residential area with public parks, river frontage and public library. It is the entryway to city from the south. Much of the land (61%) is city-owned and City may issue an RFP for development of some parcels. Most buildings (15 of 21) were built before 1940. City hopes to spur residential or mixed-use development, including townhomes and artists lofts.

3. Arts/Culture –includes "some of the most attractive and distinctive architecture" in downtown, current uses include retail, mixed-use, institutional and cultural. City hopes to attract both small scale residential and mixed-use (upper story residential) development and cultural uses.

4. Star Market - long vacant parking lot in neighborhood with stable and vacant retail sites and stable residential uses (1-3 unit homes). It is a gateway to the city. City hopes to attract mixed-use development (up to 20 units per acre).

5. Ralsco - vacant remediated brownfield site owned by city. Has river frontage on two sides. City anticipates issuing RFP for residential development (1-3 unit buildings) consistent with surrounding neighborhood.

Allowed Uses

Subdistrict	Single-Family Detached	Two-Family	Three-Family	Multifamily*	Mixed-Use Development***
Downtown Core	-	12	12	80	80
Corcoran	8	12	12	45**	45**
Arts / Culture	8	12	12	-	40
Star Market	-	-	-	-	20
Ralsco	8	12	12	-	-

* Pre-1940 buildings can be converted to Multifamily projects at a density equal to the greater of (1) the maximum allowed in the above table or (2) 80% of the gross square footage of the building as it existed on the date the 40R ordinance was adopted divided by 900 square feet.

** Multifamily and Mixed-Use Development Projects within the Corcoran Sub-District may be constructed to a residential density of 60 Dwelling Units per acre on certain parcels

***Pre-1940 buildings existing the date the 40R ordinance was adopted can be converted to Mixed-Use projects at the greater of (1) the density listed in the Table or (2) 80% of the gross square footage of the portion of the building proposed for use as residential dwelling units, as it existed on the date of article adoption divided by 900 square feet.

Design standards: The City developed extensive and detailed "guiding principles" and "standards for compliance." It does not require energy efficient or green building design but sustainable development is a guiding principle.

Project Details: To date, one project has been formally proposed for the district and a local church and nonprofit are exploring developing 30-40 units of studio or ingle room occupancy housing (SRO) in a second subdistrict.

Renaissance Village: A private developer, the Economic Development Finance Corporation (EDFC) filed for site plan review in June/July 2009 though the future of the application is uncertain. EDFC has acquired much of a 3.4 acre city block which currently consists of parking lots, sites cleared for former buildings and underutilized buildings. It proposes creating 308 rental units in a six story building through adaptive reuse of the Enterprise Building (former home of the city's daily newspaper). The project would also include 7,700 square feet of commercial space, 4,600 square feet of retail use and a 460-space parking garage (the latter on land currently owned by the City). Preliminary plans called for a mixed of adaptive reuse and new construction, with residential units starting out as rental and converting to condominium use when market conditions permit. The site is about 300 feet away from the MBTA commuter rail station and 600 feet from the intermodal bus center.[2]

St. Paul's/Caritas Housing: The social service subsidiary of St. Paul's Church has purchased a vacant building at the intersection of Pleasant and Warren next to the church and near its soup kitchen and is working with a nonprofit housing provider, Caritas Communities, on a preliminary proposal to acquire two more abutting properties for development into 30-40 units of studio or SRO housing for very low income individuals, using 40R. It has had preliminary discussions with the Planning Department and is reviewing the design guidelines.

[1] City of Brockton Planning Department Website – 40R Page. Downloaded 7/2009.
[2] Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form for Renaissance Village, July 17, 2009.

6. CHELSEA: GERRISH AVENUE SMART GROWTH OVERLAY DISTRICT

PROJECTS: Janus Highlands, Box Work Homes, Atlas Lofts

Location Type	Transit	Units Built/Under Construction	67
DHCD Final Approval Date	7/13/2006	Future Zoned Units	125
Total District Size	2.82 acres	40R Bonus Units	90
Developable land	2.73 acres	Planned Units	120
Pre-40R Use:	vacant mill complex	Affordable Units	at least 63
Pre-40R zoning:	residential	Incentive Payment	$75,000 (pd)
Construction:	new (49u)/Adaptive reuse (53 u)	Maximum Bonus U Payment	$270,000

40R Initiator:	developers	Funding for 40R planning	Developer, city (in-house)
Developers:	Chelsea Neighborhood Developers Mitchell Properties	State/federal subsidies	housing: $6,635,771 walkway $500,000

COMMUNITY BACKGROUND:
Chelsea is small city and traditional immigrant gateway located directly across the Mystic River from Boston and the second most densely populated city in Massachusetts. Commercial and industrial uses make up about one-third of its land area and are primarily concentrated on its south side. It has commuter rail service to Boston and extensive bus coverage. Its housing stock consists primarily of 2-4 unit (59%) and multifamily housing (33%). Most households are renters and while rents are low relative to Boston, so are incomes.[1] Over half of its working residents work in Chelsea (22%) and Boston (34%).

	Chelsea	State
Form of Government	City	
Population (2007)	38,203	
Land Area	2.19 mi^2	
Population density per square mile (2007)	17,444	810
Housing density per square mile (2000)	5,633	334
Average Household Size (2000)	2.87	2.51
Population Growth 2000-2007	↑ 8.9%	↑ 1.9%
Population Growth 1990-2000	↑ 22.2%	↑ 5.5%
Household Growth 1990-2000	↑ 12.7%	↑ 8.7%
Housing Growth 1990-2000	↑ 6.6%	↑ 6.0%
School District Enrollment Change (FY2001-2009)	- 3.6%	- 2.9%
School District Enrollment Change (FY1991-2001)	+ 54.1%	+ 16.0%
Percentage of Property Taxes Residential	49.8%	72%
Average Single Family Assessed Value 2009	not avail	$391,818
Average Single Family Tax Bill (FY2009)	not avail	$4,250
Median Household Income (1999)	$30,161	$50,502
Per Capita Income (1999)	$14,628	$25,952
Adults Over 25 with at 4-Year Degree	10.0%	33.0%
Poverty Rate (Individual) (2000)	23.3%	9.3%
Total Housing Units (2000)	12,337	
Single family detached as % of 2000 Units	7.8%	52.4%
Multifamily Units (5+) as % of 2000 Units	32.8%	19.6%
Building Permits 2000-April 2009 (total units)	300	166,775
Single family attached and detached units	3	109,574
Multifamily Units (5+)	233	46,241
Median home value (2000)	$149,200	185,700
Median Gross Rent (2000)	$695	684
% of Households That Are Renters (2000)	71.1%	38.3%
Subsidized Housing Inventory % (9/2008)	17.8%	9.7%

Zoning: The City began revising its zoning in the 1980s to move away from allowing commercial and industrial uses next to residential areas and to direct non-residential uses away from neighborhoods. It identified areas with uses that were no longer viable and in need of planning to transform them into residential uses. In 1986, it rezoned the Gerrish Avenue area from industrial to residential, allowing 1-3 unit buildings as of right on lots of 5,000-10,000 square feet. It failed to attract developers however, due in part to a lack of funds to address deteriorated streets, sidewalks, sewers and lighting.[2]

40B status: Chelsea has long been over 10%.

SGOD District: The 2.7 acre district consists of two sites 600 feet apart, both in a mixed industrial/residential area with several historic mill buildings. In the past decade, several large businesses had closed or relocated and the residential areas began showing signs of blight. It is located in Chelsea's lowest income neighborhood.[3]

Transit: District is located near 5 bus stops and a short walk from commuter rail station

40R PLANNING PROCESS: The creation of the 40R district was spurred by a development proposal initiated in 2005 by Chelsea Neighborhood Housing Developers in partnership with a for-profit developer (Atlas Lofts). The developers sought to convert 2 buildings in a vacant mill complex into housing and clear the others to build 3 new buildings next door and two nearby. After discussing zoning approval options with city officials, including possibly using Chapter 40B, they decided to start the first phase of development (18 rental units) by applying for a special permit and variance while pursuing the creation of a 40R district for the rest of the project. While the City had zoning tools to allow dense residential development (e.g. R3 zoning allowed 12 units per acre as-of-right and up to 45 units/acre by special permit and Planned Development provisions could be used in any zone subject to a 2-4 acre minimum), none quite fit the proposed development given the small land area and higher density requested (20-55 units per acre).

The 40R funding was helpful in persuading the Planning Board to give up its discretion in the approval process (it just received site plan review authority from the City a year earlier) because it provided a way to help pay for needed infrastructure improvements for the area (the City also received a state transit oriented development grant for that purpose). The 40R projects are the densest in Chelsea

Milestones

June-July 2005	Applications for special permits, variance, site plan review filed
Nov. 2005	Special Permit and Variance (2 buildings: 18u rental) approved (11/18)
March 2006	State announces $500,000 Transit Oriented Development grant for pedestrian walkway in the Gerrish Avenue district plus $2 million to support the proposed rental development.
April 2006	40R Application – DHCD preliminary approval letter issued (4/6)
May 2006	Special Permit/Major Site Plan Review (remaining 102 units) approved (5/8)
June 2006	Amended Special Permit (1st building) approved 6/4/2006;
June 2006	City Council approves 40R ordinance (6/5); "technical correction" to 102 unit site plan review to reference 40R filed (6/8)
July 2006	DHCD Final Approval 40R district (7/13)
Aug 2006	Revised Site Plan Review (technical correction) approved for 102 units (8/1)
Jan-Feb 2009	Developer applies (1/8) for revised Plan Approval for Atlas Lofts, replacing language requiring that all units be market rate with language allowing up to 11 affordable units; also minor design changes (e.g. addition of roof deck). Planning Board approves (2/24/2009)

District/ Project Status: All three projects planned for the district have received plan approval and two are built and occupied (completed between September 2007 and February 2008). They include a 41-unit rental development, 18 units of which was approved before the district was created, and a 26-unit condominium. The third project (Atlas Lofts - creation of 53 loft units in a former factory) was delayed by the downturn in the housing market. Originally planned as a 100% market rate condominium, it is now expected to proceed as a rental project with 6-12 affordable units and was awarded a state housing grant in April 2009.

Plan Approval Authority: Zoning Board of Appeals

Ordinance/Design Standard features of note: The District consists of two subdistricts, one since developed with 18 rental units and a second with 102 rental and ownership units built or planned.

Allowed Uses are the same in both subdistricts, though some dimensional requirements differ:

- Multifamily (3+) – allowed as of right
- Conversion of non-conforming structures to residential use – subject to design and site plan review
- Minimum density – 20 units per acre (both subdistricts)

Affordability The ordinance requires that at least 10% of units in each project be 3-bedroom and at least 10% of all 3-BR units be affordable.

Project Details

Janus Highlands is a rental development with 41 units in four two- and three-story buildings (including 18 units in subdistrict 1), constructed on a vacant lot and the sites of two former industrial buildings. It was completed in February 2008

Box Work Homes is a mixed-income 26-unit townhouse condominium completed in March 2008

Atlas Lofts, originally planned as an entirely market-rate 53-unit condominium, is now expected to be a mixed-income rental development.

	Tenure	Total Units	Affordable Units	Affordability Details	Subsidy Sources	Funding
Janus Highland Apartments	Rental	41	41	41 at 60% AMI (8 project-based vouchers)	MHP HUD HOME DHCD HOME Transit Grant	1,100,000 570,000 385,000 2,000,000
Box Works	Sale	26	14	All below 80% AMI	HUD HOME DHCD HSF State CATNHP	725,000 700,000 555,771
Atlas Lofts	Rental	53	6	50-60% AMI	HOME	$600,000
Total		**120**	**61**			**$6,635,771**

Bedroom mix:

	1-BR	2-BR	3-BR	4-BR	Lofts	Total Units
Janus Highlands	5	29	5	2		18
Box Work Town Home Condominiums		12	14			26
Atlas Lofts					53	53
Total	**5**	**41**	**19**	**2**	**53**	**97**

[1] City of Chelsea Community Development Plan, June 2004.
[2] City of Chelsea Planning Department, "Gerrish Avenue Transitional Area."
[3] City of Chelsea Planning Department, "Gerrish Avenue Transitional Area," downloaded from City website June 1, 2009.

7. DARTMOUTH: LINCOLN PARK SMART GROWTH OVERLAY DISTRICT

PROJECT: Village at Lincoln Park

Location Type:	Highly Suitable	Units Built/Under Construction to date	0
DHCD Final Approval Date	12/5/2006	Future Zoned Units	319
Total District Size:	40.65 acres	40R Bonus Units	319
Developable land	23.3 acres	Planned Units	307-308
Substantially developed	n/a	Affordable Units	at least 61
Pre-40R Use:	amusement park	Incentive Payment	$350,000
Pre-40R zoning :	business	Maximum Bonus Units Payment	$957,000
Construction type:	New		

40R Initiator:	40B consultant	Funding for 40R Planning	Developer
Developer:	Lincoln Park Realty/Midway Realty	State/Federal Housing Subsidies	not to date

COMMUNITY BACKGROUND: Dartmouth is a large town on the south coast, bordered by the cities of New Bedford and Fall River and the town of Westport. It is 60 miles from Boston, 30 miles from Providence and home to a branch of the University of Massachusetts (8,000 undergrad students). About 25% of working residents work locally and 40% more work in New Bedford and Fall River. About 48% of residents are served by Town sewer and 70% by Town water.[2]

	Dartmouth	State
Form of Government	Town	
Population (2007)	34,005	
Land Area	61.6 sq mi	
Population density per square mile (2007)	552	810
Housing density per square mile (2000)	183	334
Average Household Size (2000)	2.60	2.51
Population Growth 2000-2007	↑ 10.9%	↑ 1.9%
Population Growth 1990-2000	↑ 12.6%	↑ 5.5%
Household Growth 1990-2000	↑ 14.9%	↑ 8.7%
Housing Growth 1990-2000	↑ 13.0%	↑ 6.0%
School Enrollment Change (FY2001-2009)	- 1.0%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 1.3%	+ 16.0%
Percentage of Property Taxes Residential	77.8%	72%
Average Single Family Assessed Value 2009	$401,863	$391,818
Average Single Family Tax Bill (FY2009)	2,901	$4,250
Median Household Income (1999)	$50,742	$50,502
Per Capita Income (1999)	$24,326	$25,952
Adults Over 25 with at 4-Year Degree	24.6%	33.0%
Poverty Rate (Individual) (2000)	4.5%	9.3%
Total Housing Units (2000)	11,283	
Single family detached as % of 2000 Units	82.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	5.7%	19.6%
% of Households That Are Renters (2000)	19.3%	38.3%
Building Permits 2000-April 2009 (units)	989	166,775
Single family attached and detached units	896	109,574
Multifamily Units (5+)	88[1]	46,241
Median home value (2000)	$155,500	185,700
Median Gross Rent (2000)	$566	684
Subsidized Housing Inventory % (8/2009)	8.6%	9.7%

Zoning : Current zoning limits multifamily housing (up to 4 units per structure) to one small district.[3] Minimum lot sizes for 1- and 2-family homes are 40,000 or 80,000 in most of the Town.

40B status: Dartmouth's subsidized housing percentage is 8.6%. Its Housing Production Plan was approved in 2005.

SGOD District: The 41-acre district covers the site of a defunct amusement park and was created after the Town began working with a developer on a redevelopment plan using Chapter 40B. The Town decided in April 2009 to apply to DHCD to expand the district by 37 acres.

Transit: The district abuts a major road (Route 6) west of a large mall. Route 6 is served by buses that run every 30-60 minutes.

Infrastructure: The district is served by Town water and sewer though extensions will be required.

40R PLANNING PROCESS: In April 2005, Lincoln Park Realty filed a "friendly 40B" application under the Local Initiative Program to build 252 condominiums on 31 acres of the old amusement park site. It also proposed to develop another 10 acres for commercial uses (not using 40B). During the hearing process, the attorney working with the developer suggested using Chapter 40R instead and the developer and Town agreed to pursue that option. In February 2006, they submitted a revised proposal to redevelop the entire site under 40R, adding 63 rental units to their proposal. Most of the work to prepare the 40R application, bylaw and design standards was handled by the developer's attorney, working with the Town, and the cost was borne by the developer. In early 2009, developers working with the same attorney on a proposal to develop housing on a site across the highway from the current 40R district approached the Town to discuss amending the 40R district to seek project approval using 40R (by expanding the current 40R district to incorporate their site) rather than 40B. The Town agreed to submit an application based on the financial incentives under 40R

Discussions with the town planner indicated disappointment with the use of 40R locally. He felt it had great potential to create vibrant mixed-use communities but noted that while the initial concept for the Village at Lincoln Park met this standard, it may change from a project with mixed-use properties and a village feel to a more conventional strip mall with housing behind. He noted that lending conditions may have played a role as the developer found it difficult to obtain financing for mixed residential/commercial buildings. He felt that many developers are using 40R simply to produce high density housing (the development proposed for the pending 40R expansion is land that has never been developed, lacks infrastructure, is not close to public transportation and would be entirely housing).

Milestones

- April 2005 Developer applies for a comprehensive permit for 252 condominiums (72 age-restricted), with 63 affordable units (18 age restricted) on 31 acres and outlines plans for commercial uses on remaining 10 acres of site.
- Feb 2006 Developer submits proposal to develop 308 units on the entire site using 40R instead of 40B.
- June 2006 DHCD approves preliminary application 6/1; Town meeting approves 40R zoning 6/6/2007
- Dec 2006 DHCD gives final approval for 40R district 12/5/2006
- Oct 2007 Developer receives preliminary environmental approval (Phase I waiver) from State
- June 2008 Developer's application for Plan Approval for Phase I (5 all-commercial buildings) approved, including waivers to permit commercial development in subzone A.
- April 2009 Select Board votes to apply to DHCD to amend SGOD by adding a 37 acre site (449 Reed Road) to allow 162 housing units in response to a specific proposal by another developer.
- June 2009 Town submits preliminary application to DHCD for amended 40R district.

District/Project Status: In August 2007, clearance of part of the commercial subzone started, but construction of buildings is on hold. The developer has had difficulty obtaining financing in the current market and is believed to be revising his design concept from one that included mixed-use buildings to one that places commercial uses at the front of the site along Route 6 and housing placed at the rear of the site. The revision may include a change to rental housing. The original plan called for 70,000 square feet of commercial space and 307 housing units, and increased impervious area on the site by 9.5 acres.

The proposed ordinance to expand the 40R district was originally expected to be on the Fall 2009 Town Meeting warrant but was not finalized in time.

Plan Approval Authority: Special three-person board consisting of one member of the Board of Selectmen, one member of the Planning Board and one member of the Zoning Board of Appeals.

Bylaw/Design Standard features of note: The district includes three subzones; two permit residential uses.

- Subzone A - Multifamily Residential
- Subzone B – Mixed-use Structures (commercial and multifamily residential in same building)
- Subzone C – commercial only

Permitted commercial uses in both the Mixed-use and the Commercial subzones include retail, restaurant, entertainment or recreation facilities, professional or business office, veterinary hospitals, medical/dental offices and clinics, hotel or motel, hotels, motels, and nurseries or greenhouses. Structured parking is allowed in all three districts.

Allowed Uses

Residential Subdistricts	SF	TH	MF	Mixed-use	Maximum density	Maximum Units	Proposed Units
A-Multifamily residential	-	-	Y	-	20 u/acre	not specified	245 or 262
B-Mixed-use	-	-	-	Y	20 u/acre	not specified	63 or 29
C-Commercial	-	-	-	-			308 or 291

Affordability requirement Allows Town to require Project applicant to pay reasonable costs to the administering agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements. Such payment shall not exceed one-half (1/2%) percent of the amount of rents of Affordable Rental Units (payable annually) or one (1%) percent of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale), as applicable.

Project Details

Village at Lincoln Park The original 40R project was expected to consist of 307-308 units. As outlined in the Phase I environmental approval (October 2007), it was to include 244 condominiums (72 age restricted) and 63 apartments, some in a free-standing building and others in two buildings with ground level commercial uses. The developer's website (May 2009) shows somewhat fewer units (291), with more unrestricted condominiums (190) and fewer rental units (29). It indicates that all of the unrestricted rental and condominium units will have 2 or 3 bedrooms. This may change again, according to the Town.

449 Reed Road If the expanded 40R district application is approved by DHCD and if Town Meeting approves the proposed ordinance, this project is proposed to add about 162 housing units.

Affordability details No information is available on the proposed affordability levels or any plans to use housing subsidy programs. At 307 units, at least 61 affordable units are required; at 308, it would rise to 62.

Housing type	**Total Units**	**Affordable Units**
Unrestricted Condos	172	not known
Age-restricted Condos	72	not known
Apartments	63	not known
Total	**308**	

[1] Includes a 78-unit assisted living facility developed under Chapter 40B.
[2] 2007 Dartmouth Master Plan, page 2-5.
[3] Limited Business district – which accounts for 0.05% of the town's land area according to the 2007 Master Plan.

8. EASTON: QUESET SMART GROWTH OVERLAY DISTRICT

PROJECT: Queset Commons

Location Type:	Highly suitable	Units Built or Under Construction	0
DHCD Final Approval Date	9/26/2008	Future Zoned Units	280
Total District Size:	60.66 acres	Incentive Units	259
Developable land	18 acres	Planned Units	259
Substantially Developed land	15 acres	Affordable Units (min) at full build out	56
Pre-40R Use	Vacant land	Incentive Payment	$350,000
Underlying Zoning	Commercial	Maximum Bonus Units Payment	$777,000

40R Initiator	Developer	Funding for 40R Planning	
Construction type:	New	Other State/Federal Housing Subsidies	not to date
Developer:	Douglas A. King Builders, Inc.		

COMMUNITY BACKGROUND:
Easton is a growing suburban town in southeastern Massachusetts with large tracts of open space. It is located 4 miles west of Brockton and 24 miles south of Boston. The Town has a long and important industrial history, including older mill buildings that remain in town. It is also home to Stonehill College.[1] Modest growth is projected in the Town over the next 30 years[2] with the largest gain, 1,648 persons, projected to occur between 2000 and 2010.[3]

	Easton	State
Form of Government	Town	
Population (2007)	22,969	
Land Area	28.4 mi^2	
Population density per square mile (2007)	808	810
Housing density per square mile (2000)	268	334
Average Household Size (2000)	2.74	2.51
Population Growth 2000-2007	↑ 3.3%	↑ 1.9%
Population Growth 1990-2000	↑ 12.2%	↑ 5.5%
Household Growth 1990-2000	↑ 16.4%	↑ 8.7%
Housing Growth 1990-2000	↑ 13.8%	↑ 6.0%
School Enrollment Change (FY2001-2009)	+ 5.9%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 19.2%	+ 16.0%
Percentage of Property Taxes Residential	87.0%	72%
Average Single Family Assessed Value 2009	$413,767	$391,818
Average Single Family Tax Bill (FY2009)	$5,110	$4,250
Median Household Income (1999)	$69,144	$50,502
Per Capita Income (1999)	$30,732	$25,952
Adults Over 25 with at 4-Year Degree	2.0%	33.0%
Poverty Rate (Individual) (2000)	39.6%	9.3%
Total Housing Units (2000)	7,631	
Single family detached as % of 2000 Units	67.8%	52.4%
Multifamily Units (5+) as % of 2000 Units	12.3%	19.6%
% of Households That Are Renters (2000)	18.4%	38.3%
Building Permits 2000-April 2009 (units)	604	166,775
Single family attached and detached units	598	109,574
Multifamily Units (5+)	0	46,241
Median home value (2000)	$221,200	185,700
Median Gross Rent (2000)	$796	684
Subsidized Housing Inventory % (8/2009)	3.4%	9.7%

40B Status: Easton's current subsidized housing inventory percentage is 3.4% (249 units). The Town has a DHCD-approved Housing Production Plan.

SGOD District: The planned village-style development is envisioned as a tree-lined Main Street with three to four-story buildings that include 60 condominiums, 220 apartments, a function center and office, retail and restaurant space. The project intends to eventually capitalize on the State's South Coast rail project, a planned extension of the Stoughton Commuter rail line.

The project will use Low-Impact Development techniques, including rain gardens.

The town negotiated a Development Agreement worth over $2 million which includes:

- 8 acres of forested open space
- An agreement to renovate and expand a fire station
- A package wastewater treatment plant that reserves 50,000 gallons/day in capacity for use by the Town
- Major traffic improvements
- An Easton "Welcome" sign
- $3,000 annually for public information on maintaining a clean water supply; and
- Construction of walking trails to connect with Town-owned land.

Transit Access: The development is part of the Brockton Area Transit bus route which now includes the Easton Industrial Park and would be expanded to include a stop at Queset Commons. The route would travel between Stoughton and Brockton commuter rail stations.[4]

40R PLANNING PROCESS: The 40R district project underwent extensive review through the Easton Board of Selectmen and the Planning and Zoning Board and was also discussed with other major boards in Town. The Selectmen were assisted in their review by BETA Group, Inc. with all conceptual designs and conceptual engineering work, which included traffic impacts, wastewater systems, water and other utilities, and storm water management. A Developer's Agreement was prepared to ensure implementation of project mitigation to the benefit of the Town of Easton. The 40R District By-Law was formally adopted by Easton Town Meeting on May 19, 2008.[5]

Milestones

• December 2007	Traffic Impact Study conducted by McMahon
• February 2008	Financial Analysis Report completed
• March 2008	Design Standards finalized and SGOD Warrant Article prepared
• April 2008	DHCD issues preliminary approval
• May 2008	Board of Selectmen approves SGOD
• May 2008	Town Meeting approves SGOD
• September 2008	DHCD issues final approval of SGOD

District/Project Status: The development is divided into four construction phases. The first phase includes the development of 40 apartments, an 80-unit assisted living facility, and 22,000 square feet of retail and commercial space. 50 more apartments, 18,000 square feet of commercial space and an 11,000 square foot office building will be developed in the second phase. In the third phase, a 60 unit condominium development will be built. The final phase will include the remaining 50 housing units, 35,000 square feet of retail and commercial space, and a 16,000 square foot conference center.[6]

Plan Approval Authority: Planning Board and Zoning Board

Design Standards: The Design Standards for the District comprise the following details: the scale and proportion of buildings; the alignment, width, grade, and surfacing materials for streets and sidewalks; the types and location of infrastructure; site design; off-street parking; landscaping design and species selection; exterior and window signage; and buffering in relation to adjacent properties. The standards also include the possibility and encouragement of shared parking techniques.

The ordinance establishes three sub-districts (subzones):

- Subzone A includes primarily multifamily residential uses, municipal uses and indoor or outdoor recreational facilities.
- Subzone B is a mixed-use zone allowing multifamily residential combined with office, retail, and restaurant uses. This is the only zone allowing assisted living facilities.
- Subzone C is for nonresidential uses only.

Densities are as follows by Subzone:

	Minimum	Maximum
Subzone A		
Multifamily Use	20	20
Subzone B		
Mixed-Use only as developed in the same building	20	20
Total amount of commercial space in Subzone B cannot exceed 80,000 sq. feet aggregate gross floor area		
Subzone C		
Total amount of commercial space in Subzone C cannot exceed 30,000 sq. feet aggregate gross floor area		

Project Description: Queset Commons is located west of Washington Street (Rte 138) and north of Morse's Pond in Easton. The development will consist of seven buildings total: two 4-story condominium buildings (total 60 units), two mixed-use residential (83 assisted living and 137 apartment rental units) and retail/commercial (60,000 square foot) buildings, a 16,000 square foot conference center, a 15,000 square foot food market, two office buildings (total 25,000 square feet), and a wastewater treatment plant building.

The proposed Queset Commons development will be part of a larger Smart Growth District. The Smart Growth District is 60.72 acres, of which 24% is currently developed and 27% consists of Morse's Pond and wetlands. The remaining 29k acres will consist of three subzones: a residential subzone, a mixed-use subzone, and a retail commercial subzone. The site is located near major roads with quick and direct access to Route 24 and is located within 0.4 miles of the Brockton Area Transit (BAT) service stop. Water supply is adequate and of good quality. Soils are suitable for development and for water recharge. This project site is also within an existing area of concentrated development.

Some features of the proposed project include underground parking for all residents, commuter shuttle bus service (provided by site owner), low impact development (LID) strategies, and a walking trail with parking and bike racks which will connect to conservation land currently owned by the Town of Easton. Approximately 8 acres of wooded land adjacent to the proposed project will be granted to the Town of Easton.

Stormwater management will be achieved by implementing low impact development (LID) strategies (e.g. rain gardens, roof runoff storage and recharge). Parking and roadway runoff will be directed to localized rain gardens incorporated into the site landscaping.[7]

Affordability: 20% of the total units will be affordable housing. Rental projects will have a 25% set-aside for affordable housing. 20% of the 25% will be reserved for households earning at or below 50% of the area median income. Any fractional units will be counted as whole units. Ten percent of the units in the development will be accessible.

[1] DHCD Community Profiles and Metropolitan Area Planning Council MetroFuture Population and Employment projections.
[2] MetroFuture population projections, Metropolitan Area Planning Council, 2008.
[3] DHCD Subsidized Housing Inventory, 2009.
[4] Queset Commons website: www.queset.com
[5] ENF 14266 Commonwealth of Massachusetts EOEEA
[6] Per a Community Opportunity Group fiscal impact report from November 26, 2007.
[7] Ibid.

9. GRAFTON: FISHERVILLE SMART GROWTH OVERLAY DISTRICT

Project: to be determined

Location Type:	Highly Suitable	Units Built/Under Construction to date	0
DHCD Final Approval Date	8/31/2007	Future Zoned Units	240
Total District Size:	13.74 acres	40R Bonus Units	240
Developable land	10 acres	Planned Units	240
Substantially developed	not applicable	Affordable Units	48
Pre-40R Use:	vacant land (old mill site)	Incentive Payment	$350,000
Pre-40R zoning :	Office/Light Industrial	Maximum Bonus Units Payment	$720,000

40R Initiator:	Town	Funding for 40R Planning	Town, developer, PDF
Construction type:	New Construction	State/Federal Housing Subsidies	not to date
Developer:	Fisherville Mill Redevelopment		

COMMUNITY BACKGROUND:

Grafton is a growing suburb in central Massachusetts, bordered by the city of Worcester and six towns and 30 miles from Boston. Much of its early development was spurred by the 1828 construction of the Blackstone Canal to serve mills from Worcester to Providence and five mill sites remain.[1] It has three villages and large areas of low density residential development (in 2008, 40% of residents relied on septic systems).[2] Commuter rail service to Worcester and Boston began in 2000 from a station at the north end of town, near the entrance to the Massachusetts Turnpike in neighboring Millbury.

Zoning: Most residential zoning is restricted to single-family detached homes with minimum lot sizes of 20,000-40,000 square feet (80,000 in unsewered areas). Two-family units are allowed as of right in one area and by special permit in another. Multifamily (3+) is allowed by special permit in one district.[3]

40B Status: The town has a 40B percentage of 5.3% (271 units short of 10%). Its Housing Production Plan was approved in July 2006.

SGOD District: The district covers 14 acres of the 35-acre brownfield site of the former Fisherville mill in South Grafton next to the Blackstone River.

	Grafton	State
Form of Government	Town	
Population (2007)	17,525	
Land Area	22.7 mi^2	
Population density per square mile (2007)	771	810
Housing density per square mile (2000)	256	334
Average Household Size (2000)	2.54	2.51
Population Growth 2000-2007	↑ 17.7%	↑ 1.9%
Population Growth 1990-2000	↑ 14.3%	↑ 5.5%
Household Growth 1990-2000	↑ 18.6%	↑ 8.7%
Housing Growth 1990-2000	↑ 15.7%	↑ 6.0%
School Enrollment Change (FY2001-2009)	+ 28.2%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 14.8%	+ 16.0%
Percentage of Property Taxes Residential	91.4%	72%
Average Single Family Assessed Value 2009	$370,781	$391,818
Average Single Family Tax Bill (FY2009)	$4,016	$4,250
Median Household Income (1999)	$56,020	$50,502
Per Capita Income (1999)	$26,952	$25,952
Poverty Rate (Individual) (2000)	5.6%	9.3%
Adults Over 25 with at 4-Year Degree	34.8%	33.0%
Total Housing Units (2000)	5,828	
Single family detached as % of 2000 Units	60.7%	52.4%
Multifamily Units (5+) as % of 2000 Units	14.1%	19.6%
% of Households That Are Renters (2000)	27.7%	38.3%
Median home value (2000)	$183,500	185,700
Median Gross Rent (2000)	$625	684
Building Permits 2000-April 2009 (units)	1,421	166,775
Single family attached and detached units	1,376	109,574
Multifamily Units (5+)	41	46,241
Subsidized Housing Inventory % (8/2009)	5.3%	9.7%

The mill property was abandoned in 1986 and tax-foreclosed. It was designated a superfund site after it was largely destroyed by a fire in 1999 that severely contaminated the soil and ground water. EPA cleanup began in 2002 and the site was sold in 2004 to a private developer who agreed to assume the remaining remediation work. Current plans are for 240 condominiums and 40,000 SF of retail space on 10 acres and a public park.

Transit: The site is not served by public transportation but abuts the planned Blackstone River bikeway.

Infrastructure: the district has public water and sewer.

40R PLANNING PROCESS: The use of 40R for the site was originally suggested by the Town Planner at that time and a development potential concept was created in the summer of 2006 during the South Grafton Villages Master Plan process. The developer funded the hiring of an attorney to work with the Town to develop a draft 40R bylaw. The new Town Planner and the Planning Board helped refine the bylaw to reflect Town preferences and to develop design standards. The Planning Board held a number of meetings on the proposed bylaw, as well as the required hearing and the developer and other organizations conducted additional public outreach to highlight the benefits of the project (brownfield remediation, water quality enhancement, creation of public spaces, restoring a section of the historic Blackstone Canal, and creating affordable housing, and mixed use development). Town Meeting passed the bylaw unanimously.

The Town is also exploring creating a 40R district in another area (Depot Street) and received a $20,000 state Priority Development Fund (PDF) grant to help with that. A small portion was also provided to assist with the Fisherville Mill district outreach and education effort.

Milestones

Aug 1999	Fisherville Mill destroyed by fire, contaminated debris and ground water released
2002	EPA begins site cleanup – completed 3/1/2005
2004	Local groups hold charrette on site reuse; Fisherville Mill Redevelopment buys mill site
2005	EPA completes cleanup (3/2005)
Nov-Dec 2006	Town approves SGOD zoning contingent on DHCD approval of preliminary eligibility (11/20/06 - unanimous); DHCD preliminary approval letter issued (12/8/06)
April 2007	Amended DHCD letter of eligibility issued 4/27/2007
May 2007	Town Meeting approves overlay district 5/14/2007 (unanimous)
Aug 2007	Attorney General (8/8/07) and DHCD Final Approval 40R district (8/31/07);
Nov 2007	Town receives Zoning Incentive Payment (11/28/2007)
July 2008	State designates district as Brownfields Support Initiative site to facilitate interagency cooperation and permitting

District Status: Remediation and site cleanup nearing completion (May 2009)

Plan Approval Authority: Planning Board

Bylaw features of note: The district has 10 acres of developable land bisected by Main Street and has two subzones (A and B), one on each side of Main. Both permit multifamily and mixed-use buildings as of right, but Subzone B allows more density and will not allow residential development without commercial development (the Town will not issue a certificate of occupancy for any 10 dwelling units prior to issuance of a certificate of occupancy for 10,000 GSF of nonresidential space [Section 10.6.A.3.k])

Allowed Uses

Sub-zone	SF	TH	MF	Mixed-use	Max density	Commercial
A	-	-	1	1	20	Restaurant up to 15,000 SF, retail up to 20,000 GF, Other*
B	-	-	1	1	25	Restaurant up to 10,000 SF, retail up to 40,000 GF, Other (required)*

* Day care, neighborhood or community center, personal or consumer service establish, office, bank, health clubs

The bylaw requires an affordability term that is the maximum period allowed by law but not less than 99 years. At least 20% of units must be affordable; for rental projects, the minimum is 25% unless 20% are affordable to households at or below 50% of area median. Fractional units below 0.5 round down.

Design standards – for mixed-use, in Subzone A there must be at least 30 residential units per dwelling if multiple structures and in subzone B, the residential must be located above the non-residential space and have received a certificate of occupancy first. Restaurants in subzone A must be oriented toward a dam. No discussion of energy efficiency requirements.

Project Description:

Fisherville Mill: initial plans call for mixed-use development including 240 condominiums (at least 48 of which will be affordable).

Affordability To date there has been no discussion regarding levels of affordability or use of state or federal subsidy programs.

[1] Town of Grafton website, "About Grafton," downloaded 4/28/2009; and Department of Housing and Community Development "Community Profiles."
[2] Town of Grafton NPDES PII Small MS4 General Permit Annual Report to EPA (May 2007-May 2008), page 11.
[3] The Town's one multifamily zoning district (R-MF) allows two family units as-of-right also. Minimum lot sizes are 44,000 square feet (and 5,500 per unit for multifamily). The Town's 2001 Comprehensive Plan found that the R-MF district could accommodate 140 additional units if fully built out.

10. HAVERHILL: DOWNTOWN SMART GROWTH OVERLAY DISTRICT

PROJECTS: Hamel Mills (Hamel & Lagasse buildings – aka "Haverhill Mills) – 305 rental units
Hayes Building – 57 rental units

Location Type:	Transit	Units Built or Under Construction	305
DHCD Final Approval Date	2/8/2007	Future Zoned Units	526
Total District Size:	53 acres	Incentive/Bonus Units	526
Developable land	3.87 acres	Planned Units	
Substantially developed:	33.37 acres	Affordable Units (min) at full buildout	107
Pre-40R Use:	Varied (non-residential)	Incentive Payment	$600,000
Pre-40R zoning:		Maximum Bonus Units Payment	$1,578,000
Construction type:	Adaptive Reuse (mills, factories)		

40R Initiator:	City	Funding for 40R Planning (PDF)	$50,000
Developers: Forest City Residential (Hamel); Planning Office for Urban Affairs (Hayes Building)		State/Federal Housing Subsidies	yes

COMMUNITY BACKGROUND:
Haverhill is an older but growing city on the Merrimack River, 21 miles north of Boston and bordered by four towns and the state of New Hampshire. A major manufacturing center until the 1930s, it has many underutilized mill and factory buildings in its downtown area but has experienced major growth in its outlying areas, adding almost 2,000 single family homes between 1990 and 2000.

Zoning: Multifamily housing (4+ u) allowed by special permit only (from the City Council) in some residential and commercial districts. Minimum lot requirements range from 7,500 to 80,000 square feet for single-family homes and from 25,000 to 40,000+ SF for multifamily (4+) buildings.

40B Status: Haverhill's subsidized housing percentage is 8.9% (265 units short). It may go over 10% once it adds its completed 305-unit 40R rental project.

SGOD: The 53-acre district covers about half of the downtown.[2] It includes 4 acres of developable land plus a number of underutilized mill and factory buildings (some require asbestos and lead remediation).

	Haverhill	State
Form of Government	City	
Population (2007)	59,902	
Land Area	33.3 mi^2	
Population density per square mile (2007)	1797	810
Housing density per square mile (2000)	712	334
Average Household Size (2000)	2.51	2.51
Population Growth 2000-2007	↑ 1.6%	↑ 1.9%
Population Growth 1990-2000	↑ 14.7%	↑ 5.5%
Household Growth 1990-2000	↑ 17.4%	↑ 8.7%
Housing Growth 1990-2000	↑ 11.2%	↑ 6.0%
School Enrollment Change (FY2001-2009)	- 20.5%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 23.6%	+ 16.0%
Percentage of Property Taxes Residential	76.1%	72%
Average Single Family Assessed Value 2009	$293,847	$391,818
Average Single Family Tax Bill (FY2009)	$3,365	$4,250
Median Household Income (1999)	$49,833	$50,502
Per Capita Income (1999)	$23,280	$25,952
Poverty Rate (Individual) (2000)	9.1%	9.3%
Adults Over 25 with at 4-Year Degree	23.4%	33.0%
Total Housing Units (2000)	23,737	
Single family detached as % of 2000 Units	42.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	20.4%	19.6%
% of Households That Are Renters (2000)	33.8%	38.3%
Median home value (2000)	$159,200	185,700
Median Gross Rent (2000)	$658	684
Building Permits 2000-April 2009 (units)	1,801[2]	166,775
Single family attached and detached units	838	109,574
Multifamily Units (5+)	323[1]	46,241
Subsidized Housing Inventory % (8/2009)	8.9%	9.7%

Transit: SGOD includes a regional bus station and a train station (commuter rail; Amtrak)

40R PLANNING PROCESS: The Mayor first began exploring the use of 40R in 2005 as part of a renewed downtown revitalization effort. He established a Zoning Review Committee to assess parking and other needs. The City Council was initially reluctant to support the 40R concept both because it would remove their discretion over special permit approvals and because of uncertainty about market demand. A successful mill redevelopment under Chapter 40B (Cordovan at Haverhill Station), which opened in 2006, helped persuade the Council that 40R might help encourage further mill conversions and they approved the 40R ordinance in December 2006.[3]

Milestones

Feb 2006	Mayor proposes reducing parking requirements in "factory zone" to facilitate redevelopment of vacant buildings as housing
July 2006	Developer applies for variances for Hamel Lofts regarding building heights, setback and inclusionary zoning details (July 21);
Aug 2006	City Council votes 5-2 to submit 40R application to DHCD
Sept 2006	City Council approves variances for Hamel Lofts project (9/20/2006)
Dec 2006	DHCD approves preliminary 40R application (12/11); City Council (7-2) approves 40R ordinance (12/19)
Feb 2007	DHCD issues final approval of 40R district – 2/8/2007
March 2007	Building Inspector denies permit for Hamel Lofts, saying building height variances required
April 2007	Hayes Building plan approved 4/24/2007 (57 units, at least 24-33 affordable)
May-June 2007	Hamel Lofts applies for plan approval (5/18) with density waiver. Plan approved (6/26)
Dec 2007	State Building Code Appeals Board rules building permit does not require variance (12/20)
Aug 2008	State awards low income housing tax credits to Hayes Building

District/Project Status: Hamel Mills Lofts opened starting in October 2008 (305 rental units). The Hayes Building project was delayed by the downturn in the economy which made it difficult to obtain financing but is expected to begin construction shortly.

Plan Approval Authority: City Council

Bylaw features of note: The district consists of 5 subzones. The design guidelines state that development in subzones A, B and C is expected to consist of rehabilitation of the existing buildings which are 7-8+ stories.

- Rehab must preserve river views.
- Mixed-use allowed in all subzones "at least 75% of the gross floor area of the structure shall be residential" and "not more than 5%...shall be non-residential"; all nonresidential uses must be on the first floor only.

Allowed Uses

Subzone	Acres	Townhouse (2-3 unit)	Multifamily	Mixed-use	Artist Live-Work	Parking	Open Space/ Recreational
Developable land							
A	2.3	No	Y	Y	No	Y	Y
B	0.4	No	Y	Y	No	Y	Y
C	1.2	No	Y	Y	No	Y	Y
Substantially Developed land							
D	29.6	No	Y	Y	Y	Y	Y
E	3.8	Y	No	Y	Y	Y	Y

Allowed Densities

- A –High Density (up to 220u/acre or – for rehab –can be existing building GSF*.75, divided by 1200) - all 8+ story mill buildings here – expect rehab

- B – High Density (120/acre – for rehab, same as above) all 7+ story mill buildings here – expect rehab

- C – High Density (65/acre – for rehab, same as above) all 8+ story mill buildings here – expect rehab
- D - Multifamily (20/acre) – see Washington St Design standards – artist live/work allowed.
- E – Townhouse (2u and 3u buildings); mixed-use encouraged.- artist live/work allowed

Projects Both projects are located within two blocks of the downtown commuter rail station.

Project Name	Tenure	Units	Affordable Units	Housing Subsidy ($)
Hamel Mill Lofts	Rental	Total: 305 (193 1br, 112 2br) Affordable: 61 (55 1br, 6 2br)	61@50% AMI	MDFA tax-exempt bond ($49M); 4% low income tax credits
Hayes Building	Rental	Total: 57 (11 1br, 46 2br)* Affordable: 52 (10 1br, 42 2br)	3@50% AMI, 30@60% AMI, 18@<80% AMI	State Historic tax credits (both) – total $8.5M; LIHTC, HOME, State Bond funds (HSF, CBH, CATNHP)

*approximate according to plan approval

[1] Total building permits and multifamily building permits adjusted to include 305 adaptive reuse units permitted under 40R reuse and not included in the Census Bureau estimates.
[2] "Haverhill's Smart Growth Overlay District," presentation to the Essex County Forum by Mayor James J. Fiorentini and city staff, June 12, 2007, slide 9. Available online at http://www.essexcountyforum.org/documents/40R_Haverhill.pdf.
[3] History per "Zoning for Density: Haverhill's 40R District," downloaded from Essex County Forum website, July 2009, based on interviews with mayoral office employees and developers. http://www.essexcountyforum.org/documents/WaytoGrow_Zoning_for_Density.pdf.

11. HOLYOKE: SMART GROWTH OVERLAY ZONING DISTRICT

PROJECT: to be determined

Location Type:	Area of Conc. Dev.	Units Built or Under Construction	5
DHCD Final Approval Date	7/7/2008	Future Zoned Units	296
Total District Size:	152.3 acres	40R Incentive/Bonus Units	211
Developable land	4 acres	Planned Units	
Substantially Developed land	83 acres	Minimum Affordable U	60
Pre-40R Use:	residential, commercial, institutional	Incentive Payment	350,000
Pre-40R zoning:	varied	Maximum Bonus Units Payment	633,000

40R Initiator:	Pioneer Valley Planning Commission	PDF Planning Grant	~$38,520[1]
Planning Funds Source:		PDF grant; city in-kind staff support	
Construction type:	infill and adaptive reuse	State/Federal Housing Subsidies	HOME
Developer:	Olde Holyoke Development, others		

COMMUNITY BACKGROUND: Holyoke is an old mill city on the Connecticut River located 90 miles west of Boston and 34 miles north of Springfield, with good highway access to both cities. It developed in the 1800s as a planned industrial community and was a major producer of paper and textiles, using dams and canals. It has a high poverty rate and suffered population and housing losses in the 1990s. In 2000, 45% of working residents worked in Holyoke. It has a diverse housing stock.

	Holyoke	State
Form of Government	City	
Population (2007)	39,737	
Land Area	21.3 mi^2	
Population density per square mile (2007)	1,866	810
Housing density per square mile (2000)	761	334
Average Household Size (2000)	2.57	2.51
Population Growth 2000-2007	↓ 0.3%	↑ 1.9%
Population Growth 1990-2000	↓ 8.8%	↑ 5.5%
Household Growth 1990-2000	↓ 5.6%	↑ 8.7%
Housing Growth 1990-2000	↓ 4.2%	↑ 6.0%
School Enrollment Change (FY2001-2009)	↓ 2.7%	- 2.9%
School Enrollment Change (FY1991-2001)	↓ 19.7%	+ 16.0%
Percentage of Property **Taxes** Residential	49.7%	72%
Average Single Family Assessed Value 2009	$190,885	$391,818
Average Single Family Tax Bill (FY2009)	$2,720	$4,250
Median Household Income (1999)	$30,441	$50,502
Per Capita Income (1999)	$15,913	$25,952
Poverty Rate (Individual) (2000)	26.4%	9.3%
Adults Over 25 with at 4-Year Degree	16.9%	33.0%
Total Housing Units (2000)	16,210	
Single family detached as % of 2000 Units	32.8%	52.4%
Multifamily Units (5+) as % of 2000 Units	36.4%	19.6%
% of Households That Are Renters (2000)	58.5%	38.3%
Median home value (2000)	$105,600	$185,700
Median Gross Rent (2000)	$503	$684
Building Permits 2000-April 2009 (units)	341	166,775
Single family attached and detached units	190	109,574
Multifamily Units (5+)	60	46,241
Subsidized Housing Inventory % (8/2009)	21.7%	9.7%

Zoning Some residential districts[2] allow up to 20, 40 and 60 units per acre with minimum lot sizes ranging from 6,000 square feet (RD-60) to an acre (RD-20). Lower density districts allow 1-3 unit residences. Two overlay districts in the downtown and canal areas promote mixed-use and residential development. All multifamily housing (3+) units is subject to site plan review by the Planning Board.

40B status Long over 10%; current subsidized housing percentage (21.7%) one of highest in the state

SGOD District: The district is located in Holyoke's urban core on a stretch of Dwight Street that is about a half mile long. It includes a mix of housing, industrial and commercial uses, with lower scale residential use more predominant on one end.

Transit An inter-modal transportation center is under construction in the SGOD in a former City building. It will create waiting areas for local bus service and add regional bus transportation and also will house day care and literacy programs.

40R PLANNING PROCESS: Holyoke first began considering using 40R when the regional Pioneer Valley Planning Commission (PVPC) encouraged it to submit a joint application with two other communities (Easthampton and Westfield) for 40R planning funds. The City had already identified a downtown area where they wanted to encourage the creation of market-rate housing through adaptive reuse as well as infill single family homes and duplexes. City and PVPC staff worked jointly to develop the 40R application and zoning ordinance. The City is working on a larger visioning process for the entire downtown area, but went

ahead with the 40R district because it aligned with their zoning goals and provided an opportunity to develop consistent standards in an area which was covered by quite diverse underlying zoning and adjust certain residential dimensional requirements (e.g. setback and frontage) to promote infill development..

Milestones

April 2008	DHCD approves city's preliminary 40R application (4/4/2008)
June 2008	City Council approves 40R ordinance and design standards
July 2008	DHCD issues final approval of 40R ordinance, standards (7/7/2008);
July 2008	City approves building permits for new construction of two infill duplexes.

District/Project Status: As of May 2009, the City reported that five housing units (one single family and two duplex units) have been built in the district, all on infill sites, and that discussions are underway regarding the conversion of a high school into rental housing.
Plan Approval Authority: Planning Board

Ordinance/Design Standard features of note: The district runs along Dwight Street and is divided into two sub-districts:

- Gateway (Linden to Elm Street) and
- Downtown Mixed-Use (Elm to Main St)

The ordinance sets minimum densities (in mixed-use buildings, the minimums apply only to the residential portions). Higher density uses are permitted in the Downtown subdistrict.

No more than 30% of the gross square footage in mixed-use buildings can be non-residential. The design standards for the Downtown sub-district require some first floor commercial use and require windows on storefronts to achieve at least 65% transparency. In the Gateway sub-district, they limit commercial uses to first and second stories.

Requires plan "review" rather than plan approval for small projects (l2 units or less or mixed-use or commercial projects ≤5,000 square feet). The planning staff, rather than Board, conducts the review. Before applying for review, applicants must submit a concept plan showing building envelope areas, open space and natural resource areas, parking, site improvements, building groupings and proposed land uses.

	Single family detached	**Two and Three Family**	**Single family attached**	**Multi-family (4+)**	**Assisted Living**	**Mixed-use**	**Mill renovation for mixed-use**
Gateway	Y	Y	Y	Y	Y	Y*	not applicable
Downtown	-	-	Y	Y	Y	Y*	Yes
Minimum du/ acre	8	12	8	20	20	20	20

*Maximum building height for mixed-use is 60 feet in Gateway subdistrict, 120 feet in the Downtown district

Project Details

Infill housing Five units of housing had been completed as of May 2009 (one single family and two duplexes), all developed and sold by Olde Holyoke Development, a non-profit that works closely with the City.

Affordability Consistent with the ordinance, none of the infill units have 30-year affordability requirements.

[1] Holyoke, Westfield and Easthampton received a joint grant of $115,560 grant for 40R planning. This table assumes each city received one third of total grant.
[2] RD-20, RD-40 and RD-60

12. KINGSTON: 1021 KINGSTON'S PLACE SMART GROWTH DISTRICT

PROJECT: 1021 Kingston's Place

Location Type:	Transit	Units Built or Under Construction	0
DHCD Final Approval Date	8/28/2007	Future Zoned Units	730
Total District Size:	109 acres	40R Bonus Units	730
Developable land	69.6 acres	Planned Units	730
Substantially Developed land	n/a	Affordable Units (min)	146
Pre-40R Use:	Sand/gravel pit	Incentive Payment	$600,000
Pre-40R zoning :	Industrial/commercial	Maximum Bonus Units Payment	2,190,000

Funding for 40R Planning	Developer, PDF	PDF Grant	50,000
40R Initiator:	Developer	Other State/Federal Housing Subsidies	unknown
Construction type:	New construction		
Developer	Thorndike Development		

COMMUNITY BACKGROUND: Kingston is a growing coastal town 35 miles southeast of Boston. It is primarily residential with a small number of professional fishermen and cranberry growers.[2] Commuter rail service to Boston was restored in 1997 after a 38-year hiatus. It also has good highway access to Boston via Route 3. Most residents (88%) work in other communities; in 2000, 14% worked in Boston[3].

	Kingston	State
Form of Government	Town	
Population (2007)	12,339	
Land Area	18.5 mi^2	
Population density per square mile (2007)	666	810
Housing density per square mile (2000)	244	334
Average Household Size (2000)	2.71	2.51
Population Growth 2000-2007	↑ 4.7%	↑ 1.9%
Population Growth 1990-2000	↑ 30.2%	↑ 5.5%
Household Growth 1990-2000	↑ 31.8%	↑ 8.7%
Housing Growth 1990-2000	↑ 29.4%	↑ 6.0%
School Enrollment Change (FY2001-2009)[1]	- 3.0%	- 2.9%
School Enrollment Change (FY1991-2001)[2]	+ 48.0%	+ 16.0%
Percentage of Property Taxes Residential	83.6%	72%
Average Single Family Assessed Value 2009	$375,884	$391,818
Average Single Family Tax Bill (FY2009)	$4,699	$4,250
Median Household Income (1999)	$53,780	$50,502
Per Capita Income (1999)	$23,370	$25,952
Poverty Rate (Individual) (2000)	5.8%	9.3%
Adults Over 25 with at 4-Year Degree	31.7%	33.0%
Total Housing Units (2000)	4,525	
Single family detached as % of 2000 Units	76.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	5.6%	19.6%
% of Households That Are Renters (2000)	18.2%	38.3%
Median home value (2000)	$201,800	185,700
Median Gross Rent (2000)	$730	684
Building Permits 2000-April 2009 (units)	433	166,775
Single family attached and detached units	425	109,574
Multifamily Units (5+)	0	46,241
Subsidized Housing Inventory % (8/2009)	4.1%	9.7%

Zoning Depending on the district, single family minimum lot sizes are 10,000 (Town Center), 20,000, 40,000 or 80,000 square feet. A few districts permit two-family homes as of right or by special permit. One allows multifamily (2+ units) housing by special permit–with a minimum land area of five acres.

40B Status Kingston's 40B percentage is 4.1%. It has an approved Affordable Housing Plan and inclusionary zoning. Adding 23 subsidized units would make it appeal-proof for a year.

SGOD District: Consists of 109 acres of land, much a former sand/ gravel pit next to the commuter rail station. Allows the development of a new neighborhood of up to 730 housing units (including up to 260 single family homes) and up to 50,000 gross square feet of retail and up to 250,000 GSF of office space, a park and artificial pond Developer must also design and fund construction of a slip ramp to the regional highway (Rt. 3) and build a bridge over the rail.

Transit: near commuter rail station

Infrastructure: The project will connect to expanded town water and sewer facilities.

40R PLANNING PROCESS: Town officials first began exploring ways to redevelop the sand/gravel site after the commuter rail station opened and its 1998 Master Plan Committee identified it as an appropriate area for growth, given its location next to the commuter rail station and a new Town waste water plant. The Town proposed creating a 140-acre cluster zoning district allowing up to 800 housing units but fell short of two-thirds approval at Town Meeting both in 2001 and 2002 (though a majority voted yes in 2002). Strong housing demand led to the filing of six 40B applications in various parts of Kingston in subsequent years, including one by the owner of the sand/gravel pit site to build 200 units on a 36-acre portion of the site. The latter was denied by the Zoning Board of Appeals in November 2005.

In early 2006, a private developer (Thorndike) approached the Town with a new proposal for the site using 40R. The Town was receptive as the proposal met Town development goals and could enable the Town to reach 10% under Chapter 40B. The developer agreed to pay initial project planning costs to jump-start the process and the Town successfully applied for a $50,000 Priority Development Fund (PDF) grant to help with zoning bylaw and design standard development costs. Thorndike provided additional funds after the PDF funds were exhausted. The bylaw and design standards were developed collaboratively by the developer and Town (special committees, town staff and town counsel) with consultant assistance.

Milestones

- 1998-2002 — Town begins planning for redevelopment of site; Town meeting rejects proposed cluster zoning in 2001 and 2002.
- Nov 2005 — ZBA denies comprehensive permit application for 200 units on part of site
- Jan 2006 — Thorndike approaches Town with development concept and proposal to use 40R
- 2006 — Town receives PDF grant
- April 2007 — DHCD approves preliminary application (4/4); Town Meeting vote on 40R bylaw falls 26 votes short of the required two-thirds (4/9) but passes two nights later (925-341). Abutting owner of a summer cottage files 5-count appeal of Town approval
- Aug 2007 — Attorney General partial approval (8/13)–wording problems require new Town vote; DHCD Final Approval (8/28)
- Nov 2007 — Appeal of Town approval of 40R bylaw filed by abutters
- Jan 2008 — State gives preliminary environmental approval ("Phase I waiver") approving creation of ramp to Route 3 prior to completing environmental review of entire project.
- Nov 2008-Feb 2009 — Thorndike applies for comprehensive permit to build a 44-unit project next to the 40R district, stating the smaller project would follow the 40R guidelines, help it secure financing and help defray its 40R carrying costs. Selectmen object to proposal and Planning Board drafts amendment to the 40R design standards to block access to the 40B site (for April town meeting). DHCD advises that it will not approve this change.
- March 2009 — Land Court upholds Town's 40R approval (3/10/2009), Thorndike withdraws 40B application; Planning Board withdraws 40R change; Thorndike announces it is ready to file the Master Plan and initial phase site plan application for site plan review.
- April-May 2009 — Thorndike files Master plan and application for plan approval for 30 units of rental housing (April). Hearing opened 5/18/2009.
- June 2009 — Town Meeting again votes (152-24) to authorize Board of Selectmen to request special legislation to allow a land swap with the State to enable construction of an on- ramp to Route 3 south to serve both the 40R district and commuter rail station.

Litigation A residential abutter (owner of a seasonal home) appealed the Town's approval of the 40R bylaw in Land Court in November 2007 (and has since appealed several project approvals by the State Department of Environmental Protection). After Land Court upheld the Town's approval in April 2008, the abutter filed an appeal with the Appeals Court, which is still pending as of July 2008.

District/Project Status: In April 2009**,** the developer filed a District Master Plan and applied for plan approval for the first phase (a 3,500 SF commercial building and a 30-unit rental building)**.** The Town expects the

developer to file for plan approval for additional residential units (about 100) in the summer. District build-out is now expected to occur over ten years. The project is still going through the environmental review process but received a Phase I waiver (also challenged) to begin design and permitting of streets and infrastructure. The developer is refining plans for the highway ramp with the State highway agency.

Plan Approval Authority: Planning Board

Bylaw/Design Standard features of note:

- Creates four subdistricts - one for open space/recreation and three residential (two mixed-use)
- Allows transfer/mixing of unit types within the three residential subdistricts (up to 60 units maximum). For example, units not built in the single family subdistrict (up to 60) can be built as single-, 2-3 unit and multifamily units in the other subdistricts, subject to the density limits for each building type.
- Design standards require compliance with draft LEED for Neighborhood Development standards
- Uses form-based codes.
- Bylaw encourages developer to submit a pre-application to the Planning Board for review, comments prior to filing for plan approval. Design standards also give the developer the option of submitting a District Master Plan in the pre-application review that outlines the location and size of streets, sidewalks, bike lanes, open space, proposed project mitigation and phasing.
- Sets affordability term at "longest period customarily allowed by law" but not less than 30 years. Site plan approval application must include AHR, marketing plan, and evidence that it will comply with all affordable housing requirements.

Subdistrict	Density	Allowed Uses	Maximum Allowed Units
Single Family	8	Single family*	260
Mixed-Use Residential-Commercial	20	Multifamily **	437
Mixed-Use Live-Work (Upper story housing)	20	Multifamily**	33
Conservation-Recreation	0		

*Up to 60 units can be 2-3 unit or multifamily buildings. **Up to 60 can be single- or 2-3-family buildings

Project Details: Project approvals will be phased. The first application for a project approval was filed in April 2009 and involves two buildings – a small commercial building and a 30-unit residential project. Details on the tenure, financing and bedroom mix are not yet available. It is not known whether any housing subsidy program use is planned.

The proposed residential mix at total buildout as discussed by the developer with the Planning Board when creating the District bylaw is summarized below.[4]

				Total			Affordable		
Housing Type	**Total**	**Affordable**	**% Affdbl**	**1-BR**	**2-BR**	**3-BR+**	**1-BR**	**2-BR**	**3-BR**
Single family homes	120	24	20%	0	0	96	0	0	24
Townhouses	140	28	20%	0	105	35	0	21	7
Multifamily Condos	212	30	12%	21	159	32	3	22	5
Live-Work	33	7	21%	0	33	0	0	7	0
Total Ownership	505	89	17.6%	21	297	163	3	50	36
Rental Apartments	225	57	25%	23	157	45	7	39	11
Grand Total	**730**	**146**	**20%**	**44**	**454**	**208**	**10**	**89**	**47**

[1] Kingston belongs to a regional school district that served 3 other towns through FY2004 and now serves 2 other towns. For simplicity, table shows enrollment growth for grades K-6 only.
[2] Town website, "About Kingston," http://www.kingstonmass.org/content/37/71/default.aspx.
[3] U.S. Decennial Census, Residence MCD/County to Workplace MCD/County Flows for Massachusetts.
[4] Community Opportunities Group, "1021 Kingston's Place Proposed Chapter 40R Overlay District Fiscal Impact Review," prepared for the Kingston Planning Board, March 2007.

13. LAKEVILLE: RESIDENCES AT LAKEVILLE STATION SMART GROWTH OVERLAY DISTRICT

PROJECT: Kensington Court at Lakeville Station (originally Residences at Lakeville Station)

Location Type:	Transit	Units built/under construction	100
DHCD Final Approval Date	12/27/2006	Future Zoned Units	207
Total District Size:	10.87 acres	40R Incentive Units	207
Developable land	10.35 acres	40R Bonus Units	207
Substantially developed land	not applicable	Planned Units	200
Pre-40R Use: vacant		Affordable Units (min)	41
Pre-40R zoning :	Office Park	Incentive Payment	$350,000
Construction:	New construction	Maximum Bonus Units Payment	$612,000

Project Initiator:	Developer	Funding for 40R Planning:	Developer
Developer:	Oxford Development/KCLS Holding	State/Federal Housing Subsidies	$3.99 million

COMMUNITY BACKGROUND Lakeville is a small, growing inland town 38 mile miles south of Boston. About one-sixth of its total area is occupied by a chain of lakes. It is bordered by the towns of Middleborough, Freetown, Rochester and Berkley and the city of Taunton. Commuter rail service to Boston (a 55 minute trip) started in 1997[2] and helped spur growth.[3] Its housing stock consists primarily of single family homes. It relies primarily on private wells for water supply and private septic systems for waste water treatment.

Zoning Multifamily housing is not allowed as of right. The minimum lot size for single family homes is 70,000 SF, in part due to the need for septic systems. Created a mixed-use overlay district in 2003 to permit business uses and age-restricted (55+) housing on a 73-acre former state hospital site (Lakeville Hospital).[4]

40B status: Lakeville's subsidized housing percentage of 4.4% should rise with the completion of Phase I of the 40R development (Kensington Court).[5] Except for Kensington Court, most of its affordable units are age-restricted. The Town's Housing Production Plan was approved 8/ 2004.

	Lakeville	State
Form of Government	Town	
Population (2007)	10,587	
Land Area	29.9 mi^2	
Population density per square mile (2007)	354	810
Housing density per square mile (2000)	122	334
Average Household Size (2000)	2.91	2.51
Population Growth 2000-2007	↑ 7.8%	↑ 1.9%
Population Growth 1990-2000	↑ 26.2%	↑ 5.5%
Household Growth 1990-2000	↑ 26.4%	↑ 8.3%
Housing Growth 1990-2000	↑ 16.7%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↑10.2%[1]	-2.9%
School District Enrollment Growth FY1991-2001	↑21.0%*	+16.0%
Percentage of Property Taxes Residential	85.6%	72%
Average Single Family Assessed Value 2009	$347,841	$391,818
Average Single Family Tax Bill (FY2009)	$3,245	$4,250
Median Household Income (1999)	$70,495	$50,502
Per Capita Income (1999)	$26,046	$25,952
Poverty Rate (Individual) (2000)	3.0%	9.3%
Adults Over 25 with at 4-Year Degree	32.7%	33.0%
Median home value (2000)	$187,400	185,700
Median Gross Rent (2000)	$806	684
Total Housing Units	3,662	
Single family detached as % of 2000 Units	93.5%	52.4%
Multifamily Housing (5+) as % of 2000 Units	1.4%	19.6%
% of Households That Are Renters (2000)	9.5%	38.3%
Building Permits 2000-April 2009 (total units)	645	166,775
Single family attached and detached units	485	109,574
Multifamily Units (5+)	160	46,241
Subsidized Housing Inventory % (8/2009)	4.4%	9.7%

SGOD District Covers 10.35 acres of vacant land next to the Lakeville commuter rail station. The district was created for a project already approved under Chapter 40B with Town support. Developer agreed to creation of 40R district.

Transit: The district is adjacent to Lakeville commuter rail station (about 1,200 riders board trains there each day, almost all going to Boston).[6] Lakeville has no other public transportation except for a dial-a-ride program for seniors.

Infrastructure: The district will be served by an on-site wastewater treatment plant and use public water from the city of Taunton.

40R PLANNING PROCESS: In late 2003, Oxford Development began discussions with town officials about building a 192-unit rental development on the site using a comprehensive permit. In August 2004, the developer advised the town of the recent passage of 40R and suggested exploring that option as well. The Town decided to proceed under 40B after initial discussions with the State led it to believe they would have to include three-bedroom units. When they later learned that the State only forbids excluding such units, they decided to pursue 40R zoning for the project. The developer funded the costs of creating the district (about $15,000 in legal costs). The project approved under 40R was ultimately slightly larger (204 units rather than 192) but in all other respects (including footprint) was the same as approved under 40B In addition to the incentive payments, the developer agreed to provide $300,000 to the Town for mitigation purposes.

Milestones

- Aug 2004 — Developer applies for comprehensive permit to build a 192-unit project (96 condominiums/ 96 rental units), including 77 affordable units. Also briefs selectmen on recently enacted 40R statute and possibility of proceeding that way.
- June 2005 — Town decides not to pursue 40R because it objects to DHCD requirement that project include 3-bedroom units. Oxford proposes 136 2-bedroom and 56 one-bedroom units.
- Aug 2005 — ZBA approves comprehensive permit 8/19/2005 for 192 units
- June 2006 — State announces Low Income Housing Tax Credit award for project
- Sept 2006 — Town learns that 3-bedroom requirement for 40R has been dropped. ZBA rescinds comprehensive permit and files 40R application with State (9/21/2006); re-instates comprehensive permit next day (9/22/2006) to "provide safety net" for project.
- Sept-Dec 2006 — DHCD approves preliminary 40R application (9/29); Town Meeting approves 40R bylaw in October, DHCD issues final approval of district (12/27)
- January 2007 — Site Plan Review – Special permit issued 1/8/2007
- May 2008 — Revised project approval granted, allowing Phase I (100 units) as rental rather than condominium
- July-Oct 2008 — State Task Force announces that long-term future of commuter rail stop is under review (July); may be replaced by stops in adjacent community as part of new rail spur. In early October, announces station's future is secure.
- Jan-Feb 2009 — Building Permits issued for four buildings (100 units total)

District /Project Status: Phase I (100 rental units in four buildings – all affordable) is in construction, with 24 units completed in July and the remaining 76 expected to be completed by October 2009. The developer has not determined tenure or construction timing for the remaining 104 units authorized.

Plan Approval Authority: Planning Board

Bylaw/Design Standard features of note: No subdistricts. Allowed Uses are residential only (townhomes and multifamily) with heights not to exceed 3 stories, parking and "accessory uses customarily incidental." Non-residential uses are allowed by special permit with following restrictions:

- can't exceed 20,000 gross square feet per building
- limited to retail, service and office uses that are compatible with residential uses and intended to serve commuters and residential populations within the SGOD. Prohibits filling stations.

Affordability: The bylaw requires that at least 20% of all units in all residential projects be affordable and at least 25% in the case of rental developments. The term of the restriction must be the longest "customarily allowed by law."

Project Details Kensington Court received Plan Approval in January 2007 for 204 units (96 condominiums and 108 rental units, the latter all affordable). The Approval was modified in May 2008 to allow the project to be entirely rental.

Affordability/Subsidies Phase I (27 one-bedroom, 73 two-bedroom) was financed with federal low income housing tax credits ($1 million allocation), $2.243 million in MassHousing PDF funds and $750,000 in state bond funds under the Commercial Area Transportation Node Program. Eight units are reserved for holders of Section 8 vouchers.

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[1] Grades K-6 only. Lakeville belongs to a regional school district with the town of Freetown. Each town has its own K-6 school. Regional district growth was 39% between FY1990-FY2000 and 10.1% between 2000 and 2008.

[2] Five of the 40R districts to date include or are near stops on the Old Colony Lines. These are branches of the MBTA Commuter Rail system, connecting downtown Boston, Massachusetts with the South Shore. The *Middleborough/Lakeville Line* winds south through Holbrook, Brockton, Bridgewater, Lakeville and Middleborough and the *Plymouth/Kingston Line* heads southeast from Braintree, roughly following Route 3 toward Weymouth, Abington, Whitman, Hanson, Halifax, Kingston and Plymouth. The Greenbush Line runs east from north of Braintree station to Hingham, Cohasset, and Scituate.

[3] Southeastern Regional Planning and Economic Development District (SPREDD), "Lakeville Commuter Rail Survey Summary – May 14, 2008," page 1.

[4] Town of Lakeville Affordable Housing Plan, February 2004, pages 26 and 24. The Lakeville Hospital redevelopment has not moved forward yet. The development has put the retail component (a Target store) on hold and was unable to get two-thirds approval at Town Meeting to remove the age-restriction in the zoning for residential uses (June 2009).

[5] It is the responsibility of the municipality to notify the State of changes in their Subsidized Housing Inventory. Units can be added when a comprehensive permit or 40R project approval is granted but are temporarily removed if building permits or occupancy permits are not issued within certain timeframes.

[6] SPREDD, "Lakeville Commuter Rail Summary – May 14, 2008," page 2.

14. LAWRENCE: ARLINGTON MILLS SMART GROWTH OVERLAY DISTRICT

PROJECT: Malden Mills Redevelopment

Location Type:	Highly Suitable	Units Built or Under Construction	0
DHCD Final Approval Date	5/2/2008	Future Zoned Units	1031
Total District Size:	34.1 acres	40R Bonus Units	1031
Substantially Developed land	not applicable	Planned Units (identified projects)	512
Developable land	34 acres	Affordable Units (min)	236
Pre-40R Use:	Mills	Incentive Payment	600,000
Pre-40R zoning : varied	Industrial (I2)	Maximum Bonus Units Payment	3,093,000

Initiator:	City and Developer	Funding for 40R Planning	City/pro bono
Construction type:	Adaptive reuse (mill)	Other State/Federal Housing Subsidies	expect to use
Developer:	College Street Management		

COMMUNITY BACKGROUND[2] Lawrence is an old industrial city 25 miles north of Boston and bisected by the Merrimack River. It was developed in the 1840s as a planned industrial city and by the early 1900s was a world leader in textiles production in massive mills. It has long been a gateway city for immigrants. About 35% of its economy is still manufacturing-based. It is the state's poorest city and one of the hardest hit by foreclosures. Most households (67%) are renters.

	Lawrence	State
Form of Government	City	
Population (2007)	70,066	
Land Area	6.96 sq mi	
Population density per square mile (2007)	10,067	810
Housing density per square mile (2000)	3,678	334
Average Household Size (2000)	2.90	2.51
Population Growth 2000-2007	- 2.7%	↑ 1.9%
Population Growth 1990-2000	+ 2.6%	↑ 5.5%
Household Growth 1990-2000	+ 0.8%	↑ 8.3%
Housing Growth 1990-2000	- 4.9%	↑ 6.0%
School District Enrollment Growth FY2001-2009	- 2.7%	-2.2%
School District Enrollment Growth FY1991-2001	+ 15.7%	+16.3%
Percentage of Property Taxes Residential	67.3%	72%
Average Single Family Assessed Value 2009	$212,015	$391,818
Average Single Family Tax Bill (FY2009)	$2,269	$4,250
Median Household Income (1999)	$27,983	$50,502
Per Capita Income (1999)	$13,360	$25,952
Poverty Rate (Individual) (2000)	25.5%	9.3%
Adults Over 25 with at 4-Year Degree	10.0%	33.0%
Median home value (2000)	$114,100	185,700
Median Gross Rent (2000)	$607	684
Total Housing Units	25,601	
Single family detached as % of 2000 Units	18.6%	52.4%
Multifamily Housing (5+) as % of 2000 Units	25.5%	19.6%
% of Households That Are Renters (2000)	67.8%	38.3%
Building Permits 2000-April 2009 (total units)	423	166,775
Single family attached and detached units	139	109,574
Multifamily Units (5+)	53[1]	46,241
Subsidized Housing Inventory % (8/2009)	14.8%	9.7%

Zoning Minimum single family lot sizes range from 2,500 to 10,000 square feet. Multifamily housing requires a special permit except in an overlay district[3] created in 2004 to encourage multifamily housing and mixed-use development in other industrial and residential areas.

40B Status Lawrence has long been over 10%.

SGOD District The district covers 9 historic mill buildings at the north end of the city along the Spicket River near the border with Methuen plus adjacent parcels. It is located at the edge of a neighborhood described by the City as very poor but vibrant.[4]

Transit The district is served by a city bus route and a stop will be added to the SGOD. Reactivation of the abandoned rail line at the district's edge is seen as unlikely.

Infrastructure Served by public water and sewer (the latter is being modernized).

40R PLANNING: Discussions about converting the mill buildings started in late 2003. Malden Mills (a polar fleece manufacturer) had replaced most of its manufacturing facilities with modern buildings after they were destroyed by fire in 1995. The company went into bankruptcy (2001-2003) and the original owner began talking with Winn Development about selling some of the now-vacant buildings for housing, hoping to use the proceeds to repurchase his stake. Discussions continued with the successor owner and in 2006, Winn applied for state funds to help finance phase I of a conversion.

In the meantime, the City had been investigating 40R and had identified three possible locations for a district, including Arlington Mills. Though a lower priority, the Arlington Mills district rose to the top due to the active developer interest. The City applied for a state technical assistance grant to help fund the costs of developing the 40R application, ordinance and design standards. In anticipation of the grant, several consultants and a local nonprofit provided assistance that ended up as pro bono work when the City did not receive the grant. In early 2007, Winn lost site control when Malden Mills re-entered bankruptcy and was sold. After discussions with the new owner, the City decided to proceed with the 40R application in 2008.

Milestones

- 2004 City starts working with Winn on redevelopment of Malden Mill buildings
- Oct 2006 Developer announces plans to convert ten buildings to rental housing in three phases and applies for historic and low income housing tax credits
- Jan 2007 MassHousing approves loan to finance Phase I rental development (86 units)
- March 2007 Malden Mills sold in bankruptcy; developer loses site control
- May 2007 DHCD approves preliminary 40R application
- Oct 2007 New owners decide to develop housing themselves (through a subsidiary); present preliminary proposal to City for 500-600 rental units similar to Winn proposal.
- Apr–May 2008 City Council approves 40R zoning (4/1/2008); DHCD gives final approval (5/2/2008)
- Oct 2008 City approves site plan (10/1/2009); Developer (College Street Management) applies for historic tax credits (unsuccessfully)

District /Project Status: As of April 2009, the City was expecting that developer would pull a building permit shortly for Phase I (about 200 units).

Plan Approval Authority: Planning Board

Ordinance/Design Standard features of note: No subdistricts. As of right uses include:

- *Mixed-use development* (for buildings and land in one ownership for residential, retail, restaurant, office, personal services, government non-profit, educational, philanthropic, day care or similar uses)
  - requires separate access for residential and commercial uses
  - forbids any minimum or maximum percentage of residential or commercial/office uses (except for residential percentage restrictions on artist live/work space)
- Rehab of all existing commercial and residential uses
- Multifamily (4+) residential (as adaptive re-use or new construction)
- Town or Row Houses
- Artist Live/Work Units
- Professional and general office uses and buildings, medical offices, recreational uses, parking including garages, R&D, retail up to 20,000 SF (up to 65,000 for supermarkets and furniture stores), etc.

Open Space At least 10% of total lot area must be used for open space. A project can meet up to half of this requirement off-site if a proposed public park is within the SGOD or within 500 feet of it and the developer agrees to pay the cost/square foot of developing the park for the square footage of open space not provided on site, subject to a minimum payment of $50,000.

Approval Process: Prior to filing for project approval, applicant must obtain all necessary approvals and conditions from city Conservation and Historic Commissions, and at least have initiated process to receive

required approvals from the city Public Works Department and State Department of Environmental Protection

Project Details

MALDEN MILLS REDEVELOPMENT The developer plans to develop 512 units in three phases. The project will include 3- and 4-bedroom units.

- Phase I – renovation of four buildings (165 units)
- Phase II – renovation of five buildings (134 units)
- Phase III – renovation of four buildings (213 units)

Affordability/Use of Housing subsidies The developer has re-applied for historic tax credits and expects to use housing subsidy programs as well.

[1] The Census Bureau counts exclude adaptive re-use units. Lawrence permitted at least 460 such units during this period.
[2] City of Lawrence, http://www.ci.lawrence.ma.us/Pages/LawrenceMA_WebDocs/about, downloaded April 21, 2009.
[3] The Reviviendo Gateway Overlay District, adopted in October 2003, covers residential, commercial and industrial districts and permits residential uses, multifamily housing and mixed use development, within the district. At least 10% of the units in projects creating 20 or more units of multifamily housing must be affordable to households with incomes at or below 80% of median. At least one large mill has been redeveloped as housing using the overlay (Washington Mills Building #1 – 155 units).
[4] Community Opportunities Group for the City of Lawrence Community Development Department, "The Arlington Neighborhood Revitalization Strategy," August 2009, page 1. See http://www.ci.lawrence.ma.us/Pages/LawrenceMA_PlanDev/arl.pdf.

15. LOWELL: DOWNTOWN SMART GROWTH OVERLAY DISTRICT

PROJECT: Hamilton Canal Lofts (aka Hamilton Crossing)

Location Type:	Transit	Units Built or Under Construction	0
DHCD Final Approval Date	10/3/08	Future Zoned Units	250
Total District Size:	2.5 acres	40R Bonus Units	250
Substantially Developed land	not applic	Planned Units	101
Developable land	2.5 acres	Affordable Units (min) at full build out	50
Pre-40R Use	Industrial	Zoning Incentive Payment	$200,000
Construction type	Adaptive Reuse	Maximum Bonus Units Payment	$750,000

40R Initiator	City	Funding for 40R Planning	
		Other State/Federal Housing Subsidies	$1,300,000
Developer	Architectural Heritage Foundation (HCL Acquisitions, LLC) and Bank of America Community Development Corporation		

COMMUNITY BACKGROUND: Lowell is the fourth largest city in Massachusetts. It is located at the intersections of Routes 495, 93 and 3. The city has a commuter rail station. Lowell National Park, the first urban national park in the United States[2], pays homage to the city's significant role in the Industrial Revolution and the nineteenth century textile industry boom in New England. It is home to the University of Massachusetts at Lowell as well as other smaller colleges.[3]

	Lowell	State
Form of Government	City	
Population (2007)	103,512	
Land Area	13.8 sq mi	
Population density per square mile (2007)	7,517	810
Housing density per square mile (2000)	2,866	334
Average Household Size (2000)	2.67	2.51
Population Growth 2000-2007	- 1.6%	↑ 1.9%
Population Growth 1990-2000	↑ 1.7%	↑ 5.5%
Household Growth 1990-2000	↑ 2.3%	↑ 8.7%
Housing Growth 1990-2000	- 1.4%	↑ 6.0%
School Enrollment Change (FY2001-2009)[1]	- 17.3%	- 2.9%
School Enrollment Change (FY1991-2001)[2]	+ 18.5%	+ 16.0%
Percentage of Property Taxes Residential	72.5%	72%
Average Single Family Assessed Value 2009	$251,742	$391,818
Average Single Family Tax Bill (FY2009)	$2,940	$4,250
Median Household Income (1999)	$39,192	$50,502
Per Capita Income (1999)	$17,557	$25,952
Poverty Rate (Individual) (2000)	16.8%	9.3%
Adults Over 25 with at 4-Year Degree	18.1%	33.0%
Total Housing Units (2000)	39,468	
Single family detached as % of 2000 Units	30.9%	52.4%
Multifamily Units (5+) as % of 2000 Units	32.3%	19.6%
% of Households That Are Renters (2000)	57.0%	38.3%
Median home value (2000)	$134,200	185,700
Median Gross Rent (2000)	$627	684
Building Permits 2000-April 2009 (units)	1,374	166,775
Single family attached and detached units	1,032	109,574
Multifamily Units (5+)	224	46,241
Subsidized Housing Inventory % (8/2009)	13.3%	9.7%

40B Status Lowell's subsidized housing percentage is 13.3% (5,237 units). The City continues to actively create affordable housing.[4]

SGOD District: The 2.5 acre 40R district covers two historic mill buildings and is located within both the Downtown Lowell Historic District and the Jackson/Appleton/ Middlesex (JAM) urban renewal area. It abuts a 15 acre site within the URA (Hamilton Canal) at the confluence of four canals scheduled to become a mixed-use commercial/residential area with canal walkways.

Under a JAM revitalization plan first adopted in 2000, the City has acquired and cleared sites for redevelopment, built a parking garage and begun planning for new sidewalks and curbs. The SGOD includes multifamily residential use and mixed-use development projects. Artist live/ work space is also included in the development.

Transit Access: The development is within a quarter mile of the Lowell Commuter Rail station.

Milestones

- March 2007 Properties are acquired by the developers
- August 2008 Planning Board approves SGOD
- August 2008 Request to amend Jackson/ Appleton/ Middlesex (JAM) Urban Revitalization and Development Plan to include SGOD
- August 2008 Unanimous approval of SGOD by City Council (8/26/2008)
- October 2008 Lowell Historic Board report filed for Hamilton Canal Lofts
- October 2008 DHCD approves JAM plan amendment
- November 2008 Lowell Historic Board Public Hearing and Decision for Historic Permit/ Certificate of Non-Applicability issued

District/Project Status: The Historic Board granted plan approval with conditions for Phase I (redevelopment of one of the two buildings into 65 rental units) in November 2008.

Plan Approval Authority: Lowell Historic Board

Allowed Uses The district consists of one zone. Allowed uses include:

- multifamily housing
- non-residential uses
- accessory uses (parking, home occupation)
- artist live-work unit projects (if in the Artist Overlay District also)
- mixed-use developments (multifamily residential with non-residential uses – wide range of allowed non-residential uses)

Design Standards: The project is consistent with the City of Lowell 2003 Comprehensive Master Plan and the goals and plans of the Lowell National Historic Park. The project is also consistent with the JAM plan. Development is subject to Design Review Standards for the Downtown Lowell Historic District effective January 2008.

Project Description: The former storehouse and counting house in the Hamilton Millyard were acquired by the Architectural Heritage Foundation for over $4 million with support from the Bank of America Community Development Corporation. The 400,000 square foot complex will include 200 residential units, gallery and community space. The two buildings are within an expanded area of the downtown mixed-use zone. The property is also a state-designated Priority Development Site.

The developer currently plans to redevelop the buildings in two phases. Phase I will involve redeveloping the smaller mill building (165 Jackson Street) into 65 loft-style apartments. In April 2009, the State announced an award of federal low income housing tax credits for that phase (65 rental units, 13 affordable).

In Phase II, the larger mill building (26 Jackson), with 290,000 square feet, will be developed into commercial space in the western half of the building (plans for the eastern half are still to be determined but may involve creating up to 50-100 additional housing units).

Affordability: For all projects containing residential units, not less than 20 percent of housing units are for eligible households earning less than 80% of the Area Median Income.[5]

[1] Enrollment growth for grades K-6 only, as we lack information on upper grade enrollment trends. Kingston belongs to a regional school district that served 3 other towns through FY2004 and now serves 2 other towns.
[2] Envisioning Centralville, City of Lowell, by George Proakis, Chief Planner, City of Lowell.
[3] DHCD Community Profiles and Metropolitan Area Planning Council MetroFuture Population and Employment projections.
[4] DHCD Subsidized Housing Inventory, 2009.
[5] Section 9.6 Downtown Lowell CGOD from City of Lowell Zoning Ordinance.

16. LUNENBURG: TRI-TOWN SMART GROWTH DISTRICT

PROJECT: Tri-Town Landing

Location Type:	Highly suitable	Units built/under construction	0
DHCD Final Approval Date	8/11/2006	Future Zoned Units	204
Total District Size:	8.97 acres	40R Bonus Units	204
Developable land	8.97 acres	Planned Units	204
Substantially developed	n/a	Affordable Units (min)	51
Pre-40R Use:	Drive-in movie theatre	Incentive Payment	350,000 (paid)
Pre-40R zoning :	commercial	Maximum Bonus Units Payment	$612,000
Construction:	New	State/Federal Housing Subsidies	$12.34 M

Initiator: Town	Funding for 40R Planning: used town staff primarily
Developer: was MHOC; now Great Bridge Properties	

COMMUNITY BACKGROUND Lunenburg is a small town bordered by the cities of Fitchburg and Leominster and several small towns. It is 43 miles west of Boston and 29 miles north of Worcester. Most working residents (81% in 2000) work in other communities, such as Fitchburg and Leominster (31%) and Worcester (14%).[1] The town has four areas of concentrated residential development (two on lakes with many former vacation homes).[2] The remainder consists largely of farms and orchards that have slowly developed into "large lot single family housing."[3] It has limited sewer service but has negotiated connections with Fitchburg and Leominster. Some areas lack public water. Commercial and industrial development is permitted along two major roads and the town periphery, due largely to proximity to Leominster and Fitchburg sewer and water systems.

	Lunenburg	State
Form of Government	Town	
Population (2007)	9,948	
Land Area	26.4 sq mi	
Population density per square mile (2007)	377	810
Housing density per square mile (2000)	139	334
Average Household Size (2000)	2.66	2.51
Population Growth 2000-2007	↑ 5.8%	↑ 1.9%
Population Growth 1990-2000	↑ 3.1%	↑ 5.5%
Household Growth 1990-2000	↑ 8.7%	↑ 8.7%
Housing Growth 1990-2000	↑ 5.2%	↑ 6.0%
School Enrollment Change (FY2001-2009)	- 8.1%	- 2.9%
School Enrollment Change (FY1991-2000)	+ 20.1%	+ 16.0%
Percentage of Property Taxes Residential	90.8%	72%
Average Single Family Assessed Value 2009	$298,662	$391,818
Average Single Family Tax Bill (FY2009)	$3,895	$4,250
Median Household Income (1999)	$56,813	$50,502
Per Capita Income (1999)	$26,986	$25,952
Poverty Rate (Individual) (2000)	4.1%	9.3%
Adults Over 25 with at 4-Year Degree	31.5%	33.0%
Total Housing Units (2000)	3,668	
Single family detached as % of 2000 Units	86.3%	52.4%
Multifamily Units (5+) as % of 2000 Units	0.7%	19.6%
% of Households That Are Renters (2000)	12.7%	38.3%
Median home value (2000)	$157,300	185,700
Median Gross Rent (2000)	$618	684
Building Permits 2000-April 2009 (units)	359	166,775
Single family attached and detached units	337	109,574
Multifamily Units (5+)	0	46,241
Subsidized Housing Inventory % (8/2009)	1.8%	9.7%

Zoning Minimum single family lot sizes are 40,000 or 80,000 square feet. Multifamily housing (4 or fewer units per building) requires a special permit. One overlay district allows up to 8 units per acre. Inclusionary zoning applies to developments with 10 or more units.

40B Status It has a subsidized housing percentage of 1.8% and a Housing Production Plan (approved in 2006).

SGOD District 8.97-acre site of a drive-in movie theatre.

Transit The site is 1.5 miles from a Fitchburg commuter rail station and has some local bus service.

Infrastructure The site is not served by public water or sewer, but connections with City of Fitchburg systems have been negotiated. A sidewalk requirement has been dropped.

40R PLANNING PROCESS: Development pressures, including the filing of several Chapter 40B applications,[4]

and anticipation of several parcels likely to become available for development, spurred the Town to proactively explore using 40R. A February 2006 Town Housing Plan identified 3 possible 40R sites: two drive-in movie theatre sites and a soon-to-be vacated school in the town center. When the owner of one of the drive-ins expressed interest in using 40R (and reluctance to sell to a developer who might use 40B), the Town decided to submit a 40R application. The Planning Director did most of the work for the application herself, with minor consultant help. She reports that community control was the key factor in the decision to pursue and adopt 40R zoning and that the 40R payments and 40S were also important (though she noted school impacts will be limited by the fact that only 10% of the units will have three bedrooms).

Milestones:

- June 2006 DHCD approves preliminary application (6/1); Town meeting approval (218-63) (6/27)
- Aug 2006 DHCD issues final approval letter (8/11)
- Oct 2006 Attorney General approves bylaw (in part) and map (10/23)
- Jan 2007 Planning Board approves project plan for 204 units (1/29)
- April 2007 Incentive payment issued ($350,000) (4/17)
- Jan 2008 State announces award of subsidy funds for the first 100 units of project
- Nov 2008 MassHousing announces $2.8 million funding award for Phase I (66 units) (11/19)
- July 2009 Planning Board issues revised plan approval (7/29), eliminates sidewalk requirement

District/Project Status The Planning Board has approved the single project anticipated for the site (204 rental units). To date, construction has not started. The initial developer ran into difficulties and sold the site to another developer who has decided to phase construction. In November 2008, the developer obtained a construction loan commitment for Phase I (66 rental units) but has been unable to sell the low-income housing tax credits needed to complete financing. The developer plans to apply for assistance under new programs to help delay tax credit projects and if successful, would begin construction immediately.

Plan Approval Authority: Planning Board

Bylaw features The bylaw reflects the specific proposal for the site and has no subdistricts. Allowed as of right uses (up to 204 units) consist of:

- multifamily residential uses including garden apartments, with a density of 22.03 units per acre
- parking, including surface, garage-under and structured parking
- open space and recreational uses
- accessory uses customarily incidental to the above uses

The Planning Board can require development in phases to control impacts.

At least 10% of total and affordable units in a project must include 3 bedrooms.

Project Details

Tri-Town Landing The approved project plan is for 204 rental units in 8 buildings. The developer plans to build the project in three phases. Phase I will consist of 66 units (two three-story buildings).

	Phase I		**Total**	
One bedroom	12	18%	41	20%
Two bedroom	48	73%	142	70%
Three bedroom	6	9%	21	10%
Total Units	**66**	**100%**	**204**	**100%**
Affordable Units	**60**	**91%**	**60**	**29%**

Affordability/Subsidy Use In January 2008, the State awarded approximately $9.5 million in subsidy funds for the first 100 units of the development (60 affordable). In November 2008, MassHousing announced that it would provide an additional $2.8 million in financing for Phase I (66 units), including 60 affordable units (52 @60% AMI, 8@50% AMI).

State:	Affordable Housing Trust Fund (bond sales)	$1 million
	State Low Income Housing Tax Credits (SLIHTC)	$1.02 million
	MassHousing	$2.8 million
Federal:	DHCD HOME Funds	$715,000
	Low Income Housing Tax Credits (LIHTC)	$6.8 million
		$12.34 million

[1] Residence MCD/County to Workplace MCD/County Flows for Massachusetts: 2000.
[2] Town of Lunenburg, "Community Affordable Housing Strategy (Planned Production)," February 2006, page 4.
[3] Massachusetts Department of Revenue, Division of Local Services, "Town of Lunenburg Financial Management Review," December 2008, page 1.
[4] At least three applications were filed between 2001 and 2007; of those, one was approved but is not yet built, one was denied and one is still in review.

17. LYNNFIELD: PLANNED VILLAGE DEVELOPMENT DISTRICT

PROJECT: Arborpoint Meadow Walk

Location Type:	Highly suitable	Units built/under construction	0
DHCD Final Approval Date	8/24/2007	Future Zoned Units	180
Total District Size:	80.25 acres	40R Bonus Units	124
Developable land	65.09 acres	Planned Units	180
Substantially developed	4.44 acres	Affordable Units (min)	40
Pre-40R Use:	Golf Course	Incentive Payment	200,000 (paid)
Pre-40R zoning :		Maximum Bonus Units Payment	$432,000

Initiator:	Funding for 40R Planning	
Construction: New construction	State/Federal Housing Subsidies	
Developer: National Development		

COMMUNITY BACKGROUND

Lynnfield is an affluent suburban town 15 miles north of Boston. It is bordered by two cities (Peabody and Lynn) and five towns including two with 40R districts (Reading and North Reading). Most working residents (83% in 2000) commute to other communities, including Boston (18%) and Peabody and Lynn (6% each)[2]. School enrollment has been rising despite limited housing growth.

	Lynnfield	State
Form of Government	Town	
Population (2007)	11,382	
Land Area	10.1 sq mi	
Population density per square mile (2007)	1,122	810
Housing density per square mile (2000)	421	334
Average Household Size (2000)	2.75	2.51
Population Growth 2000-2007	↓ 1.4%	↑ 1.9%
Population Growth 1990-2000	↑ 2.4%	↑ 5.5%
Household Growth 1990-2000	↑ 6.9%	↑ 8.7%
Housing Growth 1990-2000	↑ 6.0%	↑ 6.0%
School Enrollment Change (FY2001-2009)	+ 24.0%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 13.9%	+ 16.0%
Percentage of Property Taxes Residential	91.2%	72%
Average Single Family Assessed Value 2009	$571,401	$391,818
Average Single Family Tax Bill (FY2009)	$6,411	$4,250
Median Household Income (1999)	$80,826	$50,502
Per Capita Income (1999)	$39,560	$25,952
Poverty Rate (Individual) (2000)	2.5%	9.3%
Adults Over 25 with at 4-Year Degree	49.3%	33.0%
Total Housing Units (2000)	4,273	
Single family detached as % of 2000 Units	86.7%	52.4%
Multifamily Units (5+) as % of 2000 Units	7.1%	19.6%
% of Households That Are Renters (2000)	5.6%	38.3%
Median home value (2000)	$328,000	185,700
Median Gross Rent (2000)	$572	684
Building Permits 2000-April 2009 (units)	349	166,775
Single family attached and detached units	130	109,574
Multifamily Units (5+)	211[1]	46,241
Subsidized Housing Inventory % (8/2009)	11.5%	9.7%

Zoning The Town is zoned primarily for single family homes (minimum lot requirements range from 15,000 to 60,000 square feet). Most of the town lacks municipal sewer service except for areas near the town borders that have tie-in arrangements with three neighboring municipalities. Others rely on septic systems. Multifamily housing is not allowed as of right except in two small "Elderly Housing" districts. Most of the town's nonresidential zoning is along U.S. Route 1.[3]

40B Status The Town went over 10% with the addition of the 40R development, but may fall back since the project is now on hold.

SGOD District: The district covers 80 acres of a former 202-acre golf course (Lynnfield Colonial). The 40R ordinance allows the development of 180 housing units in one subzone and 530,000 square feet of office and retail in a separate subzone. A development of this type was recommended at this location in the Lynnfield Master Plan. It also achieves other goals and objectives in the Master Plan relative to economic development

and open space conservation. The remaining 110+ acres includes about 100 acres the developer will donate to the Town for a 9-hole municipal golf course.[4] Another 6 acres will be donated to the Lynnfield Initiative for Elders (LIFE) for 48 units of age restricted housing. Overall, the project will create 38 additional acres of impervious surfaces.

Transit Access As part of the environmental review process, the developer committed to contribute up to $25,000 for start-up of a shuttle service to the Oak Grove Rapid Transit stop in the adjoining town of Wakefield.[5]

Infrastructure: the development will connect to Wakefield's sewer system.

40R PLANNING PROCESS

Milestones:

- Sept 2006 National Development purchases 220-acre site (golf course, hotel)
- April 2007 DHCD approves preliminary application (4/19), Town executes Development Agreement with developer (4/23/2007); Town Meeting approves 40R 1,592-391 (4/30)
- June-Aug 2007 Attorney General approves bylaw (6/20), DHCD issues final district approval (8/24)
- Jan 2008 Developer files application for Plan Approval for Meadow Walk (1/23/2008)
- Feb 2008 Developer files Draft Environmental Impact Report (2/29)
- March 2008 DHCD Issues Zoning Incentive Payment (3/4/08)
- April 2008 Developer files limited scope Final EIR (4/15)
- May 2008 Planning Board issues plan approval for Meadow Walk (5/16) and revised design s (5/14)
- May 2009 Developer announces project on hold

District/Project Status In May 2009, National Development announced that the project is on hold.

Plan Approval Authority: Planning Board

Bylaw features The bylaw reflects the proposal for the site negotiated with the Town. It has separate zoning sub-districts for Commercial and Residential uses:

- 495,000 SF non-residential use limit
- 180 residential units maximum

Allowable Uses

- Multifamily residential
- Two and three-family residential
- Retail and restaurant, with tiered building sizes to ensure mix of uses, and "village concept"
- Office, Conservation, Recreational use

Affordability Requirements At least 20% of units must be affordable (25% for rental projects). The term of affordability must be the longest customarily allowed by law but at least 30 years. Any fractional units will be counted as whole units.

Design Standards: The Design Standards for the District comprise the following details:

- Placement, alignment, width, and grade of streets and sidewalks;
- Scale, proportions, exterior appearance of buildings;
- Location and design of on-site open space;
- Landscaping;
- Exterior Signs
    - District signage
    - Building sign types and dimensions
    - Prohibited sign types
- Lighting

  - Full cut-off (90 degrees)
  - Prohibited lighting types
  - No lighting outside
  - Buffering in relation to adjacent properties, and
  - Protection of significant natural site features
- Raised, landscaped berm
- Tree tagging on plans
- Off-street parking
- Stormwater management
  - LID / BMPs
  - Operations / Maintenance[6]

Strong pedestrian connections within and among sub-districts

- 200' Walnut Street buffer

Project Details

Meadow Walk The project as approved is to consist of three four-story apartment buildings, each with 60 units; 25% of which (45) will be affordable at less than 80% of area median. The design is pedestrian-oriented providing a "Main Street" shopping experience that mimics a town center. Appropriate buffers and screening will reduce impacts to abutting properties.[7] Some of the parking will be below the buildings and pervious pavement is proposed for the surface parking. It will overlook the municipal golf course and will have pedestrian connections to the office and retail potion of the site.

Affordability/Subsidy Use 45 units (25% of the total) will be affordable housing – including 24 one-bedroom, 19 two-bedroom and two 3-bedroom units. Ten percent (10%) of the development will have accessible housing units. The agreement also includes local preference for up to 70% of the affordable units. The buildout is consistent with the approved Housing Production Plan.

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[1] Includes 200-unit Chapter 40B development.
[2] Residence MCD/County to Workplace MCD/County Flows for Massachusetts: 2000.
[3] Town of Lynnfield, "Affordable Housing Plan for Planned Production Regulation under MG.L. Chapter 40B," February 2006, page 7.
[4] Lynnfield Planning Board, May 16, 2008 Decision on Planned Village Development District Site Plan Application, page 2.
[5] Certificate of the [Massachusetts] Secretary of Energy and Environmental Affairs on the Final Environmental Impact Report (EIR) for Meadow Walk at Lynnfield, May 20, 2008.
[6] Presentation by Angus Jennings, AICP, Concord Square Development Corporation, 2008.
[7] http://www.meadowwalklynnfield.com/Pages/FAQ.html.

18. NATICK: SMART GROWTH OVERLAY DISTRICT

PROJECT: Natick Paperboard/ Barberry Homes

Location Type:	Transit	Units Built or Under Construction	0
DHCD Final Approval Date	April 2008	Future Zoned Units	138
Total District Size:	5 acres	40R Bonus Units	138
Substantially Developed land	2.5	Planned Units	138
Developable land	5	Affordable Units (min) at full build out	28
Pre-40R Use	Factory	Incentive Payment	$200,000
Pre-40R Zoning	Industrial	Maximum Bonus Units Payment	$414,000

40R Initiator:	Town	Funding for 40R Planning	?
Construction type:	New Construction (TH and MF)	State/Federal Housing Subsidies	No
Developer:	Barberry Homes		

COMMUNITY BACKGROUND: Natick is a suburban town 18 miles southwest of Boston, bordered by the towns of Framingham, Wayland, Weston, Wellesley, Dover and Sherborn. It is located on the upper basin of the Charles and Concord Rivers with an extensive complex of ponds.[1] It also has extensive commercial land uses (regional shopping malls, industrial and office uses), and has two commuter rail stops that provide service to Boston. Most working residents (77% in 2000) work in other communities, including Boston (17%).[2]

	Natick	State
Form of Government	Town	
Population (2007)	31,975	
Land Area	15.1 sq mi	
Population density per square mile (2007)	2,120	810
Housing density per square mile (2000)	886	334
Average Household Size (2000)	2.42	2.51
Population Growth 2000-2007	↓ 0.6%	↑ 1.9%
Population Growth 1990-2000	↑ 5.4%	↑ 5.5%
Household Growth 1990-2000	↑ 8.9%	↑ 8.7%
Housing Growth 1990-2000	↑ 5.6%	↑ 6.0%
School Enrollment Change (FY2001-2009)	+ 8.1%	- 2.9%
School Enrollment Change (FY1991-2001)	+ 21.0%	+ 16.0%
Percentage of Property Taxes Residential	77.3%	72%
Average Single Family Assessed Value 2009	$471,009	$391,818
Average Single Family Tax Bill (FY2009)	$5,223	$4,250
Median Household Income (1999)	$69,755	$50,502
Per Capita Income (1999)	$36,356	$25,952
Poverty Rate (Individual) (2000)	2.8%	9.3%
Adults Over 25 with at 4-Year Degree	52.5%	33.0%
Total Housing Units (2000)	13,368	
Single family detached as % of 2000 Units	62.6%	52.4%
Multifamily Units (5+) as % of 2000 Units	21.0%	19.6%
% of Households That Are Renters (2000)	33.8%	38.3%
Median home value (2000)	$247,800	185,700
Median Gross Rent (2000)	$873	684
Building Permits 2000-April 2009 (units)	575	166,775
Single family attached and detached units	575	109,574
Multifamily Units (5+)	0	46,241
Subsidized Housing Inventory % (8/2009)	10.14%	9.7%

The Town has engaged in extensive affordable housing and master planning efforts in recent years. It created a Housing Opportunity Overlay Program (HOOP) in 2004 to allow residential development in commercial and industrial areas in the downtown area at densities of 2,500 or 3,500 square feet per unit (at least 15% must be affordable). Several large housing developments have been built or planned over the past five years, including the redevelopment and expansion of the Natick Mall.

40B Status Natick has an approved Housing Production Plan and reached 10% (as well as appeal-proof status for two years) in December 2008.

SGOD District: Covers 5 acres of the 6.375 acre former site of a factory (Natick Paperboard) that recycled newspaper into other products (closed in November 2005). It is within walking distance of downtown Natick and next to a planned rail trail for walking and biking.

Transit: 0.3 miles from a stop for the commuter rail line to Boston.

40R PLANNING PROCESS: Planning began when Barberry Homes acquired an option for the site in March 2006 and approached the Town about its desire to develop 150 units. Barberry proposed a warrant article for the Spring Town Meeting to add the site to the Housing Opportunity Overlay Program (HOOP I) district,

which would allow up to 195 units to be built (15% affordable). That same month, the Community Development Department and Planning Board held a public hearing to discuss the future of the site. One outcome was the establishment of a working group (Barberry, town representatives and neighborhood residents) to discuss design and zoning options. The Town wanted at least 20% of the units to be affordable, suggested 40R as an option and applied (unsuccessfully) for a PDF grant for planning costs. By August 2006, the working group reached agreement and the Planning Board agreed to propose three zoning articles for Town Meeting (two to create 40R zoning and one to create cluster zoning). Barberry also worked with the Town design review committee and the open space committee to create the plan. The Town Planner sees the project as complementing other affordable housing and master planning efforts in the town

Milestones

- Nov 2005 Paperboard factory closes.
- Spring 2006 Barberry Homes acquires option on property and proposes warrant article to rezone site by adding it to the HOOP I district, which would allow 195 units to be built (15% affordable). Town establishes working group to discuss design and zoning options.
- Aug 2006 Planning Board agrees to propose zoning articles for Town Meeting (two to create 40R zoning and one to create cluster zoning). Developer presents proposal to Board of Selectmen - 138 condominiums (20% affordable) on the proposed 40R portion of the site and 12 townhomes (all market) on the front of the site (to be rezoned Administrative and Professional [AP] to allow cluster housing). Suggests that Town will use some of the projected $614,000 in 40R payments to help with offsite drainage issues.
- Dec 2006 DHCD approves preliminary application (12/6); Special Town Meeting approves SGOD (12/19).
- Feb 2007 Attorney General approves 40R bylaw (2/20)
- April 2007 Planning Board rejects Barberry plan to develop 150 units in the 40R district and put open space at front of site as non-compliant with the 40R zoning.
- April 2008 DHCD issues final approval of SGOD (4/14/2008)
- July 2008 Barberry files for 40R plan approval (138 rental units/28 affordable) on July 22. Neighbors express dismay that project will be entirely rental.
- April 2009 Conservation Commission approves Land Disturbance permit for site, despite concerns of abutters that site has not been completely cleared and presents a risk of contaminating their water supplies. Abutter files appeal of decision in Superior Court.
- April 2009 Town Meeting indefinitely postpones vote on citizen petition to repeal SGOD; changes the underlying Industrial zoning to Residential General to ensure industrial uses won't be allowed if the 40R project does not go forward.
- April 2009 Planning Board grants site approval for project under 40R and AP. Abutter files appeal of approvals in Land Court, claiming project violates 40R bylaw and that plan to fill 2.4 million gallons of natural storage area on site will cause flooding on abutter's property.

District/Project Status: The Planning Board granted site approval for the project but a lawsuit by the owner of an adjacent property with 83 apartment units has put the project on hold. The developer is optimistic.

Plan Approval Authority: Planning Board

Bylaw/Design Standard features The bylaw creates a single 40R district for the Paperboard site. Allowed as of right uses consist of:

- Single family, 2-3 unit and multifamily residential uses (up to a density of 27.6 units per acre)
- parking, including surface, garage-under and structured parking
- accessory uses customarily incidental to the above uses

Project Description: 138 apartments in the 40R district and a 12-townhouse complex in the AP district, with a 177-car garage and 58-space parking lot, a pool, clubhouse, and on-site amenities for residents.

Affordability 20% of the 138 units (28) will be affordable. Any fractional units will be counted as whole units. 10% of all units will be accessible. There has been no discussion of using housing subsidy funds.

[1] DHCD Community Profiles, Natick
[2] Residence MCD/County to Workplace MCD/County Flows for Massachusetts: 2000.

19. NORTH ANDOVER: OSGOOD LANDING SMART GROWTH OVERLAY DISTRICT

PROJECT: to be determined

Location Type:	ACD	Units Built/Under Construction	0
DHCD Final Approval:	10/26/2007	Future Zoned Units (Maximum New Units)	530
Size:	169 acres	Planned Units	530
Developable land:	26.53 acres	Incentive Units	530
Substantially developed:	not applicable	40R Bonus Units	530
Pre-40R Use:	vacant	Affordable Units	106
Pre-40R zoning :		Incentive Payment	$600,000
Construction:	New	Maximum Bonus Units Payment	$1,590,000

Project Initiator:	developer/landowner	Planning Funds: developer, PDF	PDF: $40,000
Developer/Owner:	Ozzy Properties	State and Federal Housing Subsidies	none to date

COMMUNITY BACKGROUND North Andover is a growing suburb of almost 28,000 located about 24 miles north of Boston. North Andover is bordered by the towns of Andover, North Reading, Boxford, and Middleton and the cities of Methuen, Haverhill, and Lawrence. It has good schools and a diverse housing stock, reflecting its evolution from an agricultural and industrial community to a residential community. Areas near the town center tend to be denser. About 70% of residents are connected to the town's sewer system (the remaining 30% use private septic) and about 90% are connected to the town water system.[1]

	N. Andover	State
Form of Government	Town	
Population (2007)	27,637	
Land Area	26.7 sq mi	
Population density per square mile (2007)	1,037	810
Housing density per square mile (2000)	373	334
Average Household Size (2000)	2.61	2.51
Population Growth 2000-2007	↑ 1.6%	↑ 1.9%
Population Growth 1990-2000	↑ 19.3%	↑ 5.5%
Household Growth 1990-2000	↑ 23.2%	↑ 8.7%
Housing Growth 1990-2000	↑ 20.2%	↑ 6.0%
School Enrollment Change (FY2001-2009)	+ 7.7%	- 2.9%
School Enrollment Change (FY1991-2000)	+ 23.1%	+ 16.0%
Percentage of Property Taxes Residential	83.5%	72%
Avg. Single Family Assessed Value 2009	$501,396	$391,818
Avg. Single Family Tax Bill (FY2009)	$5,896	$4,250
Median Household Income (1999)	$72,728	$50,502
Per Capita Income (1999)	$34,335	$25,952
Poverty Rate (Individual) (2000)	2.9%	9.3%
Adults Over 25 with at 4-Year Degree	50.3%	33.0%
Total Housing Units (2000)	9,943	
Single family detached as % of 2000 Units	56.4%	52.4%
Multifamily Units (5+) as % of 2000 Units	22.3%	19.6%
% of Households That Are Renters (2000)	27.5%	38.3%
Median home value (2000)	$316,500	185,700
Median Gross Rent (2000)	$879	684
Building Permits 2000-April 2009 (units)	868	166,775
Single family attached and detached units	480	109,574
Multifamily Units (5+)	300	46,241
Subsidized Housing Inventory % (8/2009)	7.14%	9.7%

Zoning Most of the town (90%) is zoned for residential uses.[2] Minimum lot sizes for single family homes range from 12,500 square feet to 2 acres; about half the residentially zoned land requires more than a half acre. Two-family and multifamily dwellings are allowed in a few districts, primarily by special permit.[3] About 4% of its residentially zoned land allowed multifamily housing (mostly up to 5 units) as of right in 1999.

40B Status North Andover's subsidized housing percentage is 7.1% - 283 units short of 10%.

SGOD District: The Osgood SGOD covers a 169-acre single-owner parcel (1600 Osgood Street) formerly owned by Lucent Technology and used for office and manufacturing, employing 13,000 at its peak. It also includes 40 acres of undeveloped land. It will allow housing in a zone of about 32 acres.

Transit The district is bounded to the north by the Haverhill MBTA commuter rail line. It is also 1 mile from a major highway (495).

Infrastructure New development will connect to town water and sewer.

40R PLANNING PROCESS: Lucent began closing down in the late 1990s and sold its site to Ozzy Properties in September 2003. Ozzy announced plans to find new industrial and commercial tenants for the almost 1.5 million square feet of space Lucent vacated (some smaller tenants remain). As part of its efforts to market the space (demand was proving weak), Ozzy worked with the Town and legislators in 2004 to obtain a state grant to study feasibility of adding a commuter rail stop to the site.

In September 2004, Ozzy proposed creating a mixed-use district on the site – including using Chapter 40B to develop up to 650 housing units on the vacant part – in part to strengthen the case for a rail stop. It noted that a 650-unit project would bring the town above 10% under 40B. In 2005, the Town indicated openness to housing development for the site and began discussions with Ozzy about using 40R. Selectman agreed to set October, then December for a town meeting vote on 40R but didn't proceed due to delays in obtaining traffic studies. Ozzy then decided to proceed with a 40B application for 300 units for part of the site.

Milestones

- 2005 — Town begins discussion with owner regarding redevelopment under 40R.
- July 2006 — Ozzy Properties applies to MassHousing for site approval letter for 300-unit condominium (75 affordable) for part of site (15.5 acres) using Housing Starts program.
- 2007 — Ozzy hires planning firm to provide "technical and strategic consulting" for 40R
- March 2007 — ZBA opens hearing on 40B application (3/29).
- April 2007 — DHCD approves town's preliminary application (4/10).
- May 2007 — Owner announces partnership with AvalonBay to develop 530 units, expected to include 300 rental units (75 affordable) and 230 condominiums (46 affordable).
- June 2007 — Town Meeting approves 40R (with only 4 votes against) on 6/4/2007.
- October 2007 — State Attorney General approves 40R bylaw except for sections requiring corrections, DHCD issues Final Approval of 40R district (10/26).
- Dec 2008 — AvalonBay pulls out of project, stating it was unable to reach agreement with owner on details of development proposal.

District/Project Status: No developer at present

Plan Approval Authority: Planning Board

Bylaw/Design Standard features of note: The district consists of three sub-districts and allows some flexibility regarding the boundaries (uses allowed in one subdistrict may be extended up to 150 feet into another subdistrict, subject to plan approval).

- Allows residential density (calculated sub-district-wide) of 20 units per acre.
- In addition to as of right uses, it also allows additional uses by special permit. .
- Design standards express preference for putting non-residential uses in mixed-use buildings (e.g. combined with residential) rather than stand-alone buildings.

Allowed As of right Uses

Subdistrict	Acres	SF	2-3 U	MF	Assisted Living/ CCRC/ Elderly	Mixed-use (residential/ non) Bldgs	Commercial/ retail
Residential Mixed-use	31.65	-	Yes	Yes	Yes	Yes	up to 75,000 SF
Mixed-use	10.15	-	SP	SP	SP	SP	Yes –see below
Business Opportunity	125.94	-	-	-	-	-	Yes + manufacturing

- Residential Mixed-use– allows residential uses (except single family) plus non-residential uses not to exceed 75,000 square feet total in the subdistrict. Allowable uses include small retail, eating/drinking up to 2,000 SF per user, banking and service establishments up to 3,000 SF per user, schools and recreation areas. Larger retail/commercial uses allowed by special permit, along with commuter rail stop

- Mixed-use Zone – as of right, allows range of non-residential uses including outdoor recreation areas, art galleries; offices; day care; eating and drinking establishments up to 2,000 SF per user, funeral parlors; guest houses; medical center and/or offices; motel/hotel; personal services establishments; places of worship; public building or use; retail, banking, and service establishments not to exceed 20,000 square feet in gross floor area per user; accessory parking including surface, garage-under, and parking garages.

  By special permit, allows residential uses, larger business and other non-residential uses, including retail and service establishments up to 65,000 SF per user; eating and drinking establishments up to 15,000 SF per user; incubator or business parks; arenas, theatres, and athletic or recreational facilities; indoor ice skating; schools; R&D facilities; retail plaza of up to 150,000 SF, nursing and convalescent homes; and accessory uses customarily incidental as determined by the Inspector of Buildings.

- Business Opportunity Zone – no residential uses allowed. Allowed non-residential uses as of right and by special permit similar to those allowed in the Mixed-use zone except allows larger square footage as of right for retail, office and service uses. Also allows manufacturing as of right and commuter rail service by special permit.

Affordability Requires 20% affordability for each project (25% if rental unless 20% at 50% AMI). Fractional units at or above 0.5 must be rounded up. The Planning Board has discretion to require affordability in perpetuity as part of site plan approval.

[1] Town of North Andover, Affordable Housing Plan, October 2006, pages 24-25.
[2] Ibid, page 25.
[3] Town of North Andover, Affordable Housing Plan, October 2006, pages 37-38.

20. NORTH READING: BERRY CENTER RESIDENTIAL SMART GROWTH OVERLAY DISTRICT

PROJECT: Edgewood Apartments

Location Type:	Highly Suitable Location	Units Built	406
DHCD Final Approval:	7/13/2006	Future Zoned Units	434
Total Land Area:	46 acres	Planned Units	406
Developable land:	21.7 acres	40R Bonus Units	434
Substantially developed:	not applicable	Affordable Units	102
Pre-40R Use:	part of State Rehab Center	Incentive Payment	$350,000
Pre-40R zoning :	Office	Maximum Bonus Units Payment	$1,302,000
Construction:	New	Town share of Land Sale to Developer	3,400,000[1]

Project Initiator:	developer	PDF planning grants	$30,000
Planning Funds:	developer, 40R, PDF	State and Federal Housing Subsidies	none
Developer:	Gutierrez/Lincoln North		

COMMUNITY BACKGROUND North Reading is a suburb 15 miles north of Boston and bordered by six towns (Wilmington, Andover, North Andover, Middleton, Lynnfield and Reading), three of which also have 40R districts. It lacks a public sewer system, relying on septic systems instead.

Zoning Single family minimum lot sizes range from 20,000 to 120,000 square feet. Two family units are not allowed. Multifamily housing is allowed by special permit only.

40B Status Development of the 40R district raised the Town's 40B percentage from 2.8% (early 2008) to 11.1%. The Town does not have a Housing Production Plan. It approved 4 small 40B developments in 2004-2005.

District: Covers 46 acres of the 87-acre former campus of a state facility for the developmentally disabled (Berry Center) at the town's border with Wilmington.

Transit About a mile from MBTA commuter rail stop in Wilmington (North Reading has no public transportation). Highway access is primarily through the adjacent town of Wilmington.

	No. Reading	State
Form of Government	Town	
Population (2007)	14,201	
Land Area	13.25 sq mi	
Population density per square mile (2007)	1,072	810
Housing density per square mile (2000)	368	334
Average Household Size (2000)	2.86	2.51
Population Growth 2000-2007	↑ 1.3%	↑ 1.9%
Population Growth 1990-2000	↑ 15.3%	↑ 5.5%
Household Growth 1990-2000	↑ 18.0%	↑ 8.3%
Housing Growth 1990-2000	↑ 16.6%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↑10.2%	-2.9%
School District Enrollment Growth FY1991-2001	↑39.7%	+16.0%
Percentage of Property Taxes Residential	87.5%	72%
Avg. Single Family Assessed Value 2009	$490,247	$391,818
Avg. Single Family Tax Bill (FY2009)	$5,906	$4,250
Median Household Income (1999)	$76,962	$50,502
Per Capita Income (1999)	$30,902	$25,952
Poverty Rate (Individual) (2000)	1.5%	9.3%
Adults Over 25 with at 4-Year Degree	41.0%	33.0%
Total Housing Units (2000)	4,870	
Single family detached as % of 2000 Units	82.7%	52.4%
Multifamily Units (5+) as % of 2000 Units	9.9%	19.6%
% of Households That Are Renters (2000)	9.5%	38.3%
Median home value (2000)	$247,800	185,700
Median Gross Rent (2000)	$783	684
Building Permits 2000-April 2009 (units)	713	166,775
Single family attached and detached units	307	109,574
Multifamily Units (5+)	406[2]	46,241
Subsidized Housing Inventory % (8/2009)	11.1%	9.7%

Infrastructure Developer built wastewater treatment facility

40R PLANNING: The State created a re-use committee for the Berry Center with town and citizen representatives following 1998 state legislation. The re-use committee decided to pursue redevelopment of the site as an office and/or industrial park. In 2002, it selected The Gutierrez Companies to redevelop all 87 acres as office buildings. In the fall of 2004, the developer asked Town permission to reduce the office component due to a soft market and build housing on 46 acres. The Town gave permission (November 2004) and established a 40B committee, with representatives from various town boards and commissions, to work with the developer. Because the site was at the edge of town, next to Wilmington, accessed through Wilmington, and far from residential abutters, the proposal to use 40B was non-controversial for North Reading. Town officials were also supportive because the project would get the Town to 10% in one fell

swoop and avoid the controversy that came with multiple small projects.

After the Town planner became aware of Chapter 40R in December 2005, the developer agreed to work with the Town to create a 40R district for the project instead. The Town 40B committee for the project became a 40R committee and worked with the developer to create the 40R bylaw.

Milestones

- Fall 2004 Developer seeks permission to build 420 units of housing, rather than offices, on part of site.
- Aug 2005 Developer applies to Mass Development for 40B site approval letter for 406 units.
- Dec 2005 Town planner researches and reports on 40R to Board of Selectmen, notes the financial benefits and reports that developer is willing to withdraw its 40B application if Town approves 40R district. Selectmen agree to pursue. 40B committee becomes 40R committee.
- May 2006 DHCD approves preliminary application (5/9); Town Meeting approves bylaw (5/18)
- July 2006 DHCD issues Final Approval (7/13/2006), developer files for plan approval (7/11)
- Aug 2006 Site Plan approved (decision 8/22/2006)
- Sept 2006 State enacts law giving North Reading and Wilmington almost a 20% share of campus land sale proceeds (North Reading projected to receive about $3.4 million at full build out including office component).
- May 2007 Building permits issued
- ~April 2008 Occupancy begins

District Status: The district is now built out with the completion of Edgewood Apartments (406 units). While the 40R bylaw allowed 434 units, the Town and developer concluded it would have been difficult to get the necessary environmental approvals for one of the buildings and decided to drop it.

Plan Approval Authority: Zoning Board of Appeals

Bylaw/Design Standard features of note: The district has three subdistricts:

- A 30.3-acre Multifamily Residential Subdistrict
- An 0.4-acre Main Drive Subdistrict (aka Main Shared Drive Lane)
- A 7.9-acre Disposal Field Subdistrict (for treated wastewater effluent from the private sewage treatment facility serving the residential project and surface parking).

Allowed uses in the Multifamily Residential Use include:

- multifamily housing
- related amenities and accessory uses, structures and buildings (e.g. clubhouses, private recreational facilities such as swimming pools, tennis courts, lawns, open areas, walking paths and other active and passive recreational areas), private sewage treatment facilities and parking (surface or garages).

Affordability requirements: at least 20% of the units in a project must be affordable (at least 25% if a rental project) to households with incomes below 80% of area median. The affordability term is 30 years.

Project Details

Project Name	Tenure	Total Units	Affordable Units	Housing Subsidy ($)
Edgewood Apartments	Rental	406	102 (60 1br, 42 2br)	none

The 2009 affordable contract rents (exclude some utilities) are $1,125 (one-bedroom) and $1,223 (two-bedroom unit).

[1] Special legislation signed into law 9/6/2006 requires the State to turn over 20% of the net cash proceeds from the sale of the property to North Reading (estimated at $3.4 million) and Wilmington (estimated at about $200,000).
[2] Entirely due to 40R development.

21. NORTHAMPTON: SUSTAINABLE GROWTH OVERLAY DISTRICT

PROJECTS: Village at Hospital Hill II; Morningside; Eastview

Location Type:	HSL	Units Built or in construction	42
DHCD Final District Approval:	1/4/2008	Future Zoned Units	156
Total District Size:	16.56 acres	40R Bonus Units	156
developable land:	8.81 acres	Planned Units	TBD
substantially developed:	3.25 acres	Min. Affordable Units	32
Pre-40R Use:	part of state hospital campus	Incentive Payment	$200,000
Pre-40R zoning :	Planned Village District	Maximum Bonus Units Payment	$468,000

40R Initiator:	City	Planning grants	$0
40R Planning funds source:	City, developer	State and Federal Housing Subsidies	Yes
Construction type:	New Construction		
Developer: The Community Builders/Mass Development			

COMMUNITY BACKGROUND

Northampton is a small city and sub-regional commercial and social services center located 93 miles west of Boston and 20 miles north of Springfield. Home to Smith College and close to four other colleges, it has a diverse economic base and many cultural attractions. Half (52%) of its working residents work in the city, and many others work in nearby Amherst, Easthampton and Hatfield or in Springfield or Holyoke. It has a diverse housing stock and almost half its households are renters.

	Northampton	State
Form of Government	City	
Population (2007)	28,411	
Land Area	34.6 sq mi	
Population density per square mile (2007)	824	810
Housing density per square mile (2000)	360	334
Average Household Size (2000)	2.14	2.51
Population Growth 2000-2007	↓ 2.0%	↑ 1.9%
Population Growth 1990-2000	↓ 2.9%	↑ 5.5%
Household Growth 1990-2000	↑ 6.4%	↑ 8.3%
Housing Growth 1990-2000	↑ 5.6%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↓ 4.2%	-2.9%
School District Enrollment Growth FY1991-2000	↓ 8.2%	+16.0%
Percentage of Property Taxes Residential	80.3%	72%
Avg. Single Family Assessed Value 2009	$306,109	$391,818
Avg. Single Family Tax Bill (FY2009)	$3,514	$4,250
Median Household Income (1999)	$41,808	$50,502
Per Capita Income (1999)	$24,022	$25,952
Poverty Rate (Individual) (2000)	9.8%	9.3%
Adults Over 25 with at 4-Year Degree	46.1%	33.0%
Total Housing Units (2000)	12,405	
Single family detached as % of 2000 Units	46.2%	52.4%
Multifamily Units (5+) as % of 2000 Units	24.7%	19.6%
% of Households That Are Renters (2000)	46.5%	38.3%
Median home value (2000)	$144,600	185,700
Median Gross Rent (2000)	$647	684
Building Permits 2000-April 2009 (units)	373	166,775
Single family attached and detached units	230	109,574
Multifamily Units (5+)	78	46,241
Subsidized Housing Inventory % (8/2009)	11.8%	9.7%

40B Status Its subsidized housing percentage is 11.8%.

SGOD District: Covers 16.5 acres of the former Northampton State Hospital campus (526 acres), located about a mile from downtown. It has been designated for housing development (207 units) since 1999 when a Master Plan for re-use of the hospital was approved. The City created a special zoning district for the site (Planned Village District) with flexible requirements, subject to special permit, to encourage adaptive reuse, a range of residential and mixed-uses and walkability. The 40R zoning allows more clustering of development.

Transit Access: Nearest bus stop is one mile away.

40R PLANNING PROCESS: The state hospital, home to over 5,000 people in the 1950s, closed down between 1977 and 1993. Formal reuse planning began in 1994 when state law established a Citizens Advisory Committee. The Committee set aside about 400 acres for open space or agricultural uses and issued an RFP for development of the remaining 126 acres in 1997. In 1998, it provisionally designated The Community Builders (TCB) - a national nonprofit - as redeveloper and in 1999 approved its parcel-by-parcel Master Plan for the 126 acres, including creating 207 housing units (half affordable) and 250,000 square feet of commercial and industrial space through new construction and renovation. TCB formed a joint entity (Hospital Hill Development) with MassDevelopment and took ownership of the land in 2002. Hospital Hill began work on environmental approvals, infrastructure development and site remediation and built 59 housing units.

The City began exploring creating a 40R district at the site in 2006, both because of the financial benefits and because they were interested in denser development than originally envisioned. The developer was very supportive of the concept. While they initially wanted to propose mixed-use development, the developer concluded that including non-residential uses while simultaneously meeting 40R density minimums would have required greater density than the local market would accept. The City did most of the work necessary to prepare the 40R application in-house and Community Builders funded the legal costs.

Milestones

- 1993-1994 — Northampton State Hospital closes (1993), Reuse planning committee established
- 1999 — Master Plan for 126 acre portion of campus approved: 207 housing units (50% affordable), 60-80 assisted living units and a mix of commercial, retail and industrial uses to ideally attract 750 jobs.
- 2001 — City rezones site as new Planned Village District (12/20/2001), allowing flexible zoning by special permit. No minimum lot sizes. At least 40% open space required.
- 2002 — State conveys site to developer (12/2002) and grants special permit for Phase I residential development (109 units), covering sites later converted to 40R.
- 2003-2006 — TCB receives special permit (2/2003) for Ice Pond Drive (26 single family homes) using cluster development zoning. Project completed in 2004. Hilltop Apartments (33 rental units in two rehabilitated buildings authorized under the 2002 permit) opens in 2006.
- April 2007 — City submits 40R application to DHCD (4/3/2007)
- Aug-Sept 2007 — DHCD approves 40R application (8/21); City Council approves 40R district (9/20)
- Nov 2007 — Village at Hospital Hill II (Community Builders) files for site plan approval 11/9/2007
- Jan 2008 — DHCD issues Final Approval letter (1/4); City issues plan approval for 40-unit rental project (1/14) and 23 ownership units (filed 1/9/2008, approved 1/25/2008)
- June 2008 — Town receives $200,000 40R zoning incentive payment
- March 2009 — Citizens Reuse Advisory Committee approves illustrative concept Master Plan raising number of residential units that can be built from 207 to 287-327.

District/Project Status: Three projects have received plan approval: a 40-unit rental development (completed in Spring 2009) and two ownership projects totaling 23 units (two single family homes have been built). A covenant with the developer allows 4 years from April 2008 for completion.

Plan Approval Authority: Planning Board

Ordinance features of note The district is divided into two subzones – a single family district and one allowing townhomes, multifamily housing, office and mixed-use development. Plans have been approved for 11 single family homes, 12 townhomes and 40 rental units under 40R. Subzone B also contains 59 units built pre-40R between 2003 and 2006 (33 rental units and 26 ownership units).

Allowed Uses

Subzone	Developable Acres	Maximum Allowable Units	Single Family	Town homes	Live/ work	Multifamily	Mixed-use
A - Single Family	1.96	16 (8/acre)	Yes	-	-	-	-
B - Multifamily	8.83	140 (21/acre)	-	Yes	Yes	Yes	Yes*

* Allows up to 60,000 square feet of office space, provided at least 7,000 SF are below residential uses

Affordability requirements At least 20% of units in a project must be affordable (all fractional units round up). The term of the restriction must be at least 30 years but can be the longest period customarily allowed by law at the discretion of the PAA.

Project Details

Project Name	Tenure/Structure	Total Units	Affordable Units	Total Bedrooms	Affordable Bedrooms	Housing Subsidy ($)
Village at Hospital Hill II	MF Rental	40	32	1 BR: 19 2 BR: 19 3 BR: 2	19 13 -	HOME, AHT, FCF
Morningside at Village Hill	HO-single family	11	0	2+3	-	
Eastview at Village Hill	HO-townhomes	12	0	2+3	-	
Total		**63**	**32**		**-**	

Affordability The 32 affordable rental units include 4 for households at or below 30% of area median income (AMI), four for those at or below 50% AMI and 24 for households at or below 60% AMI.
DHCD has found that the current bedroom mix for Village at Hospital Hill II does not meet Northampton's 40R ordinance requirement that the total number of bedrooms in the affordable units be "insofar as practicable" proportionate to the total number of bedrooms in all units in the development, since the average number of bedrooms in the affordable units average 1.4 bedrooms, while the market rate units average 2.25 bedrooms.

22. NORWOOD: ST. GEORGE AVENUE SMART GROWTH OVERLAY DISTRICT

PROJECT: Courtyard at St. George condominium

Location Type: ACD	Total Units Built	15
DHCD Final Approval 6/28/2006	Future Zoned Units	15
Size: 0.78 acres – developable land 0.75a	Planned Units	15
Pre-40R Use: Church/rectory/convent	40R Incentive/Bonus Units	11
Pre-40R zoning : residential	Affordable Units	3
Construction: Adaptive Reuse	Incentive Payment	$10,000
Project Initiator: developer	Maximum Bonus Units Payment	$33,000

Developer: John Iredale (D+J Realty)	State and Federal Housing Subsidies	$0
40R Planning funds source: developer	Planning grants	$0

COMMUNITY BACKGROUND: Norwood is an older town of about 28,000 located 14 miles south of Boston, surrounded by the towns of Sharon, Walpole, Canton and Westwood. It is a sub-regional employment center with significant retail and commercial development and a diverse housing stock. Over 40% of its residents are renters. It created the first 40R district in the state. It has three commuter rail stops to Boston (travel time ranges from 25-30 minutes) as well as bus service to the end of a Boston subway line. One quarter of its working residents worked in Norwood (24%) in 2000 and another 20% in Boston. It has public water and sewer systems.

Zoning Single family and two-family homes are permitted in most residential districts with minimum lot requirements ranging from 5,000 to 22,500 square feet. Multifamily housing is permitted as of right in one residential district and by special permit in another. The Town also has a Downtown Apartment Overlay District that allows multifamily housing as of right.[1]

40B Status With a subsidized housing percentage of 6.0%, the town is 472 units short of 10% but has received very few 40B applications. It does not have a housing production plan.

SGOD District This 0.75 acre district is the smallest in the state and was created to shape the redevelopment of a single site containing a church, rectory and convent that closed in 2004.

	Norwood	**State**
Form of Government	Town	
Population (2007)	28,172	
Land Area	10.5 sq mi	
Population density per square mile (2007)	2,688	810
Housing density per square mile (2000)	1,140	334
Average Household Size (2000)	2.41	2.51
Population Growth 2000-2007	↓ 1.5%	↑ 1.9%
Population Growth 1990-2000	↓ 0.4%	↑ 5.5%
Household Growth 1990-2000	↑ 5.5%	↑ 8.3%
Housing Growth 1990-2000	↑ 3.1%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↓ 5.7%	-2.9%
School District Enrollment Growth FY1991-2001	↑ 8.1%	+16.0%
Percentage of Property Taxes Residential	55.6%	72%
Avg. Single Family Assessed Value 2009	$386,310	$391,818
Avg. Single Family Tax Bill (FY2009)	$3,268	$4,250
Median Household Income (1999)	$58,421	$50,502
Per Capita Income (1999)	$27,720	$25,952
Poverty Rate (Individual) (2000)	4.4%	9.3%
Adults Over 25 with at 4-Year Degree	39.2%	33.0%
Total Housing Units (2000)	11,945	
Single family detached as % of 2000 Units	51.4%	52.4%
Multifamily Units (5+) as % of 2000 Units	24.2%	19.6%
% of Households That Are Renters (2000)	42.8%	38.3%
Median home value (2000)	$219,800	185,700
Median Gross Rent (2000)	$895	684
Building Permits 2000-April 2009 (units)	468	166,775
Single family attached and detached units	177	109,574
Multifamily Units (5+)	239	46,241
Subsidized Housing Inventory % (8/2009)	6.0%	9.7%

40R PLANNING PROCESS: The town first considered using 40R after the Archdiocese of Boston sold the property to a private developer (D&J Realty) in late 2005 for $1 million and the developer approached the Town to discuss redevelopment options. The underlying zoning would have allowed the development of two duplexes if the existing buildings were torn down. At the Town's suggestion, the developer agreed to use 40R to create a development plan. The town planner worked with the developer to identify a consultant and attorney to assist them (funded by the developer).

Milestones

- April 2006 DHCD approves town's preliminary 40R application (4/4)
- May 2006 Town Meeting approves 40R bylaw (5/8)
- Jun 2006 DHCD issues final 40R district approval (6/28); developer applies for plan approval (6/29)
- Aug 2006 Planning Board issues plan approval (8/4)
- Nov 2006 Project construction begins
- 2008 Construction complete. First sale July 2008.

District/Project Status: Construction completed in Spring 2008.

Plan Approval Authority: Planning Board

Bylaw/Design Standard features of note: Bylaw only requires 30 yr affordability but project permit required that affordable units remain affordable in perpetuity.

Project Name	Tenure	Total Units	Affordable Units	Affordability	Subsidy
Courtyard at St. George	Condo	15	3 (two 1-BR, one 3BR)	3 @ less than 80% AMI in perpetuity	none

[1] Town of Norwood Community Development Plan, "Putting It All Together," May 2004, pages 99, 103 and 104.

23. PITTSFIELD: SMART GROWTH OVERLAY DISTRICT

PROJECTS: New Amsterdam Apartments, Silk Mill, others

Location Type:	Area of concentrated dev.	Units Built or Under Construction	67
DHCD Final Approval Date	10/3/2008	Future Zoned Units	296
District Size:	10.72 acres	Incentive Units	217
Developed land	--	Affordable Units (min) at full build out	59
Developable Land	10.72 acres	Incentive Payment earned	$350,000
Pre-40R Use	varied (see below)	Maximum Bonus Units Payment	$651,000
Pre-40R zoning	varied (see below)		

Initiator:	City	Funding for 40R Planning -PDF Grant	$50,000
Construction type:	New/Rehab/Conversion	Other State/Federal Housing Subsidies	Yes
Developer:	various		

COMMUNITY BACKGROUND: Pittsfield is the commercial center of Berkshire County and its largest city. Its population has fallen by 17% since 1980 after a GE manufacturing plant that once employed 15,000 began closing in 1976. The City has taken a number of steps in the past five years to revitalize its downtown and adjacent neighborhoods and build its "creative economy" (arts, culture and entertainment). It approved a new Master Plan in early 2009 and adopted a Tax Increment Financing (TIF) district that offers a phase-in of new property tax assessments to developers who renovate abandoned mills and churches or redevelop existing properties as mixed-income housing (at least 25% affordable) in its urban center.

	Pittsfield	State
Form of Government	City	
Population (2007)	42,931	
Land Area	40.7 mi^2	
Population density per square mile (2007)	1,054	810
Housing density per square mile (2000)	525	334
Average Household Size (2000)	2.26	2.51
Population Growth 2000-2007	↓ 6.2%	↑ 1.9%
Population Growth 1990-2000	↓ 5.8%	↑ 5.5%
Household Growth 1990-2000	↑ 1.1%	↑ 8.3%
Housing Growth 1990-2000	↑ 0.4%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↓ 9.7%	-2.9%
School District Enrollment Growth FY1991-2001	↑ 0.2%	+16.0%
Percentage of Property Taxes Residential	65.2%	72%
Avg. Single Family Assessed Value 2009	$188,678	$391,818
Avg. Single Family Tax Bill (FY2009)	$2,579	$4,250
Median Household Income (1999)	$35,655	$50,502
Per Capita Income (1999)	$20,549	$25,952
Poverty Rate (Individual) (2000)	11.4%	9.3%
Adults Over 25 with at 4-Year Degree	20.5%	33.0%
Total Housing Units (2000)	21,366	
Single family detached as % of 2000 Units	53.0%	52.4%
Multifamily Units (5+) as % of 2000 Units	13.5%	19.6%
% of Households That Are Renters (2000)	39.2%	38.3%
Median home value (2000)	$100,800	185,700
Median Gross Rent (2000)	$503	684
Building Permits 2000-April 2009 (units)	530	166,775
Single family attached and detached units	469	109,574
Multifamily Units (5+)	57	46,241
Subsidized Housing Inventory % (8/2009)	9.7%	9.7%

Zoning One third (32%) of the city is zoned for low density single family homes (one acre minimum lot) and another 44% is zoned for higher density single family homes (6,000 or 12,000 square feet). Only 3% is zoned for multifamily (3+ units) housing and site plan review or a special permit is required.[1] A Downtown Arts Overlay District (adopted in 2005) also allows multifamily housing. The city also offers density bonuses to developers who include affordable units in their developments.[2]

40B Status Pittsfield's 40B percentage is just under 10%. It does not have a Housing Production Plan.

SGOD District: The district covers nine parcels scattered around Pittsfield including some downtown, three churches, a business park, a former mill, and some large apartment buildings.

Transit Access: varies

40R PLANNING PROCESS Pittsfield's Planning Director was interested in Chapter 40R as soon as it was announced. The City was already working on creating a Downtown Arts Overlay District that it knew would probably meet 40R standards and adopted it in 2005, rather than wait for 40R regulations to be developed. It then applied for a PDF planning grant to create a larger 40R overlay district, covering nine areas including the Downtown Arts Overlay District.

Milestones

2006	City applies for planning grant.
Early 2007	Regional Planning Commission begins planning studies for 40R district (Jan/Feb)
June 2007	City approves special permit for New Amsterdam Apartments (43 units) under existing zoning that allowed density bonus for affordable housing.[3]
Oct 2007-Jan 2008	New Amsterdam developer applies for housing funds for 67 units (including renovation of two buildings on nearby sites); DHCD awards $2.275 million (Jan 2008).
June 2008	DHCD issues preliminary approval for 40R district (6/20/2008).
Sept 2008	City Council approves 40R zoning (9/9/2008).
Oct 3, 2008	DHCD issues final approval.
Oct 7, 2008	City issues 40R project approval for New Amsterdam Apartments (67 units).
March 2009	New Amsterdam Apartments open.
May 2009	City grants plan approval for Silk Mill project (5/13).

District/Project Status: The new construction phase (43 of 67 units) of the first 40R development (New Amsterdam Apartments) was completed in March 2009 with renovation scheduled for the other 24 units. A second project (The Silk Mill – 45 units) received plan approval in May 2009 and the developer hopes to start work in 2010 (timing is contingent on a recent application for historic rehabilitation tax credits).

Plan Approval Authority (PAA): Community Development Board (equivalent to Planning Board)

District/Ordinance Features The SGOD consists of 9 subzones. All allow mixed-use, but at least 75% of the gross floor area in mixed-use developments must be residential. Office, retail and consumer services, and eating establishments (sit-down only) are allowed as of right.

Subzone	Allowed SGOD Uses	Multifamily	Townhouses	Mixed-use	Density (du/acre)
A	Wood Brothers	Yes *	-	Yes	50
B	New Amsterdam	Yes	Yes	"	23
C	Clocktower Business Park	Yes	-	"	24
D	Paul Rich & Sons	Yes*	-	"	24
E	Notre Dame Church site	Yes	-	"	31
F	Saint Mary's Church	Yes	Yes	"	20
G	Mount Carmel church	Yes	Yes	"	30
H	Silk Mill	Yes	Yes	"	30
I	White Terrace/Madison	Yes	-	"	49

*second floor and above only; must include non-residential uses on first floor

Affordability: The ordinance has relatively detailed plan approval requirements, especially for affordable housing elements (application must include narrative, marketing plan and draft affordable housing restriction, among other things). It also allows the PAA to impose a longer term than 30 years on the affordability restriction (up to the "longest period customarily allowed by law").

Projects:

New Amsterdam Apartments consists of 67 rental units, all affordable, on three sites in two subdistricts (New Amsterdam and Wood Brothers). It includes 43 units of new construction (5 buildings) and rehabilitation of 24 units (2 buildings) at two other sites.

- *Bedroom Mix*: 16 one-bedroom units and 51 two-bedroom units.
- *Affordability/ Housing Subsidies* The project is 100% affordable (60 units at up to 60% of area median income and 7 at up to 30% of area median income). It was financed with $1.275 million in state HOME and capital funds, $1 million in federal low income housing tax credits and a Massachusetts Housing Partnership mortgage.

Silk Mill received plan approval in May 2009. It involves the conversion of a vacant mill property into 45 units of rental housing. The developer (Berkshire Silkville, LLC) originally planned to create 72 artist live-work units on the site but revised its plan in response to the downturn in the housing market. Some non-historic buildings will be razed to create open space and housing will be created in the historic buildings. The developer is applying for historic tax credits and thus does not expect to begin construction until 2010.

- *Bedroom Mix*: 18 one-bedroom units, 22 two-bedroom units, five 3-bedroom
- *Affordability/ Housing Subsidies* The project is expected to be 100% affordable

[1] City of Pittsfield, "Planning to Thrive: City of Pittsfield Master Plan," March 2007, page 29.
[2] Section 7.715, first enacted in 1990, of the zoning ordinance allows higher density multifamily development and reduced parking requirements if at least 30% of units in a project are affordable to households at or below 80% of median. Section 7.848 ("Flexible Development" – adopted in 2007) encourages clustered development and offers density bonuses for providing affordable housing or other public benefits.
[3] Section 7.715 (see above).

24. PLYMOUTH: CORDAGE PARK SMART GROWTH DISTRICT

PROJECT: Seaport at Cordage

Location Type:	Transit	Units Built or Under Construction	0
DHCD Final Approval Date	10/12/2007	Future Zoned Units	675
Total District Size:	56.8 acres	Incentive Units	675
Developable land	33.6 acres	Affordable Units (min)	135
Substantially developed	18 acres	Incentive Payment	600,000
Pre-40R Use:	industrial/retail	Maximum Bonus Units Payment	2,025,000
Pre-40R zoning :	Light industrial		
Construction type	New and adaptive reuse		

Initiator:	Town and developer	Funding for 40R Planning (PDF):	$50,000
Developer	Cordage Development LLC	State/Federal Housing Subsidies:	None yet

COMMUNITY BACKGROUND: Famed for its Pilgrim history, Plymouth is now a fast-growing coastal town of 96 square miles located 37 miles southeast of Boston. It is connected to Boston by both commuter rail and bus service. It has 50+ miles of coastline and seasonal homes made up 9.5% of its housing in 2000. It has five village centers and has approved two large planned residential communities with their own village centers. Pinehills[3] started construction in 2001 and will include 3,000+ units (none affordable/900+ units age-restricted) on 3,000+ acres. River Run, approved in 2008, will consist of up to 1,175 units (103 affordable) on 959 acres.

	Plymouth	State
Form of Government	Town	
Population (2007)	55,188	
Land Area	96.5 sq mi	
Population density per square mile (2007)	572	810
Housing density per square mile (2000)	220	334
Average Household Size (2000)	2.67	2.51
Population Growth 2000-2007	↑ 6.7%	↑ 1.9%
Population Growth 1990-2000	↑ 13.4%	↑ 5.5%
Household Growth 1990-2000	↑ 16.1%	↑ 8.3%
Housing Growth 1990-2000	↑ 8.1%	↑ 6.0%
School District Enrollment Growth FY2001-2009[1]	↓ 8.4%	-2.9%
School District Enrollment Growth FY1991-2001[1]	↑ 9.9%	+16.0%
Percentage of Property Taxes Residential	78.2%	72%
Avg. Single Family Assessed Value 2009	$343,049	$391,818
Avg. Single Family Tax Bill (FY2009)	$3,798	$4,250
Median Household Income (1999)	$54,677	$50,502
Per Capita Income (1999)	$23,732	$25,952
Poverty Rate (Individual) (2000)	5.4%	9.3%
Adults Over 25 with at 4-Year Degree	26.4%	33.0%
Total Housing Units (2000)	21,250	
Single family detached as % of 2000 Units	75.4%	52.4%
Multifamily Units (5+) as % of 2000 Units	8.3%	19.6%
% of Households That Are Renters (2000)	22.4%	38.3%
Median home value (2000)	$166,300	185,700
Median Gross Rent (2000)	$747	684
Building Permits 2000-April 2009 (units)	2,686[2]	166,775
Single family attached and detached units	2,354	109,574
Multifamily Units (5+)	139	46,241
Subsidized Housing Inventory % (8/2009)	4.6%	9.7%

Zoning The Town's 2004 Strategic Plan reported that 88% of the town's developable residential land is zoned for large lot single family homes (single family by-right minimum lot requirements are 20,000, 25,000, 40,000 or 120,000 square feet).[4] As-of-right multifamily housing is limited to one district (Downtown Harbor); several others allow it by special permit. The bylaw also has provisions to encourage mixed-use and clustered development.[5]

40B status Its 40B percentage is 4.6%. Its Housing Production Plan was approved in February 2007. It has had an inclusionary bylaw since 2005.

SGOD District The district covers 57 acres (33 developable) abutting Plymouth Harbor. It includes a large mill complex where the Plymouth Cordage Company manufactured rope from 1824 until 1964. Parts of the site were redeveloped as retail in the 1980s and 1990s. The current owner acquired the site in 2000 with the goal of creating a mixed-use development of retail, office, restaurants, housing and a marina, through reuse of the mill buildings and new construction.

Infrastructure The district is served by town water and sewer.
Transit The district is bisected by and includes a stop for the Old Colony commuter line which runs to Boston a few times a day (its long-term future is uncertain due to a proposal to close the station). It is also near a hiking and biking trail that leads to Plymouth Center.

40R PLANNING PROCESS The Town and the site owner began working on redevelopment of the site in 2001. In 2005, they heard a presentation by members of the Commonwealth Housing Task Force and Concord Square Development. The owner was particularly interested in the elements that discourage abutter litigation. The Town accepted Concord Square's offer to help them apply for a PDF planning grant. The Town used the grant to hire consultants to help in developing the application, zoning bylaw and design standards and won local approval of the 40R zoning bylaw in May 2006.

Milestones

- Dec 2005 Town receives PDF grant.
- May 2006 DHCD approves preliminary 40R application (May 17); Town approves bylaw (May 20).
- Sept. 2006 Attorney General approves; notes sub-district boundaries are missing from zoning map.
- June 2007 Town approved 40R bylaw again (6/11).
- Aug 2007 Attorney General approves 40R bylaw.
- Oct. 2007 DHCD gives final approval (10/12/2007).
- Feb 2008 Project receives plan approval for Phase I (February 25), consisting of 150 rental units.

District /Project Status: The project received site plan approval for Phase I, consisting of 150 rental housing units (38 affordable) in two buildings and 40,000 square feet of "open-air life style retail space." It also includes pocket parks, a recreation area and a bike lane leading to a traffic circle that "provides direction to" the commuter rail parking garage.[6] As of June 2009, the project has not broken ground due to market conditions and financing challenges. Full build-out is expected to take ten years.

Plan Approval Authority: Planning Board

Bylaw/Design Standard features of note:

- The district has no subdistricts and permits all types of housing from single family detached through multifamily, mixed-use and assisted living. As of right densities range from 8-20 units consistent with the 40R statutory minimums.
- *Affordability:* All projects must be at least 20% affordable (rental projects must be at least 25% affordable) in perpetuity or longest period allowed by law. Fractional units below 0.5 round down.

Project Status: See district/project status (above).

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[1] Grades 7-12 were part of a regional district through FY1993. For simplicity, the table shows the enrollment change for grades K-6 between 1990-2000 and for K-12 for 2000-2009. K-6 enrollment dropped 12.8% between 2000-2009.
[2] U.S. Census Bureau estimates. The Town reports more units permitted (3,007 from 2000 through 2008), including 1,246 units (45%) at Pinehills.
[3] Pinehills was authorized as an Open Space Mixed Use Development (OSMUD), in 2000, described further below.
[4] Plymouth Planning Board and Master Plan Committee, "Growing Smarter in Plymouth's Fifth Century: A Strategic Action Plan for the Town of Plymouth, October 2004, Part I - page 6.
[5] Examples include Section 205.63: Open Space Mixed Use Development (OSMUD), adopted in 1996, and Section 205.70: Transfer of Development Rights (TDR), adopted in 2004. OSMUD allow a range of residential and non-residential uses on sites of at least 3000 acres and requires that at least 200 acres be put under Town control for passive recreation. TDR, encourages clustered development and open space protection by allowing the development potential of parcels zoned RR (single family with a minimum lot size of 120,000 SF) to be transferred to other large lot districts.
[6] Town of Plymouth, Planning Board minutes, February 11, 2008, page 2.

25. READING: GATEWAY SMART GROWTH OVERLAY DISTRICT

PROJECT: Reading Woods

Location Type:	Highly suitable	Units Built or Under Construction	0
DHCD Final Approval Date	4/11/08	Future Zoned Units	202
Total District Size:	10 acres	40R Bonus Units	202
Developable land	8.91 acres	Affordable Units (min)	41
Substantially Developed	--	Incentive Payment	$350,000
Pre-40R Use	Offices/ Vacant	Maximum Bonus Units Payment	$606,000
Pre-40R zoning	Office & Retail/ Business C	Funding for 40R Planning	
Construction type:	New	State/Federal Housing Subsidies	not to date
40R Initiator:	Developer (National Development)		

COMMUNITY BACKGROUND: Reading is a mature suburban town located 12 miles north of Boston, with access to several major highways.[1] It is bordered by the towns of North Reading and Lynnfield, both of which have 40R districts, as well as Wakefield, Stoneham, Wilmington and the city of Woburn. It has commuter rail service to Boston (a 34-minute ride) with a stop in the town center. An MBTA bus route runs to a rapid transit line station in Malden. In addition to creating a 40R district in 2008, it is also working on a 40R district for its downtown area.

	Reading	State
Form of Government	Town	
Population (2007)	23,129	
Land Area	9.93 mi^2	
Population density per square mile (2007)	2,329	810
Housing density per square mile (2000)	889	334
Average Household Size (2000)	2.71	2.51
Population Growth 2000-2007	↓ 2.4%	↑ 1.9%
Population Growth 1990-2000	↑ 5.2%	↑ 5.5%
Household Growth 1990-2000	↑ 9.5%	↑ 8.7%
Housing Growth 1990-2000	↑ 8.9%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↑3.3%	-2.9%
School District Enrollment Growth FY1991-2001	↑19.3%	+16.0%
Percentage of Property Taxes Residential	91.4%	72%
Avg. Single Family Assessed Value 2009	$443,448	$391,818
Avg. Single Family Tax Bill (FY2009)	$5,858	$4,250
Median Household Income (1999)	$77,059	$50,502
Per Capita Income (1999)	$32,888	$25,952
Poverty Rate (Individual) (2000)	2.6%	9.3%
Adults Over 25 with at 4-Year Degree	47.8%	33.0%
Total Housing Units (2000)	8,823	
Single family detached as % of 2000 Units	74.5%	52.4%
Multifamily Units (5+) as % of 2000 Units	13.6%	19.6%
% of Households That Are Renters (2000)	17.5%	38.3%
Median home value (2000)	$271,600	185,700
Median Gross Rent (2000)	$739	$684
Building Permits 2000-April 2009 (total units)	202	166,775
Single family attached and detached units	180	109,574
Multifamily Units (5+)	0	46,241
Subsidized Housing Inventory % (8/2009)	7.8%	9.7%

Zoning The town is primarily zoned for single family homes (minimum lots of 15,000 to 40,000 square feet). Two-family and multifamily housing (3+ units) is allowed by-right in a few areas.[2] Multifamily is also allowed by special permit in a downtown Mixed-Use Overlay District (adopted in 2005) if at least 20% of the units are affordable. Planned Unit Development and Planned Residential Development provisions also allow it by special permit in some areas.[3]

40B Status The Town's 40B percentage is 7.8% (197 units short of 10%). It has had a Housing Production Plan since November 2006.

SGOD District: Covers 10 acres of a 24.8 acre former office/warehouse complex (Addison Wesley) on the southern end of town, next to Route 128 at the Route 28 interchange. Redevelopment of this underutilized parcel, formerly home to its largest employer, has long been an important Town goal.

Transit: The district is not served by public transportation.

Infrastructure: The site is served by public water and sewer.

40R PLANNING PROCESS: In the late 1990s, Addison Wesley Pearson began closing down its operation in Reading and the town began working with the site owner to promote redevelopment options. Town meeting approved rezoning the site to allow 600,000 square feet of office and 300 hotel rooms, but development did not occur. In 2007, National Development and a planning consultant (Concord Square) began working with the Town on a new plan for the site. Pre-development and planning work included a full redevelopment strategy, traffic study, and fiscal impact study. National Development also provided alternative building layouts and proposed amendments to the underlying zoning district bylaws (Business C).

The final proposal, under zoning amendments approved by Town Meeting in December 2007:

- Created a 40R district (10 acres) that permits the development of up to 160 multifamily rental units
- Amended the underlying Business C zoning to allow 16 townhomes in one area (3.75 acres) and nursing homes or up to 160 senior independent living units in another (5.61 acres)
- Kept the underlying zoning that already permitted office use unchanged for a fourth area (5.45 acres).

Milestones

- Aug 2007 SGOD received by DHCD for review
- Sept 2007 DHCD issues final approval of SGOD
- Oct 2007 Gateway Smart Growth District filed with Town Clerk
- Nov–Dec 2007 Recommendation to Town Meeting for passage of SGOD by Town Community Planning and Development Commission (Nov); Town Meeting approves SGOD (Dec)
- Dec 2008 Developer announced they are putting project on hold due to market conditions

District/Project Status: The project is currently on hold.
Plan Approval Authority: Community Planning and Development Commission

Bylaw/Design Standard Features of Note: The bylaw creates a single zone.

- *Allowed uses* are limited to multifamily (4+) dwelling units, conservation, recreational use and accessory uses including parking.
- The bylaw doesn't set minimum lot sizes but caps the total number of allowed units in the district at 202.
- The development is designed such that buildings cannot exceed 55 feet in height and are set back 30 feet from the property lines. The buildings must also be located at least 100 feet from adjacent residential properties.
- *Affordability* The bylaw requires that 25% of the units be affordable in rental developments (20% if restricted to households at 50% of AMI) and requires that all fractional units be rounded up in calculating the minimum for both rental and ownership projects. It also requires that the term of affordability be the longest period permitted by law.

Project Description: The project consists of the redevelopment of the 24.8 acre Addison Wesley Longman office/warehouse complex into a mix of residential, senior living, and office space. Development will require traffic improvements, including the widening of South and Main streets and the realignment of South Street and Jacob Way. The SGOD is bordered by a zone that allows 160 senior independent and assisted living units.

Reading Woods includes the construction of 202 apartment units in two buildings, with 41 affordable housing units. There will also be 16 townhomes, and 160,000 square feet of Class A office space.[4]

Affordability Under National Development's plan, 20% of the apartments will be affordable and 10% will be accessible.

[1] DHCD Community Profiles and Metropolitan Area Planning Council MetroFuture Population and Employment projections
[2] Town of Reading, "Housing Plan," November 6, 2006, page 13.
[3] The Planned Unit Development and Planned Residential Development provisions require or encourage the provision of housing affordable to households at 100% or 125% of area median.
[4] Commonwealth of Massachusetts Executive Office of Environmental Affairs, MEPA, Environmental Notification Form #14252.

26. SHARON: SHARON COMMONS SMART GROWTH OVERLAY DISTRICT

PROJECT: Residences at Sharon Commons

Location Type:	Highly Suitable	Units Built or Under Construction	0
DHCD Final Approval Date	4/3/2009	Future Zoned Units	167
Total District Size:	11.55 acres	40R Bonus Units	160
Substantially Developed		Planned Units	167
Developable land	9.32 acres	Affordable Units (min) at full build out	39
Pre-40R Use	Vacant	Incentive Payment	$200,000
Pre-40R Zoning	Single Residence A	Maximum Bonus Units Payment	$680,000

40R Initiator:	Town	Funding for 40R Planning:	
Construction type:	New construction	Other State/Federal Housing Subsidies	
Developer:	Old Post Development Corp.		

COMMUNITY BACKGROUND: Sharon is a suburban community with a well-regarded school system located 19 miles from Boston and a similar distance from Providence. It is bordered by the towns of Norwood, Canton, Stoughton, Easton, Mansfield, Foxborough and Walpole.[1] It has an MBTA commuter rail stop with service to Boston (20-29 minutes). The town has no public sewers.

Zoning Sharon is zoned primarily for single family homes as of right. It had a total of nine properties with three or more units as of 2005.[2] Minimum single family lot requirements range from 20,000 to 80,000 square feet. No areas are zoned for multifamily housing as of right.[3]

40B Status Sharon experienced significant development pressures in recent years, with multiple comprehensive permit applications between 2002 and 2007. In 2007, Town Meeting agreed to rezone the site of a 250-unit 40B application to permit 624 elderly units instead (all market rate). Its official 40B percentage is 6.4%.[4] It has had a DHCD-approved Housing Production Plan since 2005 and was appeal-proof for two years (March 2007-2009) as a result of meeting minimum production goals (30 units a year) through recent 40B approvals.

	Sharon	State
Form of Government	Town	
Population (2007)	17,033	
Land Area	23.3 mi^2	
Population density per square mile (2007)	731	810
Housing density per square mile (2000)	259	334
Average Household Size (2000)	2.92	2.51
Population Growth 2000-2007	↓ 2.2%	↑ 1.9%
Population Growth 1990-2000	↑ 12.2%	↑ 5.5%
Household Growth 1990-2000	↑ 13.2%	↑ 8.7%
Housing Growth 1990-2000	↑ 12.6%	↑ 6.0%
School District Enrollment Growth FY2001-2009	↑ -2.5%	-2.9%
School District Enrollment Growth FY1991-2001	↑ 32.5%	+16.0%
Percentage of Property Taxes Residential	92.2%	72%
Avg. Single Family Assessed Value 2009	$442,045	$391,818
Avg. Single Family Tax Bill (FY2009)	$7,833	$4,250
Median Household Income (1999)	$89,256	$50,502
Per Capita Income (1999)	$41,323	$25,952
Poverty Rate (Individual) (2000)	3.0%	9.3%
Adults Over 25 with at 4-Year Degree	63.1%	33.0%
Total Housing Units (2000)	6,026	
Single family detached as % of 2000 Units	87.1%	52.4%
Multifamily Units (5+) as % of 2000 Units	4.3%	19.6%
% of Households That Are Renters (2000)	10.0%	38.3%
Median home value (2000)	$270,600	185,700
Median Gross Rent (2000)	$782	$684
Building Permits 2000-April 2009 (total units)	301	166,775
Single family attached and detached units	153	109,574
Multifamily Units (5+)	148[1]	46,241
Subsidized Housing Inventory % (8/2009)	6.4%	9.7%

[1] For one comprehensive permit project approved in 2007

SGOD District[5]: The 11.6 acre district is adjacent to the Sharon Commons Lifestyle Center, a planned office/retail development on land owned by the same developer and approved by rezoning in 2007. The 40R district was created to allow the development of 168 housing units that the Town was planning to approve with a comprehensive permit using the Local Initiative Program.

Transit Access The district is close to Interstate 95 and the Sharon Commuter Rail Station, but access to the train station is not close enough for the project to be deemed transit-oriented.

Infrastructure The site is served by the town water system but not by public sewer; initial units will be served by a temporary septic system and eventually by a private onsite wastewater treatment facility.

40R PLANNING PROCESS The development was originally proposed as a friendly 40B under the Local Initiative Program (LIP) for 168 units (see milestones below). In discussions with the attorney hired to help the Town with its LIP review, the Town became aware of 40R and with the developer and attorney agreed to pursue creation of a 40R district for the project while continuing to work on details of the LIP proposal.

During the planning period, the developer also acquired an adjoining parcel and the Town decided to draft the bylaw in the form of two articles, one allowing 168 units and the second expanding the district by 1.1 acres, for a combined total of 210 units. The expanded district would allow just over 200 incentive units and thus would move the Town would move into the next zoning incentive payment category (201-500 units) and would allow it to receive a zoning incentive payment of $350,000 rather than $200,000. At the public hearing on the proposed bylaw, the developer noted that the lack of a profit limitation under 40R and the lower percentage of affordable units required. Town Meeting members voted to create the SGOD for 168 units rather than continue with the pending 40B proposal (the article expanding the district was withdrawn just prior to Town Meeting).

Milestones

- 2006 — Developer enters discussions with Town to develop commercial "lifestyle center" on part of a 139-acre residentially-zoned site, with offices, small businesses and large retailers, using a village-style layout with streets.
- 2007 — Town executes Memorandum of Understanding (MOU) regarding development of the land and Town Meeting approves rezoning of 60 acres for business in March 2007. The MOU requires that another 62.5 acres be used for conservation or passive recreation or a new town public well. It also allows the developer to apply for a comprehensive permit to develop up to 168 housing units on the last 16 acres using LIP. Under LIP, the chief elected official must approve the project concept before the developer can file for a comprehensive permit.
- 2007 — In discussions with the attorney hired to help the Town with its LIP review, the Town became aware of 40R as an alternative and with the developer agreed to pursue creation of a 40R district while simultaneously working on details of the LIP proposal.
- Oct 2008 — Planning Board holds public hearing on proposed 40R bylaw, consisting of two articles, one for a district allowing 168 units and one expanding the site to allow 42 more units.
- Nov 2008 — DHCD issues Preliminary Approval (11/14); Town signs MOU with developer (11/17), Special Town Meeting approves first article for SGOD allowing 168 units (11/18) 189-32.
- Dec 2008 — Developers files application for plan approval (12/17) for Phases I and II (29 townhomes)
- Jan 2009 — ZBA opens hearing on application for Plan Approval
- Mar-Apr 2009 — Attorney General approval (3/5/2009); final approval by DHCD (4/3/2009)
- Apr 2009 — ZBA issues Plan Approval for 29 units with 73 conditions, including prohibition on creating temporary access road for this first phase (4/15/2009); Developer files lawsuit protesting Plan Approval decision
- May-June 2009 — ZBA amends plan approval decision, changing access road conditions (5/13/2009) and to clarify language requiring 3 affordable units in each phase (14 and 15 units).

District/Project Status: Plan approval was granted for 29 townhouse units (6 affordable) in mid-2009

PAA ("Plan Approval Authority"): Zoning Board of Appeals

Bylaw/Design Standard Features: The District has two sub-zones:

- Subzone A allows multifamily housing only - at 20 units/acre
- Subzone B allows townhomes only - at 12 units/acre

Subzone	Lot Area Minimum	Maximum Building Height	Required Frontage	Lot Width Minimum	Lot coverage	Setbacks		
						Front	Side	Rear
A	60,000 square feet	4 stories or 60 feet[6]	40 feet	60 feet	20% building footprint; 50% total	75[7]	10	10
B		2.5 stories or 40 feet	80 feet	120 feet		5	10	10

Affordability: Requires that at least 20% of units in ownership projects be affordable. In rental projects, at least 25% must be affordable (can be 20% if the units are restricted to households earning less than 50% of area median income). For purposes of calculating the number of affordable housing units, any fractional unit shall be deemed to constitute a whole unit. At least 10% of all units must be handicapped-accessible.

Project Description: Old Post Development Corporation intends to build 167 dwelling units (it had to eliminate one unit in subzone B due to wetlands constraints).

- 100 apartments and 38 condominiums in sub-zone A which abuts the Sharon Commons Lifestyle Center along Old Post Road.
- 29 townhouses will be developed on 5 acres in sub-zone B located off of South Main Street

[1] "Community Profiles," Massachusetts Department of Housing and Community Development; Metropolitan Area Planning Council MetroFuture Population and Employment projections.
[2] Town of Sharon, Affordable Housing Plan, November 2005, page 14.
[3] Town of Sharon, Affordable Housing Plan, November 2005, pages 13-21.
[4] DHCD Subsidized Housing Inventory, 2009.
[5] Information for this profile from Memorandum of Understanding: Residences and Villages at Sharon Commons Chapter 40R Overlay Amendment and Sharon Commons Smart Growth Overlay District zoning bylaw and Design Standards, November 17, 2008.
[6] Not including below-grade parking facilities.
[7] Accessory structures need only satisfy a 50-foot front setback.

27. WESTFIELD: WESTFIELD SMART GROWTH ZONING OVERLAY DISTRICT (SGZOD)

PROJECT: Wildflower Meadow

Location Type:	Highly suitable	Units Built or Under Construction	0
DHCD Final Approval	8/15/2008	Future Zoned Units	244
Total District Size:	22.2 acres	40R Bonus Units	198
Developable land	15.32 acres	Planned Units	60
Substantially Developed	-	Affordable Units (min) at full buildout	48
Pre-40R Use:	vacant/underutilized land	Incentive Payment	$200,000
Pre-40R zoning	Business/ Rural Resid.	Maximum Bonus Units Payment	$594,000
Construction type	New construction		

Initiator: Pioneer Valley Planning Commission/City	Funding for Planning: PDF Grant	$38,520[1]
Developer: Heritage Homes of New England	State/Federal Housing Subsidies	-

COMMUNITY BACKGROUND:
Westfield is a small city in western Massachusetts spread over 46 square miles. It is located 10 miles from Springfield, 99 miles from Boston and 85 miles from Albany and is a sub-regional commercial and industrial center. It also houses Westfield State College. Many of its working residents (43% in 2000) work in the city. It is close to major highways, with an exit from the Massachusetts Turnpike close to downtown, and also has two bus routes to Springfield and Holyoke. Most of the city is served by public water and sewer.

Zoning Single family minimum lot sizes range from 10,000 to 80,000 square feet with the higher requirements applying to areas without sewer or public water. Multifamily housing (3+) units is allowed as-of-right in a few areas. Mixed-use (residential over commercial) is allowed in two areas by special permit.

	Westfield	State
Form of Government	City	
Population (2007)	40-,774	
Land Area	46.5 mi^2	
Population density per square mile (2007)	875	810
Housing density per square mile (2000)	331	334
Average Household Size (2000)	2.54	2.51
Population Growth 2000-2007	↑ 1.8%	↑ 1.9%
Population Growth 1990-2000	↑ 4.4%	↑ 5.5%
Household Growth 1990-2000	↑ 7.0%	↑ 8.7%
Housing Growth 1990-2000	↑ 6.7%	↑ 6.0%
School District Enrollment Growth FY2001-2009	- 8.1%	-2.9%
School District Enrollment Growth FY1991-2000	- 13.7%	+16.0 %
Percentage of Property Taxes Residential	74.2%	72%
Avg. Single Family Assessed Value 2009	$240,319	$391,818
Avg. Single Family Tax Bill (FY2009)	$3,350	$4,250
Median Household Income (1999)	$45,240	$50,502
Per Capita Income (1999)	$20,600	$25,952
Poverty Rate (Individual) (2000)	11.3%	9.3%
Adults Over 25 with at 4-Year Degree	24.2%	33.0%
Total Housing Units (2000)	15,441	
Single family detached as % of 2000 Units	59.2%	52.4%
Multifamily Units (5+) as % of 2000 Units	14.9%	19.6%
% of Households That Are Renters (2000)	32.2%	38.3%
Median home value (2000)	$133,400	185,700
Median Gross Rent (2000)	$590	$684
Building Permits 2000-April 2009 (total units)	603	166,775
Single family attached and detached units	527	109,574
Multifamily Units (5+)	10	46,241
Subsidized Housing Inventory % (8/2009)	7.1%	9.7%

40B Status Westfield's 40B percentage is 7.1%. It does not have a DHCD-approved Housing Production Plan.

SGOD District The 22.2 acre district covers a large tract of vacant land and an adjoining commercial area with underutilized parcels. The vacant land is adjacent to the Little River. It includes 15.3 acres of developable land.

Transit Access The district is within 1/4 mile of a bus line.

Infrastructure The district has public water and sewer.

40R PLANNING PROCESS: The City began exploring using 40R in early 2007 after the regional planning agency (Pioneer Valley Planning Commission) encouraged it to join two other cities (Holyoke and Easthampton) in seeking a planning grant for that purpose. It was looking at four possible locations when it was approached by a developer interested in building housing in one of the locations. Given that interest, the City decided to focus its 40R planning there first (it has since drafted a 40R plan for downtown but is awaiting developer interest before proceeding). It convened a broad-based committee to work on the 40R ordinance and design standards, tapping PDF funds to help with the legal and design work. Committee members included municipal planning staff, several City Councilors and the directors of the local Community Development Corporation and another affordable housing nonprofit (Domus, Inc). The City first proposed limiting the district to the land the developer had identified as a site for his project but with DHCD's encouragement decided to expand it to incorporate an adjacent commercial strip that has some underutilized properties.

City staff report that the approval process went quickly and felt that the incentive payments were a major factor, as the city is facing severe budget problems.

Milestones

- Early 2007 PVPC receives PDF Planning Grant for Westfield, Holyoke and Easthampton
- Nov 2007 Developer requests zoning change for parcels on east side of Southwick Road
- Dec 2007 DHCD approvals 40R application (12/7); City Council approves 40R ordinance (12/20)
- Aug 2008 Developer files application for Project Approval for 60-unit condominium (Wildflower Meadows) (8/1). DHCD issues Final 40R District Approval letter (8/15
- Oct 2008 Planning Board approves application for Project Approval (10/7/2008).
- April 2009 Town submitted request for zoning incentive payment

District/Project Status: 60-unit condominium on 10.23 acres has received site approval. As of early September 2009, building permits have not been issued. No other projects have been proposed.

Plan Approval Authority: Planning Board

Ordinance/Design Standard features of note: The ordinance establishes two sub-districts, both allowing mixed-use development:

- Mixed-use sub-district–up to 50% of gross floor area can be non-residential including neighborhood scale commercial uses; allows multifamily housing
- Residential sub-district – up to 20% of gross floor area can be non-residential, no multifamily housing except assisted living facilities.
- Single family detached uses do not require site plan approval unless waivers are requested.
- *Affordability* At least 20% of units in a project must be affordable for at least 30 years. Fractional units below 0.5 are rounded down.

Allowed Uses

	Single family detached	2-4 unit attached townhouses	Double and triple deckers	Multifamily (5+) not assisted living	Mixed-use development	Assisted Living
Residential Subdistrict	Yes	Yes	Yes	-	Yes	Yes
Mixed Use Subdistrict	Yes	Yes	Yes	Yes	Yes	Yes
Minimum units/acre	8	8	12	20	20	20
Maximum units/acre	10	10	14	24	24	24

Project Details

Wildflower Meadow Site plan approval has been granted for a 60 townhouse condominium (15 four-unit buildings) on Hundred Acre Road. Each unit will have a driveway in front and a garage space. All units will have two bedrooms; 12 (20%) will be affordable at less than 80% of area median income.
After discussions with DHCD, it was agreed that sidewalks will be installed in front of the homes. The developer and City initially wanted to put a walkway several hundred feet from the new homes along the river that abuts the site instead. The trail would connect to the main street (Route 202/10) at a point where there is a traffic signal and crosswalk and access to the commercial district. DHCD was concerned that the trail would not provide adequate access (as it was less direct) to the commercial uses that were key to the district's designation as a Highly Suitable Location and also had concerns about safety and snow removal.

[1] Assumes Westfield, Easthampton and Holyoke each received one-third of the tri-community PDF grant

APPENDIX II: CHAPTER 40S BACKGROUND INFORMATION AND LOCAL SCHOOL COSTS

Chapter 40S (*Smart Growth School Cost Reimbursement)* requires the State to make payments to school districts to cover the cost of public school students living in housing developed under Chapter 40R under certain circumstances. The payments are subject to appropriations.
Specifically, Chapter 40S requires the State to fill the gap, *if there is one*, between the cost of educating public school students who live in 40R developments and the sum of (1) approximately one half[1] of the property and excise taxes generated by new development within the 40R district and (2) state aid provided for those students. As detailed in the Chapter 40S regulations (830 CMR 40S), the payment is calculated as follows:

40R School Costs: "Average actual net school spending per pupil" for the district *times* the number of public school students living in new smart growth development[2]	
***Minus*:**	Property and excise taxes generated by the new smart growth development x the *education percentage* (statewide average percentage of local General Fund spending that goes towards schools)
Minus:	The actual increase in State Chapter 70 payments attributable to the number of students from the 40R district (determined by comparing what the district would receive with and without those students)
Equals:	40S payment (if greater than zero)

Whether a community with 40R development will be eligible for 40S payments depends on (1) the results of the above calculation, including how Chapter 70 payments may be calculated for a specific year and (2) the extent to which the Legislature provides sufficient funds each year.

Background (1994-2006) Chapter 70 was first enacted in 1993 to fill the gap between

- what municipalities could "afford" to contribute to local school costs, based on municipal revenue growth and other factors
- what they should spend to reach the state-determined minimum level of spending ("*foundation budget*" or *"Net School Spending"*). Net School Spending excludes capital expenditures and transportation

The State calculates what each district should spend each year per pupil (with some demographic adjustments) for 19 categories, using the same per pupil amount statewide with adjustments for salaries. It then multiplies those per-pupil amounts by a district's prior year enrollment (October 1) to determine total net school spending for a district. It also calculates the required community contribution. Chapter 70 funds were supposed to fill the gap.[3]

New Formula In 2006, the Legislature revised the formula for determining what a municipality should contribute so that it reflects local incomes as well as property values.[4] It also capped the local contribution at 82.5% of the foundation budget so that all communities would eventually begin receiving Chapter 70 funds. The revised calculation (*the target local contribution*) is being phased in over five years (FY2007-FY2011), to give communities time to adjust to increases or decreases in their required share. During this transition period, districts may receive aid under four different but related contributions.

- foundation aid –foundation budget minus required contribution
- foundation aid down-payment (for communities phasing in to a new lower minimum contribution and higher Chapter 70 aid), part of the extra funding they would receive if their share had already been reduced to the target contribution
- growth aid – increased aid for districts whose foundation budgets have increased, even if their aid already exceeds the amount needed to reach the foundation budget (this helps districts experiencing enrollment growth or cost growth due to inflation and could include funding for children in 40R districts)
- Minimum Aid – a payment to ensure that every community receives an increase of at least $50 per student over the prior year (if not provided under the above 3 calculations)

Communities that want to spend more than the Foundation Budget level can and often do so. Massachusetts Department of Education data[5], shown below, indicates that the statewide total of municipal "actual net student spending" was 119% of the Foundation Budget in FY2009.

City/Town	FY09 Foundation Budget	FY09 Actual Net School Spending (NSS) Per Student	Chapter 70 as % of Actual NSS	Actual NSS as % of Foundation
Amesbury	8,444	10,489	35.2%	124%
Belmont	8,454	10,244	12.2%	121%
Boston	11,069	12,851	28.3%	116%
Bridgewater	not available	11,944	not available	not available
Brockton	10,340	10,267	79.8%	99%
Chelsea	11,082	11,268	81.8%	102%
Dartmouth	8,468	8,800	26.7%	104%
Easton	8,126	9,442	27.3%	116%
Grafton	8,258	8,486	35.5%	103%
Haverhill	9,193	9,693	50.2%	105%
Holyoke	10,856	10,957	88.7%	101%
Kingston	8,039	9,439	35.8%	117%
Lakeville	7,953	10,416	33.6%	131%
Lawrence	10,697	10,568	97.0%	99%
Lowell	10,490	10,724	77.9%	102%
Lunenburg	8,334	9,493	29.7%	114%
Lynnfield	8,312	9,754	18.8%	117%
Natick	8,502	11,360	10.8%	134%
North Andover	8,219	9,892	12.4%	120%
North Reading	8,355	9,253	24.6%	111%
Northampton	8,869	10,034	26.0%	113%
Norwood*	8,572	10,878	10.8%	127%
Pittsfield	9,691	10,178	55.1%	105%
Plymouth	9,252	10,936	23.5%	118%
Reading	8,283	9,730	22.3%	117%
Sharon	8,378	11,831	17.6%	141%
Westfield	9,223	9,710	56.5%	105%
State Total	**9,332**	**11,096**	**37.7%**	**119%**

*FY2008

[1] The actual percentage (the "education percentage") is calculated annually and is set at the average *across all communities* in the commonwealth of total education expenditures in relation to total municipal expenditures *as certified at the end of the preceding fiscal year by the department of revenue*. This percentage shall be the total actual *net school spending of all districts* as defined by the department of *education divided by the sum of total General Fund municipal spending and regional school district aid*.

[2] New smart growth development is defined in the statute as any new residential or commercial development, including the redevelopment of existing properties, subject to the payment of local property taxes that occurs in the 40R district after adoption of the 40R zoning and is permitted under the provisions of the smart growth zoning district. Redevelopment is considered substantial if its cost exceeds 50% of the building's pre-development assessed value or if it constitutes a change in use from nonresidential to residential.

[3] The State also makes and has made Chapter 70 payments to communities that are not "Foundation Aid" communities in varying amounts over the years.

[4] As detailed on the Massachusetts Department of Education "School Finance" website (http://finance1.doe.mass.edu/chapter70/chapter_09_explain.htm), the State sets an ideal goal for how much each city and town should contribute toward its foundation budget. The calculation assumes that the State will fund 59% of the statewide foundation budget total and that localities will fund 41%. Once the statewide local share is determined, the State calculates the percentage of each municipalities aggregate equalized property value and aggregate personal income that must be contributed so that each of the two sources account for 50% of the total contribution by all localities statewide. (In FY2009, this calculation set the local contribution for each municipality at 0.3106% of its 2006 aggregate equalized property value and 1.5561% of its 2005 aggregate personal income). In communities where this calculation results in a local contribution above the foundation budget and above the 82.5% cap, the required contribution will be reduced somewhat.

[5] Massachusetts Department of Education, "Chapter 70 Trends, FY99 Through FY09" (updated through 5/13/2009)

APPENDIX III: PERSONS INTERVIEWED FOR THE DISTRICT PROFILES

The authors would like to thank the municipal staff and developers who were interviewed for this report:

COMMUNITY	PERSONS INTERVIEWED
Amesbury	Nipun Jain, Town Planner
Belmont	Jay Szklut, Planning and Economic Development Coordinator
Boston	Heather Campisano, Boston Redevelopment Authority Planner
Bridgewater	David Matton, former Community Development Director
Brockton	Pam Gurley, Planning Department
Chelsea	John DePriest, AICP, Director of Planning and Development
Dartmouth	Donald Perry, Planning Director
Easton	Mark Rousseau, AICP, former Town Planner
Grafton	Stephen Bishop, Town Planner and Ann Morgan, Assistant Planner
Haverhill	William Pillsbury, Planning Director
Holyoke	Karen Mendrala, Senior Planner
Kingston	Thomas Bott, Town Planner
Lakeville	Rita Garbitt, Town Administrator
Lawrence	Daniel McCarthy, Land Use Planner
Lunenburg	Marion Benson, Planning Director
Lynnfield	National Development
Natick	Patrick Reffett, Community Development Director
North Andover	Curt Bellavance, Community Development Director
North Reading	Heidi Griffin, Planning Administrator
Northampton	Wayne Feiden, Director, Office of Planning and Development
Norwood	Steve Costello, AICP, Town Planner
Pittsfield	Lisa Haynes, Principal Planner
Plymouth	Lee Hartmann, Director of Planning and Development
Reading	Carol Kowalski, AICP, former Town Planner
Sharon	Eli Hauser, Planning Board
Westfield	Lawrence Smith, Director, Planning Department