When Incentives Aren't Enough: Challenges in Chapter 40R Massachusetts Smart Growth Zoning Overlay District Act Implementation

by

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Abstract:

The Greater Boston area has some of the highest housing costs in the country, a trend which has only intensified through the nation’s recovery from the recent global financial crisis. Greater Boston has a fragmented municipal system, with individual cities and towns controlling their own land use regulations. This fragmentation has led to a system where cities and towns regulate land use in an uncoordinated manner, leaving the entire region with a shortage of housing and raising housing costs. In 2004, the Commonwealth of Massachusetts enacted Chapter 40R, the Smart Growth Overlay District Act, to incentivize communities to implement zoning districts that allow dense housing by right. To date, very few communities in Greater Boston have enacted Chapter 40R districts, and once those districts are enacted, very few of the newly-zoned units are built. This thesis seeks to explore the causes behind these phenomena. Communities in the region are loath to implement 40R districts because of an aversion to growth, in particular multifamily development. Misconceptions about program requirements may also prevent town planners from using 40R as a planning tool for their communities. Developers don’t often utilize 40R as a permitting mechanism because it is riskier to implement than Chapter 40B permitting. Even when 40R districts are established, units are not always built because of market conditions or land availability. While 40R has produced successful developments across the state, this report calls into question whether an incentive-based development policy is sufficient to deal with the region’s current housing shortage.

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Title: Senior Lecturer of Economic Development and Planning
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Thank you to everyone who has supported me to this point in my life.

Tía y Tío, thank you for all your love and support. Without you, being here would never have been possible.

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I. Introduction

The Boston region is experiencing a period of tremendous economic growth. Since 2010, the region has added 285,000 jobs, an increase of 13% (Bluestone & Huessy, 2017). In that same period, the region has grown by 3.3%, adding close to 150,000 new residents. While the economic gains and population growth have come with higher household median incomes, the growth has also come with a higher cost of housing. In 2017, the cost of a single-family home reached an all-time high, with indications that 2018 could be another record-setting year. For renters, the median rent increased an average of 6.9% every year from 2009-2016, or a roughly 60% increase over that seven-year period. Both homeowners and renters are increasingly cost-burdened, with 35.8% of homeowners and 52.5% of renters paying more than 30% of their income on housing expenses.

Figure 1: Percent of Households that are rent burdened in Greater Boston (1990-2015).

While the city of Boston, at the core of the region, has encouraged housing development within its boundaries to alleviate housing supply pressure, other cities and towns in the region have not taken as aggressive a role in promoting new housing growth. In 2017, City of Boston constituted 40% of all new housing development in the region, and 60% of all new multifamily housing development (Bluestone & Huessy, 2017). Despite the rapid increase in population, very few communities in the region have opened their doors to new development to house new residents. In the 2017 Greater Boston Housing Report Card, the president of the Boston Foundation claimed, “zoning restrictions continue to seriously hamper housing development outside of Boston.” In Massachusetts, the tools to deal with a regional issue like housing supply are mostly local in nature, and it is the right of each municipality in the region to decide if and how they want to allow new development in their communities. Unfortunately, the aggregate result of this local control has been lower than needed supply resulting in high regional housing prices (Glaeser & Ward, n.d.).

The region’s housing affordability problem precedes the current economic boom. From even before the Great Recession, housing prices in Greater Boston were very high, placing high cost burdens on low income households. A 2004 study by the University of
Massachusetts found that “the lack of housing construction, especially multifamily and high density housing, has driven the cost of an existing house to unmanageable levels” (Goodman & Palma, 2004). To help structure solutions to the problem, The Boston Foundation convened a Commonwealth Housing Task Force in 2001 to propose solutions to ameliorate the high cost of housing in the region. One of the Task Force’s ultimate recommendations was “Smart Growth Overlay Zoning Districts” as a means of encouraging housing development throughout the region. The result of the Task Force’s work was Chapter 40R: the Massachusetts Smart Growth Zoning Overlay District Act.

Chapter 40R was codified in state law in 2004. Chapter 40R “encourages communities to create dense residential or mixed-use smart growth zoning districts, including a high percentage of affordable housing units, to be located next to transit stations, in areas of concentrated development such as existing city and town centers, and in other highly suitable locations” (“Chapter 40 R,” n.d.). In this scheme, cities and towns in Massachusetts are incentivized to create high-density residential districts in return for monetary payments from the state. Chapter 40R is the proverbial carrot for towns to allow density and affordability in contrast to the older and more well established “stick” of Chapter 40B.

Since program regulations were issued in 2005 (Verrilli & Raitt, 2009), 44 districts have been enacted in 39 of the 351 communities (11%) throughout the Commonwealth (“40ractivitysummary.pdf,” n.d.). Combined, these districts have entitled over 15,500 incentive residential units, of which 3,453 units have been constructed as of January 2018. Zones tend to be located in Eastern Massachusetts, with an additional concentration of zones in the Pioneer Valley. Of the zones, many were enacted just prior to the Great Recession, with 26 of the 44 zones (59%) enacted from 2005-2008, and the other 18 enacted in the following decade. The state has continued to see communities adopting 40R districts, with six communities adopting 40R zones in 2017 and early 2018.

Despite the Boston region’s longstanding affordability issue, the metropolitan area has a relatively low adoption of 40R districts to increase the supply of multifamily housing. Of the 44 existing 40R districts, only 14 (32%) are located in 11 communities within Route 128 (Reading, Marblehead, and Norwood each have two districts), historically considered to be the boundary of the close-in Boston suburbs. Further, while collectively these communities have zoned for 2,203 incentive units, only 882 (40%) of those units have been built despite the fact that all but four of the zones have been in place since before 2010. When this analysis is expanded to communities in the greater Boston metro outside of the Route 128 core, an even weaker utilization of 40R districts is revealed. In the 16 districts within the communities between Route 128 and Route 495, only 1,721 of the 8,021 zoned incentive units have been built (21%).
### Figure 2 - Number of 40R districts, incentive units zoned, and units constructed within the Route 128 and Route 495 Corridors

<table>
<thead>
<tr>
<th>Area of Analysis</th>
<th>Number of 40R Districts</th>
<th>Sum of Units Built</th>
<th>Sum of Incentive/Future Zoned Units</th>
<th>Build-out rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston Urban Core (within 128)</td>
<td>14</td>
<td>882</td>
<td>2,203</td>
<td>40%</td>
</tr>
<tr>
<td>Boston Metro Area (within 495)</td>
<td>16</td>
<td>1,721</td>
<td>8,021</td>
<td>21%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>30</td>
<td>2,603</td>
<td>10,224</td>
<td>25%</td>
</tr>
</tbody>
</table>

### Figure 3 - Communities with 40R districts in the Boston Urban Core (communities located within Route 128) and in the Greater Boston Metro Area (within Route 495)

**Boston Urban Core (within Route 128)**

<table>
<thead>
<tr>
<th>Community</th>
<th>District Name</th>
<th>Year</th>
<th>Incentive Zoned Units</th>
<th>Sum of Units Built</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belmont</td>
<td>Oakley Neighbor</td>
<td>2008</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Beverly</td>
<td>SGOF (Sohier Roa)</td>
<td>2017</td>
<td>101</td>
<td>0</td>
</tr>
<tr>
<td>Boston</td>
<td>Olmsted Green</td>
<td>2008</td>
<td>578</td>
<td>159</td>
</tr>
<tr>
<td>Chelsea</td>
<td>Gerrish Ave</td>
<td>2006</td>
<td>125</td>
<td>120</td>
</tr>
<tr>
<td>Danvers</td>
<td>Maple Street</td>
<td>2018</td>
<td>211</td>
<td>0</td>
</tr>
<tr>
<td>Lynnfield</td>
<td>Meadow Walk</td>
<td>2007</td>
<td>180</td>
<td>180</td>
</tr>
<tr>
<td>Marblehead</td>
<td>Pleasant St</td>
<td>2010</td>
<td>17</td>
<td>0</td>
</tr>
<tr>
<td>Marblehead</td>
<td>Vinnin Sq</td>
<td>2010</td>
<td>47</td>
<td>0</td>
</tr>
<tr>
<td>Natick</td>
<td>SGOD</td>
<td>2008</td>
<td>138</td>
<td>138</td>
</tr>
<tr>
<td>Norwood</td>
<td>St. George Ave</td>
<td>2006</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Norwood</td>
<td>Guild St</td>
<td>2014</td>
<td>44</td>
<td>0</td>
</tr>
<tr>
<td>Reading</td>
<td>Downtown</td>
<td>2008</td>
<td>459</td>
<td>53</td>
</tr>
<tr>
<td>Reading</td>
<td>Gateway</td>
<td>2010</td>
<td>202</td>
<td>200</td>
</tr>
<tr>
<td>Swampscott</td>
<td>Vinnin Sq</td>
<td>2015</td>
<td>68</td>
<td>0</td>
</tr>
</tbody>
</table>

**Greater Boston Metro (within Route 495)**

<table>
<thead>
<tr>
<th>Community</th>
<th>District Name</th>
<th>Year</th>
<th>Incentive Zoned Units</th>
<th>Sum of Units Built</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amesbury</td>
<td>Gateway Village</td>
<td>2007</td>
<td>249</td>
<td>240</td>
</tr>
<tr>
<td>Bridgewater</td>
<td>Waterford Village</td>
<td>2008</td>
<td>594</td>
<td>0</td>
</tr>
<tr>
<td>Brockton</td>
<td>Downtown</td>
<td>2007</td>
<td>1,096</td>
<td>140</td>
</tr>
<tr>
<td>Easton</td>
<td>Queset Commons</td>
<td>2008</td>
<td>280</td>
<td>110</td>
</tr>
<tr>
<td>Haverhill</td>
<td>Downtown</td>
<td>2007</td>
<td>701</td>
<td>362</td>
</tr>
<tr>
<td>Kingston</td>
<td>1021 Kingston's Pl</td>
<td>2007</td>
<td>730</td>
<td>0</td>
</tr>
<tr>
<td>Lakeville</td>
<td>Kensington Court</td>
<td>2006</td>
<td>207</td>
<td>204</td>
</tr>
<tr>
<td>Lawrence</td>
<td>Arlington Mills</td>
<td>2008</td>
<td>1,031</td>
<td>137</td>
</tr>
<tr>
<td>Lowell</td>
<td>SGOD</td>
<td>2008</td>
<td>250</td>
<td>122</td>
</tr>
<tr>
<td>Methuen</td>
<td>Methuen Center St</td>
<td>2018</td>
<td>350</td>
<td>0</td>
</tr>
<tr>
<td>Plymouth</td>
<td>Cordage Park</td>
<td>2007</td>
<td>675</td>
<td>0</td>
</tr>
<tr>
<td>Newburyport</td>
<td>SGOD</td>
<td>2015</td>
<td>540</td>
<td>0</td>
</tr>
<tr>
<td>N. Andover</td>
<td>Osgood</td>
<td>2007</td>
<td>530</td>
<td>0</td>
</tr>
<tr>
<td>N. Reading</td>
<td>Berry Center</td>
<td>2006</td>
<td>434</td>
<td>406</td>
</tr>
<tr>
<td>Rockland</td>
<td>DRROD</td>
<td>2017</td>
<td>187</td>
<td>0</td>
</tr>
<tr>
<td>Sharon</td>
<td>Sharon Commons</td>
<td>2009</td>
<td>167</td>
<td>0</td>
</tr>
</tbody>
</table>
Research Questions and Initial Hypothesis

Given the high housing costs in the Boston metro area, the continued growth of the region, and the clear demand for housing the region, it is surprising that more communities have not adopted 40R districts. It is also surprising that within existing 40R districts, the incentive units that have been zoned have not been fully built-out.

This thesis will explore two principal questions related to this phenomenon:

1. Why have so few communities within the Boston urban core implemented 40R districts?
2. For communities within Greater Boston metropolitan area, why has the utilization of 40R entitlements been so low, such that the districts have not been fully built out by developers?

Based on a review of the literature, some initial hypotheses begin to emerge. With regards to why more communities don’t implement Chapter 40R districts, possibilities include the following:

Figure 4 - Communities within the Boston urban core
• The communities within the Boston urban core have high market demand for development. By not implementing Chapter 40R districts, they retain control over the development process and require developers to enter direct negotiations with the town before any multifamily development is permitted
• Underlying zoning in these communities allows multifamily development by right or through some other, simpler zoning mechanism. The underlying zoning makes establishing a Chapter 40R district unnecessary
• There are underlying issues with Chapter 40R that makes it undesirable for communities to implement new overlay districts
• The communities within the Boston urban core desire no or little growth. Concerns about neighborhood character, inadequate infrastructure, or about the fiscal impacts of additional school children inhibit communities desire to take on additional housing units

With regards to why developers aren’t building in established 40R districts, possibilities include the following:

• 40R zoning, if preemptively undertaken by a town, may still make it difficult for a developer to develop a specific site. The land may require further zoning relief, in which case creating an overlay district may be an ineffective tool to spur multifamily development
• The value of land within rezoned districts goes up because of the higher allowed density, and hypothesized increase in residual land value. However, given the small sample size and the difficulty of teasing out land value from market transactions of land, the hypothesis will not be explored.

These hypotheses and the underlying literature supporting them will be explored in the following chapters.

**Thesis Organization**

Chapter two of this thesis explored underlying literature informing this research and presents the theoretical lens that sets the context for the findings. Chapter three provides a brief, factual overview of zoning law in Massachusetts. Chapter four outlines this study’s methodology. Chapters five and six focus on findings from the research, with the first of those two chapters attempting to answer why communities are not implementing Chapter 40R districts, and the second attempting to answer why developers are not building in 40R districts. The final chapter summarizes the analysis and provides policy recommendations to enhance the implementation of Chapter 40R.
II. Literature Review

The literature for this thesis draws from four major bodies of work:

- **Urban economics**, which outlines the basics of supply and demand as it relates to the housing market and housing costs
- **Local governance & zoning**, understanding how town governments control development within their communities, what theory says about local decision-making process, and understanding the legal authorities of cities and towns to implement zoning as a technique to control land management decisions
- **Massachusetts-specific land use**, including research conducted on Chapter 40B, 40R, and various other Boston-area housing economics literature
- **Neighborhood effects**, which describes the importance of place for households and outlines the effects that neighborhoods (or towns, as the case may be) impact life outcomes

Understanding these literatures is key to better understand Chapter 40R’s implementation. The literatures outline the financial and equity implications that 40R is couched in, and also highlight the mechanisms by which control over land use can create communities that are inclusive or exclusive; affordable or ultra-wealthy; areas of opportunity or gated-off communities.

**Urban Economics**

A prominently held viewpoint is that housing prices are a simple function of basic supply and demand economics. However, when compared to other commodities, housing and land require a unique lens of analysis compared to other products. Urban land is a completely differentiated product; that is, every parcel of land and the real estate which sits upon it is unique relative to any other piece of land with real estate on it (Wheaton & DiPasquale, 1996). Further, land is fixed in place and generally is not newly created. Real estate upon land is a durable good, and so reductions in supply require a long period of depreciation. Therefore, housing supply is generally inelastic. Demand, on the other hand, can change rapidly without respect to the supply, meaning it is much more elastic relative to supply.

The economist Ricardo (1817) popularized location theory of land, in which consumers of land pay for the locational advantages of the land relative to other parcels. The overall supply of land in this model determines overall land prices, but the location of the particular parcels of land determines their price relative to one another. Less land supply, larger population, and greater lot sizes all contribute to higher housing and land rents throughout the city. Further, land at central location or along transit infrastructure will be more expensive relative to more distant land, all else held equal. Wheaton and
DiPasquale (1996) contend that “land use segregation is a common and natural outcome in private housing land markets, rather than a result of government regulations.”

Saiz (2010) builds upon the Ricardian model to understand how land availability impacts land rents. He finds that geography is a key factor in the inelasticity of housing supply, such that metropolitan areas with low availability of land on which to build due to geographic conditions (lakes, oceans, mountains) are the most supply inelastic. The implication of this is that metro areas with low land availability will respond to shocks in demand with greater variations in housing values. Boston, as a coastal city, is one of the most supply inelastic cities in the US, ranked 15th in supply inelasticity of metros over 500,000 in population. In contrast to Wheaton and DiPasquale, Saiz finds that land use regulations are more commonly used in supply constrained metros, such that pre-existing landowners in places with high supply inelasticity have strong incentives to enact land use controls that protect and maximize their land value.

Importantly, Saiz notes that geography is a measure of original constraints of city development, but does not speak to ease of development, presumably from things like government regulation (Saiz, 2010). Quigley and Raphael (2004) echo this, finding that many land use regulations “reduce the supply of housing by artificially increasing land requirements and by allocating land away from residential uses.” Glaeser and Ward (2009) also speak to this in the context of Greater Boston, finding that, rather than a shortage of land supply, land use regulations indeed constrain supply in suburban Boston. Specifically, minimum lot sizes and increased land use regulation related to septic systems and setbacks from wetlands were increasingly enacted post-development, making it more difficult for denser redevelopment of land to occur. Glaeser and Ward find that while an individual town’s restrictions don’t necessarily raise its housing prices relative to other towns, the overall cost of housing goes up due to collective supply constraints imposed by individual towns. Unfortunately, the increases in housing prices disproportionately impact the poor, who are the least able to afford higher cost housing (Quigley & Raphael, 2004).

**Local Governance & Zoning**

Neoclassical economists have long theorized that local government is the most efficient form of government for the distribution of services (Tiebout, 1956). Being closest to the electorate, local government can use its power of taxation and spending to provide the set of services desired by the populace more efficiently than state or national governments, which are further removed from their constituency and serve an electorate with a much more diverse set of interests. Tiebout’s Pure Theory of Local Expenditures (1956) theorized that consumer-voters choose where to live based on the bundle of services available to them and the cost of those services in the form of property tax. Local school systems are a good example of this, frequently cited as one of the major local services households analyze in making a decision about a community in which to live. Tiebout’s theory also postulated that there was an optimal population size for a local government’s delivery of services, which gave rise to a rational approach to limiting
population size. Indeed, Tiebout’s words ring true, as one of the most often cited concerns of small towns faced with growth is impact of new housing development on the local school system, the local service that is costliest for cities and towns in Massachusetts to provide (Reardon & Philbrick, 2017).

Zoning and land use regulation are the key mechanisms in ensuring the desired level of service expenditures and serving as “an insurance policy to protect against unwanted neighborhood outcomes” (Fischel, 2001). In his Homevoter Hypothesis, Fischel outlines the importance of land use controls in local governance. For the majority of Americans, their greatest source of wealth comes from homeownership - both through accrued equity in paying down a mortgage and through price appreciation of their homes. In addition to serving as a tool for efficient population size, and therefore, efficient service distribution and taxation, Fischel argues that homeowners in a community also seek to protect their own wealth in the form of home value through zoning regulation. This matches well with Saiz’s postulation that landowners with high land values have the greatest incentive to use land use regulation to protect their high land values.

Zoning is a relatively new concept in the United States. New York City was the first major city to implement a zoning code in 1916 (Dolkart, n.d.). Among the principles espoused by the 1916 Zoning Resolution were that landowners were not free to create nuisances to those around them and that local government had the ability to exercise its police power to ensure public health, safety, and welfare (Dunlap, 2016). Within a decade, the constitutionality of this new policy tool was before the Supreme Court, when the Village of Euclid, OH was challenged by a local landowner who believed the zoning ordinance in the town “deprived the appellee of liberty and property without due process of law and denies it the equal protection of the law” (Village of Euclid v. Ambler Realty Co., 1926). The court in that case upheld that local government indeed could use its police power to enact zoning, so long as the government’s actions were not arbitrary or unreasonable with no substantial relation to the health, safety, morals, or general welfare of the people. Part of Euclid’s zoning ordinance allowed for the exclusion of multifamily dwellings from single family home districts. The court found that this provision within the zoning code was consistent with the promotion of health, safety, morals, and general welfare, reasoning that multifamily buildings were a “mere parasite.” The court goes on to say these buildings, “interfering with the free circulation of air and monopolizing the rays of the sun which otherwise fall upon the smaller homes, and bringing as their necessary accompaniments, the disturbing noises incident to increased traffic and business... until, finally, the residential character of the neighborhood and its desirability of a place of detached residences are utterly destroyed.” In upholding the legitimacy of zoning for the public good, the court also showed their bias against density, and arguably classist and racist attitudes to the poor, minority, and immigrant communities they assumed would be occupying these homes.

Zoning has consistently been used as a means of curtailing or preventing density. Even in Manhattan, one of the densest places in the US, the implementation of the 1916
zoning ordinance had a large role in reducing the island’s population by over 750,000 and the population density by a third over the course of a century (Dunlap, 2016). In the post-World War II period, Americans began to suburbanize, flooding outward from the city into formerly rural farmland on the city’s periphery, fundamentally changing the character of these communities. In incorporated areas, municipalities used the tool of zoning to control how they would grow, and oftentimes inertia was the biggest determinant in the extent to which they chose to grow. Indeed, Gleaser and Ward find that historical housing density in 1940 of Massachusetts communities was the most important determinant of minimum lot sizes more than sixty years later. Some communities famously tried to use their zoning power to prevent growth and exclude, seemingly to stem the tide of urbanites moving to their tranquil communities bringing along with them their urban problems. Easttown Township, PA, a suburb of Philadelphia, changed its residential zoning to minimum 4 acre lots from 1 acre lots to slow growth (National Land & Investment Company v. Easttown Township Board of Adjustment, 1965). Mt. Laurel, NJ, another suburb of Philadelphia, zoned an unrealistic amount of land for commercial purposes and restricted the number of bedrooms that could be developed within apartments (Southern Burlington County N.A.A.C.P v. Township of Mount Laurel, 1975). The Mt. Laurel rezoning was ostensibly a fiscal move to ensure that sufficient tax revenue was collected through commercial uses, and limited amounts of school children were added to the school district to minimize the cost of services to the town. The courts found that in both those cases, the towns had overstepped the boundaries of their police power in restricting growth. In the Easttown Township case, the court found that “the township cannot stand in the way of the natural forces which send our growing population into hitherto underdeveloped areas in search of a comfortable place to live; a local body must only use its zoning power to ensure that municipal services which the community requires are provided in an orderly and rational manner.” The Mt. Laurel decision went further, saying that no municipality in New Jersey could, through its system of land use regulation, make it impossible for low or moderate-income families to afford living in those communities. The court also advanced the “fair share” principle, which required that all New Jersey municipalities affirmatively make available housing opportunities for these families relative to the municipality’s “fair share” of present and prospective regional need for low and moderate-income housing.

The Mt. Laurel decision was decided by the New Jersey Supreme Court, and so its legal ramifications were only applicable within that state. In Massachusetts, while there is no legal mandate for serving a “fair share” of the regional population with respect to low and moderate-income housing, Chapter 40B serves as the mechanism by which towns may be compelled to allow housing development if it serves moderate income households. However, this is not to say that Massachusetts makes it easy to build multifamily housing; in fact, the opposite is true. Though initial waves of zoning regulations in the 1940’s-50’s were a result of market forces rather than driven by a desire to exclude, later waves of zoning reform starting in the 1970’s led to greater exclusion of multifamily housing, particularly by more affluent communities (Schuetz, 2006). While in 1972, 44% of the cities
and towns closest to Boston allowed multifamily development by right, only 17% still allowed multifamily development by right by 2004.

What makes it so difficult to develop multifamily housing in Massachusetts? Rosan and Susskind (2007) undertook case studies of planning practices of eight communities along the Route 495 corridor, roughly 20-30 miles away from Boston, to better understand how they responded to growth. Their findings found that local government planning practices are far from perfect and painted a poor picture of Tiebout’s Pure Theory of Local Expenditures. Among their findings were:

- These towns had few formal planning procedures, including comprehensive planning and implementation of best practices
- Planning professionals defer to local elected officials in making planning decisions
- Open town meetings constrain planning and the ability to modify zoning
- Short-term fiscal pressures drive planning decisions, especially in light of Proposition 2 ½, which limits the amount by which towns can raise property taxes on an existing property by 2.5% annually
- Communities turn to tools other than zoning to limit land use development, including sewage and septic system requirements, and wetlands setbacks regulations (consistent with Glaeser & Ward’s findings)
- Chapter 40B developments are controversial because it doesn’t pay the town the full costs of educating school children
- Towns have limited interest in regionalism

In summary, land use regulation provides towns with the ability to efficiently provide services to their residents, and variation among towns allows households to choose between which bundle of services they most prefer. However, land use regulation also gives towns the power to exclude by denying land uses that are accessible to certain types of households. By moving to a system where it is more difficult to construct multifamily housing, towns may be acting in their fiscal best interests even if not in the best interests of the region or its residents.

**Massachusetts-Specific Land Use**

Massachusetts has state-wide policies the effect the supply of affordable housing within the highly fragmented context of the state’s cities and towns. Chapter 40B, sometimes referred to as “anti-snob zoning”, was enacted in 1969, giving developers the flexibility to circumvent certain local land use requirements in cities and towns in order to construct affordable housing. Chapter 40B has over time, “become the major source of new, permanently subsidized housing in greater Boston” (Fisher, 2008). In order to qualify as a project under Chapter 40B, a project must generally make available at least 25% of its units to households earning less than 80% of the Area Median Income (AMI).

Chapter 40B has been incredibly successful throughout its history at getting new units built in suburban communities. In a 2008 report, Fisher found that in the study period
of 1999-2008, nearly 19,000 new units of housing in the Greater Boston region received building permits through Chapter 40B, comprising about 25% of all new housing production, 46% of all new multifamily development, and 70% of all rental housing in the region (Fisher, 2008).

It should be noted that Chapter 40B is not without controversy. In 2010, the repeal of key provisions of 40B was placed on the ballot for popular vote, but the initiative failed with 58% of voters in favor of keeping 40B in place ("Voters Reject Ballot Question to Repeal Chapter 40B | Massachusetts Land Use Monitor," n.d.). One of the key concerns raised by 40B opponents is the impact these projects have on surrounding property values. Pollakowski, Ritchat & Weinrobe (2005) found that Chapter 40B developments were often sited at the edges of towns or were cut off from the nearest community by large amounts of open space, highways, rail corridors, or other industrial or manufacturing uses, which limited their ability to impact property values of surrounding single family residential buildings. However, even in settings where Chapter 40B multifamily, mixed income projects were developed, the researchers found that contrary to popular belief, 40B developments did not detract from surrounding property values (Pollakowski, Ritchay, & Weinrobe, 2005).

Chapter 40R, the Massachusetts Smart Growth Zoning Overlay District Act, by contrast, was passed with the intention of providing incentives to communities to enact smart growth overlay districts, which would allow denser multifamily housing by right. The law was the proposal of the Commonwealth Housing Task Force in 2001 as a response to the growing affordability crisis. By 2005, the first towns were enacting 40R districts. In 2009, a report jointly issued by the Citizens Housing and Planning Association (CHAPA) and Metropolitan Area Planning Council (MAPC) analyzed the implementation of 40R across the Commonwealth. This was the first study to make a comprehensive analysis of the program. The report was rich in town-level data about the 40R districts that had been created up to that point. Among the more salient findings were that:

- Most 40R districts (80%) are developer driven, rather than town driven. In fact, a number of 40R districts were created by developers initially pursuing 40B projects, where the town and developer successfully negotiated to use the Chapter 40R process instead. This has led to a system where the overlay zones only cover project-specific zones that have less of an impact on the surrounding areas.

- Communities that have enacted larger 40R zones in hopes of attracting development tend to be lower-income Gateway cities (Brockton, Holyoke, Lawrence). These cities have not been very successful in attracting development (number of units built in the zone as of 2017 compared to the total amount of units that could be built under overlay zoning) despite the friendlier zoning and often require additional infrastructure work before development can take place.

- They outline a number of reasons towns chose to enact 40R, including: developer initiative, assistance reaching 10% affordable housing, location and density...
standards consistent with long-term planning goals, financial incentives, transparency in approval process, and provisions limiting rights of abutters to appeal

- A dozen communities considered adopting 40R, but ultimately chose not to for reasons such as lack of sufficient votes to adopt a 40R district, concerns over school overcrowding, concerns with higher density standards, and inadequate public sewer facilities.

While the joint CHAPA and MAPC report provided a comprehensive analysis of 40R, the report only covers 1/3 of the time that 40R has existed. Further, the report was written as the Great Recession took full hold over the national economy, and construction in the region ground to a halt. Since that time, the economy has rebounded dramatically, with construction reaching unprecedented levels ("Boston real estate boom," 2017). Despite this, only a few additional 40R districts have been adopted in that time.

Tej Karki, in his dissertation, brings a more updated lens to Chapter 40R, and critically answers some questions as to which cities and towns enact 40R districts, and what reasons do towns give for not enacting 40R districts (Karki, 2010). Karki performed a regression analysis to tease out what characteristics of cities and towns were predictors of enactment of a 40R district. The most significant finding was that having a professional planner on staff was a significant determinant of 40R enactment at the town level, with towns with a professional planner on staff 32% more likely to enact a 40R district. Other factors that were statistically significant include having a higher percentage of non-white residents and attempting a lower number of property tax increases over 2½% annually.

Karki also conducted interviews with town planners and administrators in communities that had and had not adopted 40R. To select “non-adopting” towns, Karki selected five “adopting” towns within the Greater Boston region, and then selected a town adjoining each with a similar population. The non-adopting towns interviewed were Carver, Methuen, Canton, Freetown, and Middleton. These towns were small, three of which had populations of under 12,000. In interviews, these towns outlined their reasons for not implementing 40R districts, among which were concerns about additional density and its implications on community character, fear of decline of home values, lack of a professional town planner, lack of interest in the incentives offered by the state for 40R adoption, lack of “unfriendly” 40B project attempts, lack of desire to alter the zoning code, and lack of adequate infrastructure for development.

Neighborhood Effects

Understanding the importance of housing affordability is incomplete without understanding the equity implications behind the pricing system seen in this highly fragmented environment. Quigley and Raphael (2004) find that while housing is generally affordable for most Americans, those at the bottom of the income distribution have seen affordability go down as a result of increasing rents in recent decades. This lack of housing
affordability disproportionately impacts the poor. Additionally, while high home values stemming from a lack of supply impacts the entire region, it should not be assumed that prices are consistent across jurisdictions. Massey (2007) theorizes that when such a stratified system occurs, social groups with greater means hoard opportunity, restricting other social groups' access to scarce resources. In this case of land use regulation, this scarce resource is individual cities and towns which are unaffordable and have high quality of services. Galvez (2010) summarizes the most salient impacts of opportunity hoarding, most notably that "distance from jobs, exposure to violence and crime, poor quality public services, negative peer influences and a dearth of positive role models in high-poverty neighborhoods may limit residents' ability to achieve economic mobility" (Galvez, 2016).

Chetty, Hendren & Katz (2016), in their analysis of the Moving to Opportunity study, find just how relevant access to good neighborhoods are. In their study, they found that children under 13 who moved with their families to areas with low concentrations of poverty had increases in their incomes compared to children in control groups.

It should be noted that living in a "good neighborhood" is not the cure to all social woes. For as long as social scientists have studied the impacts of neighborhoods on the people who live in them, they have found mixed results. Jencks and Mayer, in early research summarized literature which found decidedly mixed outcomes on families based on the neighborhood they lived in, and theorized that households circumstances were more deterministic (Jencks & Mayer, 1990). In the Moving to Opportunity study referenced above, the researchers also found that moving to an area of opportunity had no effects on incomes for children aged over 13 or for adults, and in some cases, the move had detrimental effects on them from harms to their social networks (Chetty, Hendren, & Katz, 2016). While neighborhoods are not deterministic of an individual’s life outcomes, it remains important to acknowledge that they do have an impact on people’s lives and probabilistic outcomes for groups of people. By creating a land use system that creates unequal opportunity and favors wealthy homeowners who are merely trying to protect their home values, communities perpetuate inequality. It therefore becomes important that mechanisms to erode the inequalities between communities be fully implemented to create more just social outcomes.
III. Overview of Massachusetts Zoning

Land use in Massachusetts is regulated by Chapter 40 of the Massachusetts General Laws, which gives the 351 municipalities in Massachusetts the ability to control land use locally through zoning. Local zoning bylaws establish districts, or “zones”, in which the use, shape, and bulk of structures are controlled. Zones generally uniform and allow certain kinds of uses and structures “by right”. This means that if a zoning bylaw allows something, a landowner can use their property for that purpose without needing to obtain additional permission from the municipality.

Chapter 40, which broadly covers municipal regulation, begins with Chapter 40A, or The Zoning Act, which provides the basis for zoning regulations in Massachusetts. Following 40A are several other key provisions relevant to residential development. 40B is most commonly known as the Comprehensive Permit Act, which allows for dense, multifamily development through the use of a comprehensive permit, so long as the development includes a minimum amount of affordable housing. Further along in Chapter 40 is 40R, the Smart Growth Zoning Overlay District Act, which this report concerns itself with. Accompanying 40R is 40S, which was passed shortly after 40R, and provides additional financing for the marginal school costs associated with Chapter 40R development. Chapter 40 contains many other provisions related to municipal development and governance, but this report will only highlight the aforementioned subsections of Chapter 40 that are relevant to this report.

Chapter 40A

The earliest zoning legislation in Massachusetts was “An Act to Authorize Cities and Towns to Limit Buildings According to Their Use or Construction in Specified Districts”, passed in 1920 (Bobrowski, 2002). Subsequent changes to the law were made in the years between 1920 and 1954, broadening the zoning powers given to municipalities, until the Zoning Enabling Act was codified in 1954 as Chapter 40A. Chapter 40A gave authority to cities and towns to establish their own zoning ordinances “to regulate the use of land, buildings, and structures... to protect the health, safety, and general welfare of their present and future inhabitants” (“The Zoning Act,” n.d.). The act was amended in 1975, becoming the Zoning Act, and broadened the purposes and objectives for which a municipality could establish zoning laws. Among the seemingly contradictory expanded purposes were lessening congestion in the streets, avoiding undue concentration of population, encouraging housing for persons of all levels, and conserve the value of land and buildings. Among the salient sections of Chapter 40A are the following provisions:

Section 5, Adoption and Amendment: Zoning ordinances and bylaws may be adopted, amended, or repealed by the local representative body, which can include city council, board of selectmen, or town meeting. All proposed changes to local zoning require a public hearing before actions can be enacted. All changes to local zoning
must occur with a two-thirds super majority of the city council, town council, town meeting, or Zoning Board of Appeals as applicable.

Section 9, Special Permits: Zoning ordinances may provide for certain types of uses in specified districts, but only upon issuance of a special permit. This is in contrast to "by right" development, which can proceed without any additional permissions being granted by the municipality. Special permits shall only be granted for uses which are in harmony with the general purpose and intent of the ordinance, and may be subject to special provisions, conditions, or limitations on the use. Among the uses specifically called out in Sec. 9 is multifamily housing in nonresidential zoning districts, which municipalities may choose to permit in non-residential districts, if such non-residential district was not adversely affected by residential use and if the existing permitted uses in that zone are not noxious to multi-family use. Special permits are granted by a granting authority, which may be a board of selectmen, city council, zoning board of appeals, planning board, or a zoning administrator, as specifically designated by the local zoning ordinances or bylaws by a two-thirds supermajority vote.

Section 10, Variances: Different than a special permit, a variance may be granted when the specific circumstances relating to the soil conditions, shape, or topography of such land or structures would impose substantial hardship from the literal enforcement of zoning on that lot. Variances may not be granted for types of uses in districts otherwise prohibiting those uses unless the local zoning ordinance or bylaw expressly allows granting a variance for use.

Chapter 40A gives broad powers to municipalities to control what kinds of uses and structures are built within their boundaries. However, the two-thirds super majority to adopt or modify zoning ordinances and bylaws can pose a challenge to making changes that benefit or are preferred by a majority of residents. This allows a minority of the population to control land use decisions. It’s important to note that Massachusetts towns have been enabled to adopt zoning provisions since 1920, zoning provisions can remain outdated given the high bar needed to enact changes to local zoning codes. This is supported by Glaeser and Ward’s (2008) finding that inertia in Massachusetts zoning codes is rampant and that 1940’s housing density is the best predictor of current lot sizes in suburban Boston communities.

Chapter 40B, Comprehensive Permits

Chapter 40B was enacted in 1969 to give developers flexibility to override local zoning codes to develop affordable housing in Massachusetts cities and towns. In communities where 10% or less of the housing stock is deemed affordable, or where less than 1.5% of the land area is dedicated to affordable housing, developers can apply for a streamlined comprehensive permit from the town. The law was enacted to help address a shortage of affordable housing in Massachusetts by removing local zoning and approvals as
a barrier to the development of affordable housing (Citizens’ Housing and Planning Association, 2007).

To qualify for 40B, a development must be approved by a state or quasi-state agency as an eligible project, with at least 25% of its units affordable to households earning at or below 80% of the Area Median Income (AMI) or 20% of its units affordable to households earning at or below 50% AMI. Developers’ profits are restricted by 40B, with only 10% profit allowed per year for rental projects or a 20% profit allowed upon sale of ownership projects. Once a project is deemed eligible by a state agency, the developer submits a comprehensive permit application to the local zoning board, which is empowered to grant a comprehensive permit to the project on behalf of all other local boards that would otherwise have to approve the project, including historic, planning, and/or health boards, as applicable. The zoning board informs all other applicable local boards of the permit application and requests their recommendations prior to granting a comprehensive permit. The zoning board must hold a public hearing within 30 days of receiving an application, and the public hearing process typically continues for several months as project concerns are raised and addressed by the development team. A zoning board may eventually approve a project as submitted, approve a project with conditions, or deny an application. If the board denies an application or approves an application with conditions that make the project “uneconomic”, the developer may appeal to a statewide body known as the Housing Appeals Committee (HAC). The HAC ultimately makes a decision on a project based on its analysis of limited project review criteria. If non developer parties are aggrieved by a zoning board decisions, they may appeal to other state courts (Marchant, 2016).

40B projects are often typified as “friendly” or “unfriendly” 40Bs, describing the level of cooperation and goodwill between a 40B proponent and the municipality. While friendly 40Bs are proposed to proactively help a community meet their 10% affordability obligation, unfriendly 40Bs are resisted by communities for various reasons. To protect themselves from 40B applications, a town may do so by meeting a statutory minimum requirement or by meeting the standards of a safe harbor protection. The statutory requirement minimums include a minimum of 10% of a community’s year-round housing stock as affordable or a minimum of 1.5% of land area dedicated to affordable housing. A community can claim a safe harbor by creating a Housing Production Plan (HPP), which outlines a communities housing goals and an implementation process for reaching the 10% minimum affordability threshold. Additionally, a community may claim safe harbor if they have made recent progress towards the 10% affordability requirement by approving affordable units totaling at least 2% of the community’s total housing units within the past year. Though communities are typically “protected” from 40B applications once they have met their 10% affordability threshold, some communities choose to allow 40B applications even after exceeding the 10% threshold due to the streamlined and comprehensive nature of 40B permitting.

Since enactment, 40B has produced 68,239 units (2016 figures), of which 48,780 were rental units and 19,459 were homeownership units (Marchant, 2016). This equates to
about 1,450 units per year created through 40B, from its inception in 1969 until 2016. More than half of all units created through 40B have been affordable units. As of September 2017, 67 communities in Massachusetts have met their 10% minimum affordability threshold, including 23 within the study area.

Chapter 40R, Smart Growth Overlay Districts

Chapter 40R came about from the results of a report prepared by the Commonwealth Housing Task Force, which was convened by the Boston Foundation to help propose solutions to the high cost of housing in Massachusetts (E. Carman, Bluestone, & White, 2003). The task force had two main recommendations: that the state provide financial incentives to communities for implementing smart growth overlay districts and that the state increase its commitment to fund affordable housing for low and moderate-income families. The report asserted that unlike other regions in the US where housing costs track inflation in construction costs, housing costs in Boston appreciate much more quickly than inflation owing to an imbalance in supply and demand. The report ultimately identified restrictive zoning as the root cause of this imbalance rather than a shortage of land, financing, and competent developers. Identifying zoning as the key culprit led to the ultimate recommendations for smart growth overlay districts. Chapter 40R was subsequently enacted in 2004 to encourage dense residential development in communities with good transit access, areas of concentrated development, or locations that are otherwise well suited for dense development. Regulations were passed in 2005, the first year that communities could begin adopting 40R zones.

The key program features of 40R are the following:

- **Density Requirements**: Chapter 40R requires that districts be zoned to the following minimum density criteria:
  - For single family homes: 8 units/acre
  - For townhomes: 12 units/acre
  - For multifamily or condominiums: 20 units/acre

- **Affordability Requirements**: Chapter 40R requires that districts have at least 20% of all new units constructed affordable to households earning no more than 80% of the Area Median Income (AMI)

- **District Location Requirements**: Chapter 40R requires that districts be located in one of the three types of sites:
  - Transit-Oriented Location: site is within ½ mile of any rapid transit or commuter rail station, bus, or ferry terminal
  - Area of Concentrated Development: site is served (or will be served within 5 years) by a public sewer system, at least 50% of the total land area within the district is substantially development land or underutilized land, and the primary current use of the land or buildings in the proposed district is commercial or mixed use
Highly Suitable Location: the location would promote smart growth through transportation access, promotion of compact and efficient land use, would infill or redevelop areas with infrastructure and preserve open space, or the site has been identified as a locus for higher density housing

- **Allowance for mixed-use districts:** 40R allows for the incorporation of mixed-use development by right
- **Upfront zoning incentive payments:** Upon approval of a district by the Department of Housing and Community Development (DHCD), communities are entitled to a one-time zoning incentive payment of the following amounts:
  - 20 or fewer incentive units: $10,000 payment
  - 21-100 incentive units: $75,000 payment
  - 101-200 incentive units: $200,000 payment
  - 201-500 incentive units: $350,000 payment
  - 501 or more incentive units: $600,000 payment
- **Density bonus payments for construction of units:** For each incentive unit actually constructed within a smart growth zoning district, communities receive $3,000 per unit
- **Chapter 40S school costs reimbursement payments:** Under Chapter 40S, communities that enact a Chapter 40R district may be entitled to additional funds from the Commonwealth to cover the increased cost to the school system from 40R developments, should new tax revenue and Chapter 70 aid be insufficient to cover increased costs
- **Bonding requirements for parties seeking to appeal 40R projects:** Chapter 40R requires plaintiffs seeking to appeal the approval of a project to post a bond equal to twice the annual carrying costs of the property owner and the defendant’s attorney’s fees
- **Comprehensive Housing Plan:** Chapter 40R requires creation of a municipal Comprehensive Housing Plan, providing an assessment of the housing needs within the Municipality, and describing specific strategies, including but not limited to those contained in the Smart Growth Zoning, to address those needs as part of district creation
- **Public hearing requirements or Approval requirements:** Chapter 40R requires that a public hearing be held by the municipality and a two-thirds approval vote be taken prior to approval of a 40R district
- **Design Standards:** Communities may implement design standards that regulate height, frontage, density, materials, and/or landscaping requirements that projects within a 40R district must adhere to.

Chapter 40R gives communities greater control over development relative to Chapter 40B. Whereas through 40B developers can override local zoning requirements and appeal to a state body if a locality does not approve a project, through 40R, the locality retains ultimate control. If a community chooses to vote down the creation of a 40R district
or withhold waivers on 40R projects, there is no state body to which district or project proponents can appeal. Further, communities also control district aesthetics through the required design standards. Chapter 40R can also be used as proactive protection against 40B development in a community’s Housing Production Plan process if the 40R district is eventually adopted by the community.

It’s important to distinguish between 40R districts that were established by communities to proactively to encourage denser residential development and districts that were initiated by developers for specific projects. In their early report of 40R districts, Verrilli and Raitt (2009) found that about 80% of the extant 40R districts at the time had been developer-driven districts. However, by the time of Verrilli’s updates report (2018), only about half of 40R districts had been initiated by a developer (22 of 42 districts), and that the remaining 20 were enacted by municipal initiative. 72% of the developer-initiated 40R zones were established in the three years directly after regulations for 40R were promulgated. Many of these projects had already been approved by or were in the approval process with municipalities through 40B, special permits, or land disposition agreements, and so switching to 40R as the permitting mechanism provided additional benefit to municipalities. These early 40R zones account for half of the units built under 40R to date.

Of January 2018, 15,549 incentive units have been zoned through 40R, and yet only 3,453 (22%) of those have been built. In annual terms, this is about 287 units per year created by 40R from 2005-2017, which is significantly fewer than the 1,450 per year created through 40B. In the Boston core (further defined in Chapter IV), many more of the zoned incentive units have been built, with 720 built out of 1,694 (43%) zoned. Only half of the twelve 40R zones in the study area have been fully built out, while four zones have seen no development at all despite being in place since at least 2015.

Chapter 40S, School Costs

Chapter 40S was passed as companion legislation to 40R to deal with a commonly cited barrier to residential development in suburban communities: the cost of educating school children. A follow up report by the Commonwealth Housing Task Force shortly after Chapter 40R’s adoption suggested that 40R was unlikely to see much adoption unless the state also contribute funds to communities to cover the increased cost of educating the new schoolchildren resulting from development in 40R districts (T. Carman, Bluestone, & White, 2005). 40S provides reimbursement payments to towns based on actual costs of educating new school children based on a formula. The reimbursement “equals the cost of educating students living in new housing in smart growth districts less an amount equal to the sum of: (a) new property and excise taxes in the smart growth district multiplied by the average percent of total local spending on education across the Commonwealth (about 52%), and (b) any increases in other state education funding (including Chapter 70) that is directly a result of these new students (“Chapter 40 S,” n.d.). It should be noted that though school costs are often raised as a concern by communities facing new housing development, MAPC recently found that there is no meaningful relationship between housing production and
school enrollment (Reardon & Philbrick, 2017). Furthermore, Chapter 40S costs have only been accessed by three communities thus far – Chelsea, Lakeville, and Lunenburg – as new real estate tax and increased Chapter 70 school aid have covered the full marginal cost of educating any additional school children brought into the system through 40R development.
IV. Methodology

This study undertook a mixed methods approach to analyzing the two research questions at its core. To restate, those questions are:

1. Why have so few communities within the Boston urban core implemented 40R districts?
2. For communities within Greater Boston metropolitan area, why has the utilization of 40R entitlements been so low, such that the districts have not been fully built out by developers?

This study proceeded in multiple phases. First, a review of Chapter 40R policy documents and available data sets was conducted. A survey of town planners in the study area was then conducted to better understand, from their perspectives, what the benefits and impediments to implementing Chapter 40R in their communities are. Regression analysis was performed using American Community Survey Data and responses to the survey. To better understand municipalities’ attitudes towards growth, in depth interviews were conducted with town planners who participated in the survey. Finally, interviews with developers were conducted to understand the challenges they face in permitting projects in the region, with a focus on how 40R does or does not fit into their permitting strategy. Each step in the process is described in more detail in this chapter.

Study Region

This study focused on communities in the Boston region, generally located within what is known as the “Route 128 Corridor”, or communities that are adjacent to or within the ring road surrounding circumscribing Boston with a radius of about 12-15 miles from downtown. Given the high housing costs in the Boston metro area, the continued growth of the region, and the clear demand for housing the region, it is surprising that more communities in the region have not adopted 40R districts, and that the zones that have been adopted have not been fully built-out. Furthermore, because these communities are more populous, denser, and are geographically closer and have better transportation access to the region’s main economic hub of Boston, these communities are distinct from the ones studies by Tej Karki in his analysis. The communities are much less likely to face some of same issues Karki raised in his study, including having a professional town planner on staff, having the necessary water, sewer, and road infrastructure to accommodate new development, and pre-existing densities and population sizes greater than Karki’s study sample. For that reason, this study chose to focus on the communities within Route 128. There are several exceptions to this – Framingham and Natick were included in the study area since both communities have excellent connectivity to Boston on the Massachusetts Turnpike and the MBTA Commuter Rail, both have seen recent residential development, and Natick in particular has an existing 40R district. The communities studied are shown in the map in Figure 5 below.
Part 1: Review of Chapter 40R & 40B data

Before commencing with analysis, this study began by obtaining publicly available documents related to Chapter 40R to understand how 40R has been implemented since its inception in 2005. Additionally, documents that helped shed light on towns’ progress meeting their 40B requirements were requested from DHCD and reviewed. The reviewed documents shaped the survey and interview questions and were used in the analysis of Parts 2-4 of this chapter. The documents reviewed were the following:

- 40R Districts/Activity list with approved districts and number of approved and constructed units
- Spreadsheet of all approved and constructed 40R projects
- Subsidized Housing Inventory

Part 2: Survey of Town Planners in Route 128 communities

Data overview and cleaning

The survey was distributed to 56 communities by email. The target of the surveys was the most senior town planning official of each community, as determined by
community websites and planning board meeting minutes. In all, there were 33 responses to the survey, representing 32 different communities shown in Figure 6 (in one community, the town planning staff person and a member of the town’s planning board both responded to the survey), for a 57% response rate. The towns that responded to this survey are indicated in Figure 6 below. Of the 56 communities, one responded indicating that there is no planning staff and therefore there was no one qualified in town government to respond to the questions in the survey. In one other community, no planning director could be identified online and no member of the planning board/staff responded to emails regarding the survey. There was no response from the remaining 22 communities.

To not weight the results of one community any more than any other, the results of the planning board member from the community with two survey responses is excluded from this data. Of the 33 survey responses, one was a partial response; all others were full responses. The information collected in the partial response is included for the questions that respondent answered.

*Figure 6: Map of Communities that responded to this survey – communities highlighted in green responded to the survey*

*Descriptive statistics*
The first two questions on the survey verified which of the respondents' communities have existing Chapter 40R districts in place or are considering the implementation of Chapter 40R districts (Figure 7, Figure 8). Of the respondents, 10 had implemented Chapter 40R districts (32%). Two communities were considering Chapter 40R districts (6%), one of these being a community that already has a 40R district and the second being one that is considering implementation of its first district.

*Figure 7: Communities with Chapter 40R Districts*

**Does your town have any Chapter 40R Smart Growth Districts in place?**

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<td>Yes</td>
<td>10</td>
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<tr>
<td>No</td>
<td>22</td>
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*Figure 8: Communities considering implementing a Chapter 40R District*

**Is your town in the process of implementing a Chapter 40R Smart Growth District?**

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Chapter 40R Program Requirements

The next set of questions listed program characteristics of Chapter 40R and asked for each characteristic, to what extent if at all, those characteristics serve as an incentive for or impediment to Chapter 40R implementation in the respondent's communities. Each program characteristic was accompanied by a brief description outlining specific requirements or program features of 40R to clarify any questions about specific requirements for respondents. The program elements and their explanations surveyed can be seen in Figure 9. The survey also allowed communities to write in additional program requirements that they viewed as impediments or incentives. Two communities listed additional strong impediments, including a perceived loss of control to the state in determining appropriate projects, the notion that incentive payments are only one-time payments, and the perception that developers shy away from 40R as it limits their profit margins.

Figure 9: Chapter 40R Program Requirements and Descriptions

<table>
<thead>
<tr>
<th>Program Requirement</th>
<th>Description of Program Requirement</th>
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</table>
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For townhomes: 12 units/acre  
For multifamily or condominiums: 20 units/acre |
| Affordability Requirements    | Chapter 40R requires that districts have at least 20% of all new units constructed affordable to households earning no more than 80% of the Area Median Income (AMI) |
| District Location Requirements| Chapter 40R requires that districts be located in one of the three types of sites:  
- Transit-Oriented Location: site is within ½ mile of any rapid transit or commuter rail station, bus or ferry terminal  
- Area of Concentrated Development: site is served (or will be served within 5 years) by a public sewer system, at least 50% of the total land area within the district is substantially development land or underutilized land, and the primary current use of the land or buildings in the proposed district is commercial or mixed use  
- Highly Suitable Location: the location would promote smart growth through transportation access, promotion of compact and efficient land use, would infill or redevelop areas with infrastructure and preserve open space, or the site has been identified as a locus for higher density housing |
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<td><strong>Incentive Payments for Construction of Units</strong></td>
<td>For each incentive unit actually constructed within a smart growth zoning district, communities receive $3,000 per unit</td>
</tr>
<tr>
<td><strong>Chapter 40S School Cost Reimbursement Payments</strong></td>
<td>Under Chapter 40S, communities that enact a Chapter 40R district may be entitled to additional funds from the Commonwealth to cover the increased cost to the school system from 40R developments, should new tax revenue and Chapter 70 aid be insufficient to cover increased costs</td>
</tr>
<tr>
<td><strong>Bonding requirements for parties seeking to appeal 40R projects</strong></td>
<td>Chapter 40R requires plaintiffs seeking to appeal the approval of a project to post a bond equal to twice the annual carrying costs of the property owner and the defendant’s attorneys</td>
</tr>
<tr>
<td><strong>Comprehensive Housing Plan</strong></td>
<td>Chapter 40R requires creation of a municipal Comprehensive Housing Plan, providing an assessment of the housing needs within the Municipality, and describing specific strategies, including but not limited to those contained in the Smart Growth Zoning, to address those needs as part of district creation</td>
</tr>
<tr>
<td><strong>Public hearing requirements or Approval requirements</strong></td>
<td>Chapter 40R requires that a public hearing be held by the municipality prior to DHCD’s determination of a district’s Preliminary Determination of Eligibility. An additional public hearing is required prior to adoption of a 40R district, where a two-thirds supermajority vote is required for adoption of the district.</td>
</tr>
</tbody>
</table>

Common Barriers

The final aspect of the survey focused on commonly cited barriers for Chapter 40R adoption. The survey drew from many of the issues cited in the literature, including Karki
(2010) and Rosan and Susskind (2007). The barriers surveyed are listed in the chart below. 

*Figure 10: Commonly Cited Barriers to Chapter 40R Implementation*

<table>
<thead>
<tr>
<th>Commonly Cited Barriers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of developer interest in your community</td>
</tr>
<tr>
<td>Lack of market demand to support new development in your community</td>
</tr>
<tr>
<td>Lack of adequate water or sewer</td>
</tr>
<tr>
<td>Lack of adequate school infrastructure</td>
</tr>
<tr>
<td>Lack of other critical infrastructure</td>
</tr>
<tr>
<td>Anticipated opposition from community</td>
</tr>
<tr>
<td>Lack of desire for higher residential density</td>
</tr>
<tr>
<td>Lack of desire for affordable housing</td>
</tr>
<tr>
<td>Lack of desire to see community grow</td>
</tr>
<tr>
<td>Desire to preserve community character</td>
</tr>
<tr>
<td>Desire to maintain local control over</td>
</tr>
<tr>
<td>Lack of desire to allow multifamily development “as of right”</td>
</tr>
<tr>
<td>Lack of community familiarity with</td>
</tr>
<tr>
<td>Lack of planning department staff capacity</td>
</tr>
<tr>
<td>Fear of not receiving incentive payments from the Commonwealth</td>
</tr>
</tbody>
</table>

**Part 3: Regression Analysis**

Using American Community Survey (ACS) data, statistical analysis was employed to see if certain town characteristics could be predictive with regards to Chapter 40R adoption or attitudes towards growth in general. This is a method similar to the one employed by Karki in his analysis. Specifically, this study analyzed factors related to housing tenure, existing housing stock, median town income, and town racial composition. Data was gathered from 2012-2016 American Community Survey (ACS) at the town level. ACS data-tables downloaded included Total Population (B01003), Income in the Past 12 Months (S1901), Demographics and Housing Data (DP05), and Units in Structure (B25024). ACS data was regressed against community’s responses to the commonly cited barriers from the survey.

**Part 4: Interviews with surveyed town planners**

Follow up interviews were held with selected town planners who responded to the survey to better understand town attitudes towards growth and how their communities plan for growth. Specific examples of recent project or rezoning efforts, and community reactions to those projects and efforts, were discussed. The communities interviewed for this portion of the thesis are listed below, along with a brief description of each community.
## Town Interviewed

<table>
<thead>
<tr>
<th>Town Interviewed</th>
<th>Brief Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arlington</strong></td>
<td>Arlington is a close-in “street-car” suburb of Boston, located about 6 miles away from Boston. Arlington is typified by several main commercial corridors surrounded by tracts of single-family and two-family housing. Population: 44,408&lt;sup&gt;1&lt;/sup&gt; Housing Density: 5.8 units/acre&lt;sup&gt;2&lt;/sup&gt; Median Income: $98,103 % Owner-occupied units: 60.6% % White-only: 85.95% 40R district in place: No&lt;sup&gt;3&lt;/sup&gt; Vulnerable to Chapter 40B developments: Yes&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Danvers</strong></td>
<td>Danvers is a suburban residential community, located about 15 miles north of downtown Boston. Population: 27,558 Housing Density: 1.27 units/acre Median Income: $79,913 % Owner-occupied units: 69.4% % White Only: 93.58% 40R district in place: Yes Vulnerable to Chapter 40B developments: No</td>
</tr>
<tr>
<td><strong>Norwell</strong></td>
<td>Norwell is a low-density suburb of Boston, located about 16 miles south of downtown Boston. Norwell is characterized by large amounts of open space and an agricultural character. Population: 10,845 Housing Density: 0.28 units/acre Median Income: $114,560 % Owner-occupied units: 92.5% % White Only: 97.23% 40R district in place: No Vulnerable to Chapter 40B developments: Yes</td>
</tr>
</tbody>
</table>

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<sup>1</sup> 2016 American Community Survey 5-year estimate, 2012-2016  
<sup>2</sup> 2016 American Community Survey 5-year estimate, 2012-2016 and MassGIS Oliver  
<sup>3</sup> Massachusetts Department of Housing and Community Development 40R Districts/Activity Summary  
<sup>4</sup> Massachusetts Department of Housing and Community Development Subsidized Housing Inventory
<table>
<thead>
<tr>
<th>Reading</th>
<th>Reading is a suburb of Boston, located about 12 miles away north of downtown Boston. Reading has a vibrant downtown located in close proximity to an MBTA commuter rail stop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population: 25,490</td>
<td></td>
</tr>
<tr>
<td>Housing Density: 1.54 units/acre</td>
<td></td>
</tr>
<tr>
<td>Median Income: $108,894%</td>
<td></td>
</tr>
<tr>
<td>Owner-occupied units: 79.4%</td>
<td></td>
</tr>
<tr>
<td>% White Only: 92.22%</td>
<td></td>
</tr>
<tr>
<td>40R district in place: Yes</td>
<td></td>
</tr>
<tr>
<td>Vulnerable to Chapter 40B developments: Yes</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Saugus</th>
<th>Saugus is a working-class community located about 7 miles north of downtown Boston. Saugus has a predominantly single-family typology with a heavy commercial corridor/highway bisecting the community.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population: 27,773</td>
<td></td>
</tr>
<tr>
<td>Housing Density: 1.46 units/acre</td>
<td></td>
</tr>
<tr>
<td>Median Income: $78,372</td>
<td></td>
</tr>
<tr>
<td>% Owner-occupied units: 79%</td>
<td></td>
</tr>
<tr>
<td>% White Only: 90.70%</td>
<td></td>
</tr>
<tr>
<td>40R district in place: No</td>
<td></td>
</tr>
<tr>
<td>Vulnerable to Chapter 40B developments: Yes</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Weston</th>
<th>Weston is a wealthy suburb of Boston about 12 miles due west of downtown Boston. Weston is known for its “leafy, liberal, and loaded” character similar to other suburban towns west-northwest of Boston.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population: 11,946</td>
<td></td>
</tr>
<tr>
<td>Housing Density: 0.36 units/acre</td>
<td></td>
</tr>
<tr>
<td>Median Income: $191,744</td>
<td></td>
</tr>
<tr>
<td>% Owner-occupied units: 85.3%</td>
<td></td>
</tr>
<tr>
<td>% White Only: 82.67%</td>
<td></td>
</tr>
<tr>
<td>40R district in place: No</td>
<td></td>
</tr>
<tr>
<td>Vulnerable to Chapter 40B developments: Yes</td>
<td></td>
</tr>
</tbody>
</table>

**Part 5: Interviews with local multifamily developers**

The final piece of this analysis was conducting interviews with developers who have experience developing multifamily housing in multiple municipalities in the Boston region. Developers were interviewed to better understand the challenges in permitting projects in the fragmented municipal system of the region. Many interviewees have developed at least one 40R project, though one interviewee had not. All 40R developers had also developed other non-40R projects, including many 40B projects.
Figure 12 - Summary of developers interviewed for this study

<table>
<thead>
<tr>
<th>Program Requirement</th>
<th>Description of Program Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>AvalonBay Communities</td>
<td>AvalonBay is a national equity real estate investment trust (REIT) that specializes in apartment communities. Headquartered in Boston, AvalonBay is very active in Eastern Massachusetts with over 40 communities built or under development in the area. 40R Projects: None</td>
</tr>
<tr>
<td>Harborlight Community Partners</td>
<td>Harborlight Community Partners is a non-profit community development organization that seeks to house economically vulnerable populations, including the elderly, formerly homeless individuals, and low-income families. Harborlight is based in Beverly and focuses its work on Boston’s North Shore, with developments in nine North Shore communities including Salem, Beverly, Peabody, Rockport, and Gloucester. 40R Projects: Sohier Road, Beverly 75-unit affordable housing project for low income families</td>
</tr>
<tr>
<td>Mill Creek Residential</td>
<td>Mill Creek Residential is a national residential developer that focuses on high-density multifamily development. Nationally, the company has developed roughly 25,000 units since its inception in 2011. The firm has expertise in getting sites permitted in suburban locations. Locally, the firm has seven properties in Eastern Massachusetts, including projects in Quincy, Framingham, Hopkinton, Medford, Natick, Needham, and Watertown. 40R Projects: Modera Natick Center 150-unit apartment community, of which 138 units were 40R units, within walking distance to MBTA commuter rail and Natick Center</td>
</tr>
<tr>
<td>National Development</td>
<td>National Development is a local development firm that has developed 28 million square feet of space throughout 45 communities in the Boston region. Their development portfolio spans residential, office, retail, lab, industrial, hotel, and mixed-use products. 40R Projects: Marketstreet Apartments, Lynnfield 180-unit apartment community located adjacent to 400,000 square foot “main street” retail center.</td>
</tr>
</tbody>
</table>
**Oaktree Development**

Oaktree is a boutique design and development firm that specializes in environmentally friendly designs, a patented modular building system, and socially motivated development. Oaktree’s development focuses on mid-sized projects in transit-oriented locations throughout New England.

40R Projects: 30 Haven, Reading
Downtown Reading’s inaugural project, a 53-unit project with ground floor retail a block away from an MBTA commuter rail stop.

**Traggorth Companies**

Traggorth Companies is a small boutique development firm that focuses on developing affordable and mixed-income projects in transit-oriented locations.

40R Projects: 20-24 Gould, Reading
A permitted 55-unit mixed-income project located in Reading’s amended and expanded 40R district. The project is located a block away from an MBTA commuter rail stop.

**Issues with the methodology**

For the qualitative analysis, the largest limitation is the small sample size associated with this analysis. There were only 56 communities in the sample size, and of those only eleven have enacted 40R districts. Thirty-two communities responded to the survey associated with this report. This high response rate provides excellent descriptive statistics. However, many of the communities in the study area were fairly homogenous in terms of the demographic factors analyzed for this study. The subtle variation in demographics from community to community coupled with the low number of communities sampled in this study do not lend themselves to making sharp distinctions about which demographic factors impact a community’s decision to implement 40R or their attitudes on growth through regression analysis.

Additionally, for both the quantitative portion and the interviews with town planners, issues could arise from the use of town planners as the source material for information. Town planners’ responses are a useful proxy for this study, as planners regularly interact with community members around issues of growth, from having projects permitted to large-scale planning processes. However, using town planners is not a perfect proxy. In many cases, planners are the experts in their respective communities as to why certain projects proceed and others do not. In some case, planners may overstate or understate a community’s desire to grow based on their own preferences for growth. Despite this, planners had no incentive to not answer truthfully on this survey. While using town planners may be an imperfect tool, for the purpose of this study, using the knowledge
and opinions of town planners is appropriate given the subjectivity of attitudes towards growth and development.
V. Why aren’t more towns implementing 40R districts?

Chapter 40R is the proverbial “carrot” to the “stick” of Chapter 40B, allowing communities to choose how they want to grow, rather than being forced to grow in a particular manner. Developers to override local zoning to develop affordable housing. Given that thirty-three of the communities in the study area have not met their 10% affordable housing requirement, one would expect some of those communities to have implemented 40R districts as a proactive measure to shape how and where they want affordable housing to be located in their communities. Even for communities who have met their 10% affordable housing requirement under 40B, but who still desire to grow densely and in an environmentally sensitive manner, one could expect that they could use 40R as a means to allow for that kind of development while also benefiting from the state’s incentive payments. However, Chapter 40R adoption has been very limited, both statewide and in the study area. Why has Chapter 40R adoption been so limited? Some initial hypotheses include the following:

- The communities within the Route 128 corridor have high market demand for development. By not implementing Chapter 40R districts, they retain control over the development process and require developers to enter into direct negotiations with the town before any multifamily development are permitted.
- Underlying zoning in these communities allows multifamily development by right, or if not by right, then some other, simpler zoning mechanism exists such as a comprehensive permit through Chapter 40B.
- There are underlying issues with Chapter 40R that makes it undesirable for communities to implement new overlay districts.
- These communities want no or little growth. Concerns about neighborhood character, inadequate infrastructure, or about the fiscal impacts of additional school children inhibit communities desire to take on additional housing units.

This chapter explores the final two hypotheses, using surveys and interviews with town planners to provide insights. While planners view Chapter 40R as being full of incentives, certain program requirements, such as the density requirements, are impediments for Chapter 40R implementation. Additionally, a lack of familiarity with the program leads to misconceptions of it, which can in turn impact a community’s decision to not use Chapter 40R in favor of other tools. However, even if a community chooses to use 40R as a tool for implementation, the process for implementation can be difficult, leading communities and developers to choose more familiar permitting mechanisms, like Chapter 40B. Ultimately, though, the largest barrier to Chapter 40R adoption is that many communities in the study area don’t want to grow, which is precisely the point of the program. Communities that have a higher proportion of homeowners, a higher proportion of single-family homes, and a higher median income had a higher likelihood of objecting to growth.
Chapter 40R is viewed as being full of incentives, but some requirements are viewed as impediments

In analyzing survey results from town planners, communities generally view Chapter 40R as being full of incentives that would encourage them to adopt a 40R district. The three main monetary incentives of the program – incentive payments for the construction of units in 40R districts, upfront payment to the town for adoption of a 40R district, and Chapter 40S school cost reimbursement payments – were almost universally seen as incentives by communities, with between 78%-84% of communities responding positively toward those features of the program. The flexibility of the program was also frequently cited as an incentive, with 72% of respondents responding positively to the flexible locational requirements, which can include transit-oriented locations, areas of concentrated development, or other highly suitable locations, and 70% of respondents responding positively the ability to incorporate mixed-use in the districts.

Though most town officials generally view the 40R program as being full of incentives, it’s clear that among communities that have not implemented 40R and are not considering implementing 40R, the density requirements of 40R are the major impediment for implementation. When that subset of non-40R-adopting communities is analyzed independently, over half of those communities find the density requirements to be an impediment (12 of 21 communities, or 57%). This can be inferred to mean that communities that don’t want dense development will not implement 40R districts, regardless of the incentives offered to them to offset the negative externalities of denser development. As one of the communities noted in their survey response, “[our
community] is a town that looks to preserve its rural character; therefore, incentives for more density are not nearly carrots enough to get the town to enact a 40R." Another town official stated that their community members were “not totally keen on the attached housing requirements” and the town “has reservations about whether it’s appropriate for them.”

It is also important to note that several communities that have enacted 40R districts claimed that incentives were not a significant consideration or a consideration at all during the implementation process. For those communities, Chapter 40R happened to be the zoning tool that matched their desires for growth. In one community, for example, the community upzoned three areas in the community, but only adopted a 40R district in one of those areas. Additionally, during the public planning process, the notion of incentives was not widely broadcast to the community, as getting the zoning right was the key message planning staff wanted to focus on. In that community, 40R was only viewed as the right zoning tool for that one area, and incentives were not a driver in making the decision to implement 40R in any of those three areas.

40R’s affordability requirement and the Comprehensive Housing Plan requirements were the only other requirements that a sizeable number respondents indicated were also impediments, with 28% of respondents claiming each was somewhat of an impediment or a strong impediment. However, the majority of respondents viewed these requirements as incentives or neutral, so it’s unlikely these were the primary impediments to implementing Chapter 40R districts.

Lack of familiarity with 40R or misconceptions about the program impacts adoption

Among surveyed communities, town planners generally indicated familiarity with 40R, with more than half of communities indicating they were extremely or very familiar with 40R (Figure 14). No community indicated they had no familiarity with 40R. Despite this, a number of surveyed communities indicated that their lack of familiarity with 40R was a barrier to its adoption in their communities. Communities with a higher median income, with a higher proportion of homeowners, and with a higher proportion of single-family homes were statistically more likely to say that lack of familiarity with 40R as a barrier to Chapter 40R adoption. It may be that high income, high proportion homeownership, high proportion detached single-family home communities may understand that the basic premise of 40R is to promote denser residential development and have dismissed the program as an option for that very reason. However, this dismissal of the program can lead to misconceptions about the program. Interviews with town planners revealed that to an extent, misconceptions about 40R exist and serve as a barrier to community adoption of 40R districts.
In the survey and in interviews, town planners indicated misconceptions about Chapter 40R program requirements, which steered them away from using 40R. This happened despite the fact that 40R was a tool that may have been appropriate for the specific planning issues their towns were facing. Several surveyed communities identified perceived requirements of 40R as impediments that are, in fact, not actual 40R program requirements. For example, one community indicated that implementing 40R would require the community to cede control of determining what projects were appropriate to the state. However, the community generally retains control over all projects allowed in a 40R zone through how its own zoning bylaw and design guidelines are constructed (though communities do not have control over bedroom distribution, age-restrictions, or rental vs. ownership of properties, which are powers not granted to communities under 40A).

Another community indicated that 40R would not attract developers to their community because the program limits the profits developers can earn from 40R projects. While this is true of 40B projects, this is not true of 40R.

Interviewed communities similarly raised objections to 40R that were based on misconceptions about program requirements. For example, one community that has not met its 10% affordable housing requirement briefly looked at using Chapter 40R for the proposed site of a high density multifamily project. It instead chose to allow the project to proceed as a friendly 40B project because, among other reasons, the community believed the site would be ineligible since the site was not on a transit-oriented location close to the town's commuter rail stop. In another community that recently went through a rezoning process to allow higher residential density and mixed-use development along a commercial corridor, 40R was thought to be an inappropriate rezoning tool for a large corridor, despite the fact that 40R allows for mixed-use residential and commercial development. In both these cases, the community ultimately rezoned to allow for greater residential density; however, misconceptions about the flexibility in 40R may have led the communities to miss out on monetary incentives from the state for allowing greater residential density.
Getting 40R districts approved is very challenging

One factor the survey did not reveal was an impediment, but became readily apparent during phone interviews, was the form of community approval for adopting 40R. Many of the communities interviewed have a town meeting form of government, in which a body of town resident’s meet and vote on local governance decisions, which can include changes to local zoning bylaws (“CIS: Citizen’s Guide to Town Meetings,” n.d.). Town meetings can be representative town meetings, in which representatives are selected to represent the community in town meeting, or open town meeting, in which any adult in the community can participate. In interviews, town planners indicated needing 2/3 of a town meeting’s vote to approve a 40R district as a barrier to adoption. In their 2009 report, Verrilli and Raitt found that at least three communities (Hingham, Newbury, and Georgetown) were unsuccessful in enacting 40R districts because of failure to meet the required 2/3 threshold, and at least one other community (Norwell) has faced the same issue since 2009. In one community, the town planner indicated that “representatives at town meeting are unlikely to make decisions that can hurt their friends and neighbors. This is a small town and everyone grew up with each other, so preserving those friendships is important.” Because increasing density can provoke intense emotions in the community, the preservation of long-term relationships trumped allowing increased density in town meeting. In another community, the town planner said the town decided to permit a friendly 40B project in lieu of undertaking 40R rezoning because of the relative simplicity of the 40B process, among other factors.

Even in communities where 40R has been adopted, town planners raised town meeting as a concern during the adoption process. One community undertook a two-year planning process to educate the community about what 40R and other rezoning initiatives would mean for the community before taking the creation of the 40R district to town meeting. In another community, the town planner expressed surprise at how little pushback there was from town meeting to expand an existing 40R district after a brief outreach process; however, concerns over proposed projects since the zone’s expansion could lead to future issues with town meeting should the town pursue additional 40R zones.

Communities Don’t Want to Grow

Many of the surveyed communities indicated that they lacked a desire to grow, which served as the principal barrier to adopting a 40R district. More than 70% of survey respondents claimed that their communities lacked desire for higher residential density (84%), lacked desire to allow multifamily development by right (77%), they anticipated opposition from community residents (74%), and lacked desire to see their community grow (74%). Communities with a higher proportion of homeowners, a higher proportion of detached single-family homes, and with a higher median income were all more likely to claim that a lack of desire to grow was a barrier to implementing Chapter 40R in their
communities. These factors explained about 24%-27% of the variation among communities’ citing a lack of desire to grow as a barrier to Chapter 40R adoption.

Interviews with town planners helped to shed light on communities’ objections to growth. Some concerns are related to legitimate concerns of managing growth relative to tax expenditures, environmental concerns, or concerns about infrastructure. For example, in one interviewed community, many areas of the town are in flood zones due to the town’s proximity to rivers, ponds, wetlands, and poorly draining low-lying areas. In this community, proposals for single-family homes are received with skepticism if they are located in a designated flood area, even while high density multifamily development is permitted by right along a commercial corridor. In another, more rural suburban community, the lack of sewer infrastructure and sidewalks is a challenge for development. Aside from a small portion of the town connected to a neighboring community’s sewer system, the entire town is connected to septic tanks, which make large scale development challenging.

In addition to concerns about growth based on specific factors like those listed above, planners indicated that while their communities have a reputation for being anti-growth, they may prefer specific kinds of growth which exclude further residential development or any kind of higher density residential development. In one town, the town planner claimed that residents never raised objections to single family home development, unless the development infringed on wetlands. In another town, the planner indicated that town residents desire economic development at the former town center. However, residents don’t see residential development as a tool within a larger economic development strategy that increases the market base from which local businesses can draw customers. It’s important to note that fiscal planning would support this desired path of growth, as Proposition 2 1/2, which limits a town’s property tax levy 2.5% of the town’s total assessed value, favors large single-family homes and commercial development, both of which generate the most assessed value per unit of development.

Interviews with town planners and developers often suggested more veiled reasons for not desiring growth related to class, race, and/or family structure. Interviewees often answered questions about community oppositions to growth with ambiguous responses such as, “I’ll let you speculate” or “[community members] don’t like dense housing typologies, and I’ll leave it at that”, leaving open the possibility that concerns about growth are not strictly related to things such as managing growth to provide proper infrastructure or ensuring fiscal impacts of development are mitigated. When pushed, one town planner claimed that residents of that town “have a hard time accepting housing typologies that are not similar to their own [single family homes]. [Town residents] may not see the people living in these places as people who don’t want to mow their lawn or deal with the maintenance on their home. They view people living there as different from them, with different values than them.”
Developers who have worked in communities throughout the region shared findings from their proposals. One developer claimed that in some communities, any proposals that involved children are “dead on arrival”. In those cases, the developer frequently hears “infrastructure” as a code word to indicate that new families with school aged children are not welcome in the community. In another predominantly white and affluent community, the affordable component of an elderly housing development was never developed due to community fears of low-income seniors from a nearby, majority-minority community moving into their community. These prejudices towards, and perhaps fear of, low-income households, minority households, and families with children, make it difficult for new high-density multifamily development to take place unless it is already expressly allowed by the zoning code.

The survey clearly shows that growth is viewed as a challenge by most of the communities in suburban Boston. Some communities have legitimate concerns about growth and its impact on the environment, local infrastructure, or tax expenditures. However, either in parallel or underlying those legitimate concerns is a fear of “others” or “outsiders”. This echoes Fischel’s theorizing, that home equity is the greatest source of wealth for American families, and they use zoning as the means to protect this investment. Reeves’ (2018) puts this poignantly, stating:

We then become highly defensive - almost paranoid – around the value of our property and turn to local policies, especially exclusionary zoning ordinances, to fend off any encroachment by lower-income citizens and even the slightest risk to the desirability of our neighborhoods. These exclusionary processes rarely require us to confront public criticism or judgment. They take place quietly and politely in municipal offices and usually simply require us to defend the status quo. (Reeves, 2018)

It’s worth restating some of Tej Karki’s findings regarding 40R adoption by communities. Karki found that “at the local level, adoption of Chapter 40R largely depends upon the provision of a town planner, the selection of politically less-sensitive sites, a community’s awareness of Chapter 40R advantages, a community’s confidence in the state’s ability to fund Chapter 40R, and the availability of water and sewer in communities.” The sample of communities in this study is vastly different from Karki’s sample, and as such, this study finds results that contradict Karki’s. For example, lack of water and sewer infrastructure (26%) and a fear of not receiving state incentive payments (23%) were infrequently cited as barriers for Chapter 40R in the surveyed communities. Further, all but one of the surveyed communities had a town planning professional, even though several town planning positions were vacant at the time of the survey. This all is to say that specific objections or obstacles, such as the ones Karki found in his study, are not the primary barrier to 40R implementation in the close-in suburbs of Boston; rather, objection to growth as a concept is the primary barrier.

Other Factors

Among the barriers to 40R adoption that communities were surveyed on, several factors were found to be statistically correlated with ACS data. In addition to “lack of desire
to grow” and “lack of familiarity with 40R,” which have already been described, other factors were also found to correlate with ACS data, though to a lesser extent.

- Several communities claimed that there was a lack of developer interest in their communities. Communities with a higher proportion of homeowners and a higher proportion of detached single-family homes were statistically found to be more likely to raise this as a barrier.
- Communities with a high proportion of single family homes claimed that the “desire to preserve community character” was a barrier to 40R implementation.
- Communities also raised necessary infrastructure as a barrier to 40R adoption. Communities with a high proportion of detached single-family homes and with a higher median income were more likely to raise adequate water or sewer infrastructure as an issue. Adequate school infrastructure was also raised as a barrier, but notably, was only statistically correlated with communities with higher median incomes. In other words, communities with the highest median incomes were the most likely to claim that not having adequate school infrastructure was a barrier to Chapter 40R adoption (99.9% confidence, $R^2=0.334$). This is not necessarily surprising given that wealthier communities receive less Chapter 70 aid from the state, and so are responsible for a greater proportion of their minimum per-student spending requirement relative to poorer communities.

Conclusions

While 40R appears to be full of incentives, it’s clear that several obstacles exist to getting communities to adopt 40R districts. The two-thirds supermajority of the local zoning body required to approve 40R districts makes it challenging to implement 40R districts, particularly in communities with town meeting. A lack of understanding of 40R’s requirements and flexibility may contribute to planner and developers pursuing other zoning mechanisms for growth, which deprive communities of potential incentives from the state. Most importantly, many communities in the study area are not interested in growth, which is the main point of 40R. While these communities have generally anti-growth attitudes, the barriers to multifamily development are particularly acute. Concerns about preserving community character and adequate school infrastructure contribute to this concern. Underlying attitudes towards multifamily development, in particular prejudiced attitudes towards the kinds of people that may live in multifamily housing, are particularly concerning and serve as real barriers to growth. So far, the incentives associated with Chapter 40R have not been sufficient to overcome these attitudes in many communities in the region. If anti-growth sentiments continue to not be addressed, then 40R has little chance of success at widespread adoption or making an impact in the regional housing shortage.
VI. Why don’t developers build 40R projects?

This thesis sought to better understand why, in addition to so few 40R districts being adopted in the Boston area, many 40R zones remain underbuilt. As of January 2018, 15,549 incentive units have been zoned through 40R, and yet only 3,453 (22%) of those have been built. In the study area, many more of the zoned incentive units have been built, with 882 built out of 2,203 (40%) zoned. Excluding the two newest districts approved within the past six months, only half of the twelve 40R zones in the study area have been fully built out, while four zones have seen no development at all despite being in place since at least 2015. These low levels of development would seem to indicate that even when 40R is adopted by a city or town, there are further barriers for units to be constructed. The issue may be the 40R permitting mechanism itself, or it may be other external factors. This chapter explores 40R from the developer’s perspective and seeks to answer why developers do not build projects in 40R zones. This chapter includes insights from town planners, developers who have built projects in 40R districts, and developers who develop in Eastern Massachusetts outside of 40R zones. Why have so few units been constructed in 40R districts? Some initial hypotheses include the following:

- 40R zoning, if preemptively undertaken by a town, may still make it difficult for a developer to develop a specific site. The land may require further zoning relief, in which case creating an overlay district may be an ineffective tool to spur multifamily development.
- The value of land within rezoned districts goes up because of the higher allowed density, and hypothesized increase in residual land value. However, given the small sample size and the difficulty of teasing out land value from market transactions of land, the hypothesis will not be explored.

This chapter explores these hypotheses, using interviews with developers to provide insights. In interviews, developers generally had positive, but cautious attitudes towards 40R. Many said they would do a 40R project if the circumstances were right. This is to say that 40R in and of itself is not a permitting problem. However, given the permitting alternatives, including Chapter 40B, it was not the most sought-after zoning mechanism. Even when the 40R zoning is in place, market conditions and land availability hamper development within 40R districts.

Before diving into understanding why projects aren’t being developed in 40R zones, it’s important to reiterate the distinction between 40R districts that were established by communities to proactively to encourage denser residential development and projects that were initiated by developers. In this chapter, projects that are in community-initiated zones and projects that are in developer-initiated zones are treated somewhat differently throughout this chapter.
Development is Risky

It’s important to acknowledge that development is a risky activity, and pre-development is the riskiest stage of development. Geltner, et al, (2014) conceptualize development as a linear process, beginning with pre-development and moving through construction, lease up, and stabilization. They define risk as “the probability of financial or economic ‘failure’ of the project”, with risk declining over time as a project moves forward. The pre-development process includes land acquisition, permitting, market analysis, design development, and securing construction financing, among other things. Figure 15 below shows a diagram of the authors’ conceptualization of risk relative to a project’s stage of development.

Figure 15: Geltner, et al.’s, development phase risk model. The blue dotted line shows the level of risk associated with various stages of development, with the earliest stages of development being the riskiest. Permitting, along with land acquisition and design development, is included in the earliest stage of this development risk, carrying an opportunity cost of capital of roughly 30%-50% in this conceptualization. (Geltner, Miller, Clayton, & Eichholtz, 2014, pg. 768)

This analysis regarding 40R with regards to the development of units lies in this early, riskiest phase of development. Though permitting certainly contributes to the high level of pre-development risk, it is certainly not the only factor. When developers look at development opportunities, they must weigh multiple pre-development factors and consider a project’s viability through a holistic analysis. However, eliminating or mitigating
the risk that comes from the permitting process helps lower the overall risk associated with predevelopment. In a development environment like the one in Eastern Massachusetts, with fragmented municipal systems and strong anti-growth attitudes in many communities, establishing a 40R district pro-actively can be seen as a strong signal to developers that you as a community are willing to entertain development. This lowers the risk that a project is unable to proceed because of political or regulatory issues.

In interviews with developers, one developer who builds high density multifamily properties throughout Eastern Massachusetts revealed that developers will often spend in excess of $1 million to get a project to the necessary levels needed to be permitted. This includes costs associated with deposits for site control agreements, environmental studies, initial design development, and legal representation. Though this amount represents a small portion of a project's eventual total development cost, in absolute terms it is a large sum of money. A developer is less likely to expend funds for such a risky phase of development without reasonable expectations that their project will be permitted. If the development is not ultimately permitted by the local jurisdiction, then that $1 million becomes unrecoverable sunk costs. Chapter 40R then is seen as signaling by a community to a developer that they face lower permitting risk in that community, since the community has indicated that they are willing to entertain higher density residential development. However, if a 40R district is not in place and a developer is evaluating options for project permitting, Chapter 40B is often seen as a more attractive permitting mechanism for reducing permitting risk. As one developer mentioned in their interview “if a community has not met their 10% and the real estate is decent, we will take the [permitting] risk because we know we can get there in the end.” Fisher’s 2008 report supports this attitude, finding that just over 80% of proposed 40B projects were initially approved by the local Zoning Board of Appeals, and 90% of projects were ultimately approved after various appeals processes had taken place.

Norwood’s Plimpton Press site is a great example of this. The site is located in Norwood Center, .2 miles from the Norwood Central MBTA station. The site had formerly been used as a printing press, but by the late 2000’s, it was only being used for storage and its owners wanted to sell it for redevelopment. Developer Criterion Development Partners attempted to permit a 240-unit residential project using 40R in 2014. Though a majority of town meeting voted in favor of implementing the 40R rezoning to allow the project to proceed in a 93-70 vote, the 40R zone did not garner the two-thirds majority needed to implement it (“Norwood Town Meeting members reject Plimpton Press - News - Norwood Bulletin - Norwood, MA,” n.d.). A year later, AvalonBay acquired site control to permit the project as a 40B project. Though the permitting process took over two years, by 2017 AvalonBay had reached a negotiated agreement with the town to develop 198 units on the site. Though the permitted project ultimately provided 42 fewer units, the town lost control over its permitting process and lost the ability to collect on the 40R incentive payments when it didn’t approve the 40R zone. AvalonBay, as an experienced suburban developer,
chose to mitigate its permitting risk by opting for a 40B process rather than repeat the unsuccessful steps of the site’s prior developer.

**Developers don’t build in 40R zones because communities don’t establish 40R zones**

Though 80% of the initial 40R zones were developer driven, there have been far fewer developer-driven zones in recent years. In the past three years, only three approved zones were initiated by developers (Verrilli, 2018). Since 40R is not the preferred permitting mechanism because of its increased risk, developers are not building in 40R zones because so few communities have proactively enacted them. At The Boston Foundation’s “Understanding Boston: The Greater Boston Housing Report Card 2017” event, one developer panelist remarked on the lack of 40R districts in the Boston area, claiming that “developers only want to go where they are wanted.”

Having a 40R zone in place requires significant time and resources from a community. 40R implementation processes ranged from 3 months to over a year, and often required the hiring of consultants to assist communities with their capacity to implement such a broad-scale zoning change. However, when a developer enters a community to develop high density multifamily housing, and the groundwork for a clear zoning path is not laid out, the developer becomes the one to expend the time, effort, and resources to implement the 40R district. As one developer said, “developers effectively become the planners for the towns, and 40R becomes the tool that the developer uses to get the town to approve their project, rather than have the community shape their vision for growth as 40R was intended to do.” When a town has already done this for themselves, then project permitting goes more smoothly. However, when a town has not already established a 40R zone, the developer takes on the responsibility of laying the groundwork for getting the community to define how they want to grow.

By contrast, a community’s establishment of a 40R district is a clear indication to developers that they are indeed wanted in that community. For one developer who had focused on multifamily infill development in a community on the North Shore, Reading’s expansion of its 40R district was a signal that Reading was serious about wanting to encourage development and an endorsement to the development community that they were wanted there. In fact, since Reading adopted its amended 40R zone in early 2017, four 40R projects totaling a proposed 139 units have received approval from the town’s planning board.

**Getting a 40R zone established is a political process**

There are several examples of projects where the developer chose to permit a project using 40R where no 40R zone previously existed. While in most interviews with town planners and developers, the incentives afforded through 40R were a relatively minor consideration in the permitting process, the opposite was true for projects where developers initiated a 40R process for the purposes of permitting their projects. In two cases in particular – Lynnfield and Beverly – the developers described the 40R
implementation as challenging and time consuming, where the incentives offered through 40R were crucial in winning town officials and residents over. In both these projects, the developers initiated the planning process behind the 40R implementation, and in both cases engaged consultants to assist the town with the technical expertise needed to implement the 40R zones. Additionally, both developers pursued an expansive “public education” campaign to inform community members about the benefits of their proposed projects to win permitting approval.

In Lynnfield, 180 multifamily units were permitted to complement a new mixed-use development that also features 395,000 SF of retail and 80,000 SF of office space on land that was formerly a golf course. 40R was attractive to the developer in this case because of the large retail component that could be incorporated by right in the 40R zone, as opposed to 40B which would not have allowed retail by right. The developer of this project cited the initial cash payment to the town for the implementation of 40R district as crucial to winning town officials over for this plan. Since Lynnfield has an open town meeting structure, where any resident of voting age can come to town meeting and cast a vote, the developer likened the implementation process to campaigning for an election. The developer and the town’s consultants held around 80 neighborhood meetings or personal conversations with town residents. As a result, the town meeting where 40R was being voted on was one of the largest town meetings in that town’s history.

In Beverly, a local community development organization proposed a 75-unit affordable housing development. The developer chose to pursue the route of 40R since the community had already met its 10% affordability requirement under 40B, and because of the appealing nature of the 40R incentive payments. The development is proposed to be all 2- and 3-bedroom units, and so is projected to generate about 116 new students in the local school system (MacNeill, 2017). Because of the projected impact to schools, the Chapter 40S school cost reimbursement payments were critical to winning over local elected officials, including the mayor, for the proposed development. The developer, who has deep roots in Beverly, managed to mobilize over 120 community members to attend the city council meeting at which 40R was being considered. With not a single dissenting community member, the city council approved implementation of the 40R district unanimously.

In both these cases, the developer had to proactively initiate the planning process on behalf of the local community. The incentives offered by 40R were critical in winning over town officials and residents but educating community members about these benefits was lengthy and costly process. In both these cases, the benefits associated with 40R, including the incentive payments, Chapter 40S school cost reimbursement payments, and ability to include retail by right, made the project more palatable to the local communities and were key to getting the projects approved. Additionally, in each case, 40R was a more favored approach for the developers than 40B, despite the additional permitting risk associated with a 40R project. However, implementation of 40R required a significant
amount of public education and mobilization to have sufficient public support to achieve approval of the zone by the required two-thirds majority.

**Even if a 40R zone is established, it’s still difficult to permit a project in a 40R zone**

For cases where a town pro-actively implements a 40R zone to encourage dense multifamily development, the towns often do so in a way that proposed projects still require additional permitting relief or approval before they can be built. The Town of Reading serves as a good example of this. In Reading, the town adopted the minimum density required by 40R in establishing its 40R zone (20 units per acre); however, three recently approved 40R projects in Reading have densities ranging from 52-78 units per acre. This is well above the maximum zoned density, but more consistent with the kind of projects that can be financed in the market. Because the projects did not conform with the zone’s density limitations (along with other non-conformities, such as exceeding height restrictions), projects have been required to obtain waivers from the local planning board. Reading set up this system by design, such that the town could retain some level of control over large projects and use the planning board approval process as a negotiation tool with developers.

The process in Reading is essentially a special permit and variance process, in which the town has acknowledged that it approves of the underlying use of the proposed projects, but desires to review project details to ensure that negative externalities of the projects can be mitigated for the benefit of abutters and the surrounding community. While this is beneficial for the community, it adds an additional layer of permitting approval that a developer must go through.

Having a 40R district in place lowers the permitting risk for projects relative to permitting a project as a de novo 40R zone because the community has indicated they will support high-density residential development. This is arguably a much easier threshold to meet. However, the reduced permitting risk still carries additional financial risk, as obtaining local discretionary approval can increase a project’s schedule and cost. A special permit approval process can last months, depending on the approving body’s requests for project changes and requests for additional studies, adding time to a project’s schedule and additional carrying and permitting costs to a project’s budget. Further, an approving body’s review of a project can necessitate significant design changes, such as change in number of units, costlier site design and exterior building finishes, and/or increased parking requirements, which may alter a project’s economic feasibility and render the project infeasible.

It should be noted that in Reading, though four projects have been permitted in the expanded 40R district, none have begun construction and their feasibility remains to be seen.

**Once a 40R zone is established, other factors may prevent development**
Even when 40R zones are pro-actively implemented by communities, many of the zoned incentive units don’t get built. Since these units never materialize, it’s difficult to pinpoint and quantify what exactly causes these units to not be built. In interviews, town planners and developers offered several theories as to why, even when the appropriate zoning is in place, the units are never constructed. Factors include market conditions, parcel size and parcel aggregation requirements, lack of land ownership turnover, and increased land value.

In certain communities, the rents that a project can achieve are not high enough to support new construction in those communities. While in those communities, subsidized projects may be built in 40R districts, unsubsidized projects are impossible to build without developers incurring a loss. For example, Brockton has future zoned 1,096 incentive units in its Downtown 40R district, but only 140 of those units have been built. A report on development feasibility in Brockton found that consistently across all proposed projects in Brockton, even ones with modest construction costs, a development gap existed based on the rents that the Brockton market could support. Of the 140 40R units developed in the Brockton 40R zone, 87 units, or 62% have been affordable, indicating that the projects completed in Brockton likely also accessed development subsidies in order to be constructed.

Though market conditions may be a factor hindering development in communities like Brockton, it is not the only factor that hinders 40R developments. In Reading, for example, the Downtown 40R district was implemented in 2008, and the 30 Haven project was completed in 2012 without development subsidies. Market rents were sufficient to undertake this development. However, the Haven Street project was the only project that applied for 40R permitting in Reading until the town expanded its 40R zone in 2017. Subsequently, there have been four additional projects approved by the planning board to proceed as 40R projects. This points to factors other than market conditions hindering development in that community. With the Downtown Reading 40R zone, many of the parcels in the zone are very small and occupied by long-time occupants who had no need to relocate or sell their premises. However, when the 40R zone was expanded to include the entire downtown business district, three parcels that were included in the amended 40R overlay district sought permits for 40R projects. The sites in the expanded district were on larger parcels and on sites that were ripe for redevelopment, as the existing uses of those sites were no longer the highest and best uses on those sites. This raises the fact that development can only take place to the extent that market forces and permitting line up with land availability, parcel suitability, and site assemblage opportunities.

One final theory that is difficult to quantify is based on residual land values of parcels in 40R districts. When a property is sold for redevelopment, the purchaser will pay a seller a maximum price of the total value of the redevelopment minus the cost of redevelopment, with some assumption of reasonable economic return to the developer.

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5 Though Brockton is not in the study area, it is within the larger Boston metro region and has excellent accessibility to Boston.
This is called the residual land value (RLV). The RLV is based on the value of what can be developed on the property at the time of sale, including speculative options for things that could be developed that are not currently contemplated through existing regulatory mechanisms. When an opportunistic developer purchases a site that does not have the required zoning in place for redevelopment, they are able to purchase that site for its value based on the existing development’s value. However, when 40R is enacted, a parcel’s value increases based on the added density that can be put on that site. This increased land cost eliminates an arbitrage opportunity for developers from land acquisitions, reduces developer returns, and increases financial project cost risk in a way that may make development impossible to undertake due to tighter margins.

**Summary Findings**

Development is much more than just about getting proper permitting. Development is a risky activity, and many factors need to converge for a successful development to take place, of which permitting is one factor. Development won’t take place unless all these pieces, including finding the right piece of land, market conditions, financing, and design, align. However, lessening permitting risk does create benefits for developers. Chapter 40R, because it requires a lengthy and costly planning process, and because of the two-thirds majority threshold required to enact 40R in a community, is a riskier permitting process than other permitting processes, including 40B. However, if a town pro-actively enacts a 40R district, it is a strong signal to developers that the community is willing to entertain development, thereby reducing permitting risk. This can be important in a development environment like the one in Eastern Massachusetts, with fragmented municipal systems and strong anti-growth attitudes in many communities. However, if a community wants to proactively encourage growth through a 40R rezoning, they should be sure to include appropriate parcels for redevelopment within the zone to ensure projects can take place.

From a planning perspective, 40R is a great tool to both encourage development, but also control it such that growth happens according to the community’s vision. However, municipalities must be sure to not shape their 40R districts in a way such that development becomes impossible. Though towns wish to exercise control over multifamily development in their communities, they should build flexibility into their 40R zoning language to truly allow development to proceed by right, rather than through a waiver process. Though development is often a negotiation between communities and developers, communities should also limit the changes they request of a project in a 40R zone, to not make projects uneconomic; otherwise the rezoning exercise will be fruitless. If 40R is to be a pro-active exercise, towns must undertake more rigorous analysis to understand if proposed zones are right for multifamily development.
VII. Conclusion

When the Commonwealth Housing Task Force began meeting in 2001, their goal was to develop solutions to the high cost of housing throughout Massachusetts. The Task Force concluded that through the passage of 40R, “no longer will communities be forced by the structure of the financial system to accelerate the spread of sprawl...Instead they will now be able to choose to have development take place in already built-up areas. The Planning Boards will have the authority to ensure that new construction in these Districts is consistent with the quality and character of the neighborhoods” (E. Carman et al., 2003). Chapter 40R has been an effective tool in certain circumstances. Chapter 40R has been successful when developers and municipalities act in partnership to allow development while using the program to bring financing incentives to the community. In a more limited regard, the program has been successful in communities that have proactively upzoned where market conditions are right and appropriate parcels for development are available. Though 40R has produced successful developments throughout the Commonwealth, the program has fallen short of its goals to produce more housing and moderate housing costs. In the fourteen years since Chapter 40R was passed by the state legislature and regulations were passed, only 39 of the 351 communities throughout the Commonwealth have adopted Chapter 40R districts. Within these districts, only 3,453 units have been built, or roughly 287 units/year since regulations were passed. This has fallen far short of the 28,8000 new housing units Carman, Bluestone, and White projected would be built within the first decade of this program’s adoption, and also well below 40B’s average unit production of 1,450 units per year. Incentives through 40R have not been enough to spur the amount new housing development needed to bring down the cost of housing in Massachusetts.

With respect to the initial hypotheses presented in this thesis, the exact reasons why communities choose to not implement 40R districts or why developers choose to not build in 40R districts are multitudinous and are not consistent from community to community. Communities are not enacting Chapter 40R districts for several reasons. Though the incentive-rich nature of 40R is appealing to communities, many communities find the basis of 40R – that is, increasing the underlying density of housing that can be developed – to be the biggest impediment to adoption 40R. The incentives offered through the program are not sufficient to overcome this desire to not grow. In cases where communities desire to grow or are forced to grow, 40R can be a misunderstood program. The lack of refined understanding of 40R can lead communities to believe 40R is not appropriate for their needs. Even when 40R is selected as the planning tool of choice, Massachusetts’ requirements for a two-thirds supermajority approval to make any zoning changes is prohibitive for 40R adoption.

The ultimate barrier to Chapter 40R adoption is community’s objections to multifamily development in the name of preserving community character and thinking about local school costs. Pervasive NIMBYism keeps low-density zoning bylaws in place
throughout the region. Communities with a higher proportion of homeowners, higher proportion of detached single-family homes, and a higher median income were all more likely to oppose growth. In the effort to increase housing supply in the region to house the growing population, these communities seek to maintain the status quo.

Developers also choose to not use 40R as a permitting mechanism because of the risks associated with 40R relative to other, more familiar permitting regimes. Real estate development is a risky process, and the highest risk a project faces is in its early pre-development stages. To get a project permitted, a developer can invest upwards of $1 million, with no guarantee that a project will move forward. With such a high level of risk and investment, developers choose to follow a path that minimizes their risk. In many communities, Chapter 40B is the risk-minimizing permitting path, as it allows developers to bypass local zoning and appeal to the state for zoning relief if the municipality tries to block a project. Chapter 40R does not minimize permitting risk as effectively as 40B, and so developers will often choose 40B as the preferred permitting mechanism if the option is available to them. Getting a 40R district established by a developer can be a tedious process akin to a political campaign, with broad mobilization required to build support for projects seeking to undergo 40R permitting. As more communities meet their affordability obligations under 40B, they can effectively close their doors to new multifamily development. Despite the notion that multifamily units can most easily be permitted through 40B, that option is not on the table for every community and will be less available as additional communities meet their 10% affordability requirement. It is therefore important that 40R be seen as a viable permitting mechanism moving forward.

However, enacting 40R districts has proven to not be the panacea for increasing housing supply in the region. Even when these districts are enacted, many of the incentive units don’t get built. Part of this stems from the fact that even when 40R districts are enacted, projects are still not allowed by-right. Local planning boards desire to retain some control over projects in 40R districts to negotiate through negative externalities of development. This causes additional time, money, and uncertainty for developers. In addition to permitting challenges, 40R units don’t get built because market conditions are not right to support redevelopment, parcel sizes are too small, parcels suitable for redevelopment are not turning over, or land values increase with the rezoning, thereby eliminating opportunities for arbitrage for developers.

Chapter 40R was enacted in a spirit of planning expertise’s ability to solve a vast and complex issue. The reason for Massachusetts’ high cost of housing are multitudinous. While land use regulation is clearly an obstacle to producing more housing supply in the Boston region, it certainly is not the only one, with the high costs of land, high costs of construction, and high median income relative to other parts of the country all playing their part as well. However, Chapter 40R failed to account for the pervasive level of NIMBYism in suburban Boston communities, the high cost and political difficulty of implementing higher density zoning, and the ease of inertia for communities that feel like they are already fully built out. These challenges exist not only for implementing 40R districts, but for any
growth-driven upzoning exercises in the region. These challenges cannot be addressed by 40R nor the incentives it offers alone. Despite this, a range of changes to 40R, its implementation, and to broader state zoning policy can be made that would increase the efficacy of 40R.

**Recommendations**

Before beginning recommendations, it’s important to ask if it matters that 40R is a strong tool that communities can use to choose how to grow. The answer is yes. Though 40B exists as a tool to help developers get into communities that would otherwise not be feasible to develop in, as communities meet their 10% affordable housing requirement, 40B becomes a tool that does not work in more and more communities. 40R then becomes developers’ means of getting into communities that otherwise eschew multifamily development by providing the necessary incentives to spur development in those communities. Relatively minor changes should be made to the program to increase its rate of success in getting new housing units built. However, in terms of absolute housing production, Chapter 40R has not been the most effective tool. Chapter 40B has historically been five times as productive as Chapter 40R. Ultimately, the state can take two broad courses of action that are more aggressive means of promoting dense housing development since incentives alone have proven to be insufficient.

The first course would be to more heavily subsidize development in communities with existing Chapter 40R zones, particularly in communities with weak market conditions. Communities like Brockton and Lawrence would benefit immensely from a program like this. In each of these communities, Chapter 40R zones allow over 1,000 incentive units, and yet the only developments that have taken place in those zones have been subsidized affordable development. The state has made several attempts to further subsidize housing development in areas like these through programs such as MassHousing’s Workforce Housing Initiative, which provides subsidies to housing development that cater to middle-income earners, and the Housing Development Incentive Program, which provides a tax credit to market rate housing development in Gateway Cities. Providing large subsidies to housing development for households at various income level targets in order to fully build out 40R districts in weak market communities is very expensive for the state, but it respects local land use decision-making.

The second course would be to require communities to allow multifamily development by right in their zoning bylaws. Several attempts in recent years have been made in the state legislature to require that all communities have at least one zone in their zoning bylaw in which multifamily housing is allowed by right with no special permit (Schoenberg, 2016). Legislation like this has been unpopular because it cedes power from local governments to state government, and so to date various incarnations of this legislation have been unsuccessful. However, given the strong sentiments against multifamily development found in this study, requiring dense housing zoning may be the only means to getting dense housing built in many jurisdictions. This approach would be
more cost effective for the state compared to subsidizing housing development in weak-market areas. Additionally, this approach also promotes the “fair share” approach that is inherent in Chapter 40B and in New Jersey’s Mount Laurel case.

Rather than pursue either of these strategies, the current administration is pursuing a housing production strategy that continues to favor incentives. The Housing Choice Initiative gives incentives to communities that have increased their housing stock by either 5% or 500 units in the last 5 years, or have increased their housing stock by 3% or 300% units and have committed to at least four planning best practices (“Housing Choice Designation Application Guide,” n.d.). Becoming a Housing Choice community allows towns to apply to special grants for infrastructure improvements. Adoption of a Chapter 40R district is one of the best practices that can make a community eligible for a Housing Choice Designation, along with having multifamily zoning districts, allowing accessory dwelling units by right, and having an inclusionary housing policy, among other best practices. The effectiveness of deepening the incentive structure is to be determined as the Housing Choice Initiative is still early in its implementation stage.

In absence of these two broad policy changes, several small changes can be made that would increase the efficacy of 40R and may help boost housing supply throughout the region. Figure 16 below highlights several findings from this report, along with proposed program changes that can be implemented. More detailed descriptions of the recommendations are in the paragraphs below.

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**Outreach and education:** In conjunction with the roll out of the Housing Choice Initiative, DHCD should undertake an effort to reach out to communities to promote 40R as a “housing choice best practice” and to educate town planners, officials, and community members about program requirements. Outreach should emphasize 40R’s flexibility, allowance for mixed-use development, flexibility in scale and district size, and should highlight successful 40R districts. Outreach should also clarify misconceptions related to school costs, presenting evidence from MAPC’s 2017 “The Waning Influence of Housing Production on Public School Enrollment in
Massachusetts” report. Communities with MBTA commuter rail stops should be prioritized for outreach and education.

**Change implementation threshold to a simple majority vote:** Governor Baker has proposed legislation that would allow municipalities to approve zoning changes – including the adoption of 40R districts – with a simple majority vote (Young, 2018). This is a change to the current system, which currently requires that all zoning changes be approved with a two-thirds supermajority vote. This change will make it easier for communities to implement changes to their zoning while maintaining local control.

**Re-funding of Planning Assistance Toward Housing (PATH) grants:** The PATH grant was a program through DHCD that allowed communities to receive no more than $25,000 in assistance to undertake planning activities that resulted in expanding housing opportunities. In the 2016 awards, three communities received PATH awards to hire technical expertise to implement 40R districts (Beverly, Danvers, and Rockland). PATH grants have not been funded since 2016. The program should be recapitalized to assist communities in planning for housing growth, especially as communities become motivated to participate in the Housing Choice Initiative.

**Encourage feasibility analyses:** 40R planning and implementation should add a feasibility analysis component to ensure that 40R implementation will lead to eventual housing production in proposed districts. Including this extra step will encourage planners to assess market conditions and to identify suitable sites for housing production and will help the state make decisions about district approvals and incentive payment disbursements. It should be noted that if a community engages an outside consultant to prepare a feasibility analysis, additional costs will be incurred during the 40R district adoption process.

**Promote additional flexibility in district creation.** Communities implementing 40R should be encouraged to allow by-right development that is denser than the minimum 40R program requirements. Current market conditions require densities higher than the program’s minimum requirements and forcing developers to ask for waivers from rezoned land is a costly and risky process. Towns should allow for flexibility in their regulations to allow true by-right development to help cut down on permitting risk during the development process. However, this may be difficult to do given the hesitation many communities in the study area have in allowing multifamily development by right.

These changes coupled with the state’s Housing Choice Initiative should help 40R become more effective in spurring housing development. Ultimately, the state may need to take a more aggressive stance on promoting multifamily development if further incentives do not spur the necessary levels of housing development needed to support the region’s growing population. The state may eventually find itself in a position where incentives
continue to be insufficient to promote growth on a large-scale basis throughout the region, necessitating deeper subsidy for housing development or legislation requiring denser housing in every community.
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## Appendix I: Approved and Pending 40R Districts

### Approved Districts (have received final approval from DHCD)

<table>
<thead>
<tr>
<th>Community</th>
<th>District Name</th>
<th>Eligible Location*</th>
<th>District Size** (acres)</th>
<th>Year Adopted</th>
<th>Incentive/ Units**</th>
<th>Units built / bldg. permits issued***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amesbury</td>
<td>Gateway Village</td>
<td>X</td>
<td>52</td>
<td>2007</td>
<td>249</td>
<td>240</td>
</tr>
<tr>
<td>Belmont</td>
<td>Oakley Neighborhood</td>
<td>X</td>
<td>1.51</td>
<td>2008</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Beverly</td>
<td>SGOD (Soher Rd)</td>
<td>X</td>
<td>5.1</td>
<td>2017</td>
<td>101</td>
<td></td>
</tr>
<tr>
<td>Boston</td>
<td>Olmsted Green</td>
<td>X</td>
<td>4.2</td>
<td>2008</td>
<td>578</td>
<td>159</td>
</tr>
<tr>
<td>Bridgewater</td>
<td>Waterford Village</td>
<td>X</td>
<td>12.8</td>
<td>2008</td>
<td>554</td>
<td></td>
</tr>
<tr>
<td>Brockton</td>
<td>Downtown</td>
<td>X</td>
<td>60</td>
<td>2007</td>
<td>1,066</td>
<td>140</td>
</tr>
<tr>
<td>Chelsea</td>
<td>Gentish Ave</td>
<td>X</td>
<td>2.82</td>
<td>2004</td>
<td>125</td>
<td>120</td>
</tr>
<tr>
<td>Chicopee</td>
<td>Chicopee Center SGOD</td>
<td>X</td>
<td>25.62</td>
<td>2010</td>
<td>1,062</td>
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<tr>
<td>Dartmouth</td>
<td>Lincoln Park</td>
<td>X</td>
<td>40.60</td>
<td>2006</td>
<td>319</td>
<td>30</td>
</tr>
<tr>
<td>Easthampton</td>
<td>Smart Growth Overlay District</td>
<td>X</td>
<td>149</td>
<td>2010</td>
<td>482</td>
<td>50</td>
</tr>
<tr>
<td>Easton</td>
<td>Quequett Commons</td>
<td>X</td>
<td>60.66</td>
<td>2008</td>
<td>280</td>
<td>110</td>
</tr>
<tr>
<td>Fitchburg</td>
<td>Smart Growth Overlay District</td>
<td>X</td>
<td>33.2</td>
<td>2010</td>
<td>675</td>
<td>201</td>
</tr>
<tr>
<td>Groton</td>
<td>Fisherville Mill</td>
<td>X</td>
<td>13.74</td>
<td>2007</td>
<td>240</td>
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</tr>
<tr>
<td>Great Barrington</td>
<td>North SGOD</td>
<td>X</td>
<td>36.74</td>
<td>2017</td>
<td>304</td>
<td></td>
</tr>
<tr>
<td>Great Barrington</td>
<td>South SGOD</td>
<td>X</td>
<td>39.17</td>
<td>2017</td>
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<td></td>
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<tr>
<td>Haverhill</td>
<td>Downtown (amended 5/2/17)</td>
<td>X</td>
<td>5.8</td>
<td>2007</td>
<td>701</td>
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</tr>
<tr>
<td>Holyoke</td>
<td>Smart Growth Overlay District</td>
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<td>152</td>
<td>2008</td>
<td>296</td>
<td>59</td>
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<tr>
<td>Kingston</td>
<td>1021 Kingston’s Place</td>
<td>X</td>
<td>10.0</td>
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<td>Lakeville</td>
<td>Kernsill Court</td>
<td>X</td>
<td>11</td>
<td>2006</td>
<td>207</td>
<td>204</td>
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<tr>
<td>Lawrence</td>
<td>Arlington Mills</td>
<td>X</td>
<td>34.1</td>
<td>2018</td>
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<tr>
<td>Lowell</td>
<td>SGOD (amended 5/14/17)</td>
<td>X</td>
<td>2.5</td>
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<td>250</td>
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</tr>
<tr>
<td>Ludlow</td>
<td>Smart Growth Overlay District</td>
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<td>186.6</td>
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<td>75</td>
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<tr>
<td>Lunenburg</td>
<td>TH-Town</td>
<td>X</td>
<td>6.97</td>
<td>2006</td>
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<td>131</td>
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<td>Lynnfield</td>
<td>Meadow Walk</td>
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<td>183</td>
<td>182</td>
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<tr>
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<td>X</td>
<td>0.33</td>
<td>2010</td>
<td>17</td>
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<tr>
<td>Marblehead</td>
<td>Vicinn Square</td>
<td>X</td>
<td>1.56</td>
<td>2010</td>
<td>47</td>
<td></td>
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<tr>
<td>Methuen</td>
<td>Methuen Center SGOD</td>
<td>X</td>
<td>5.44</td>
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<td>Natlack</td>
<td>SGOD</td>
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<td>5</td>
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<td>138</td>
<td>138</td>
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<td>Newburyport</td>
<td>SGOD</td>
<td>X</td>
<td>49.4</td>
<td>2015</td>
<td>540</td>
<td></td>
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<tr>
<td>N. Andover</td>
<td>Osogood</td>
<td>X</td>
<td>1.69</td>
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<td>533</td>
<td></td>
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<tr>
<td>N. Reading</td>
<td>Berry Center / Edgewood Apts.</td>
<td>X</td>
<td>4.6</td>
<td>2006</td>
<td>434</td>
<td>406</td>
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<tr>
<td>Northampton</td>
<td>Urban Residential SD</td>
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<td>Northampton</td>
<td>Village Hill SD (amended 12/8/17)</td>
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<td>Norwood</td>
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<td>Norwood</td>
<td>St. George Ave</td>
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<td>112</td>
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<td>2007</td>
<td>675</td>
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<tr>
<td>Reading</td>
<td>Downtown (amended 9/23/17)</td>
<td>X</td>
<td>41.46</td>
<td>2008</td>
<td>459</td>
<td>53</td>
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<tr>
<td>Reading</td>
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<td>X</td>
<td>10</td>
<td>2010</td>
<td>202</td>
<td>200</td>
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<td>Rockland</td>
<td>DRROCD</td>
<td>X</td>
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<td>2017</td>
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<td></td>
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<tr>
<td>Sharon</td>
<td>Sharon Commons</td>
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<td>11.55</td>
<td>2006</td>
<td>167</td>
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<tr>
<td>South Hadley</td>
<td>S. Hadley Falls SGOD</td>
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<td>48.27</td>
<td>2015</td>
<td>383</td>
<td></td>
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<tr>
<td>Swampscott</td>
<td>Vinnin Square</td>
<td>X</td>
<td>2.27</td>
<td>2016</td>
<td>68</td>
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<tr>
<td>Westfield</td>
<td>Southwick Road</td>
<td>X</td>
<td>22.2</td>
<td>2008</td>
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<td></td>
</tr>
</tbody>
</table>

### Total: 12 15 17 1,828 15,549 3,453

### Eligible/Pending Districts/amendments (yet to adopt / receive final approval)

<table>
<thead>
<tr>
<th>Community</th>
<th>District Name</th>
<th>Eligible Location*</th>
<th>District Size** (acres)</th>
<th>Year Expires</th>
<th>Future Zoned Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brockton</td>
<td>Downtown (amendment)</td>
<td>X</td>
<td>67</td>
<td>12/08/19</td>
<td>2,716</td>
</tr>
<tr>
<td>Brockton</td>
<td>Thatcher St MOD</td>
<td>X</td>
<td>15.7</td>
<td>03/10/20</td>
<td>175</td>
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<tr>
<td>Danvers</td>
<td>MSTDN-SGD</td>
<td>X</td>
<td>16.8</td>
<td>11/28/20</td>
<td>211</td>
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<tr>
<td>Lee</td>
<td>SGOD (Eagle Mill)</td>
<td>X</td>
<td>9.88</td>
<td>12/06/20</td>
<td>119</td>
</tr>
</tbody>
</table>

### Totals: 12 15 17 1,828 15,549 3,453

### Proposed / Currently Under Review Districts

<table>
<thead>
<tr>
<th>Community</th>
<th>District Name</th>
<th>Eligible Location*</th>
<th>District Size** (acres)</th>
<th>Year Expires</th>
<th>Future Zoned Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawrence</td>
<td>Downtown SGOD</td>
<td>X</td>
<td>67</td>
<td>12/08/19</td>
<td>2,716</td>
</tr>
<tr>
<td>S. Hadley</td>
<td>Newton Street SGD</td>
<td>X</td>
<td>9.88</td>
<td>12/06/20</td>
<td>119</td>
</tr>
</tbody>
</table>

### Totals: 12 15 17 1,828 15,549 3,453

---

* Transit = w/in 1/2 mile of transit station  
  ACD = Area of Concentrated Development  
  HSL = Highly Suitable Location  

---

** Community: Not limited to Developable Land Area (i.e., includes Substantially Developed Land, non-residential areas, ALL land)  

*** May not include newly-nominated units on Substr. Dev. Land  

**** May include units w/ incomplete documentation
Appendix II: Survey to Town Planners

Chapter 40R Town Planner Survey

Thank you for taking the time to complete this survey for my MIT Masters in City Planning thesis, Implementation of Chapter 40R in Greater Boston. The purpose of this questionnaire is to understand what town planning officials in the Greater Boston area think about Chapter 40R, Massachusetts Smart Growth Zoning. This survey will ask you questions about your town’s position regarding 40R. Taking this survey should take 5-10 minutes.

Participation in this study is voluntary. You may decline to answer any of the questions in this survey, though fully answering the survey will provide us with more complete data for our research. At the end of this survey, you can indicate if you would like to be contacted for a more in-depth follow up interview. Participation in any follow-up interviews is completely voluntary; you may decline participation in any follow-up interviews without any adverse consequences. Participation in this survey is confidential and your responses will not be associated with you or the community you represent without your express written consent.

Q1 For which city or town do you work?

Arlington (1) ... Woburn (53)

Q2 What is your position at this city/town?

Q3 How familiar are you with Chapter 40R, the Massachusetts Smart Growth Zoning Overlay District Act?

- Extremely familiar (1)
- Very familiar (2)
- Moderately familiar (3)
- Slightly familiar (4)
- Not familiar at all (5)
Q4 Does your town have any Chapter 40R Smart Growth Districts in place?

- Yes (1)
- No (2)

Q5 Is your town in the process of implementing a Chapter 40R Smart Growth District?

- Yes (1)
- No (2)

Display This Question:

If Does your town have any Chapter 40R Smart Growth Districts in place? = Yes
Or Is your town in the process of implementing a Chapter 40R Smart Growth District? = Yes

Q6 What benefits do you see in Chapter 40R districts?
Q7 This question lists program characteristics of Chapter 40R. For each characteristic, please indicate to what extent, if at all, this characteristic serves as an incentive for or impediment to Chapter 40R implementation in your community. Please note: each program characteristic has a brief description outlining specific requirements or program features of 40R.

<table>
<thead>
<tr>
<th>Density Requirements</th>
<th>Strong incentive</th>
<th>Somewhat of an incentive</th>
<th>Neither an incentive nor impediment</th>
<th>Somewhat of an impediment</th>
<th>Strong impediment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 40R requires that districts be zoned to the following minimum density criteria: For single family homes: 8 units/acre For townhomes: 12 units/acre For multifamily or condominiums: 20 units/acre (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Affordability Requirements</th>
<th>Strong incentive</th>
<th>Somewhat of an incentive</th>
<th>Neither an incentive nor impediment</th>
<th>Somewhat of an impediment</th>
<th>Strong impediment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 40R requires that districts have at least 20% of all new units constructed affordable to households earning no more than 80% of the Area Median Income (AMI) (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>District Location Requirements</th>
<th>Strong incentive</th>
<th>Somewhat of an incentive</th>
<th>Neither an incentive nor impediment</th>
<th>Somewhat of an impediment</th>
<th>Strong impediment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 40R requires that districts be located in one of the three types of sites: Transit-Oriented Location: site is within ¼ mile of any rapid transit or commuter rail station, bus or ferry terminal Area of Concentrated Development: site is served (or will be served within 5 years) by a public sewer system, at least 50% of the total land area within the district is substantially development land or underutilized land, and the primary current use of the land or buildings in the proposed district is commercial or mixed use Highly Suitable Location: the location would promote smart growth through transportation access, promotion of compact and efficient land use, would infill or redevelop areas with infrastructure and preserve open space, or the site has been identified as a locus for higher density housing (3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Allowance for mixed-use districts (4)

**Upfront zoning incentive payments**

Upon approval of a district by the Department of Housing and Community Development (DHCD), communities are entitled to a one-time zoning incentive payment of the following amounts:
- if 20 or fewer incentive units: $10,000 payment
- if 21-100 incentive units: $75,000 payment
- if 101-200 incentive units: $200,000 payment
- if 201-500 incentive units: $350,000 payment
- if 501 or more incentive units: $600,000 payment

(5)

**Incentive payments for construction of units**

For each incentive unit actually constructed, communities receive $3,000 per unit (6)

**Chapter 40S school costs insurance payments**

Under Chapter 40S, communities that enact a Chapter 40R district may be entitled to additional funds from the Commonwealth to cover the increased cost to the school system from 40R developments, should new tax revenue and Chapter 70 aid be insufficient to cover increased costs (7)

**Bonding requirements for parties seeking to appeal 40R projects**

Chapter 40R requires plaintiffs seeking to appeal the approval of a project to post a bond equal to twice the annual carrying costs of the property owner and the defendant’s attorney’s fees (8)
Comprehensive Housing Plan Chapter 40R requires creation of a municipal Comprehensive Housing Plan, providing an assessment of the housing needs within the Municipality, and describing specific strategies, including but not limited to those contained in the Smart Growth Zoning, to address those needs as part of district creation (9)

Public hearing requirements or Approval requirements Chapter 40R requires that a public hearing be held by the municipality and a two-thirds approval vote be taken prior to approval of a 40R district (10)

Other (please specify): (11)

Other (please specify): (12)

Q9 This question lists factors that are frequently cited as reasons why towns do not implement 40R districts. For each item, please indicate to what extent you believe each of the items would be a barrier to the implementation of a 40R district in your city or town.

Each question should be read as follows: "Is lack of developer interest in your community a significant barrier, somewhat of a barrier, not much of a barrier, or not at all a barrier to implementation of a Chapter 40R district in your community?"

Lack of developer interest in your community (1)
Lack of market demand to support new development in your community (2)
Lack of adequate water or sewer infrastructure (3)
Lack of adequate school infrastructure (4)
Lack of other critical infrastructure (please specify) (5)
<table>
<thead>
<tr>
<th>Anticipated opposition from community residents (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of desire for higher residential density (7)</td>
</tr>
<tr>
<td>Lack of desire for affordable housing (8)</td>
</tr>
<tr>
<td>Lack of desire to see community grow (9)</td>
</tr>
<tr>
<td>Desire to preserve community character (10)</td>
</tr>
<tr>
<td>Desire to maintain local control over zoning process (11)</td>
</tr>
<tr>
<td>Lack of desire to allow multifamily development “as of right” (12)</td>
</tr>
<tr>
<td>Lack of community familiarity with Chapter 40R (13)</td>
</tr>
<tr>
<td>Lack of planning department staff capacity (14)</td>
</tr>
<tr>
<td>Fear of not receiving incentive payments from the Commonwealth (15)</td>
</tr>
<tr>
<td>Other (please specify): (16)</td>
</tr>
<tr>
<td>Other (please specify): (17)</td>
</tr>
</tbody>
</table>

Q10 Comments:


Q18 Please provide any additional feedback regarding Chapter 40R that may not have been captured elsewhere in this survey.


