

# Doing Their Part?

## Proactive Planning and Deliberate Avoidance of Affordable Housing by Massachusetts Communities in Response to Chapter 40B

by

Anna J. Frantz

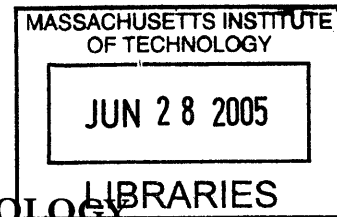
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**ROTCH**



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#### **ABSTRACT**

Chapter 40B is an innovative Massachusetts law adopted in 1969 to expand the supply and distribution of subsidized housing throughout the state. The statute creates a streamlined permitting process through which municipalities may waive local regulations that impede the construction of affordable units. Chapter 40B also establishes a state appeals court to which developers may appeal local permitting decisions if less than 10% of a community's housing stock is affordable to low-income households. In the last half-decade, Chapter 40B has become more controversial as a strong housing market and regulatory changes have increased affordable housing development activity under the law.

This thesis examines how Chapter 40B has influenced community planning for the development of affordable housing since 2000. Municipal planning staff, land-use board members, and elected officials in five communities on the rapidly-growing edge of metropolitan Boston (Bellingham, Framingham, Marlborough, Norfolk and Southborough) were interviewed about locally-driven affordability initiatives and community attitudes toward affordable housing. This research was supplemented by analysis of building permit data and zoning ordinances.

The results suggest that Chapter 40B has increased local attention to affordable housing needs. However, the extent to which communities are prioritizing affordable housing creation - and the type of households that will be served by local programs - is shaped by community identity and vision. State policy-makers and housing advocates should find this investigation useful in determining how to ensure that all segments of the population are served by local housing affordability initiatives.

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## Chapter 1

# INTRODUCTION

Three and a half decades ago, the Commonwealth of Massachusetts adopted one of the first laws of its kind to promote the development of affordable housing in all of the state's 351 cities and towns. Chapter 40B, dubbed the "Anti Snob-Zoning Act," creates a streamlined local permit process through which communities may waive municipal regulations that impede the construction of low- and moderate-income housing. Developers seeking to obtain exemptions from such bylaws and sidestep normal approval processes, which typically require approvals by multiple boards, apply for a "Comprehensive Permit" with the local Zoning Board of Appeals (ZBA). Chapter 40B also establishes a state appeals court to which ZBA decisions may be appealed in cases where a community's housing stock does not meet "local needs." Generally, if less than 10 percent of a community's housing stock is preserved as affordable through subsidies and long-term deed restrictions, the state may override local decisions made under the streamlined permitting process. Currently, slightly more than one in ten Massachusetts communities is meeting its housing needs, as defined by Chapter 40B. The overwhelming majority of cities and towns are therefore potentially vulnerable to state approval of housing developments within their boundaries.

Many communities are hostile to development proposals under Chapter 40B, which some municipal officials argue eliminates their right to guide local development the way they see fit. Community leaders claim that their issue with the law is not that it promotes the construction of affordable housing in their neighborhoods. The problem, they argue, is how it operates – forcing developments into communities with little regard for existing zoning, future land-use plans, school capacity, and infrastructure quality. Moreover, because the Comprehensive Permit process often results in the construction of multifamily developments in predominantly single-family towns, residents fear that projects erode their unique, New England character and residential property values.

In its landmark decision *Euclid v. Ambler*, the Supreme Court upheld the rights of municipalities to guide growth and limit land uses through zoning regulations. While the court gave communities the

vital ability to determine how private property within their borders could be used to protect the common good, its 1926 decision also reinforced the second-class status of housing typically occupied by working families. “. . .Very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district,” (*Euclid v. Ambler* 1926). Though the language used in *Euclid* sounds harsh to modern ears, our attitudes and actions toward low-cost housing have not progressed far since the early twentieth century. Suburban communities, accustomed to a high degree of control over the design – and socioeconomic makeup – of their neighborhoods, are often decidedly inhospitable toward housing for low-income households. After it became clear that overtly racist zoning regulations would not be permitted by the courts, communities learned to adopt other mechanisms to zone out households of a lower socioeconomic status. Exclusionary zoning mechanisms, such as large minimum lot requirements and prohibitions on multifamily development, are now common in suburban communities. Long after Massachusetts adopted its statewide solution to exclusionary regulations, the federal government identified the problem in its 1991 “Not in My Backyard: Removing Barriers to Affordable Housing.” In a follow-up report thirteen years later, the Department of Housing and Urban Development (HUD) found that though the public appears more willing to accept affordable housing, land-use controls had in fact become more restrictive and sophisticated (HUD 2005).

This double-speak regarding affordable housing occurs among Massachusetts communities as well. Residents believe that housing in the region is expensive, but municipal land-use regulations leave little room for the production of low-cost housing. Statewide, residents polled indicated that the lack of affordable housing is making it more difficult for local businesses to attract workers (62%) and preventing young people from residing where they were raised (80%). Moreover, the large majority of Massachusetts residents support the creation of affordable housing in their neighborhoods (78%) and agree that every community should fulfill their 10 percent affordability requirement under Chapter 40B (81%), (CHAPA/Donohue Institute 2005). These beliefs are grounded in the realities of the Boston metropolitan housing market, in which rents increased 7 percent per year and housing prices skyrocketed by approximately 50 percent between 1998 and 2001 (Heudorfer et. al. 2003). Rather than grapple with housing costs in one of the most expensive areas of the country, many residents have chosen to leave the state. Yet Massachusetts municipalities – governed by the same residents who clearly articulate their concerns about

escalating housing costs – have institutionalized barriers to affordable housing development. Production of housing, particularly of lower-cost multifamily units, has decreased dramatically in the last few decades due to the strict zoning restrictions. Locally-initiated bylaws are likely a major contributor to the state’s affordable housing crisis (Commonwealth Task Force 2004).

A lack of affordable housing in the state’s suburban communities creates a variety of problems for Massachusetts households and for the region as a whole. Employment opportunities are increasingly moving from the urban core to rapidly-growing communities along the region’s circumferential highways, Routes 128 and 495, where affordable housing is in short supply. This limits the ability of low- and moderate-income households to find stable employment to which they can easily commute, and to access quality public school systems. The economic stability of the region may also be threatened by imbalanced patterns of development. Employers that could offer the state economic stability through taxes and the creation of jobs are hesitant to locate where potential employees cannot afford to live.

Massachusetts has taken its responsibility toward addressing the lack of housing seriously, leveraging federal resources with an array of state-funded programs. However, state funding for affordable housing has recently dropped to \$188 million in 2003, the lowest level since 1995, and much of what is available is used for maintaining existing units rather than for new construction (Heduerfer et al. 2003, p.34). In addition to Chapter 40B, several state-wide policies encourage community planning for affordable housing. It is clear that these initiatives have had considerable success in creating affordable housing for the state’s low-income households: Chapter 40B has facilitated the production of 22,000 affordable units since its inception (CHAPA 2004), and multifamily housing construction more than doubled between 2002 and 2004 (The Boston Foundation 2005).

Despite the Commonwealth’s commitment to affordable housing development programs and the unique streamlined permitting process provided through Chapter 40B, the affordability crisis continues to plague the state because its causes run deeper than lack of funding. In high-cost regions where housing is priced above the cost of construction, such as in Boston and its suburbs, regulatory barriers are also to blame. The zoning restrictions that predicated the adoption of Chapter 40B back in 1969 still play a key role in maintaining the region’s high housing prices. Subsidies have a limited affect on mitigating this fundamental problem. “Building small numbers of

subsidized units is likely to have a trivial impact on average housing prices . . . even if well targeted toward deserving poor households. However, reducing the implied zoning tax on new construction could well have a massive impact on housing prices,” (Glaeser and Gyourko 2003, p.35). Chapter 40B mitigates the effects of these regulatory barriers by enabling developers and communities to override them on a case by case basis. However, the law does not overtly promote the full-scale elimination of the exclusionary zoning techniques that continue to be supported by many Massachusetts communities.

In addition to failing to directly address the key causes of the regional lack of housing for low- and moderate-income households, Chapter 40B is a controversial law that may exacerbate existing hostility toward affordable housing production. The statute relies on the “stick” approach, punishing communities that have not done their part in meeting “local housing needs” – local needs that were defined by the state in 1969 and are not necessarily relevant to the present situation. Arguably, Chapter 40B would be more effective in the long term if it were to provide an incentive to communities to examine their zoning regulations and attitudes and alter them in a way that facilitates the development of affordable housing. Though Chapter 40B has effectively produced thousands of units, cities and towns have a more important role to play. It is at the municipal level that exclusionary zoning must be eliminated and programs must be designed to address the unique characteristics of local housing demand. If municipal officials and residents take ownership of the region’s affordable housing crisis, the state will move closer to addressing its housing problems than it can by relying solely on the Comprehensive Permit process.

### **Research Question and Approach**

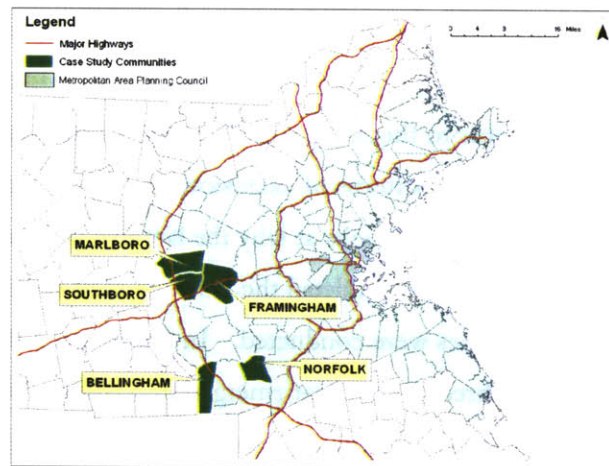
In this thesis, I explore how Chapter 40B has encouraged proactive planning for the development of affordable housing, as demonstrated by the adoption of local affordability initiatives.

Comprehensive Permit activity, and the controversy surrounding the law since 2000, has likely raised awareness of local housing needs. It may also have generated interest in planning for affordable housing, created support for meeting affordable housing needs, and directly or indirectly been the impetus behind the adoption of progressive zoning by-laws that facilitate the production of low-cost housing.

Using the case study approach, I explored how communities have reacted to Chapter 40B in the last

several years, and whether they are promoting affordability zoning mechanisms. I interviewed local officials and town planners in five target communities, chosen for their demographic diversity and their location in the rapidly-growing region along Route 495, Boston’s outer circumferential highway. In these communities – Bellingham, Framingham, Marlborough, Norfolk, and Southborough – I spoke with local officials and town planners, and examined zoning amendments and planning documents for signs that municipalities have responded to the threat posed by Chapter 40B by attempting to meet the 10 percent obligation outside of the Comprehensive Permit process.

Figure 1.1: Case Study Communities



Source: Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

My research reveals that the five communities targeted are acutely aware of the regional affordable housing issue and are taking steps to facilitate the development of such housing within their borders. However, the level of activity on the housing issue varies quite a bit. Much of this variation appears to depend on whether the community’s identity and vision for the future take into account a desire to accommodate low- and moderate-income households. Concerns over changing demographics in some places shape the type of housing leaders are willing to support. Many local affordability initiatives do not appear to be directly in response to Chapter 40B, nor are they necessarily designed to address “local housing needs” as defined by the state. Therefore, many of the units created by these programs do not help communities avoid unwanted Comprehensive Permit applications. Almost all of the communities I examined are promoting the development of housing types other than single-family homes, primarily through downtown revitalization efforts. Though most of the

units created under such initiatives would not be deed restricted for affordability to low-income households, they will provide a lower-cost alternative to more expensive homes on large lots that typify new suburban development. Communities are also overemphasizing some needs (such as seniors), and doing little to promote housing that would be suitable for low-income households with children. The level of planning capacity and the structure of local government also play a role in whether a community can efficiently develop and implement affordability initiatives.

### **Summary of Chapters**

The next chapter discusses the history of residential development in the Boston metropolitan region and how personal opposition to affordable housing has become ingrained in local land use laws. Chapter 3 examines the reasons communities remain motivated to exclude low-income residents and the housing that would be affordable to them. Chapter 4 describes the extent of the state's current housing crisis, evidence for continuing patterns of exclusion, and the origins of Chapter 40B. It also discusses recent activity under the law and looks at why the last five years are particularly relevant to the research question. Chapter 5 describes in detail the research methodology, and introduces the five communities in which case studies were conducted. In Chapter 6, I discuss the findings of the research, focusing specifically on three themes that emerged in relation to the question. Cross-cutting conclusions, implications, and recommendations to state-policy makers are discussed in Chapter 7.



## Chapter 2

# SETTING THE STAGE FOR EXCLUSION IN METROPOLITAN BOSTON

A half century after federal housing and transportation policy set the stage for a pattern of metropolitan exclusion, the Boston region remains overwhelmingly segregated by income and race. As in many other areas of the country, disinvestment in the central city in the middle of the twentieth century coincided with, and often resulted from, the vast migration of middle-class white households to the surrounding suburbs. For many of the municipalities in the Boston metropolitan region, exclusion of low-income and minority households was not accidental. A combination of economic, political, and social pressures worked together to create the landscape of exclusion that now typifies suburban America.

Decades after federally-sanctioned discriminatory mortgage lending ensured that brand new suburban neighborhoods would remain racially homogeneous, Boston's suburbs remain 91 percent white (McArdle 2003a, p.4). Despite an increase in the percentage of blacks and Latinos in the metropolitan region in the 1990s, suburbs continue to gain white residents (McArdle 2003a, p.90). Moreover, Boston is one of many metropolitan regions across the country which are growing increasingly segregated economically (Brookings 2004). Low-income and minority families, disproportionately concentrated in the urban neighborhoods of Boston and a few smaller satellite cities such as Lynn, Brockton and Lowell, have limited access to employment opportunities, quality public education, and safe and clean neighborhoods.

Though not solely to blame for these patterns of exclusion, suburban municipalities have contributed to inequitable regional growth by adopting zoning regulations designed to limit the ability of lower income households to attain residency within their boundaries. Exclusionary zoning mechanisms – large minimum lot requirements, prohibitions on apartments and manufactured housing, and building permit caps – are common throughout metropolitan Boston. In order to examine current local responses to Chapter 40B, an unusually powerful tool designed to break down such barriers, it is necessary to first understand the context of community planning that predicated its adoption in 1969. This chapter will explore the development of the Boston metropolitan region

in the second half of the twentieth century and discuss the factors that have contributed to the prevalence of exclusionary zoning.

### **Emergence of Exclusionary Zoning in the Boston Metropolitan Area**

The 1952 completion of Route 128, the nation's first circumferential highway, hastened white flight from Boston's urban neighborhoods and the decentralization of employment (Massachusetts Advisory Committee to the U.S. Commission on Civil Rights et al. 1975, hereinafter "MAC"). Households tastes were already shifting toward suburban living, as the suburban building boom of the late 1940s and 1950s responded to the pent-up demand from young families who had waited out World War II for their "dream house" and "dream life," (Wright 1981, p.253). These households were not satisfied with apartments or older homes – they wanted a brand-new house, with modern appliances and open floor plan that led into the backyard, where much modern living took place. The construction of Route 128 accelerated the out-migration of middle-class families by providing the transportation infrastructure that enabled commuters to continue to work in the city as they lived their modern lifestyle in the suburbs.

Few predicted the enormous impact Route 128 would have on the industrial and residential landscape of the metropolitan region (MAC 1975). Planned in the 1930s as a scenic byway through the rural landscape, and as a way to ease existing congestion, the route was designed to pass through areas with little existing development and low land costs. Yet real estate professionals did not take long to comprehend the potential for profit. By the 1951 completion of the first section of the roadway from Wakefield to Wellesley, developers were planning the construction of industrial parks. By 1957, 99 new industrial sites could be identified along the route, representing the loss of almost 4,000 jobs from the City of Boston and a net gain of 19,000 jobs for suburban communities (MAC 1975, p.37-38).

For the communities adjacent to Route 128, the road created conflicts over land-use priorities. Concerns about overdevelopment and the threat to the rural character that had been the impetus behind Route 128 in the first place, prompted many communities to enact large-lot zoning ordinances that put additional upward pressure on already rising home values. Other communities saw the demand for industrial property as an opportunity to increase tax revenues, and altered their zoning bylaws in order to accommodate commercial development. Over time, in order to preserve

their tax base, communities began to simultaneously look for ways to absorb low-impact industry while limiting the types of residential development permitted. Low cost housing became nearly impossible to build in all communities, and lower-income households were pushed away from potential jobs. By 1970, these unchecked trends had resulted in an imbalance of jobs and housing that exacerbated suburban inequalities in land use, resulting in sharp differences in the development patterns. Affluent communities became increasingly wary of any development that would further burden local schools or municipal services, while other communities found it necessary to increase the land zoned for industrial development at the expense of open space (MAC 1975).

Employees of the new regional office and industrial parks needed apartments and small homes nearby, as Boston's declining residential neighborhoods were not an attractive option. Developer interest in accommodating them by building higher density housing in the suburbs was perceived by many municipalities as a threat to their high quality of life and stable property values. Zoning, which had become commonplace in the 1920s as a mechanism to protect single-family zones, continued to serve the same objective four decades later as pressure built on suburban communities to accommodate these different types of residential development (Babcock 1966, p.6). Municipal governments used their zoning powers to promote the development of more expensive housing by increasing lot sizes and restricting multifamily development, and encountered little resistance at the state level. The Massachusetts Supreme Judicial Court validated large-lot zoning in *Simon v. Town of Needham* (1942), noting that at least eight other towns near this western suburb also had minimum lot sizes of 40,000 square feet or more. The Court found that "it is persuasive that many other communities when faced with an apparently similar problem have determined that the public interest was best served by the adoption of a restriction in some instances identical and in others nearly identical with that imposed by the respondent town".

### **Public Motivations**

Suburban exclusion, sparked in part by fear of the consequences of Route 128, has been reinforced by a variety of fiscal, racial, and cultural motivations and stabilized in a unique legal and political environment. These motivations have contributed to the inequitable development occurring along the region's second circumferential highway, Route 495.

## A. Fiscal Stability

Perhaps to a greater degree than in most other states, land use regulation in Massachusetts is strongly influenced by fiscal concerns (Commonwealth Task Force 2003, p.8). Towns that prohibit apartments, require large minimum lot sizes and setbacks, and enact permit caps are often acting out of legitimate fear that residential growth will require increased public services and put a strain on the municipal budget. Residents are motivated to support such measures by the basic desire to prevent the negative externality of providing comparable public services to households with lower than average tax bills (Clingermyer 2003, p.378).

The intent of exclusionary local land-use regulations was primarily to exclude the poor until the 1970s, when it shifted to preventing all new residential development (Fischel 1991). Communities favor commercial or industrial properties – which can be taxed at a higher rate and require fewer public services – over residentially-zoned land. The residential land that is made available is often limited to single-family homes on larger lots, in order to encourage the construction of expensive homes that will generate higher property taxes and to restrict the total number of units created (Commonwealth Housing Task Force 2003). Housing types of higher densities, such as apartments, are often prohibited or subject to numerous approvals for several reasons. First, communities believe that higher density translates into a greater proportion of children, requiring additional education costs, which are typically one of the largest areas of the municipal budget. Second, property owners believe that multifamily housing will negatively impact the property value of nearby single-family homes. Third, communities associate higher-density housing with demographic change, traffic impacts and unsightly development, all of which could potentially decrease the desirability of the community and local property values.

For many local officials and residents in Massachusetts, the primary threat of new residential development is the associated growth in the school-aged population that can burden the school system. An increase in public school students can translate into higher taxes needed to support additional teachers and school expansion and construction projects. If public funds cannot support such enhancements, the expanding population may increase class sizes, create a perception of decreased educational quality, and ultimately lower property values. Research indicates that communities that enact regulatory barriers in order to limit the number of households with children may be justified in doing so for fiscal reasons. Studies by the American Farmland Trust and

Commonwealth Research Group indicate that for every dollar of property taxes generated, residential development consumes between \$1.02 and \$1.16 in local services (Massachusetts Executive Office for Administration and Finance (EOAF) 2000, p.19). While a recent study suggests that new multifamily developments have generated few, if any, financial impacts on local schools (CHAPA 2003), many communities in the rapidly growing region along Route 495 are struggling to deal with an explosion of the school-aged population in the last twenty years. For them, the fiscal impacts of new development, whether it is affordable multifamily housing or single-family homes, are all too real. In response, communities are implementing regulations designed to slow family-oriented residential growth, referred to as “vasectomy zoning,” by a Framingham state senator (Hempel 2004).

The degree to which Massachusetts communities oppose residential development, or particular types of residential construction, can vary for economic reasons. First, willingness to permit residential development appears to depend in part on a community’s fiscal capacity. The Massachusetts Executive Office of Environmental Affairs found that permitting activity was positively correlated with a community’s ability to raise taxes to the limit imposed by the state statute Proposition 2 ½ (EOAF, 2000, p.33). Approved in 1980, Proposition 2 ½ limits the amount of revenue communities may raise through taxes – the levy – in two ways. Communities may not levy more than 2.5% of the total cash value of all taxable property in the community. Moreover, the amount the levy may increase from year to year is also constrained, depending on new growth. Thus communities that have reached their levy limit may be reluctant to accommodate additional residential development if the amount they can raise in new taxes does not offset the capital needs, such as school improvement projects, associated with larger populations. Second, communities may support the development of higher-value homes which bring in more property tax revenue and cover their costs, while opposing multifamily development or smaller, less expensive, homes. By requiring large minimum lot sizes and prohibiting multi-family development communities can raise the value of their residentially-zoned land, ensuring that developers must construct expensive homes in order to make a profit.

Land-use decisions designed to limit residential development due to fiscal concerns are not supported solely by municipal officials with direct knowledge of the local budget. They are also enacted in response to pressure by homeowners striving to protect what for many is their largest

financial asset – their home. As described by William Fischel in his “Homevoter Hypothesis,” (2004), homeowners base their support for land-use proposals on their perception of whether a proposed land use will alter the value of their home. Any proposed development that differs from the existing pattern, such as multifamily housing, is seen as a threat for several reasons. Residential development that accommodates lower-income households creates a negative externality, in that some households are paying smaller property tax bills for the same public services. Second, introducing lower cost housing into a community changes the demographic makeup, potentially shifting the political power structure. For many residents, the draw of the suburbs is not limited to the desire for open spaces and improved quality of life that precipitated the vast migration in the years following World War II. Homeowners are also attracted to the opportunity to exert a high degree of control over local governance and decisions that affect their investment. Acting as shareholders in a corporation, residents can keep a close eye on local land use decisions that affect their investment (Fischel 2004). Local solidarity against potentially threatening land-use decisions is weakened by a more diverse population, where residents may have conflicting economic goals (Danielson 1976, p.29).

## B. Racial Motivations

In Massachusetts, the growth of communities around Route 128 coincided with an influx of African Americans into the state. A lack of regional policy designed to accommodate this increasing population within the suburbs resulted in the concentration of new black residents in Boston’s urban neighborhoods, far from the growing job centers and quality schools (MAC 1975, p.40-42). By the early 1960s, more than 80 percent of the metropolitan area’s white population was distributed throughout the suburbs, and more than 80 percent of the area’s black population was clustered in Boston’s central neighborhoods. The population of Boston’s suburbs at that time were more than 98 percent white, and have remained overwhelmingly so. The five communities highlighted in this thesis range from 80 percent (Framingham) to 94 percent (Southborough) white, while the City of Boston is 54 percent white (U.S. Census Bureau 2000).

This racial segregation is not simply the result of chance or cultural preferences, but was established and reinforced by exclusionary zoning ordinances often motivated by racial prejudice. Despite a significant increase in the proportion of people of color in the suburban population, residential segregation on a jurisdictional level remains widespread. Even after the U.S. Supreme court deemed

racial zoning unconstitutional, communities across the country were able to remain racially homogenous through the use of large-lot zoning and other land use controls, which exclude low-income and often minority households. Federal courts have not consistently found land use controls that result in racial exclusion to be unconstitutional. Such regulations are only impermissible if it can be proven that they are designed to exclude particular groups of people. At the state level, court cases have generally addressed the legality of regulations that target low-income households, rather than those that exclude minorities (Pendall 2000, p.125).

Local ordinances are not solely to blame for residential suburban segregation. Federal policy, as established by the Federal Housing Administration, promoted the use of racially restrictive covenants under its financing programs. The FHA encouraged zoning that prevented multifamily development, and encouraged the use of restrictive covenants to ensure racial homogeneity and to prevent the possibility of racial tensions. The FHA still tacitly supported neighborhood segregation until 1968, long after the 1948 Supreme Court decision outlawing restrictive covenants (Wright 1981, p.248). The FHA's influence over suburban development was pervasive during the post-war suburban housing boom. By 1947, the FHA had financed 4.5 million homes, about 30 percent of the new homes built in a year (Wright 1981, p.248).

Though the era of discriminatory federal mortgage lending had ended, race still plays a significant role in the spatial distribution of the metropolitan population. Yet, while many studies demonstrate that current land use controls are motivated by fiscal concerns, few have documented the extent to which they are designed specifically to exclude low income and/or minority residents, and even fewer examine the issue of race separately from income. It has been shown that higher-income, predominantly white communities are more likely to enact restrictive land use controls, though few prove that the regulations lead to exclusion (Pendall 2000, p.129). Ihlanfeldt (2004, p.275) finds mixed evidence that land use regulations are motivated by a desire to exclude low-income and minority households (versus motivation by fiscal concerns), but suggests that further research could reveal such goals.

Pendall (2000) describes the mechanisms that produce what he terms the "chain of exclusion," in which land use controls, acting over time, accommodate large numbers of non-Hispanic white residents while "failing to accommodate blacks and Hispanics" (p.128). Communities across the

country with large-lot zoning, development moratoria, urban growth boundaries and building permit caps all had a decline in the proportion of blacks and Hispanic residents over a ten-year period in the 1980s, while their representation nationwide rose during the same time. Communities with large-lot zoning became more exclusive in the 1980s by growing more slowly, by encouraging the construction of single-family units over multi-family units, and (perhaps as a result) by having an increase in the proportion of owner-occupied units over renters. Pendall confirms that low-density only zoning resulted in the reduced growth of the local population of black residents, while growth caps reduced the growth of Hispanic residents in the 1980s. In contrast, urban growth boundaries that increase metropolitan density can increase the percentage of minority residents, lending support for argument that restrictive zoning and sprawling development patterns lead to racial segregation (Ihlanfeldt 2004, p.269-270).

### C. Local Character

The desire to maintain “local character” is frequently cited in support of zoning mechanisms that restrict the development of certain types of housing. Many Massachusetts communities perceive their beautiful rural landscapes, historic farmhouses, and small-town feel as their greatest assets. Multifamily development, in particular, that does not reflect traditional architectural tastes is seen as a threat to local property values and historical importance. “Maintaining local atmosphere” was one of the top priorities named by local planning officials from across the country surveyed (Lowry and Ferguson 1992), while maintaining or increasing the amount of affordable housing was one of the least-cited priorities. “Local character” is a vague term that takes on a variety of meanings depending on the context in which it is used. It often refers to aesthetic concerns, such as avoiding the construction of unattractive apartment buildings in favor of more familiar, lower-density suburban prototypes. Local officials may also use the term in the context of traffic impacts associated with both new development and with more urban areas. In exurban communities, the loss of “local character” can refer to the transformation of agricultural landscapes into residential subdivisions of any density.

Federal housing policy during the 1950s and 1960s provided financing assistance almost exclusively for single-family homes, making it difficult for builders to meet the demand for a variety of housing types. Yet by the 1960s and through the 1970s, builders began to create medium density, multifamily housing. By the mid-1960s, in many metropolitan areas, more multifamily units were



constructed than single-family homes (Wright 1981, p.260). The federal government supported this trend with public financing programs targeted at private developers, such as the 202, 221d3, and 236 programs. While this movement responded to the needs of low-income households, the effects can be felt today in the form of community backlash toward denser housing. In several Massachusetts communities, including Framingham and Marlborough, the rapid proliferation of large, unattractive apartment buildings in the 1960s and 1970s has made residents particularly wary of allowing multi-family development, even when design controls are in place (interviews with Kathleen Bartolini and Al Lima). For example, almost 3,000 units of multi-family housing were constructed in Framingham in the 1970s, constituting 12 percent of the community's total housing stock. In Marlborough during the same period, 1,500 units of multifamily housing were constructed, equaling 14 percent of the city's stock (U.S. Census Bureau 2000). Many of these developments are considered unattractive by today's standards, and remain a visible reminder to residents of how residential development can permanently alter the appearance of a community.

Concerns about community character have been translated into opposition to residential development by environmental advocates who support "growth management." As the environmental movement gained political weight in the 1970s, residential development was often opposed by those who argued that it threatened environmental quality and diminished the supply of open space. At the same time, development review processes in many regions of the country began to include regional and state officials, providing additional opportunities for residents to voice their concerns. Even communities that had supported development prior to this period became exclusionary because a small minority of vocal residents and outsiders could use the public forum to generate opposition to a project (Fischel 2003). Concern about managing growth and maintaining environmental quality remains a powerful issue in many Massachusetts communities.

### **Institutional Factors**

The personal motivations discussed above are supported in Massachusetts by a political and legal framework that allows exclusion to flourish. The state's firm culture of home rule authority, diffuse local governance structures, and outdated Massachusetts Zoning Act all contribute to the adoption of regulatory barriers to affordable housing, or make it difficult for such barriers to be eliminated.

## A. Home Rule

The legal authority to govern local matters locally, called “home rule,” is a powerful element of the Massachusetts legal structure. About half of the nation's states have adopted home rule, which enables residents to create charters for local governance (Euchner 2003). For the state, allocating power through home rule enabling legislation makes sense on many levels. First, because it is challenging for states to meet the diverse needs of regions and communities through legislative power, home rule provides flexibility. Second, adopting a broad home rule mandate enables state legislatures to avoid adopting specific statutory authorization for each local government upon request. Finally, it is often believed that local leaders are better equipped to respond to local concerns than state lawmakers (Barron et. al 2004, p.543). On the local level, as zoning emerged in the early twentieth century, the value of home rule authority became clear to municipal leaders. Communities eager to preserve their ability to zone began to fight consolidation by adjacent municipalities through annexation, which had been common prior to 1910 during periods of rapid metropolitan growth (Fischel 2003).

Even in a home rule environment, local power is not absolute because it is derived from the authority of the state government, which can rein it in through financial incentives, education funding, and transportation decisions (Danielson 1976, p.33). However, home rule generally gives communities significant power over land use decisions, which are those most likely to affect exclusion. Zoning bylaws, building codes, planning review processes are often established at the local level, as are participation in state or federal housing programs such as public housing. Land use regulations are “the essence of local autonomy” because they impact so many local characteristics, such as taxes, the quality of the schools, the appearance of the community, and provision of public services (Danielson 1975, p.35). Home rule facilitates decision-making that is guided primarily by local concerns and does not take into account regional needs or those of future residents (Danielson 1975, p.40). Local land use decisions are thus powerfully affected by local fiscal issues, prejudicial attitudes, the desire to maintain “local character,” and by a political structure that enables decision-makers to avoid directly addressing the issue of exclusion.

## B. Massachusetts Zoning Act

Many Massachusetts officials feel the “power to zone” is one of their most important tools (Barron

et. al. 2004, p.41). The Massachusetts Zoning Act, Chapter 40A of the General Laws, delegates land use regulation responsibilities to local communities, which are valued because they can so strongly determine the quality of life and fiscal health of a community. The expression of local authority has, at least in the past, exhibited itself primarily in a reluctance to adopt regulations that would permit the development of housing occupied by low-income households. As a 1975 report examining segregation in the Boston metropolitan area found, "there is a double standard operating in the communities. While new housing is generally approved by town boards, any housing which might potentially be occupied by blacks must obtain approval for the community. The concept of community control, often stressed as a major need within the inner city, has been realized in the suburbs with respect to housing for low- and moderate-income families," (MAC 1975, p.60). Home rule authority and the structure of state and federal programs enable local officials to respond only to those issues that would be supported by their constituents. Rarely do they include providing housing for low-income households.

Though Chapter 40A gives Massachusetts communities a fair amount of latitude to adopt regulations they view as necessary for their safety and quality of life, the state's Supreme Judicial Court has established limits, ruling against regulations that are clearly designed to exclude. In the case of *Simon v. Needham* (1942), the court allowed the Town of Needham's one acre lot zoning to stand, but included the caveat that a "zoning by-law cannot be adopted for the purpose of setting up a barrier against the influx of thrifty and respectable citizens who desire to live there and who are able and willing to erect homes upon lots upon which fair and reasonable restrictions have been imposed." More recently, the court ruled against the Town of Hadley's Rate of Development bylaw, which capped the number of building permits the town could issue per year indefinitely. "In their intent and in their effect, rate of development bylaws reallocate population growth from one town to another, and impose on other communities the increased burdens that one community seeks to avoid. Through zoning bylaws, a town may allow itself breathing room to plan for the channeling of normal growth; it may not turn that breathing room into a choke hold against further growth," (*Zuckerman v. Hadley* 2004).

The Zoning Act occasionally acts as a barrier to the implementation of progressive zoning that would support affordability. The state courts have been unclear on whether zoning regulations must conform to the requirements and guidelines of Chapter 40A or whether they are considered a more

general exercise of a community's police powers. This uncertainty has created reluctance among local decision-makers who would otherwise like to adopt land use regulations that are not specifically designated in the Zoning Act, such as inclusionary zoning ordinances that mandate the inclusion of affordable units in all development (Barron et al. 2004, p. 41). Additionally, Chapter 40A gives land owners vested rights to develop their property under previous zoning up to eight years after subdivision plans are filed. Community officials are often reluctant to suggest new zoning ordinances out of concern that property owners will overwhelm the community with development proposals in order to preserve their ability to build under previous zoning.

Chapter 40A also increases the likelihood that a particular project or amendment will generate opposition because it gives land use authority to many local groups that can influence the decision-making process. Public notification requirements ensure that property owners and abutters will have an opportunity to express their opinion, and usually any interested member of the community is invited to speak on proposals of any scope at a series of public meetings. "This dispersal of authority makes it possible for individual constituents and the state to frustrate a proposed zoning law even it has been voted on. It also undermines municipal officials' attempts to accomplish planning goals while, at the same time, continuing to make them responsible for the lack of an adequate land use policy in the eyes of their electorate," (Barron et al. 2004, p.55). Anticipating the diverse array of arguments against a proposal, such as concerns about traffic, density, or infrastructure, town leaders unable to fight a battle on numerous fronts may be reluctant to even propose changes to local zoning.

### C. Town Meeting

The unique Massachusetts tradition of town meeting governance presents an impediment to the promotion of affordability initiatives. Chapter 40A requires approval by two-thirds of the decision-making body to amend local zoning by-laws. City councils are usually made up of 9 to 11 members, making it a relatively straightforward task for proponents to lobby the legislators. However, open town meetings allow all registered voters in the community to participate, while representative town meetings, usually found in the larger communities, allow between 50 and 429 representatives to vote. The large majority required to approve zoning amendments, combined with the sheer number of participating individuals who have a vested financial interest in the future of the community, presents a significant challenge for housing advocates. Moreover, critics argue that the town

meeting form is outdated in an era when communities are faced with very complex issues on which members may not devote the time necessary to understand, and turnout in general is decreasing (Euchner 2003). While the quality of debate can be very good, “other participants complain that the debate is unfocused, uninformed, and sometimes rude and unruly. . . . Meanwhile, many people who show up at the meeting create a contentious scene,” (Euchner 2003, p.30). Finally, while city councils generally meet twice a week, town meetings usually only meet twice a year, providing limited opportunity to propose zoning amendments.

### **Reframing the Issue**

As this chapter has discussed, homeowners and communities have a range of motivations to maintain exclusionary zoning practices. Moreover, proposals to eliminate barriers to affordable housing construction must be subjected to a rigorous and lengthy approval process, often requiring significant support from the majority of hundreds of town meeting participants. Though the traditional Massachusetts town meeting remains a strong component of regional character and enables residents to feel a firm connection to their community, it provides opponents an opportunity to shift the terms of debate in a way that increases barriers to affordability initiatives. Town meeting members can play on the insecurities of their fellow residents about the effects of lower cost housing on property values or community character. Numerous public meetings also give advocates for marginally related causes, such as the environment or aesthetics, a chance to raise concerns about an initiative and further slow its progress, even when that may not have been their intent. This process of intentionally or unintentionally reframing a debate has been described as “heresthetics and happenstance,” (Clingermayer 2003, p.378).

The ability to reframe the debate regarding affordable housing is useful for opponents who are hesitant to voice their true concerns in public, because exclusion is not considered politically correct. Rather than arguing against housing that would facilitate the entry of low-income or minority individuals into a community, opponents instead cite “neighborhood protection, defense of property values, good planning principles, enhancing environmental quality, [and] promoting historical preservation,” (Clingermayer 2003, p.383). The emergence of the environmental protection movement has played an important role in enabling a shift in the debate about affordable housing to other worthy concerns, such as preserving water quality or green space (Fischel 2003). While some participants are sincerely concerned about these issues, other participants have less politically-

acceptable goals and use communal concerns as a foil to disguise prejudicial attitudes.

The effectiveness of heresthetics in derailing affordable housing initiatives is well-illustrated by the famous “Mount Laurel I” case, in which the New Jersey Supreme Court found the zoning regulations of the township unconstitutional because they did not provide a “realistic opportunity for the construction of its fair share of the present and prospective regional need for low and moderate income housing,” (*Southern Burlington County NAACP v. Township of Mount Laurel*, 1975). The township based its defense on arguments commonly used to justify exclusion, such as quality of life and fiscal concerns, and local infrastructure capacity. In doing so, it succeeded in removing the focus of the debate from the community’s willful exclusion of low-income households. The court did rule against Mount Laurel, deciding that the constitutional rights of the plaintiffs, as it perceived them, outweighed the local concerns which are normally used to justify exclusionary practice. Yet because the court did not refer to a specific provision in the state’s constitution, it is unclear on what constitutional rights the decision is based, leaving the door open for the future approval of exclusionary zoning practices by courts that do not have the same understanding of rights (Clingermayer 2003, p.384).

## Chapter 3

# EXCLUSION AS A THREAT TO METROPOLITAN SUSTAINABILITY

The regulatory barriers adopted by communities as a result of the social, political and historical factors discussed in the last chapter help make the Boston metropolitan region one of the most expensive places to live in the nation. Exclusionary zoning mechanisms have contributed to the state's dubious honor of being the second least affordable state in which to rent (National Low Income Housing Coalition 2004). Though housing advocates have been working to address this situation for years – pushing for the adoption of Chapter 40B in 1969 – a broader coalition that includes business leaders and Republican leaders has lately begun to take notice of the effects of the housing crisis on regional competitiveness. This chapter first examines evidence of the continuing prevalence of exclusionary regulations in Massachusetts communities and how they have contributed to the region's extraordinarily high housing prices. I then discuss the implications of barriers to development for local communities, individual households throughout the region, and metropolitan sustainability.

### **Declining Residential Production**

Though Chapter 40B was adopted more than thirty-five years ago, it remains a necessary tool to combat the regulatory barriers that still exist in most Massachusetts suburbs, such as large minimum lot sizes and prohibitions on multifamily housing. The Commonwealth Housing Task Force found that these characteristic features of Massachusetts' bylaws were significant contributors to the high housing prices in the state (Commonwealth Housing Task Force 2004, p.6). Of 155 communities analyzed by the Massachusetts Executive Office of Environmental Affairs (EOAF) by 2000, 95 had zoning regulations that, on average, required more than 1 acre per housing unit. Four communities required over 3 acres per unit (EOAF 2000, p.22). As discussed previously, large-lot zoning reduces the number of homes that can be constructed on vacant land, while simultaneously increasing the value of that land and the value of the housing constructed on it. With high land prices, builders cannot build small starter homes that facilitate the entry of first-time homebuyers into the market. Even more striking than the large lot requirements is the lack of land available for multifamily

development in many Massachusetts communities. Of the 16 communities analyzed in depth by the EOAF, 6 made it impossible to construct any form of multifamily housing (EOAF 2000, p.23). Of the five communities targeted in this study, lot sizes of an acre are typical. Though all have some provision to allow multifamily housing, only two communities (Marlborough and Framingham) have entertained proposals for more than five units of multifamily housing outside of the Chapter 40B process in the past five years.

Figure 3.1: Residential Zoning

	Bellingham	Framingham	Marlboro	Norfolk	Southboro
<b>Single Family Lot Size</b>	40,000 sq ft	8,000– 43,560 sq ft	8,000 – 43,560 sq ft	30,000 – 55,000 sq ft	25,000 - 43,000 sq ft
<b>Multifamily allowed</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Multifamily provision utilized</b>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		

Sources: Zoning bylaws of the 5 communities; Conversations with municipal staff.

Zoning that limits the supply of housing by requiring large lots and setbacks, or by prohibiting multifamily development or accessory apartments, has had a profound impact on production in Massachusetts. In 1999, the state was 47<sup>th</sup> in the nation in the number of building permits issued per capita (EOAF 2000, p.iii). The problem of lagging production is not a new one. The number of housing units permitted annually has declined continuously since 1968. The decrease of new multifamily housing has been particularly conspicuous: multifamily units were permitted at an average rate of 14,000 units per year in the 1970s, compared with 1,300 units per year for much of the 1990s. The construction of multifamily increased between 1998 and 2003, to 2,600 units per year, a phenomenon which can be attributed largely to Chapter 40B. The decline of multifamily development is understood by the fact that almost half of Massachusetts municipalities permitted only single family housing between 1995 and 2001. In three quarters of all communities, 90 percent of units permitted were single family homes (Heudorfer, 16).



Figure 3.2: Residential Development, 2000 - 2004

	Bellingham	Framingham	Marlboro	Norfolk	Southboro
Single-Family*	291	198	297	165	215
Multifamily*	0	465	Data not available	0	0
Age Restricted*	0	0	500	184	186
Approved Comprehensive Permit Units	258	150**	770	44	29
Other	45	8	17	11	69

\*Building Permit issued.

\*\* Currently under appeal

Sources: US Census 2000; Interviews with municipal staff.

The large lot requirements and lack of multifamily zoning found throughout the state are particularly notable because they are not representative of existing residential development patterns. Of the 16 communities examined in depth by EOAF, current zoning permits the development of 0.9 units per acre, compared with the 1.8 units per acre found on average in developed neighborhoods. Only three communities across the state have no existing multifamily parcels, but fewer than 50 percent of Massachusetts municipalities issued multifamily permits between 1997 and 1999 (EOAF 2000, p.31).

The relatively few units of new multifamily housing are constructed in a small minority of the state's municipalities, primarily the state's cities. Boston, for example, dominates the multifamily housing construction activity, constituting 22% of all multifamily units developed between 1997 and 1999. Though 141 of Massachusetts' 351 communities did issue permits for multifamily housing in the same period, seven communities accounted for about half of all housing units permitted statewide (EOAF 2000, p.31). Housing production is further slowed in many communities by local bylaws that go beyond limiting the type of housing allowed to capping number of units that can be permitted annually. Of the 155 communities analyzed by EOAF, 45 have explicit growth rate bylaws that limit permitting to 50 units per year (EOAF 2000 p.21-23).<sup>1</sup>

### **The Link Between Regulation and Housing Prices**

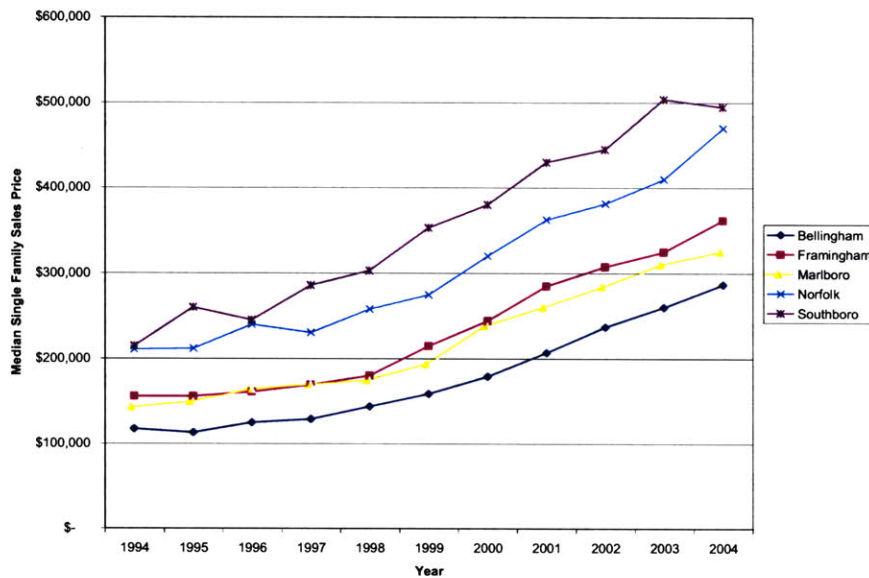
Housing prices in the Boston metropolitan area have clearly been affected by declining production

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<sup>1</sup>The impact of the 2004 Supreme Judicial Court decision in *Zuckerman v. Town of Hadley* on such rate-of-growth bylaws remains to be seen. The Court ruled the town's rate-of-growth bylaw unconstitutional because the community was doing little to plan for future growth.

and lack of availability. The Boston metropolitan statistical area is the eighth most expensive in the country in which to rent (National Low Income Housing Coalition 2004). Between 1980 and 2003, the nation's largest overall percentage increase in housing prices took place in Massachusetts (Goodman 2003), and prices have shown no indication that they will decline at the same rate. Though housing prices doubled between 1998 and 2002, according to the National Association of Realtors, metropolitan Boston is not experiencing a "housing bubble" that could burst, sending housing prices into free fall (Belsky 2003). Though most other areas of the country have lower housing prices, which increase slowly at the same rate as construction costs (Commonwealth Task Force 2003, p.7), housing prices remain out of reach for many moderate income households because of the strict regulations promulgated by many communities.

Figure 3.3: Median Single Family Sales Prices, 1994 - 2004

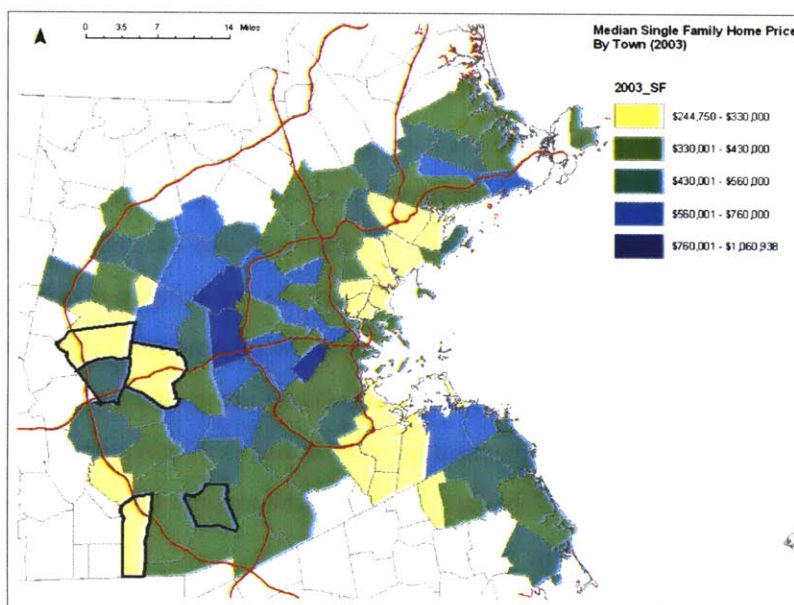


Source: The Warren Group Town Stats ([www.thewarrendgroup.com](http://www.thewarrendgroup.com))

Researchers argue that local restrictions are primarily at fault for high housing prices in high-cost markets (Downs 2002, and Glaeser and Gyourko 2003). Glaeser and Gyourko find that housing prices generally reflect the cost of construction in most areas of the country, but in particularly expensive markets, such as New York, California, and Boston, inflated prices are due to building and zoning regulations. The Commonwealth Task Force, a coalition of housing advocates and representatives from the business, labor, health care and education communities, looked at a range of factors that could conceivably contribute to the lack of housing production in Massachusetts,

including lack of available capital and under-funded government affordable housing production programs. The group found that only two factors contributed significantly: the lack of land zoned for housing production, and a lack of public funding (Commonwealth Task Force 2003 p.8).

Figure 3.4: Median Single-Family Sales Price by Town, 2003



Source: Heudorfer et. al. 2003; Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

In accordance with the basic supply and demand model, exclusionary zoning policies that limit the amount and type of residential development directly impact the price of housing in a community. Studies generally support the finding that growth controls and “characteristic zoning” (regulations which prescribe development standards such as minimum lot size or setbacks) – the type of regulations prevalent in Massachusetts – clearly limit the supply of housing, increasing price (Ihlanfeldt 2004 p.264). Barriers to construction can also impact prices when they are part of the business strategy of development firms (EOAF 2000). While many developers avoid communities with exclusionary regulations, some larger firms can afford to wait out local objections or mitigate the issues presented by the community. Those firms that succeed in getting their projects built in a strictly regulated market are able to charge high prices for the few new units available. Shifting demographics may put additional pressure on the price of smaller units and those in multifamily developments. As a large portion of the population ages, and the number of single people living alone continues to grow, the state will need different units that better respond to the needs of these

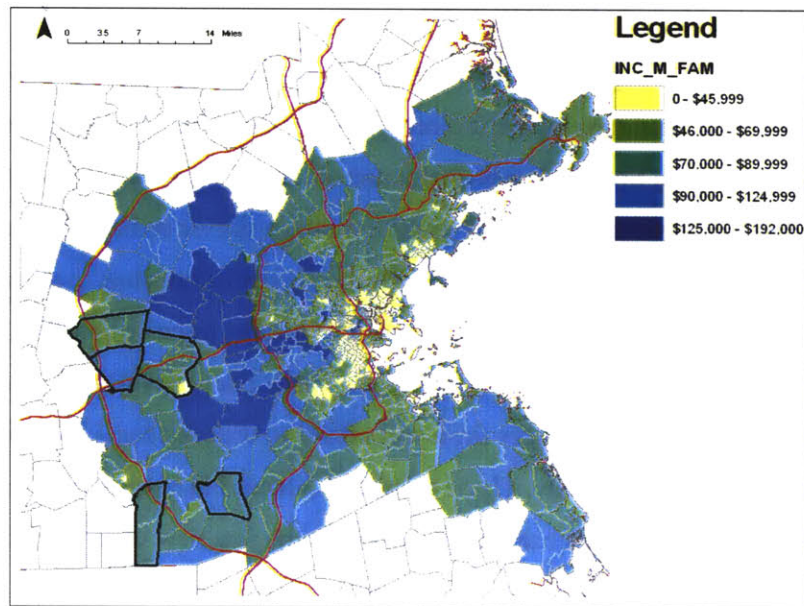


households (EOAF 2000, p.11). Local opposition to housing types that meet the needs of a growing segment of the population may exacerbate rising costs for the few units that are produced.

### Economic and Racial Homogeneity

In addition to increasing the cost of housing in communities in which they are enacted, exclusionary regulations may contribute to a lack of economic and racial diversity in Boston's suburbs, and exacerbate regional inequality. The Boston metropolitan region has a relatively high degree of economic segregation - compared with others nationwide, it has the 13<sup>th</sup> largest gap between the average central city per capita income and the average suburban income (Swanstrom et. al). Though the income gap between central cities nationwide and their suburbs has stabilized in the last decade, the income gap *between* suburbs has grown. Fewer Americans are living in middle-income suburbs and more are living in wealthy or poor communities, and the income gap between the wealthiest and poorest suburbs has grown as households in affluent suburbs are growing wealthier. Areas in the Northeast tend have less economic segregation between suburbs than regions in the Sunbelt. However, this may be an indication of the fact that most low-income families are confined to central cities by the high cost of housing in the suburbs.

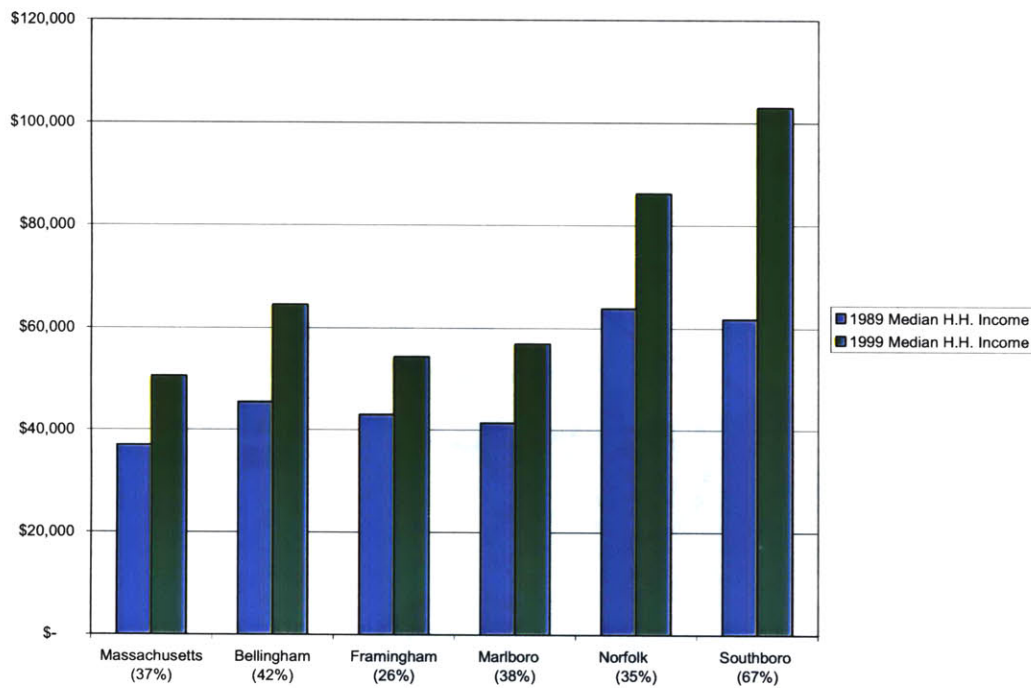
Figure 3.5: Median Income, 1999



Sources: U.S. Census Bureau; 2000 Census of Population and Housing; Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

While economic segregation between Boston's suburbs may not be as dramatic as it is in other areas of the country, the high price of housing in many communities appears to influence the spatial distribution of the population. To achieve income integration between low-income and very high-income European-American buyers, almost 50% of low-income buyers in the metropolitan area would have had to have bought a home in a different city or town during the period between 1993 and 1998 (Stuart 2000). During that same period, the majority (60%) of low- and moderate-income homebuyers bought homes in the 47 communities with an above-average share of lower income households in 1990. Only 18 percent of low- and moderate-income buyers bought homes in the 56 communities with an above-average share of very high income households, suggesting that lower-income households are not able to fully access the region's communities, and the services they offer.

Figure 3.6: Change in Median Income, 1989 - 1999



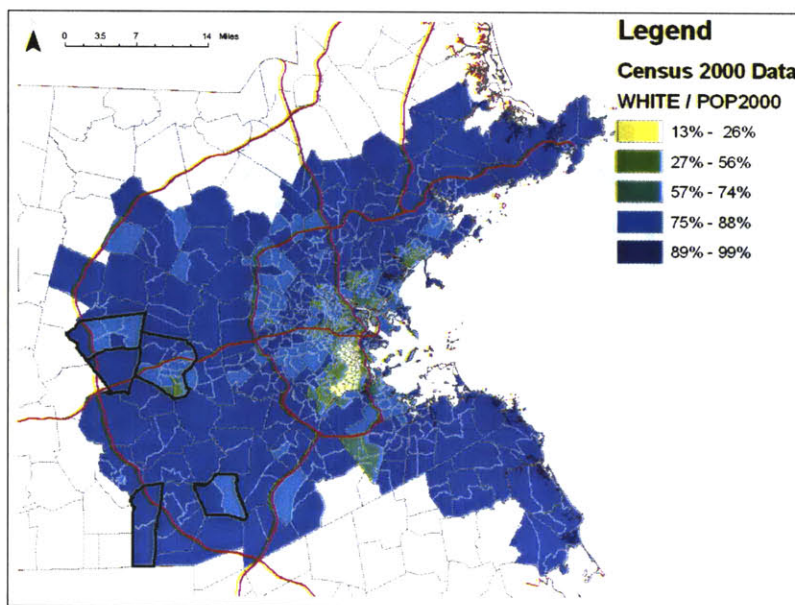
Source: U.S. Census Bureau 2000.

Even without restrictive regulations, development patterns motivated by the market tend to create economically homogenous communities. Because it is often in the developer's financial interest to build a fewer number of larger homes on large lots, and consumers seek to live in neighborhoods with households of higher or equal socio-economic status, economic segregation can result in the

absence of government intervention (EOAF 2000, p.24). However, communities concerned with increasing the local tax base reinforce these patterns through zoning designed to favor expensive over affordable homes, creating an economic hierarchy among suburbs.

Exclusionary zoning may contribute to racial as well as economic homogeneity in region's suburbs. Because minorities are disproportionately represented in the lower income categories, they may be less able to access the more expensive housing in suburban communities. Although segregation between whites and blacks has improved between 1990 and 2000, whites and Latinos are now living farther apart. In 2000, 65 percent of blacks would have to move to another census tract in order for the entire region to be racially integrated, down from 68 percent in 1990. Meanwhile, 41 percent of Latinos would have to move, up from 37.2 percent in 1990 (McArdle 2003a, p.18). The patterns of segregation are particularly striking in the region's public schools. Eighty-two percent of the public school students in the inner suburbs, and 91 percent in the outer suburbs are white, while only fifteen percent of the students enrolled in Boston public schools are white, and almost half are black (Lee 2004, p.6).

Figure 3.7: Proportion of White Residents



Source: U.S. Census Bureau, 2000 Census of Population and Housing; Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

Though part of the disproportionately low representation of minorities in Boston suburbs may be

due to a link between race and household income, other factors appear to contribute as well. For example, poor whites are more likely to live in the suburbs than in the City of Boston, while poor minorities are more likely to live in the city. Half of poor whites in the Boston metropolitan region live in suburbs, yet only 10 percent of blacks and 14.5 percent of Latinos do (McArdle 2003b, p.8). Higher household income has little effect on black mobility – only half of black households that make more than \$100,000 per year live in the suburbs (ibid., p.7). McArdle suggests a range of possible reasons people of color do not live in the suburbs, even when they apparently can afford to, including historical housing segregation, discrimination in housing markets, and reluctance of minorities to be the first to move into white suburbs.

### **Spatial Mismatch, Economic Outlook, and Sprawl**

The region's leaders are increasingly aware that the availability of affordable housing is vital to maintaining the area's economic competitiveness. Proliferation of jobs without simultaneous development of housing requires employees to commute longer distances, increasing traffic, reducing air quality, and creating pressure to sprawl farther into the rural areas of New England. Exclusionary regulations may exacerbate the jobs/housing imbalance, threaten the economic outlook for the region, and foster inefficient use the region's valuable and dwindling supply of land.

There is considerable evidence of the existence of a spatial mismatch within the labor markets of large metropolitan areas, where low income residents cannot afford to live within easy commuting distance to growing suburban employment centers. Studies suggest that the mismatch may be caused by a lack of affordable housing for low-income employees in suburban communities. Restrictive land use regulations are likely a key factor contributing to this scarcity, and therefore the existence of a mismatch (Ihlanfeldt 2004, p.272). In search of homes that meet their budgets, moderate-income households must look farther from the region's employment centers where the price of residential land remains low.

Pressure to move far from the workplace worsens air quality and traffic, as people spend more time driving to work. The average distance traveled by commuters in Massachusetts increased by approximately 10 percent between 1990 and 2000, and more commuters are now traveling between different areas of the state. Commuters in the fast-growing Metrowest region near Route 495 face



particularly long commuting times, despite their location close to job centers, raising questions about whether the area provides housing that meets the needs of employees (Goodman et. al., 2004, p.10). Commuters who spend more than 45 minutes traveling to work are more likely to own a home than other employees, “suggesting a willingness of many Massachusetts workers to trade away shorter commutes in order to purchase a home in a community they find desirable,” (Goodman et. al, p.10). Aside from negatively impacting the shared resources of air quality and roads, long commutes affect households on a more personal level by reducing time spent with the family.

Critics have asserted that exclusionary residential regulations foster the wasteful use of land and create communities that lack the traditional New England town aesthetic. Large minimum lot sizes and prohibitions on multifamily development may contribute to an unsustainable expansion of the metropolitan area, due to the cost of infrastructure required to support low-density development. Such regulations may be partially to blame for the de-densification of the region between 1950 and 1990, as the population density of Massachusetts declined by more than half. During this time, the amount of developed land increased at a rate greater than six times the population growth (EOAF 2000, p.22).

The region’s business leaders are raising awareness of the threat that high home prices, caused in part by restrictive zoning policies, pose for the state’s economy and growth potential. Companies, concerned about their ability to attract and retain a skilled workforce in an area where the high cost of living and lengthy commuting times, are joining housing advocates in urging changes to the status quo of local zoning regulations. These issues may already be taking their toll on the Massachusetts workforce, as the state was the only one to lose population between 2003 and 2004, according to estimates by the Census Bureau. Moreover, a 2005 survey found that 46 percent of households were considering leaving the state, more than four times higher than six years ago (CHAPA/Donohue Institute 2005). The majority of survey respondents also felt that high housing costs were forcing elderly and young people out of their communities, that they prevented teachers and firefighters from living where they work, and that they are making it difficult for businesses to attract workers. Massachusetts recently surpassed New York as the most expensive state in which to conduct business, primarily because of high labor costs – which are directly attributable to living costs (Gavin 2005). The Greater Boston Chamber of Commerce, among other business organizations, has cited the high cost of housing as a primary threat to regional growth, and called on business and



government leaders to prioritize the housing issue (Greater Boston Chamber of Commerce 2005, p.10).

Exclusionary regulations have resulted in a lack of diverse housing options throughout the metropolitan area, making it difficult for many low-income households, blacks, and Latinos to move from the urban neighborhoods where they disproportionately reside and into the suburbs. The region's high home prices also pose a problem to households who already live in the suburbs, making it difficult for them to work closer to their jobs and causing many families to consider leaving the area. Chapter 40B, discussed in the next chapter, attempts to address some of these problems by facilitating the development of more diverse housing throughout the region.



## Chapter 4

### HISTORY AND EFFECTIVENESS OF CHAPTER 40B

Massachusetts General Law Chapter 40B, an innovative, state-mandated policy designed to facilitate suburban inclusion of affordable housing, was adopted by the state legislature in 1969. For housing advocates, Chapter 40B was the type of powerful tool necessary to cut through the layers of local opposition that was preventing the construction of affordable units in the suburbs. Three and a half decades later, the streamlined permitting process the law established is no less potent, and no less necessary. Yet the nature of the housing built under the law and the type of developers who use it have changed in a new affordable housing financing landscape.

The Commonwealth was one of the first states to address the affordable housing issue on a regional level, although a number of similar policies were adopted across the country in the following decades. New Jersey adopted a fair-share requirement in 1985 after the 1975 and 1983 Mount Laurel court decisions established the unconstitutionality of the community's restrictive zoning practices. California began to require communities to adopt housing elements as part of their plans in accordance with regional housing needs in 1980. More recently, Rhode Island, Connecticut, and Illinois, among others, have also adopted state-level housing appeals processes. Aside from being the first of its kind, Massachusetts' inclusionary housing program was unique in that it was adopted by the state legislature, rather than mandated by the courts. While the local affordable housing production requirements resulting from Mount Laurel were opposed by local and state leaders alike, Chapter 40B originated with the state legislature. Though many local leaders remained opposed to the statute, it has arguably succeeded in its intent to create and disperse low- and moderate-income housing across the state. The law may have also reshaped community perspectives towards affordable housing. This chapter explores the history and effectiveness of Chapter 40B and other Massachusetts programs designed to address the state's high housing prices.

#### Early Legislative History of 40B

Chapter 40B, otherwise known as the "Anti Snob-Zoning Act," creates two important tools to facilitate affordable housing development. First, it establishes a Comprehensive Permit process to

streamline housing development approval by eliminating the need for review by numerous local boards. Second, it allows developers to request waivers from local zoning ordinances that they believe prevent the construction of affordable housing. In order to construct low or moderate income housing, a developer may file a Comprehensive Permit with the local Zoning Board of Appeals. If the permit is approved, at least 25% of the units in the resulting residential development must be affordable to low-income households. If the ZBA denies the application, or grants it with conditions that would make the project uneconomic, the developer may appeal the decision to a state Housing Appeals Court (HAC). The HAC reviews appeals to determine whether the local decision is “consistent with local needs,” (Chapter 40B, Section 23). If less than 10 percent of the community’s housing stock consists of subsidized affordable housing units, the burden is generally upon the community to demonstrate that local concerns outweigh the presumed substantial need for affordable housing. The community’s stock of affordable housing is counted on the state’s Subsidized Housing Inventory (SHI), which is maintained by the state’s Department of Housing and Community Development (DHCD) and updated regularly.

In adopting Chapter 40B (originally Chapter 774 of the Acts of 1969), the legislature sought to increase the supply of low and moderate income housing throughout the state, particularly outside of cities where land was more plentiful and construction costs would be lower. The law also “established that meeting affordable housing needs is a regional responsibility and provided a way to 'level the playing field' by providing the tools to override zoning and regulatory barriers that some communities imposed to shirk their regional responsibility at the expense of cities and other towns," (Verilli 1999, p.15). Furthermore, though it was not mentioned specifically, the law was considered by some advocates as a way to mitigate the problem of urban poverty by improving access to the jobs being created in the suburbs. Chapter 40B emerged during a time of conflict between urban and suburban legislative leaders over school segregation. A 1965 “Racial Imbalance Act” would have made it illegal to have more than 50% non-white children in a classroom (Heudorfer 2003, p. 11). Because the Act would have had little impact on the overwhelmingly white suburbs, urban representatives from white working-class neighborhoods resented what they perceived as an attempt by suburban legislators to force integration on their communities. In response, the powerful urban leaders formed an alliance with some of their Republican suburban colleagues and with housing advocates to adopt Chapter 40B (Fortun 2001).

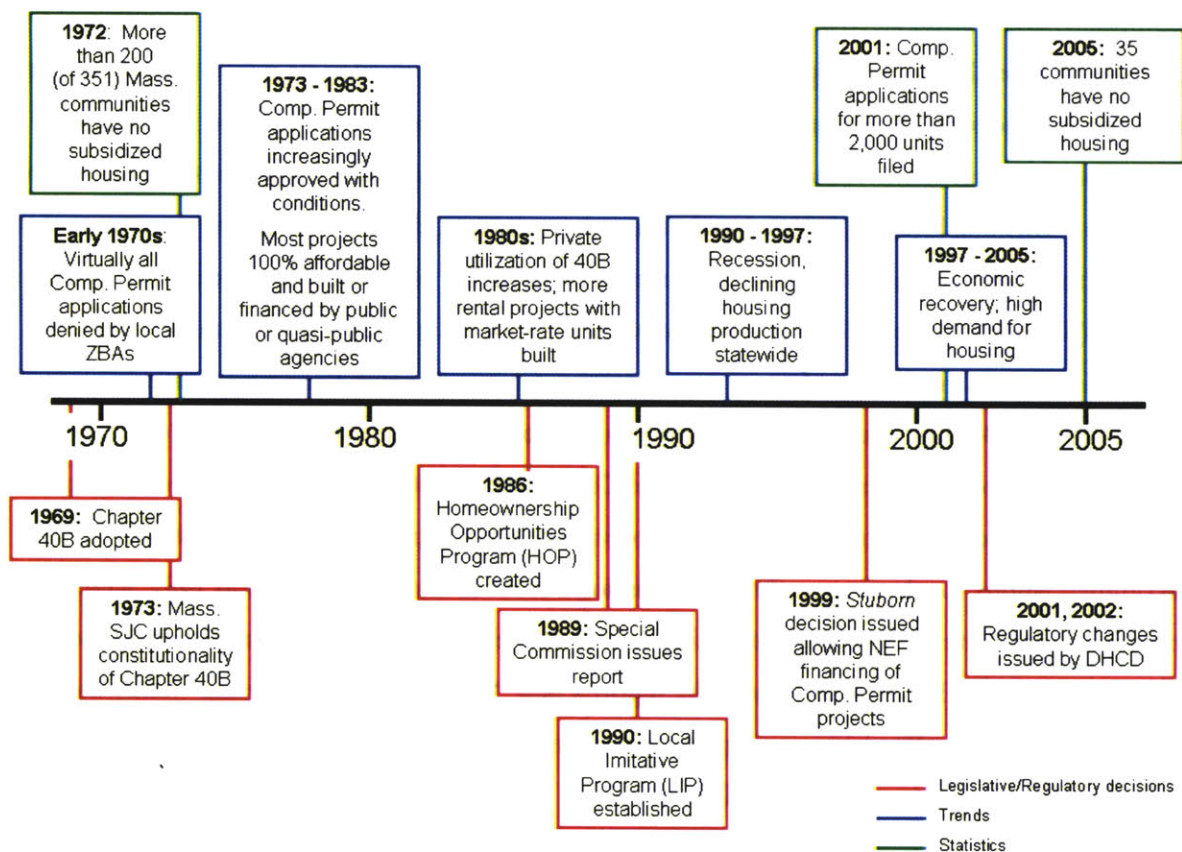
In her 1999 study of Chapter 40B, Ann Verilli describes how local responses to the law evolved from absolute opposition to acceptance and increasing control over the affordable housing production process. Immediately after adoption, communities were adamantly opposed to the law, and virtually all comprehensive permit applications were denied at the local level. After the state's Supreme Judicial Court upheld the constitutionality of law, as well as HAC's ability to reverse local denials of comprehensive permits in 1973, communities began to work within the process. Zoning Boards of Appeal increasingly approved projects with conditions that usually were designed to reduce the project impacts instead of issuing outright denials. Despite this more welcoming environment, construction of affordable housing was slowed by continuing community opposition, which prompted many developers to abandon their projects, and by cuts to federal funding for subsidized housing.

Comprehensive Permit activity began to pick up again in the 1980s with economic growth and the creation of several funding programs designed to expand the production of mixed-income housing. The Homeownership Opportunity Program (HOP) was launched in 1986 and had an immediate impact on the development landscape. Designed as a financial tool for Local Housing Partnerships to create ownership housing targeted at first-time homebuyers, the HOP program was expected to be attractive to communities interested in creating housing for "suburban born-and-bred" young families (Krefetz 2001, p.406). Yet private developers found the source more attractive than nonprofits, and to the dismay of many municipalities, Comprehensive Permit applications surged in the late 1980s. Because many of these proposals did not have community support the denial rate increased, prompting the creation of a "Special Commission Relative to the Implementation of Low and Moderate Income Housing Provisions" to evaluate the progress of the law and make recommendations for the future. The Commission's recommendations, issued in 1989, were intended to facilitate community production of affordable housing in a way that respected local planning concerns. In accordance with the report a new "Local Initiative Program" (LIP) was created under which affordable units sponsored by municipal governments but constructed without conventional subsidies can be included on the SHI.

The 1990s marked a new era for the role of Chapter 40B in the statewide production of affordable housing. Due to a lack of state and federal funding and a weak housing market, development was quiet in the early part of the decade. The deep subsidies and grants that supported much of the

affordable housing development costs in the 1970s and 1980s were replaced by “shallow subsidies and market driven development. . . During the transition, 40B went from being a *vehicle* that allowed the government subsidized programs to work in more locations to *being* the production program,” (Heudorfer 2003, p.23). By the mid 1990s, affordable housing production across the country relied extensively on private and non-profit developers using private funds, and that shift was mirrored in the types of organizations utilizing the Comprehensive Permit process. The law remained integral to the production of affordable housing in suburban communities – Verilli found that all of the affordable housing produced in 22 communities was the result of the Comprehensive Permit process.

Figure 4.1: Chapter 40B Timeline

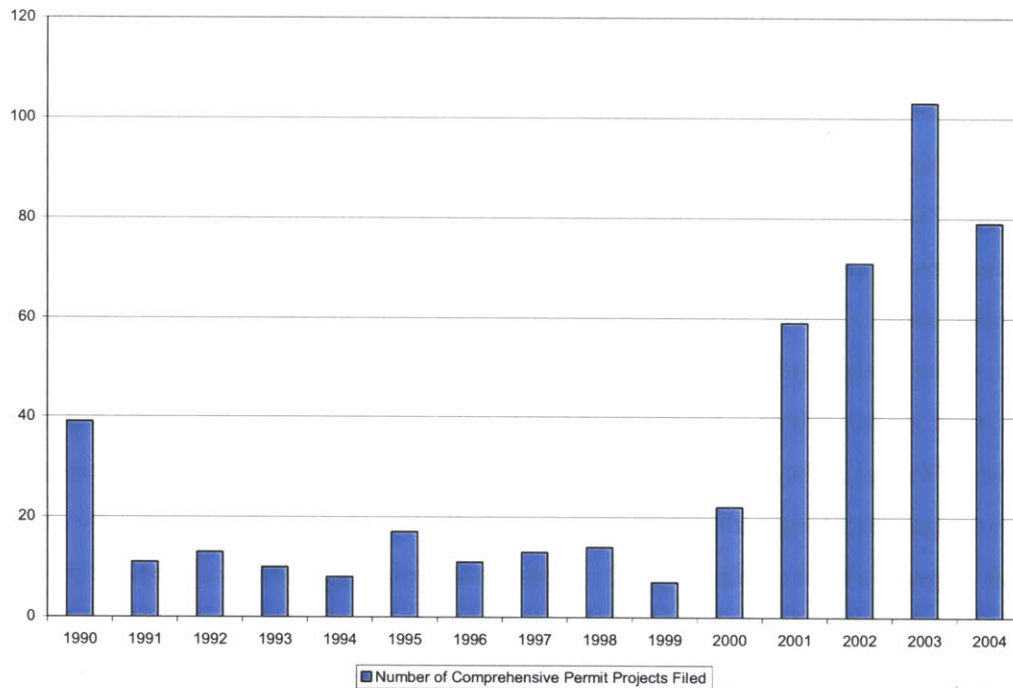


Sources: Verilli 1999; Krefetz 2001; Heudorfer 2003.

As Chapter 40B has emerged as the primary affordable housing production tool, local decision-making has taken on a more important role in the permitting process. In 1999, a landmark decision allowed mixed-income projects financed by the New England Fund (NEF), a program of the Federal Home Loan Bank of Boston which gives below-market rate loans to developers to construct affordable housing, to qualify for the comprehensive permit status. This decision shifted responsibility to municipalities to oversee affordability restrictions, project design and compliance monitoring, roles that had typically been played by state oversight agencies for projects subsidized traditionally. "In the past, large grants or loans that constituted significant proportions of total development costs were provided . . . under a 'command and control' model. That is, in return for the subsidies, state or federal officials through their regulatory authority, retained considerable control over the design and operation of the housing. Today, however, there has been a significant shift . . . toward market driven . . . programs in which cash subsidies and bureaucratic supervision are minimized," (Werner Lohe, HAC Chair, quoted by Heudorfer 2003, p.23). The decreasing oversight role of state agencies, along with the emergence of LIP, has substantially increased the importance of the role played by local communities in shaping local housing policy. With greater involvement, municipalities may be inclined to support more projects. However, they may also limit their support for projects that serve only a particular segment of the population, such as senior citizens (Verilli 1999, p.14).

Development activity under Chapter 40B -- and awareness of the law -- has increased since the NEF decision. Community groups and local officials have responded to the increasing number of large projects with vocal and organized opposition. The state's approval of NEF as a qualified funding source at a time when the regional housing market was booming increased the number of 40B filings in the first half of the current decade significantly -- from 12 in 1998 to 103 by 2002 (Heudorfer 2003, p.34). Comprehensive Permit projects have generated more controversy at the local level, perhaps because until 2002 NEF projects were not subject to review for site and project appropriateness by a state agency. The size of projects has also increased - four applications filed in 2002 were for projects of 300 units or larger (prompting the state to issue regulations limiting the size of projects in 2002). These shifts have raised concerns about whether the local impacts caused by large, primarily market-rate housing developments are justified by the affordable housing benefits they provide (Heudorfer 2003, p.36).

Figure 4.2: Number of Comprehensive Permit Projects Filed, 1990 – 2004



Source: Mass. Department of Housing and Community Development 2005

Much opposition to Chapter 40B stems from the local belief that the law gives developers and the state powers that rightfully belong to local governments. While many officials claim to support the goal of Chapter 40B, they do not think that the effects on local communities, nor the law's methods, are justified (Barron et. al, 2004, p.45). The most frequently cited complaint is that the Comprehensive Permit process and the HAC do not adequately take into account legitimate local concerns about local impacts on infrastructure, community character, and services. Many argue that the desire for profit has increased the size and decreased the affordability of the projects, and that private developers are the financial beneficiaries of a loss of local control and community character (Barron et. al., 2004, p.46). Some town officials feel that their ability to reach the affordable housing production goal that would exempt them from unwanted Comprehensive Permit projects is limited, and that local efforts to protect or encourage affordable housing are not supported by the law because often the units are not counted on the state housing inventory (Barron et. al. 2004, p.47). "Chapter 40B diverts power away from municipal governments but holds them accountable for the



lack of results," (Barron et. al. 2004, p.55). Widespread opposition to Chapter 40B has prompted state legislators to propose numerous amendments and calls for repeal – in 2004, approximately 50 bills were filed according to the Citizens' Housing and Planning Association (CHAPA). The key features of the law have remained intact, in part due to the control that urban representatives continue to exert over the state legislature.

For many communities, the rules governing the types of housing are eligible for inclusion on the SHI are of particular aggravation. The state does not count units that are "affordable" in a broad sense of the term but are not governed by deed restrictions ensuring long-term affordability and occupancy by low-income households. Thus, units occupied by Section 8 voucher holders are not counted, nor are family accessory apartments that are not deed-restricted. Representatives from the City of Peabody sponsored a 2004 bill that would allow communities to count a percentage of their manufactured homes, of which Peabody has approximately 600, to no avail. The approval of Comprehensive Permits for ownership units is less effective than those for rental developments. In order to facilitate the development of rental housing, the law allows communities to count 100 percent of the units in rental developments built under Chapter 40B, but only the units that actually serve low-income households in ownership projects. Another issue that is occasionally raised by local leaders is how "affordable" the units created through the Comprehensive Permit process really are. The statute requires that the affordable units be affordably priced for "low-income" households earning less than 80 percent of the Area Median Income. In the Boston metropolitan area, which encompasses the five communities in this study, a three-person household earning up to \$59,550 per year is considered "low-income." In 2005, an affordable three-bedroom unit may be priced no higher than \$1,300 per month (DHCD 2005). While this level of rent is certainly less than the market-rate units found within the same developments, it is decidedly unaffordable for many households employed in the service sector.

For built-out communities with a large housing stock, reaching the 10 percent can be more challenging than for smaller towns, because the number of affordable units required is relatively high. Figure 4.2 demonstrates how Bellingham jumped from 4.8% to 9.3% almost entirely due to the approval of a single 258-unit rental development, in which 65 units are affordable to low-income households. By comparison, Marlborough has almost three times the number of year-round

housing units. The city had to build almost 1,000 units under the Comprehensive Permit process in order to reach the 10 percent mark.

Figure 4.3: Recent Comprehensive Permit Activity

Community	Percent 40B units 1997	Total Year Round Housing Units, 2000	Percent 40B units 2001	Number of 40B units added 1997 - 2005	Total 40B units 2005	Percent 40B units 2005	Percent change in 40B units 1997-2005
Bellingham	4.8%	5,632	4.2%	278	523	9.3%	4.5%
Framingham	9.2%	26,588	10.2%	247	2,676	10.1%	0.8%
Marlborough	4.6%	14,856	7.9%	917	1,509	10.2%	5.6%
Norfolk	3.4%	2,851	2.9%	0	84	2.9%	-0.4%
Southborough	2.8%	2,988	2.3%	42	108	3.6%	0.8%

Sources: Heudorfer et. al. 2003; CHAPA 2005

The increasing number of private developers using the process to produce large rental developments has resulted in declining levels of affordability. In the 1970s, 97 percent of all units constructed with Comprehensive Permits served low-income households. By the current decade, that has been reduced to 27 percent (Heudorfer 2003, p.36). Figures 4.3 and 4.4 illustrate how such projects have affected the overall percentage of affordability in these communities, particularly in Bellingham and Marlborough. In 2003, most of the units built through the Comprehensive Permit projects served low-income households, but by 2005 large privately owned rental developments had reduced the overall percentage of affordable units had been approved by the communities highlighted in this study. Though the increasing role of private developers in the Comprehensive Permit process has clearly taken its toll on the overall percent of units affordable to low-income households, it is important to note that these developments constitute the bulk of the rental units found in many Massachusetts communities. This trend has helped to offset the dramatic decline of multifamily rental development of the 1990s.

Figure 4.4: Subsidized Housing Inventory Composition, 2003

	Estimated percent subsidized in 2003 using Comp. Permit	40B Units 2003	40B Units added to the SHI 1972 - 2003	Units built under CP as % of units added to SHI since 1972 (2003)	% of units in CP developments that "count" on SHI (40B units) (2003)	% of units in CP developments that serve low income (2003)
Bellingham	99.4%	238**	174	99.4%	86.5%	86.5%
Framingham	21.6%	2,705**	1,431	21.6%	100%	100%
Marlboro	53.5%	1,180**	1076	53.3%	100%	43.6%
Norfolk	23.8%	84	84	23.8%	100%	100%
Southboro	0%	70**	70	0	N/A	N/A

Source: Heudorfer 2003

Figure 4.5: Subsidized Housing Inventory Composition, 2005

	Estimated number in CP developments that serve low income 2003	Total 40B units 2005	Known additional CP units added to SHI 2003 - 2005	Estimated new low-income units 2003-2005	Unaccounted SHI units (assumed to serve low income)	Estimated total low income units 2005	Estimated % that serve low income 2005
Bellingham	205	523	258	64	27	297	57%
Framingham	2,705	2,676	0	0	0	2,676	100%
Marlboro	514	1,509	332	83	-3	594	39%
Norfolk	84	84	0	0	0	84	100%
Southboro	N/A	108	30	30	8	N/A	N/A

Source: Author's calculations based on data from Heudorfer 2003 and the 2005 Subsidized Housing Inventory

Though its opponents have not been successful in repealing Chapter 40B, they have generated enough support within the legislature to enact several important changes to the regulations that govern implementation of the program by DHCD. Perhaps most significant among the 16 regulatory changes made since 2001 is a provision that enables a community to deny a Comprehensive Permit if the community has made recent progress on affordable housing development. Communities demonstrate progress if they have either had an increase of 2 percent in their affordable housing stock over the previous 12 months, or if they have had an increase of .75 percent in affordable housing during the previous year in accordance with an approved housing plan created the municipality. As of April, 2005, 28 communities had received approval for their local housing plans under the "Planned Production Program," which encourages communities to proactively address local housing needs by assessing the needs for a range of populations, identifying

potential development sites, and amending local zoning bylaws. Though many communities had taken the initiative to receive approval for their local housing plans, far fewer have received “certification” for creating the required number of affordable housing units, which would render them exempt from Comprehensive Permit applications for one year. In November 2004, a total of 6 communities had sought and received certification (Krautscheid 2004). Another regulatory change enables communities to include accessory apartments, group homes and locally assisted units on the SHI, provided that they are deed restricted and serve low-income households.

### **The Local Impacts and Effects of Chapter 40B**

Chapter 40B has had a demonstrable impact on the supply and dispersion of affordable housing throughout the state. Since the early 1970s, approximately 35,000 units have been created with Comprehensive Permits, of which nearly two thirds are affordable for low-income households. As of May 2004, another 5,000 units had been approved and were in or nearing construction. Excluding the cities exempt from the law, 82 percent of all new production of affordable housing units between 1999 and 2004 was the direct result of 40B (CHAPA 2005). The number of communities that have exceeded the 10 percent affordability grew from 23 to 39 between 1997 and 2005. Perhaps the most important effect of Chapter 40B has been on the geographic distribution of affordable housing. While 69 percent of the state’s affordable housing supply was located in the 15 largest municipalities in 1972, by 1997 that figure had dropped to 37 percent (Verilli 1999, p.1). The number of communities with zero units of subsidized housing has fallen dramatically from more than 200 in 1972 to 35 in 2005. Much of this progress is directly due to Chapter 40B. At least two thirds of Massachusetts communities have dealt with Comprehensive Permit applications, and while many communities have created affordable housing outside of the Comprehensive Permit process, in 22 communities the streamlined process was required for 100 percent of the affordable units created (Heudorfer 2003).

Despite the obvious importance of Chapter 40B as an affordable housing production tool, the law has not necessarily succeeded in all respects. While many communities have managed to reach the 10 percent inventory goal, most that have done so have not relied primarily on the Comprehensive Permit process. Most of these communities already had a large stock of permanently-restricted public housing (Heudorfer 2003, p.44). The limited data available also indicates that Chapter 40B has had little measurable impact on the segregation of Massachusetts suburbs, in part because many

communities condition Comprehensive Permit approvals with “local preference” requirements that limit occupancy of the affordable units to residents and employees (Stonefield 2001). The role of the Local Initiative Program has also had important impacts on the characteristics of Comprehensive Permit projects. Almost half of the 175 projects proposed in the 1990s were Local Initiative Projects, which generally have less than 25 units. Because most of these projects are subsidized internally and not through a state or federal financing source, usually only the minimum 25% of units are deed-restricted to be affordable (Krefetz 2001). While the increasing involvement in municipalities with affordable housing production is certainly a positive trend, locally-initiated projects have generally not produced the same quantity of affordable units as traditional Comprehensive Permit projects do.

### **Shifts in the Development Dynamic**

Evidence suggests that many communities accept the Comprehensive Permit process, and have learned how to work with it to produce housing that meet local needs. Because Chapter 40B and the Housing Appeals Court put a substantial burden of proof on municipalities that deny Comprehensive Permit Applications, communities have an incentive to negotiate with developers. Local denials are rarely upheld at the state level, so Zoning Boards of Appeals are increasingly working with developers and conditioning approvals rather than denying them and risking being overturned (Verilli 1999, Krefetz 2003). Municipal officials may also support 40B because it allows them to promote goals that may not be politically acceptable at the local level by referring to state requirements. According to William G. Flynn, secretary for communities and development under Governor Dukakis, Chapter 40B gives “localities the leverage they need to do the things which they know are right but which are just not politically possible. . . . Any honest local official speaking candidly will tell you that he really has to have a higher authority to get the community to do what it should be doing in the first place,” (Breagy 1975, p.548).

Some observers suggest that in addition to directly facilitating the construction of affordable housing in the state, Chapter 40B has also transformed local dynamics in a way that has encouraged the construction of affordable housing outside of the Comprehensive Permit process. In a recent survey, three quarters of Massachusetts residents supported the creation of affordable housing in their communities, and more than three quarters supported Chapter 40B and felt that all communities should meet the 10 percent affordability goal (CHAPA/Donohue Institute 2005).

Several researchers believe that this awareness of affordable housing needs, and of the “reality of Chapter 40B,” (Verilli 1999, p.1) have caused communities to utilize other mechanisms to address local housing needs, such as variances, special permits, rezoning, and negotiation with developers (Heudorfer 2003, p.27). For example, fully one third of Massachusetts communities have some form of “affordability zoning” that explicitly supports the creation of affordable units (Herr 1999).

While there may be extensive local support for meeting housing needs outside of the Comprehensive Permit process, communities have encountered several barriers to doing so. First, some cities have attempted to create local laws to create or preserve affordable housing, such as rent control, inclusionary zoning, or condominium conversion restrictions. However, the state’s Supreme Judicial has occasionally limited these powers in the past, arguing that they are not within municipal Home Rule authority (Barron et. al, 2004, p.50). Even in communities with affordability zoning, development may not occur without the participation of willing developer. “Local zoning incentives, even powerful ones, can do little that Chapter 40B can’t do even more powerfully to support developers seeking to develop affordable housing. Chapter 40B obliges communities to accept affordable developments, but it doesn’t oblige landowners and developers to propose them, and neither do more than a handful of locally adopted zoning rules,” (Herr 1999, p.1). Municipal officials also note that they can do little without substantial financial assistance from the state (Barron et al, p.49). Thus for many communities, the Comprehensive Permit process is one communities are unable to avoid, despite active attempts to encourage affordable housing development outside of it.

### **Other Massachusetts Affordability Initiatives**

In addition to Chapter 40B, Massachusetts has implemented several other programs designed to encourage community planning and facilitate affordable housing creation in recent years. Governor Paul Cellucci issued Executive Order 418 in 2000 to address the growing shortage of housing for households of low-, moderate-, and middle-incomes. The first of the program’s two components was a community planning requirement which provides communities with grants and technical assistance to create plans linking housing, economic development, transportation, and open space and resource protection, while considering existing infrastructure and the regional context. The second component, a Housing Certification program, gave communities the opportunity to demonstrate that they were taking steps to increase the production of low- and moderate-income



housing. Communities that met annual certification standards were given priority for a range of state and federal grant programs, including Community Development Block Grants and the Public Works Economic Development Program.

The Community Preservation Act (CPA) is a widely-supported initiative designed to assist communities in addressing community concerns, and was also signed into law in 2000. The Act allows municipalities to enact a surcharge on local property taxes to create a fund to be used exclusively to support the preservation of open space and historic sites, and the creation of affordable housing and recreational facilities. As of April 2005, 84 of Massachusetts' 351 communities had adopted the CPA, and spent \$47.7 million (or 41% of the total) for the creation of affordable housing (Community Preservation Coalition 2005).

A third initiative to promote smart growth and housing development has sparked both interest and controversy among the planning community. The Commonwealth Task Force, a diverse coalition consisting of housing advocates, and representatives from the business, labor, health care and higher education communities, developed recommendations on ways to address the state's housing crisis in the 2003 report "Building on Our Heritage: A Housing Strategy for Smart Growth and Economic Development." The report recommends several bold steps the state should take to encourage communities to facilitate the development of affordable housing. The state has since adopted Chapter 40R, an act implementing one of the task force's two primary recommendations. Under Chapter 40R, communities can create "Smart Growth" zoning districts near transportation nodes or existing town centers, in which high-density housing and mixed use development must be allowed by right. At least 20 percent of the housing units in residential developments of 12 or more, and at least 20 percent of the units constructed within a Smart Growth district, must be affordable to low-income households. Once the proposed zoning is approved by the state's Department of Housing and Community Development (DHCD), communities are eligible to receive payments through a trust fund administered by the state. Immediately upon enacting the zoning overlay, communities receive an "incentive payment" based on the number of units that are projected to be constructed within the Smart Growth district in excess of those that could have been constructed under previous zoning. The municipality then receives an additional "density bonus payment" for each unit permitted. The program is designed to address the commonly-cited local concern that new development strains local services more than it provides in additional tax payments. A second

recommendation, which would provide communities with the school costs associated with every additional child living within Smart Growth districts, has not yet been taken up by the state legislature.

The adoption of Chapter 40R as part of the 2005 state budget has initially received lukewarm support from local officials. The predominant criticism is that the financial incentives – approximately \$1,000 for each unit projected, and \$3,000 for each unit built - are not large enough to offset the costs of educating children living in the new housing. Town officials also say the density requirements, which require per acre either 8 single-family homes, 12 two- or three-family residences, or 20 apartments or condominiums, are too high for suburban areas, particularly those without sewer systems. Municipal officials are also concerned about the streamlined approval process, which preempts the special permit process often used locally to review dense development proposals (Flint 2004). Of the five communities examined in this study, only the Town of Norfolk expressed interest in adopting a Smart Growth Overlay district.

### **Local Ownership of a Regional Problem?**

The affordability of the region's housing stock is emerging as a critical issue for many people outside of the housing advocacy world. Politicians such as Governor Mitt Romney, corporate executives including representatives from the Greater Boston Chamber of Commerce, and residents of the state's 351 cities and towns are beginning to understand that the implications of the housing crisis are deeper than how it affects individual pocketbooks. Whether this increasing awareness is due to local controversy over Comprehensive Permit developments, recognition of the economic threat to the state's economy, or individual financial concerns, it is clear that the issue has grown and that there is not yet a consensus on how best to address it. Residents cited the "cost of housing" as the most critical issue facing the region (CHAPA/Donohue Institute 2005), and the large majority of respondents believed that it was "important" or "very important" to build new housing for working families and for seniors. At the same time, far fewer people felt that it is necessary to build such housing in their own community, and slightly more than half of respondents agreed or strongly agreed that affordable housing would change the character of their town. Others remained concerned about their property values, school costs, and the aesthetics of new development. At the municipal level, some communities are demonstrating interest in meeting the 10 percent affordability requirement by adopting local zoning and more frequently approving Comprehensive



Permit applications. Yet officials remain wary of the costs associated with new development, the burden on school systems, and of proposals that could degrade local character.

At the state level, the housing problem has evolved since Chapter 40B was enacted over three decades ago. While one of the legislation's primary goals in 1969 was to make the employment and educational opportunities of the suburbs accessible to low-income households, the picture today is more complex. In the early twenty-first century, "the problems associated with concentrated poverty and separation by income and race persist, public funding for housing assistance at all levels has been cut, production has not kept pace with demand, and the inventory of low rent units - both subsidized and unsubsidized - continues to shrink," (Heudorfer 2004, p.12). Simply removing the barriers posed by local zoning regulations may not be enough to foster affordable housing development, as long as communities fear that new development will result in a net decrease in their fiscal stability (Krefetz 2001).

Though more funding may be needed to address such local concerns and to support new development, there are indications that communities may be accepting responsibility for affordable housing creation. The state is emphasizing the role of community planning for new affordable housing through the Planned Production program, and facilitating local creation of production through the Local Initiative Program (LIP). LIP has enabled communities to reassert their role in addressing local housing needs, a process that has been called the "quiet counter-revolution" in the story of Chapter 40B (Krefetz 2001, p.410).

With the increasing awareness of the affordable housing challenges and the shift toward local control over the issue, we are left with the question of whether Chapter 40B will remain the primary affordable housing production tool or whether communities will come to manage the process. The region faces an uncertain future if Chapter 40B, a builder's remedy to exclusionary zoning, remains the most prevalent mechanism to address the affordable housing crisis. The Comprehensive Permit, a controversial and imperfect production tool, will continue to be linked to affordable housing in the minds of many local leaders and residents. The opinions held by many about Chapter 40B – that it deteriorates community character and ignores local concerns – will continue to slow progress toward widespread support for more diverse housing. Affordable housing production will remain dependent on the interest and activity of the private development market and its priorities. As long

as the primary tool to housing production is a stick, eliminated once a community reaches a rather arbitrary goal of 10 percent, many communities will believe that their obligation to low- and moderate-income households ends at that point. Whether or not local and regional housing needs are met, communities will have little incentive to continue to promote the production of affordable housing. Moreover, the affordable housing crisis, which affects the population on a variety of levels, will remain a one-dimensional problem as long as communities are only given incentives to produce units that meet the generic requirements of the Subsidized Housing Inventory.

The implications of the possibility that Chapter 40B has catalyzed local planning for affordable housing are more intriguing. Despite the controversy the law has caused – or perhaps as a result of it – Chapter 40B may have increased awareness of the demonstrated need for affordable housing at the municipal level, creating local ownership of a regional problem. Communities may have taken on the responsibility to promote the development of housing that serves the needs of its residents and employees. In order to do so, perhaps they are increasingly using the Local Initiative Program to facilitate the construction of affordable units, or amending their zoning in ways that promotes the development of less-costly housing types. Community leaders may be trying to ascertain and address the wide range of housing needs found among the local citizenry, whether or not the units are countable on the state's Subsidized Housing Inventory. They may even be coordinating efforts with nearby communities, recognizing that housing markets are regional and that economic viability depends on the availability of units that meet the needs of potential employees.

In the next chapters, I discuss how Chapter 40B has impacted the culture of municipal planning for affordable housing. I explore the extent to which the law, and greater awareness of the regional affordable housing crisis, has succeeded in shifting ownership of the housing problem to the local level in five communities. My research suggests observers are correct that Chapter 40B has prompted communities to facilitate the development of affordable housing without using the Comprehensive Permit process. However, concerns about the emerging reliance on the LIP program, which enables communities to target local residents and limit the type of affordable developments, are not unfounded.

## Chapter 5

### CASE STUDIES

#### Methodology

In order to determine how Chapter 40B has impacted planning decisions regarding affordable housing in Massachusetts, interviews were conducted with local officials in five targeted communities. This chapter discusses the research methodology and introduces the five communities selected for case studies.

#### A. Approach to Data Collection

Because this study examines how Chapter 40B has influenced local decision-making regarding affordable housing planning and development, the most obvious data collection technique was the interview. Discussions with local decision makers provided me with the most efficient and accurate information about how communities have responded to the threat of Chapter 40B and whether they have become more proactive toward the creation of affordable housing. For each of the five case study communities, I interviewed the town planner (or consulting town planner), a member of the Planning Board, and a member of the Board of Selectmen (or City Council). These representatives were selected because of their substantial involvement with planning policy and creation and approval of zoning bylaws. By talking to a mix of representatives, including both town employees and residents involved in the planning process, I hoped to get a clear picture of the attitudes and actions of the community as a whole. Because opinions within a particular board can vary, I asked members to characterize both their individual opinions and the general attitude of the board on which they sit.

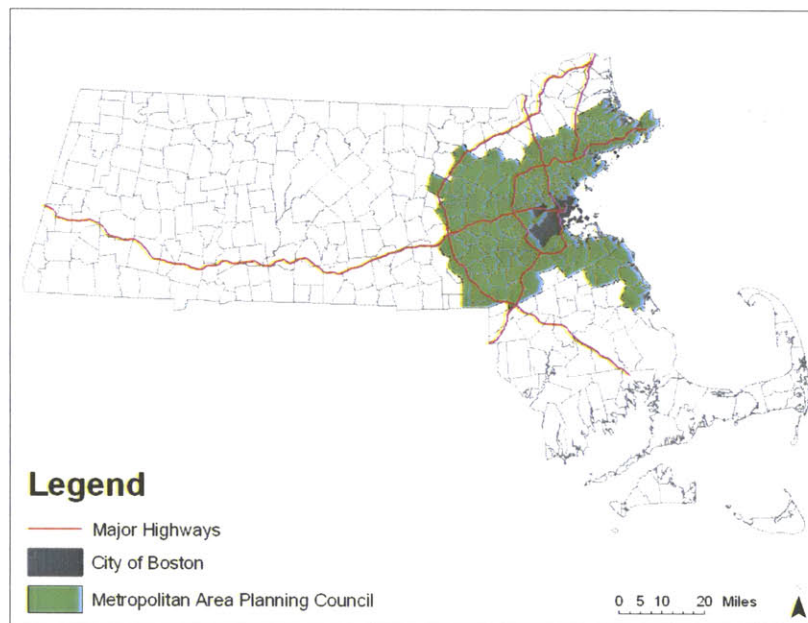
I also collected housing and master plans, newspaper articles, and meeting minutes to provide a broader perspective on the level of community support for affordability initiatives. I used these materials to assess the nature of the public discussion about zoning proposals, the extent to which the communities were deliberately promoting the development of affordable housing, the effectiveness of new zoning regulations in encouraging affordable housing production, and the types

of development encouraged locally. As official policy, community plans indicate local priorities and may be based on the opinions of a broad cross section of residents, a group I was not able to interview due to time constraints. Meeting minutes often include detailed discussions about specific zoning or project proposals, and therefore give a flavor for residents' concerns. Newspaper articles provide specific information about individual issues, and can also capture the type of debate going on among community leaders and residents.

## B. Community Selection

Out of the 351 municipalities in Massachusetts, five communities were selected for in-depth analysis on the basis of location, demographics, local government, and other individual characteristics. I chose to look at communities within the Metropolitan Area Planning Council (MAPC), the regional planning agency that represents 101 communities in the Boston area.

Figure 5.1: MAPC Region



Source: Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

High housing costs and Comprehensive Permit activity have particularly impacted communities in the MAPC area. I chose to focus on communities in the western and southwestern areas of this region because they have experienced particularly rapid growth in the last decade. For example,

while the population increased by 4.9 percent in the entire MAPC region between 1990 and 2000, it increased by 16.2 percent in the Southwest Area Planning Council, which includes the targeted communities of Bellingham and Norfolk (MAPC 2001). Because many of the communities in these outer areas still have a substantial amount land available for development, they have the opportunity to shape future growth through zoning and development policies implemented now.

The five communities I chose – Bellingham, Framingham, Marlborough, Norfolk, and Southborough – differ in terms of population, median property value and median income. The housing stock in these places also varies in terms of the overall percentage of affordable housing, single-family housing, and remaining housing units to be constructed according to build-out analyses conducted by the state’s Executive Office of Environmental Affairs. While most communities in the MAPC area have full-time professional planners, I chose one community (Norfolk) without a professional planner on staff and another (Bellingham) with a part-time planner. Though most of the municipalities in the area are incorporated as towns governed by open or representative town meetings, I chose one city (Marlborough) governed by a mayor and city council. I also sought to include at least one community (Framingham) with a recent history of controversy over a Comprehensive Permit application.

Figure 5.2: Population Statistics

Community	Population			Schools		Planning
	2000 Population	Percent increase since 1990	1999 Median Income	2000 Enrollment	Percent increase since 1990	Planning Staff
Bellingham	15,314	3%	\$64,496	2,828	19%	Part-time
Framingham	66,910	3%	\$54,288	8,666	9%	Full-time
Marlborough	36,255	14%	\$56,879	4,876	22%	Full-time
Norfolk	10,460	13%	\$86,153	1,794	33%	Consultant
Southborough	8,871	34%	\$102,986	1,684	63%	Full-time
Mass.	6,349,097	5.5%	\$50,502	N/A	MAPC Region: 16%	N/A

Sources: U.S. Census Bureau, 2000 Census; Massachusetts Executive Office of Environmental Affairs

Figure 5.3: Housing Statistics

Community	Housing Stock				Build-Out	Affordability
	1999 Median home value	Total units	Growth in housing units	Percent single-family	Percent built-out	Percent affordable (SHI)
Bellingham	\$158,800	5,642	12%	78%	75%	9.3%
Framingham	\$216,700	26,734	6%	50%	89%	10.1%
Marlboro	\$181,500	14,903	23%	49%	84%	10.2%
Norfolk	\$273,900	2,861	17%	93%	55%	2.9%
Southboro	\$318,600	2,997	31%	91%	66%	3.6%
Mass.	\$185,700	2,621,989	6%	57%	N/A	N/A

Sources: 2000 Census, Mass. Executive Office of Environmental Affairs, Mass. Department of Housing and Community Development

### C. Interview Approach

Interviews with planners were conducted on-site and in person, and were audio-recorded, while interviews with board and committee members were conducted by telephone. Guiding questions included:

- What type of residential development has been taking place recently in the community?
- What are local development priorities, and what are challenges?
- How would you characterize attitudes toward affordable housing, recent Comprehensive Permit applications, and Chapter 40B in general?
- What initiatives, including zoning amendments, has the community recently sponsored that would affect the availability of affordable or moderate-income housing?
- From your perspective, how has Chapter 40B influenced local planning behaviors or interest in facilitating the development of affordable housing?

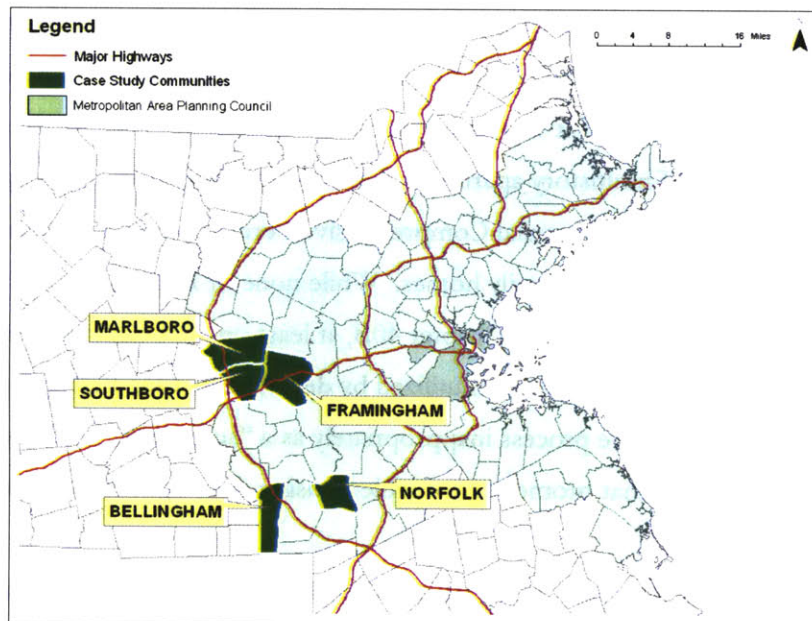
### D. Affordability Indicators

Aside from obtaining a general sense of community attitudes toward affordable housing and Chapter 40B through interviews and data collection, I was also looking for examples of specific activities that would indicate increased interest in addressing affordable housing needs. Such indicators include:

- “Inclusionary” or “incentive” zoning that requires or promotes affordable housing units in new residential development;
- Adoption of other zoning amendments to promote the development of housing other than single-family homes, including duplexes, multi-family, and age-restricted units;
- Creation of a housing plan, or discussion of housing needs in a master plan;
- Municipal encouragement of Comprehensive Permit developments (“friendly 40B” projects);
- Explicit discussion in interviews of an interest in facilitating development of affordable housing.

## Community Profiles

Figure 5.4: Case Study Communities



**Source:** Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs

### A. Town of Bellingham

A traditionally rural community located on the Rhode Island border, Bellingham has begun to transform into a more expensive bedroom town. In the 1950s and 1960s Bellingham experienced a building boom with the construction of primarily inexpensive ranches and split-level homes.



Neighborhoods remain primarily single-family, but typical recent development consists of \$500,000 homes on one-acre lots in large subdivisions, according to the town planner. There is some concern, particularly among seniors, that long-time Bellingham residents are being priced out of town as a result of this new development. Yet because home prices are lower than in neighboring communities and the tax rate is low – ranking 210 out of the 351 municipalities (Boston.com 2005) – Bellingham remains a relatively affordable option. Bellingham residents are also concerned about the impact of development on the quality and safety of the town’s roads, and on the school system. Though Bellingham has never been a major industrial center, it has recently promoted commercial development in neighborhoods near Route 495. Major shopping destinations, including a Home Depot and Wal-Mart, have recently been built in the northern end of Bellingham off of Route 495, attracting shoppers from Rhode Island and the Massachusetts communities to the north. In order to respond to increasing growth, Bellingham hired a part-time planner about five years ago.

The Bellingham Zoning Board of Appeals (ZBA) approved a Comprehensive Permit for 285 rental units in 2003, raising the local affordable housing stock from 4.2 percent to 9.3 percent of the total number of units. Though the project was initially met with opposition because the residents were unaccustomed to the type of multistory apartment development proposed, it was approved after being scaled down. Another controversial Comprehensive Permit application currently before the ZBA would create 250 to 300 single-family homes. While none of Bellingham’s representatives expressed disagreement with the goals of Chapter 40B, at least one has clear concerns with the ways the Comprehensive Permit process has been utilized by developers. One Bellingham representative feels that developers are using the process inappropriately as a “scapegoat,” to force development into even those communities that promote affordable housing development internally.

Bellingham officials feel the community has proactively planned for its affordable housing needs, most recently championing the adoption of a “Mill Reuse Bylaw” to facilitate the redevelopment of an abandoned property taken by tax-title into senior housing. The bylaw was intended to spur the creation of affordable senior housing outside of the Comprehensive Permit process, according to the town planner. There appears to be little local support for affordability mechanisms such as inclusionary zoning, which would mandate the inclusion of affordable units in new development. The planner believes that residents are not comfortable with supporting family affordable housing,



and one committee member feels that such a tool is not necessary in a community that has virtually reached the 10 percent goal. “Why penalize this town?” he asks.

#### B. Town of Framingham

Framingham has a unique blend of urban and rural qualities, with highway-oriented shopping centers along Route 9, a traditional downtown district, and typical single-family residential neighborhoods. The largest town in the state with nearly 67,000 residents (U.S. Census Bureau, 2000), Framingham is governed by a representative town meeting of 216 members and an appointed town manager. Framingham residents have repeatedly defeated attempts to alter the structure of local government – most recently, a 2004 a measure to create an elected town manager position failed. Framingham is home to a variety of large corporate employers, including medical, office, and biotechnical companies. Though past commercial development has focused on office, hotel, and box retail, the recent trend is residential, according to Planning Board Director Jay Grande.

Framingham experienced significant residential growth between the 1950s and 1970s, including a proliferation of apartments in the 1960s. Yet these developments became unpopular among long-time residents who felt that because they were generally located along Route 9, the apartments primarily served households that commuted into Boston and had no ties to the town. Framingham leaders were also concerned about the impact on the school population caused by an influx to the population, and felt that the denser housing permanently altered Framingham’s appearance and character. After thousands of apartment units were constructed, Framingham eliminated multifamily zoning. In 2000, though the memory of the town’s previous experiences remained fresh in the minds of older residents, the Department of Economic Development and Planning successfully lobbied town meeting to adopt a new mixed-use ordinance to facilitate the redevelopment of the downtown. Town officials hope that several commercial and residential projects in the pipeline will help revitalize the district and upgrade vacant industrial properties. Framingham also has a Planned Unit Development bylaw, under which the first 525-unit development is about to begin construction. An inclusionary zoning bylaw adopted last year requires the construction of affordable units in all new development of 10 or more units.

Though a recent poll found that 76 percent of the region’s residents support the development of more affordable housing in their communities, town officials note that that support disappears when

projects are proposed for their neighborhoods (Ruell 2005). Framingham Is My Back Yard (FIMBY) is an umbrella group for several neighborhood associations that works to fight developer influence over zoning and land-use decisions (National Low Income Housing Coalition 2005). A 2004 Draft Framingham Housing Plan, developed by the Framingham Housing Partnership and the Department of Planning and Economic Development, prompted tumultuous debate over the community's housing needs at a series of town meetings, and was ultimately not adopted. Though controversy over the plan has quieted, the housing issue remains a "third rail" among political candidates, according to one Framingham official.

In Framingham, opposition to new housing often emphasizes the issues of density, community character, threats to property values, and impacts on the town's aging infrastructure, according to a town representative. An age-restricted bylaw has failed twice at Town Meeting in recent years, primarily because residents opposed increasing density, and will be up for approval again in the early summer of 2005. Framingham reached the 10 percent Chapter 40B affordability mark in 2000. In 2004, the ZBA approved a Comprehensive Permit for a 150-unit senior housing development of which about half the units would be affordable. Though many residents and officials support the project, abutters have appealed the approval to the Massachusetts Land Court due to concerns about water, sewer and traffic (Shartin 2005).

### C. City of Marlborough

Marlborough is a post-industrial community that originally developed as a center for shoe manufacturing. In the second half of the twentieth century, the city's economy shifted from manufacturing to banking and is more recently shifting to the biotechnology sector. The city's well-maintained infrastructure systems and advantageous location near Route 495 and the Massachusetts Turnpike have attracted a strong industrial base. Marlborough is a solidly middle-class city that has always welcomed immigrant communities (Marlborough Downtown Neighborhood Plan, p.3-2). A variety of housing types can be found in the city's diverse neighborhoods, including multifamily rental units downtown and single-family homes on the suburban outskirts. The current population includes large and rapidly growing communities of Brazilians and Guatemalans, of whom many are employed in service positions, according to city official. Despite recently rising housing costs, Marlborough is viewed by residents as an affordable place to live in comparison with its neighbors.

In order to add vibrancy to the neighborhood and preserve the more rural character of the city's outer areas, Marlborough is working to revitalize its traditional downtown. The city's center now includes dense residential neighborhoods and commercial and industrial properties, including a number of vacant brownfield sites. To meet this goal, the city is altering its zoning regulations to facilitate mixed-use development and redeveloping a former boot factory into elderly housing. City leaders are concerned about the blighting effects of older residential properties, absentee landlords, and code violations, according to Community Development Director Al Lima. The "over-inflated" rental market and transportation limitations have resulted in overcrowding in the city's downtown rental units, particularly among the immigrant population (Downtown Neighborhood Planning Study, 3-11). An inclusionary zoning ordinance requires the provision of affordable units in large-scale housing developments, and in 2005 Marlborough established a unique pilot program to preserve the affordable rents of some privately-owned apartments.

Support for the development of affordable housing through the Comprehensive Permit process and other locally-driven initiatives has enabled Marlborough to meet the state's 10 percent affordability obligation under Chapter 40B, increasing its percentage from 4.6% in 1997 to 10.2% currently. Though the community is approaching build-out, several large Comprehensive Permit developments and over-55 housing projects have recently been approved or constructed. The first of three large Comprehensive Permit developments filed in the last decade generated some opposition, but city officials worked with the developer to ensure that the project would be attractive and that a historic house on the property could be preserved. Two additional proposals generated little concern because they do not abut residential neighborhoods. Marlborough negotiated an increase in the number of units in the last major Comprehensive Permit project so that the community would attain the 10 percent goal and be in a position to control future growth. Though Marlborough is not currently subject to Chapter 40B, the Director of Community Development believes that the Zoning Board of Appeals will continue to be amenable to modest-sized Comprehensive Permit proposals.

#### D. Town of Norfolk

Norfolk, a community that has become popular among affluent homebuyers in the last 25 years, is valued by residents for its self-described "rural suburban" feel and excellent school system (DHCD Community Profile, 2005). The demand for housing in the town is reflected by typical home prices

- single-family homes are uniformly high-end and frequently sell for \$750,000, according to a Norfolk official. Norfolk has prioritized the development of a mixed-use town center where ground floor retail shops will attract customers, and small apartments above will provide housing for senior citizens and young adults. The neighborhood is already the location of Town Hall and newly renovated library and will be the future site of 44 condominiums developed through the Comprehensive Permit process. Because less than 5 percent of the town's tax revenues come from commercial or industrial properties (Boston Globe Community Profiles 2003), Norfolk town leaders are particularly intent on encouraging commercial development, according to a town representative. Other commonly-cited concerns include the level of traffic and the encroachment of development into open spaces. Norfolk's bucolic atmosphere is balanced by the presence of a Massachusetts Correctional Facility located in the eastern part of the town. The facility opened in 1927 and currently holds 1,250 prisoners.

Of the communities studied in this project, Norfolk has the fewest affordable units relative to its total housing stock, at 2.9 percent. Norfolk representatives agree, however, that there is a need for more affordable housing in the community, particularly for the town's children, seniors, and employees, according to Gino Carlucci, the consulting town planner. Though the town is currently reviewing a 32-unit Comprehensive Permit application, in addition to the 44 units it recently approved, community opposition to Chapter 40B has been muted. For many residents, Norfolk must learn to live with Chapter 40B because the community is so far from reaching 10 percent, says one committee member. Chapter 40B is the primary affordable housing production tool in the community, and as long as the process continues to result in high-quality projects, Norfolk has little incentive to prioritize affordable housing production through other locally-driven mechanisms. As one official puts it, "Chapter 40B is taking care of it." The Housing Element of Norfolk's Community Development Plan sets forth a number of goals to encourage affordable housing development, including the adoption of mandatory inclusionary zoning, and encouraging additional age-restricted housing.

#### E. Town of Southborough

Southborough is, like Norfolk, an affluent community that prides itself on its small-town feel and quality public services. Southborough's accessible location close to the Massachusetts Turnpike and Route 9 has attracted substantial office and residential development. Residential neighborhoods are

overwhelmingly single-family, though several upscale age-restricted condominium developments have recently been constructed. While much of Southborough's land is permanently protected from development, build-out analyses indicate that at least 1,000 additional units could be built on remaining open land, according to town planner Vera Koliass. Many residents want to maintain the unique character of the town's individual neighborhoods, which each have their own names. Preservation of open space and the town's rural feel are also important, as are avoiding traffic impacts associated with new development.

Less than 4% of Southborough's housing stock is considered affordable for the purposes of Chapter 40B. Southborough successfully negotiated with Marlborough and DHCD to count 30 units built in Marlborough in a Comprehensive Permit development because the project's primary access point is via a Southborough road. The Town has also recently approved a Comprehensive Permit application for the construction of 29 ownership townhouse units. Concerns about such development tend to focus on technical issues, such as density and traffic, although there is a vocal group of residents that oppose the concept of subsidized housing. According to one Southborough representative, the community is very concerned about the ability of children of residents to afford housing in Southborough, where home prices have risen 185 percent since 1994 (The Warren Group 2005).

Southborough is the only community in this group to have received state approval for its housing plan under the Planned Production program. The Affordable Housing Strategic Plan recommends a range of changes to the zoning bylaws in order to promote the creation of housing for low- and moderate-income households who are left out of the current market. The community recently strengthened its inclusionary zoning bylaw, and allows the construction of a limited number of senior housing units. Recent age-restricted housing construction has targeted the high end of the market, with units priced from \$300,000 to \$800,000, according to Koliass. The Southborough Housing Opportunity Partnership Committee, a local housing partnership, has become more active in the last few years and recently proposed two zoning amendments. One would have required all new age-restricted units to be limited for sale to moderate income households; the other would allow construction of new duplex units (conversions from single-family homes are already permitted) provided that the units are targeted to moderate income households. The proposals were withdrawn and will be revised to address a variety of concerns cited by Planning Board members.

While there appears to be support for initiatives of this type, the extraordinarily high land costs and demand for housing in Southborough present impediments to any attempt to encourage affordable housing construction. Community leaders are a sophisticated and skilled group, and understand the unique challenges this community faces in producing affordable housing.

## **Summary**

Together, I attempt to capture much of the variety found among the 351 Massachusetts municipalities in these five communities. The group of cities and towns includes both large and small communities with a range of income, property value, and demographic characteristics. Two of the five have recently met their affordable housing obligation under Chapter 40B, one is very close to the 10 percent goal, and two others have low affordable housing percentages. While some of these communities are economically and ethnically diverse, others are more homogenous in terms of both population and housing type. Some have experienced a significant amount of Comprehensive Permit activity, while others have dealt with only one or two projects that have not been the subject of serious controversy. All have experienced significant residential growth in the last several years, but communities have responded to that growth with different concerns. Finally, these communities expressed different priorities for the pattern and nature of their future growth. These target communities therefore are a useful sample for examining the impacts of state policy on the nature of local planning and production of affordable housing.

Figure 5.5: Zoning and Affordability Initiatives

	Bellingham	Framingham	Marlboro	Norfolk	Southboro
<b>Existing Affordability Zoning</b>	<b>Mill Reuse Bylaw:</b> Allows redevelopment of vacant mill properties for senior or multifamily housing, requires 5% affordability, currently pertains to 1 property	<b>Affordable Housing:</b> Requires 10% affordable units in all development of 10 units or more.	<b>Affordable Housing:</b> Requires 10% affordability in developments of 20 or more units, and “as practical” in developments of fewer than 20 units.	<b>Town Center Zone:</b> Allows two-bedroom apartments in mixed-use developments. (No affordability requirement).	<b>Affordable Housing provision in Major Residential Development:</b> Requires 12.5% affordable units in new development of 8 or more units
	<b>Special Residential Uses:</b> Allows townhouses and assisted elderly housing. Minimum lot size of 20 acres for townhouses.	<b>Mixed-Use Regulations:</b> Allows mixed-use development in downtown. Capped at 300 units per year.	<b>Business District:</b> Allows multifamily development	<b>Affordable Housing Development:</b> Optional bylaw provides density bonus for affordable units.	
	<b>Multifamily Housing:</b> Allowed in 2 zones, almost built-out.	<b>Planned Unit Development district:</b> Allows a variety of housing types, including multifamily, with a 10% affordability requirement	<b>Comprehensive Developments:</b> Designed to increase the number of affordable units by exempting certain developments from some zoning requirements		
<b>Existing Age-Restricted</b>	N/A		<b>Retirement Community Overlay:</b> Allows multifamily over-55 housing by Special Permit. Exempt from the Affordable Housing bylaw above	<b>Age-Restricted Housing:</b> Allows multifamily over-55 housing in 2 zones.	<b>Multifamily Housing for the Elderly bylaw:</b> Allows multifamily over-55 housing. Number of units capped at 7% of number of s/f homes in town.
<b>Proposed Affordability Zoning</b>	N/A		<b>Business District:</b> Would revise the dimensional regulations to encourage mixed-use development downtown		<b>Duplex Amendment:</b> Would permit the construction of <i>new</i> duplexes, and require both to be sold to moderate-income households. Status: Withdrawn from Planning Board, under revision

(Figure 5.4 con't.)

	Bellingham	Framingham	Marlboro	Norfolk	Southboro
<b>Proposed Age-Restricted</b>	N/A	<b>Active Adult Bylaw:</b> Town meeting vote pending		N/A	<b>Multifamily Housing for the Elderly amendment:</b> Would require remaining age-restricted units to be permanently deed restricted to be affordable to moderate-income households
<b>Community Initiated Development Projects</b>	<b>Pearl Street Mill project:</b> Proposed reuse is senior housing.	N/A	<b>Frye Boot Factory:</b> Proposed reuse is senior housing	N/A	<b>Town-owned properties:</b> Identifying parcels for affordable housing
<b>Recent Planning Documents</b>	<b>1998 Master Plan</b>	<b>Draft Housing Plan:</b> Under revision by new committee. Will require 2/3 approval by Town Meeting	<b>Marlborough Downtown Neighborhood Planning Study,</b> 2003	<b>Housing Element</b> of Community Development Plan, 2004: not yet certified by DHCD	<b>Affordable Housing Strategic Plan:</b> Adopted 2004, certified by DHCD
<b>Housing Committee</b>	N/A	Framingham Housing Partnership	City Council Affordable Housing Subcommittee	Affordable Housing Committee	Southborough Housing Opportunity Partnership Committee
<b>Other</b>	N/A		<b>Pilot rent preservation program:</b> Utilizes city funds to preserve rent of affordable privately owned apartments		<b>Affordable Housing Trust</b> Approved 2005



## Chapter 6

### FINDINGS

In this thesis, I set out to explore how Chapter 40B has promoted the planning for and development of affordable housing in Massachusetts communities. By closely examining local attitudes and activities, as revealed through interviews with local officials and planners and through public documents and meeting minutes, I have attempted to shed some light on that question. Before discussing my findings, however, it is important to note that there is tremendous diversity among the 351 Massachusetts municipalities. While the five communities I selected do vary widely in terms of demographics, economics, and governance, they cannot, and do not, represent some “typical” experience. Moreover, the responses of a tiny percentage of a town’s population, chosen because of the individuals’ official positions, cannot entirely capture the opinions and values of all residents of a community.

Yet despite these caveats, some clear similarities and interesting themes emerge from my examination of how these communities are planning for housing in a period dominated by the state’s controversial law Chapter 40B. This chapter highlights three trends occurring in Marlborough, Norfolk, Bellingham, Southborough and Framingham, which are likely representative of activities occurring at a broader scale across the state. First, I discuss the ways in which local self-image plays a significant role in whether the community is likely to support affordability initiatives, and the type of housing that such programs will create. Second, I look at the implications of local emphasis on age-restricted housing on broader housing needs. Finally, I examine whether renewed interest in downtown revitalization promises to provide much needed housing diversity in many suburban communities.

#### **Community Identity and Vision**

One of the most basic but reassuring findings of this study is that all of the five communities examined are taking some steps to facilitate the production of housing that meets the needs of moderate- or low-income households. However, there are some clear differences in the ways seemingly similar communities have tackled the issue. For example, compared with the smaller

towns in this study, the range of housing types found in Framingham and Marlborough serve unusually culturally and economically diverse populations. These communities are two of the few that are currently exempt from unwanted Comprehensive Permit applications, because slightly more than 10 percent of the local housing stock in both places is affordable. Though it has reached this goal, Marlborough intends to “stay ahead of the curve” on affordable housing, according to Community Development director Al Lima. The City has continued to approve smaller “friendly” Comprehensive Permit applications, and is funding an \$80,000 pilot program to preserve the affordability of market-rate rents. In Framingham, however, vocal opposition to affordable housing has held up the adoption of a Housing Plan and construction of an affordable senior housing development. Likewise, similarities among the smaller towns in this study - Bellingham, Norfolk and Southborough – do not ensure comparable attitudes toward affordable housing planning. Differences in community attitudes toward housing appear to depend significantly on local identity and the strength of a vision for the future. In many cases, the types of affordable housing promoted by local initiatives – and whether they can be counted on the state’s Subsidized Housing Inventory - are influenced by desires to protect community character. In examining how demographically similar communities deal with affordable housing differently, I first look at the larger places of Marlborough and Framingham, and then discuss the smaller towns of Southborough, Norfolk, and Bellingham.

#### A. Marlborough

Of the five communities in this study, Marlborough appears to have taken the most proactive approach toward addressing the need for affordable housing. The city has demonstrated a strong commitment to ensuring that a significant portion of its housing remains affordable to low-income households, even as upscale residential housing is developed on the outskirts of the community. Marlborough’s willingness to promote innovative affordability initiatives seems to be a result of the community’s strong self-identity as a traditionally working-class city. The Director of Community Development, Al Lima, proudly notes that Marlborough has “welcomed diversity,” and a city official proudly points out that “we aren’t Wellesley or Weston - Marlborough was originally a manufacturing town,” referring to two of Massachusetts’ wealthiest suburbs. Another official points to the city’s “long history as an immigrant city,” and notes that Marlborough is one of the few places

poor people can live in the Boston metropolitan region due to the affordability of the city's housing and to the tolerance of the community.

It appears that local leaders are united behind the goal of preserving the affordability of many of the city's neighborhoods in order to strengthen the city's downtown and serve local employees.

Marlborough has clearly articulated its vision for the future of the downtown, a collection of historic buildings, industrial properties and relatively dense residential neighborhoods, which leaders view as major community assets. The Marlborough Downtown Neighborhood Planning study calls for preserving the stock of affordable apartments and low-cost homes, which provide affordable options for the city's immigrant communities and employees of the city's hotels and industries in a generally high-cost region. "Two elements that are generally positive for a city are economic growth and the influx of industry. At the speed at which they are increasing in Marlborough, however, they are surpassing the availability of housing," (Marlborough Downtown Neighborhood Planning Study, p.310). Though many representatives interviewed for this study discussed the need to provide housing for municipal employees, Marlborough representatives were alone in singling out the need to house the city's service-sector workers. Investment in affordable housing also provides important benefits in terms of physically upgrading neighborhoods, according to a committee member.

The Director of Community Development Al Lima has worked with an active City Council, Planning Board and Zoning Board of Appeals on several affordability initiatives, including the approval of some small "friendly" Comprehensive Permit applications. Marlborough is unique compared with many other Boston suburbs because it is incorporated as a city with a strong mayor and city council form of government. General support for affordability programs, combined with this flexible and efficient governance structure described by Lima, has resulted in the successful implementation of innovative programs: "In cities, here in Marlborough, staff has a chance to take more initiative without being penalized for it. . . . there is much more freedom." In Lima's experience, the powerful committees often found in towns limits the ability of staff to work independently on new programs. The recently-established city council subcommittee on Affordable Housing promises to further Marlborough's proactive stance toward housing creation.

In Marlborough, sincere interest in serving the city's diverse population while improving its downtown has resulted in a range of affordability initiatives that serve low-income families. Having

already adopted an Inclusionary Zoning Bylaw and having reached the 10 percent goal, Marlborough continues to approve “friendly” comprehensive permit projects and is redeveloping downtown industrial properties into affordable housing. The city has also received national attention for an innovative program designed to preserve the affordability of privately-owned affordable rental units. Using City funds raised through development fees, Marlborough is sponsoring a pioneering program to preserve the affordability of existing unsubsidized units by paying landlords approximately \$8,000 per apartment that is maintained as an affordable unit for 15 years (Thompson 2005). The city considers it a goal to continue to meet its affordable housing obligation under Chapter 40B in order to be able to control future growth, according to one official, and negotiated an increase in the number of units in the last major Comprehensive Permit project in order to guarantee that control. While Chapter 40B “doesn’t drive us too much” according to Lima, all of these programs serve low-income households earning less than 80 percent of the Area Median Income and will create units that can be counted on the state’s Subsidized Housing Inventory.

#### B. Framingham

In Framingham, “a town masquerading as a city,” (Boston Globe 2005), disagreement over community identity and a diffuse governance structure has impeded long-term planning for affordable housing. Like Marlborough, Framingham is a socio-economically diverse place with a large immigrant population. Yet unlike its neighbor, Framingham residents do not appear to have a unified view of the town’s identity. For years, Framingham was perceived as one of the rare affordable communities in close proximity to Boston and many residents value the diverse and relatively low-cost housing the community offers. There is significant support for the creation of affordable housing among many residents and among most members of the Board of Selectmen, according to one town official. Though many view Framingham as a “typical suburban bedroom community,” according to the Planning Board Director Jay Grande, Town Meeting took the significant step of creating a mixed-use district in the downtown that allows multifamily housing. Yet many residents and town meeting members feel that Framingham – which has met its 10 percent affordable housing obligation under Chapter 40B - has enough affordable housing. Neighbors recently appealed a Comprehensive Permit project that would create 150 units of senior housing, of which approximately half would be affordable, over concerns about water, sewer, and traffic impacts. Some residents who could not afford to remain in wealthier communities, such as nearby Newton, would prefer that Framingham maintain a level of exclusivity. “There’s a strong

group in town who believe [low-income] people don't have the right to live here . . . when you can afford to live here, you can live here. [They think if] you can't afford to live here – [say] you're a teacher – go live in Douglas and commute here. They feel no obligation to change anything, especially anything that would change the value of their house, or increase their taxes," according to Framingham's Director of Planning and Economic Development Kathleen Bartolini.

In addition to having typical concerns about the impacts of new affordable development on a particular neighborhood, many appear to believe that the construction of more affordable housing threatens Framingham's socio-economic standing relative to peer communities. Indeed, Framingham has not fared as well in the last decade as some of the very wealthy towns nearby on some measures. The median income in Framingham increased less rapidly than it has in many Massachusetts communities in the 1990s, including the other four in this study (U.S. Census Bureau 2000), and the town's median housing prices are lower than that of all adjacent surrounding communities except Marlborough (The Warren Group 2005). While almost every other community in suburban Boston gained white residents between 1990 and 2000, every one of Framingham's census tracts experienced a decrease in the white population (McArdle 2003a). (Figure 6.1 illustrates the changes that have taken place in Framingham compared with other communities in this study.)

At a recent debate among candidates for the Board of Selectmen, participants decried the number of social service agencies located in the town's urban center. Concerns about Framingham's prosperity relative to its wealthier neighbors appear to be linked to opposition to the development of additional affordable housing. A Framingham representative notes that if every town does its part, there would not be a need for Framingham to continue to create affordable housing. Calling the affordable housing issue a game of "chicken and egg," she worries that as Framingham continues to expand its supply of affordable housing, the population of low-income residents will increase, allowing advocates to argue that still more housing is needed.

Figure 6.1: Percent Change in Selected Community Characteristics, 1990 – 2000

	Median Income	Proportion of White Residents	Number of Housing units	Median Owner-Occupied Home Value	School Enrollment
<b>Bellingham</b>	42%	-0.6%	12%	12%	19%
<b>Framingham</b>	26%	-11.4%	6%	14%	9%
<b>Marlboro</b>	38%	-7.6%	23%	9%	22%
<b>Norfolk</b>	35%	-2.3%	17%	22%	33%
<b>Southboro</b>	67%	-3.1%	31%	48%	63%
<b>Massachusetts</b>	37%	-6.1%	6%	13%	16% in MAPC Region

Sources: U.S. Census Bureau, 1990 and 2000 Census; Massachusetts Executive Office of Environmental Affairs

Insecurity about Framingham’s place as a typical “suburban bedroom community” may be at the root of concern over the density of new residential developments, which outweighs concerns about school impacts, according to one representative. Town Meeting has failed twice to adopt an age-restricted housing bylaw primarily due to opposition to increased density, according to Jay Grande, Director of the Planning Board, leaving Framingham as the only community out of the five studied without some form of age-restricted zoning. A significant portion of the town appears to be concerned about any housing development that threatens to disturb the economic stability of the community, and the value of its homes. In their critique of the community’s Draft Housing Plan, the Framingham Taxpayers Association argues that the Plan’s recommendations could lower property values, threatening the financial well-being of the community’s current homeowners. “If the largest investment for most citizens is their home, then why is there no objective or statement in this policy concerning the town’s responsibility to its property owners/investors?” (Framingham Taxpayers Association 2005). A group called FIMBY (Framingham Is My Back Yard) was formed in 2001 to unite the town’s neighborhood associations and take back control over zoning and land use from development interests (National Low Income Housing Coalition 2005).

Tensions over the creation of affordable housing in Framingham erupted with the proposal of a Draft Housing Plan in August of 2004 at almost the same time the Zoning Board of Appeals approved a Comprehensive Permit for a very controversial project. After conducting a Housing Needs Assessment and creating a Housing Policy, the Framingham Housing Partnership worked with the town’s Department of Planning and Economic Development and the Metropolitan Area

Planning Council to develop the Draft Housing Plan. The document lays out proposals to produce a specified number of affordable units and recommends exploring the possibility of adopting multifamily zoning, supporting “friendly” Comprehensive Permit applications, and approving accessory units. The Housing Partnership felt that the recommendations were fairly benign, according to one member, and that Framingham would likely reach the housing production goals under preexisting development and zoning conditions. However, the Draft Plan was submitted to the Board of Selectmen for public review the same month the ZBA issued their approval of the 150-unit senior housing development. Aside from abutter concerns about the project impacts, this approval was particularly controversial because Framingham is meeting its Chapter 40B 10 percent obligation, and could have denied the permit without fear of an appeal to the state.

The project’s opponents began to pay more attention to municipal affordable housing policies, and looked critically at the Draft Housing Plan and Housing Policy. Says Bartolini, “All of a sudden those documents that had looked kind of motherhood and god,” began to generate alarm. Some residents argued against specific recommendations while others felt that the primary thrust of the recommendations – which support continued production of affordable housing despite the fact that Framingham has reached 10 percent – were not representative of local needs or desires. The Framingham Taxpayers Association published a lengthy critique of the town’s Housing Policy endorsed by most members of the Planning Board, a member of the both the Board of Selectmen and the Housing Authority, and almost 30 Town Meeting members. The Taxpayers Association argues that the Policy disregards potential financial impacts of the proposed action steps and recommends goals that cannot be measured or evaluated.

After a lengthy debate at the fall 2004 Town Meeting, the Housing Partnership withdrew the Housing Plan from the Board of Selectmen. Town Meeting members created a new process by which the Housing Plan must be drafted and approved. The Planning Board is now to work with the Board of Selectmen and receive advice from the Housing Partnership to create a new plan, and submit it for approval by a two-thirds majority at Town Meeting. This level of approval, which is based on the required vote for amendments to the zoning bylaws, is highly unusual for housing plans and is not even required for master plan approval under Massachusetts law. Opponents to the existing plan argued that because implementation of recommendations will require changes to the zoning ordinance, the community should ensure there is enough support for the zoning proposals at

the outset, according to Bartolini. Unlike a traditional housing partnership, the committee designated to begin work on the redraft includes both proponents and opponents to housing. The new recommendations thus promise to be more conservative.

Though the Draft Housing Plan was stalled in part due to bad timing, Framingham's municipal governance structure also played a key role. Unlike Marlborough's eleven-member City Council, Framingham is governed by 216 members of a representative Town Meeting. All of these elected officials had the opportunity at a contentious public hearing to raise their concerns about the Plan. "This coalition of everybody [who] disliked one paragraph formed . . . 'I don't like accessory apartments, I hate TDR, I don't want multifamily, I don't want them to accept friendly 40Bs'. Everybody had a page or paragraph they didn't like," recounts Bartolini. As Clinger-mayer (2004) describes, the inclusion of such a variety of viewpoints shifted debate over the general goals to specific recommendations, contributing to the Plan's failure.

As a result of the impassioned discussion over Framingham's Draft Housing Plan, affordable housing is now a "radioactive" issue in the town, according to a representative. The Housing Partnership is no longer a strong voice in the community and there is no other well-organized political force to push the Housing Plan forward, says Bartolini. Though there has been support for affordable housing among the current members of the Board of Selectmen, two positions are currently open. Of the six candidates running, four are "definitely against" affordable housing, and the one potential supporter doesn't want to risk vocalizing that view, suspects a town official. At a recent forum among the candidates, affordable housing was not mentioned overtly but an undercurrent of opposition was apparent. While the Housing Plan remains in limbo, a movement to create a Master Plan including a housing component may emerge. Advocates believe that more residents may support their cause if the master plan places housing in the context of other concerns, such as smart growth and open space preservation. One representative also believes that advocates must take the issue out of the highly charged Town Meeting debates and take it to residents in small meetings, where they should focus on demonstrating how middle-income households are affected by high sales prices – a problem to which he believes people can relate.

Despite this recent controversy, Framingham has had considerable success in the past implementing affordability initiatives. Many residents and local officials believed the appealed Comprehensive



Permit project to be a good one that would fill a substantial need for affordable elderly housing, according to Grande. Framingham adopted a mandatory inclusionary zoning bylaw in 2004, and the town allows multifamily housing in its downtown district. Under Framingham's Planned Unit Development bylaw, more than 500 units of housing – of which 10 percent will be affordable to low-income households – are scheduled to break ground in 2006. As in Marlborough, most of the affordable units created under these initiatives are designed to serve low-income households earning less than 80% of the Area Median Income.

To many Framingham residents the town's affordability initiatives are in place to ensure that the community continues to remain above the 10 percent threshold – but not too far above it. Bartolini describes the interesting political dynamic that played out when the Affordable Housing Bylaw, which mandates the inclusion of 10% affordability in all new residential development, was proposed. “The proponents and the opponents sort of switched hats. The people who were anti-affordable housing saw [inclusionary zoning] as their insurance card. They didn't have to have any more . . . They were supportive of inclusionary zoning, because they knew every time the housing stock went up their vulnerability came back, so they were very happy to put in the 10% to protect them against 40B.” Though Chapter 40B has not affected how the Department of Planning and Economic Development plans for affordable housing, the law has had a significant impact on town-wide support for affordability initiatives.

“[40B] has meant nothing. It's a tool. We use it. . . . Our housing plans reflect the housing needs of the community. . . We're not afraid of 40B, we are not advocates for 40B. . . We are neutral relative to 40B. Has it affected how the Town Meeting members have acted, or some of the residents have acted? Yes, because they became 'pro' certain actions that they never would have supported . . . They didn't want to become 12%. They wanted to stay right over that cusp. They were very worried that if we didn't do certain proactive things that we wouldn't stay over the 10 percent.”

There remains a strong sense among some local officials that Framingham has done its part. According to one, the Planning Board “generally agrees that the town has enough affordable housing.” It is therefore likely that many residents would only support the development of affordable housing that Framingham can count on its Subsidized Housing Inventory.

### C. Southborough

In Southborough, quiet conflict about the character and future of this wealthy community has resulted in particular concern about serving moderate-income households. Historically a small rural town, Southborough is not known for the economically and ethnically diverse populations of adjacent Marlborough or Framingham. As the community has become increasingly popular among wealthy residents who appreciate Southborough's small town feel and convenient location, housing prices have shot up. According to town planner Vera Koliass, long-time residents have been "fairly appalled" over the enormous homes under construction in a town where the median single-family price in 2004 was \$495,000 (The Warren Group 2005). The newer families who can afford these prices are also more likely to support tax increases to fund the high-quality school system they want to maintain, while some older residents on fixed incomes balk at what to them is an unaffordable expense.

Local support for affordable housing has most recently emerged from the town's active housing partnership, the Southborough Housing Opportunity Partnership Committee (SHOPC), which became a formal town committee with appointed members in 2004. SHOPC was originally formed in 1986 to deal with a controversial Comprehensive Permit application, but was dormant for many years in the 1990s. The arrival of a new town planner in 2002 at the same time the community was reviewing another controversial Comprehensive Permit project spurred the committee back into action. SHOPC's mission is to help create affordable housing in small numbers across the town, rather than through large Comprehensive Permit projects.

Aside from an inclusionary zoning bylaw that creates housing affordable to low-income households, SHOPC's recent proposals have targeted first-time homebuyers and seniors seeking to downsize, who often have too much equity in their homes to qualify for eligibility under the state's SHI requirements. Southborough's Housing Plan, written by SHOPC, emphasizes that the community should provide housing for moderate-income as well as low-income households.

"It is important for the Town to not only achieve 10% affordability, but to also provide housing opportunities for those households of moderate means: households earning 81% - 120% of the median income (\$65,000 - \$97,000 for a family of four). So-called "middle income families" are left out of the homeownership market due to skyrocketing real estate values, but earn too much to qualify for subsidized housing," (SHOPC 2004, p.3).

Says Koliias, “That is what we are missing in Southborough – the non-existent starter home or a home affordable to those making 80 – 120% of median.” SHOPC is also particularly intent on creating housing that is affordable for those who were raised in Southborough. Notes one SHOPC member, residents have been commenting to her for years that they support the committee’s work because they are concerned about how their children will afford Southborough’s rising housing prices. Based on these concerns, SHOPC proposed two bylaws to the Planning Board in the winter of 2005. One would allow the construction of moderate-income duplex units, and the other would require that new age-restricted units serve moderate-income senior households.

Though there is much local support for SHOPC, there is also a fair amount of vocal opposition toward affordable housing in general. “There are some people that equate 40B with social engineering,” says Koliias, and others that feel affordable ownership units provide no incentive for households to move out into market-rate units. In a letter to the editor after the Planning Board heard SHOPC’s duplex unit proposal, a resident expressed horror that the community would open itself up to affordable and multifamily housing:

“Southborough homeowners are overwhelmingly and imminently at risk with SHOPC’s proposed zoning bylaw changes. Aside from a major economic depression or nuclear Armageddon, it is hard to imagine anything more detrimental to Southborough property values, quality of life, or to the long-term semi-rural character of Southborough than the leftist, confiscatory housing agenda brought to us by our current town planner and SHOPC,” (Northborough-Southborough Villager 2005).

Even among supporters of affordable housing, there is disagreement over what type of development should be allowed and how to ensure it does not take away from Southborough’s valued rural character. Residents want to serve households in need, but they want the new units to “look like what’s already here,” according to Koliias. Some SHOPC members are particularly concerned about allowing the higher densities necessary to make housing affordable. During discussions over the proposed duplex bylaw amendment, some members wondered what an entire subdivision of duplexes would do to an abutting neighborhood, notes Koliias.

Though emphasis on the needs of moderate income households is largely attributable to interest in serving people with connections to this wealthy community, it is also due to the particular market

forces that constrain development of low-income housing. Like Marlborough, many Southborough residents want to ensure that the town will continue to remain affordable to the type of families who have long called the community home. Yet it appears that because Southborough has historically been a more affluent community, initiatives are designed to serve moderate-income households earning between 80 and 120 percent of the Area Median Income, rather than the service workers and immigrant households more common to Marlborough. At the same time, Southborough's policy-makers are limited by the realities of the town's unusual market conditions. In a place where a vacant house lot can cost \$500,000, according to one representative, zoning bylaws such as inclusionary zoning can only go so far to facilitate the development of low-cost housing. Southborough does have zoning provision that allows the construction of townhouses – yet only one developer has ever chosen to take advantage of it because “the big money is still in single-family homes at the cost of land around here,” according to Koliass. “It is very difficult to make the numbers work when your initial land purchase price is so high. It guarantees that the home a developer will build will be sold for at least \$500,000. Also, don't forget the cost of construction. When construction costs are about \$100/sq foot, a modest 2000 SF home is already \$200,000 to build, plus land costs, and the cost of a septic system, which is about \$25,000. [These are] very difficult issues to resolve.”

The challenges Koliass faces in promoting affordable housing are in many ways more complex than those found in the less affluent communities of Framingham and Marlborough. In addition to developing programs that serve the unique housing needs of Southborough's population – such as seniors on fixed incomes with significant home equity – town housing advocates also strive to meet the 10 percent obligation under Chapter 40B. “One frustrating piece [of creating the Housing Plan] was balancing the goal of achieving the all-important 10% with the goal of creating a diverse housing stock,” says Koliass. Yet because Southborough has not been faced with the type of large and controversial Comprehensive Permit developments proposed in Bellingham and Framingham, reaching the 10 percent goal is less urgent. Koliass says that Southborough is not feeling pressure from 40B because there are few sites available and the town does not have the infrastructure to support it. One representative is therefore comfortable allowing the community take its time in deciding how best to design new affordability proposals, as long as there are no “300 unit Comprehensive Permit projects filed.” While in one sense this relieves town officials from the burdens associated with large developments, it puts pressure on Koliass and SHOPC to initiate local

affordable housing projects. When such initiatives are controversial, it is Koliias that is to blame, rather than the state and its controversial statute. Given this climate, it may be that it is more acceptable politically for Southborough's affordable housing advocates to promote the development of units that serve moderate-income households, even though they do not increase the town's affordable housing obligation under Chapter 40B.

#### D. Norfolk

Like Southborough, Norfolk is a small and affluent town that prides itself on its rural character. While Norfolk lacks the type of active housing partnership that has been so influential in Southborough, town leaders here are working successfully to promote a new vision for future development – in a way that will have a limited influence on housing affordability. Since the early 1990s, Norfolk has prioritized the creation of a vibrant town center district that meets the dual goals of creating a focal point for the community and providing lower-cost housing. In 1992 the Town Meeting approved a Town Center bylaw which allows mixed-use development in a tract of open land referred to as the “moonscape,” according to consulting planner Gino Carlucci. The bylaw allows apartments constructed over retail shops, which will provide a more affordable option to the expensive single-family homes prevalent in Norfolk's neighborhoods. This housing is intended to serve moderate-income households, in particular town employees and children of residents, according to a town official.

Outside of the Town Center initiative, Norfolk has apparently done little to promote affordable housing through planning and zoning initiatives, though that may be changing. The Zoning Board of Appeals recently negotiated to increase the size of a recent Comprehensive Permit development in exchange for changing the style of the proposed units so that they would contribute to the Town Center aesthetic. The town has donated a property for the development of a few units, and a newly established Affordable Housing committee hopes to identify other strategies. The subdivision regulations include an optional provision that allows increased density in exchange for affordable units, but it has never been utilized. As in Southborough, it is a “struggle to identify suitable parcels” for affordable housing because property is so expensive, according to one local representative.

Norfolk's development requirements incorporate housing goals, but the community does not appear to prioritize the construction of affordable housing that would meet the town's obligation under Chapter 40B, as in Framingham. Nor is there a vocal group advocating the creation of housing that would meet other local needs, as in Southborough, outside of the Town Center initiative. While there is little conflict over affordable housing, there is also little action. This appears to be due to two primary factors. First, Norfolk has limited capacity to develop new affordability mechanisms. The town has no professional planner on staff, and consulting planner Carlucci and the town boards have been occupied with plans for the new Town Center. Second, there has been little controversy in Norfolk over Comprehensive Permit projects. The one project recently approved in the Town Center area is "gorgeous," according to one official, and the developer was more than willing to address the town's initial concerns over the project design. The density of residential projects is limited by the town water and sewer infrastructure capacity. Moreover, according to this representative, many people in Norfolk have "pretty much conceded that [the town] is not going to get rid of the 40B threat" because at 2.9 percent affordable, the community is so far from reaching the 10 percent goal. Instead, the community is optimistic that it can continue to work with developers to create a product that is attractive and fits in with the local vision. According to this representative, unless Comprehensive Permit projects become truly problematic, Norfolk will not prioritize planning for affordable housing creation through other zoning mechanisms.

#### E. Bellingham

Like Marlborough, Bellingham considers itself an affordable, family-oriented community. Though recent development has been more expensive – half-million dollar homes on one-acre lots are standard, according to town planner Stacey Wetstein – much of Bellingham's housing consists of small, inexpensive ranches. The 1998 Master Plan notes that the town's housing stock "best serves the center of the market, which is families seeking to own a moderately priced single-family home on a fair-sized lot," (p.8), a characterization reinforced by the fact that the 1999 median home value in Bellingham is considerably lower than the state-wide median. (See Figure 5.3) One official argues that the community has worked to maintain a low cost of living by keeping the tax rate down, and it has ridden out the budget problems faced by other towns by being "conservative and responsible."

Unlike Norfolk's decade-long effort to create a vibrant mixed-use town center, Bellingham appears to lack a strong vision for the physical development of the community. The 1998 Master Plan refers

to the arguably indistinct goals of creating a community that “nurtures family life: secure residential neighborhoods, good schools and other public services, a safe and healthy environment,” (Bellingham Master Plan 1998, p.1). Though the plan calls for improvements to its own town center, such as better pedestrian mobility and design guidelines, little has apparently been accomplished in accordance with these recommendations.

Bellingham also lacks clearly articulated affordable housing goals. If anything, the recent trend of more expensive single-family development is exactly what community officials have hoped for. Though the Master Plan notes that there could be a “critical gap between needs which the Housing Authority can serve and the ability of many to afford decent housing,” (p.9), none of the seven proposed implementation steps would help reduce that gap. Instead, the Plan calls for the development of more expensive housing:

“The Town would like housing to generally be aimed at a higher-priced market than at present. First, such housing would at least come closer than existing housing to ‘paying its own way’ fiscally. Second, such housing might influence the value of ALL housing, which benefits home owners. Third, such housing would attract people to the Town whose skills can potentially make major contributions to the community and its institutions. Fourth, such housing would add to the diversity of housing opportunities in the community, broadening choice,” (Bellingham Master Plan, p.9).

Though Bellingham’s zoning ordinance allows the construction of duplex units, developers are generally complying with the town’s goal of encouraging more expensive housing - perhaps because minimum one-acre lot requirements ensure that new housing must be priced at high levels in order to make development cost-effective.

The relatively vague set of housing priorities appears to have created a local culture in which the promotion of affordable housing occurs only in reaction to opportunities that arise, rather than as part of an ongoing plan. Bellingham’s only recent affordability initiative is a Mill Reuse Bylaw, adopted in the fall of 2004, which allows the redevelopment of vacant mill buildings into multifamily or senior housing. The ordinance, which currently applies to a single property, was prompted because the opportunity “presented itself” when a vacant mill was taken for tax delinquencies, according to a Bellingham official. The Bylaw does mandate the inclusion of affordable units in any mill reuse development, but it requires 5 percent of units to be restricted – only half of the 10 percent Chapter 40B obligation. Bellingham’s leaders appear to have other priorities. Though two

officials note their concern over how rising prices will impact long-time residents, both believe that the tools are in place to promote moderate-income housing and that no additional zoning changes are necessary. The town's half-time planner is undertaking work on an historic preservation plan, and the community lacks a housing plan.

The lack of proactive planning for affordable housing in Bellingham appears to be a result of the general belief that the community is already an affordable place to live, and that compared with wealthier neighbors the town is doing its part to meet affordable housing needs. After approving a single 250-unit Comprehensive Permit development, Bellingham is very close to reaching its 10 percent affordability obligation. Town officials are uninterested in approving another such project. "We think we're doing our fair share," according to the Town Administrator (Eastwood 2004). The lack of planning capacity has forced the town to prioritize certain goals, which do not include creating additional affordable housing for families. Thus, Chapter 40B has apparently encouraged Bellingham to take advantage of opportunities to increase affordable housing, but it appears not to have promoted long-term changes in the way the town plans for the future.

This section has demonstrated how the impact of Chapter 40B in five communities has varied depending on local culture, identity, vision, and past experience with Comprehensive Permits. Though all communities are taking steps to facilitate affordable housing development outside of Chapter 40B, the extent to which communities have prioritized the production of housing that serves low-income households is limited by whether they have a unified vision of serving such households. The next two sections explore the emergence of two specific housing development trends: age-restricted housing, and the promotion of a more diverse housing stock.

### **Age Restricted Housing: Meeting Local Needs or Strategic Choice?**

Despite the diversity of the five communities examined in this study, one of the most striking findings is their unanimous support for "age-restricted" housing, which is usually allowed at higher densities than typical residential development. Occupancy of age-restricted units is usually limited to households that include at least one resident who is older than 55, and developments may or may not incorporate affordable units. Such housing is in high demand from seniors, who view such



developments as a way to downsize from larger homes while remaining in the community. Local officials often support age-restricted development because it serves the housing needs of seniors without threatening to burden the school system with an influx of children. This trend has generated concern among advocacy groups, such as the Citizens' Housing and Planning Association, which has found that seniors-only housing now makes up 20 percent of the housing planned or recently built in the past three years under Chapter 40B (Lazar & Schworm 2005). While age-restricted housing (also referred to as "over-55" development) is playing an increasingly significant role in the regional housing supply, it appears that interest is not solely in response to demand from residents. Rather, promotion of age-restricted housing by local communities is due to both internal and external pressures, and can result in the avoidance of addressing other housing needs.

Age-restricted development has become the mantra among community officials, particularly among members of planning boards and boards of selectmen, who encourage it through a variety of zoning and permitting mechanisms. Norfolk, Marlborough and Southborough all have bylaws that allow age-restricted development at higher densities than typical single-family residential development. For example, Southborough requires ½ to 1 acre per single-family unit in its single-family districts, and though multifamily is allowed by Special Permit, the provision has been used only once in the past 4 years, according to Town Planner Vera Koliass. Yet "elderly housing" is allowed by special permit in all neighborhoods at three units per acre (Section 174.9 H, Southborough Zoning Code). The Framingham Town Meeting will vote in the early summer of 2005 for the third time on whether to adopt its own age-restricted bylaw, a proposal which is expected to pass, according to Planning Board Director Jay Grande. Concerns over density held up the bylaw in past years.

Communities are also incorporating age-restricted units into the redevelopment of older buildings and into Comprehensive Permit projects. Bellingham adopted a "Mill Reuse Overlay District" (Section 5200 of the Bellingham Zoning By-Laws) which permits the redevelopment of the town's old mill buildings into multifamily and age-restricted assisted living units. While the ordinance allows multifamily housing, it was written to spur the redevelopment of a particular property into senior housing, says one official. The elderly requirement will be incorporated in the request for proposals for the property, according to Town Planner Stacey Wetstein. The City of Marlborough is working to redevelop a former boot factory downtown into affordable senior housing (Hale 2005). Norfolk negotiated with the developer of a recent Comprehensive Permit project to ensure more

than one quarter of the units constructed would be restricted to senior households, a compromise that likely facilitated approval of the permit. Finally, appeals are underway in Framingham regarding a comprehensive permit project that would be entirely age-restricted. While abutters opposed the 150-unit Jewish Community Housing for the Elderly development, town planning officials and many residents supported the project in part because of the lack of impacts on local services the project would cause, according to Grande.

The rapid pace of age-restricted development demonstrates its popularity among developers, as well as community officials. Yet builders may be simply responding to a local regulatory environment that makes age-restricted housing the more profitable development choice. In many of these communities, it is easier – and therefore more lucrative – to obtain approval for age-restricted development than multifamily housing open to all ages. For example, Norfolk allows multifamily housing in the Town Center district, but until recently, prohibited the development of units with more than 1 bedroom. There apparently was little market demand for such units, according to consulting planner Gino Carlucci, and no developers sought to build under these regulations. In contrast, Norfolk allows age-restricted housing in several commercial zones, and almost 200 units have been permitted in the past five years. In Marlborough, multifamily housing is allowed only in the downtown where development costs may be higher because available properties tend to be formerly industrial sites requiring environmental remediation. Age-restricted development, on the other hand, can be built anywhere in the city with special permit approval from the City Council. Southborough allows multifamily dwellings as part of a “Major Residential Development,” but the number of units may not exceed the number permitted under a conventional single-family site plan. Age-restricted units, in comparison, can be developed at much higher densities and sell for as much as \$800,000, according to Koliass. Thus many communities have ensured that age-restricted housing is a more profitable choice for developers than for multifamily development, where it is feasible.

Figure 6.2: Residential Development, 2000 - 2004

	Bellingham	Framingham	Marlboro	Norfolk	Southboro
Single-Family	291	198	297	165	215
Multifamily	0	465	N/A*	0	0
Age Restricted	0	N/A	500	184	186

Sources: US Census; Interviews with municipal staff.

\* Data unavailable

Why have communities created an environment that provides incentives for the development of relatively dense senior housing, but does little to promote the production of unrestricted multifamily housing? Municipal support for senior housing appears to be a result of several factors. First, there is local demand for housing that serves the unique needs of senior citizens. Second, senior housing is viewed as fiscally advantageous development choice that strengthens the local tax base. Third, some communities appear promote the construction of age-restricted affordable housing as a way to meet their 10 percent affordability obligation under Chapter 40B.

#### A. Local Demand

For many municipal officials, encouraging age-restricted housing is simply a matter of responding to a local housing need that is not met by the typical single-family suburban development. Residents who would like to downsize but remain in the same community have few options, particularly in communities such as Norfolk and Southborough, where more than 90 percent of the existing housing consists of single-family homes.

A Bellingham representative promoted the community's new Mill Reuse Bylaw to address the lack of such housing, for which she feels there is enormous demand. In Framingham, which does not yet have an age-restricted bylaw, Planning Board members are concerned that seniors are leaving the community in search of smaller units to which to downsize. Southborough has been particularly deliberate in addressing what the community views as a very important gap in its local housing stock, by recently proposing amendments to its existing bylaw in order to better target age-restricted units at local seniors. Southborough's "Multifamily Housing for the Elderly Bylaw" was adopted in the late 1990s to provide options for local seniors wishing to downsize. However, an informal survey conducted by the Southborough Housing Opportunity Partnership Committee indicated that only 10 percent of the community's "active adult" units are occupied by households who had moved from within Southborough, according to Koliass. The over-55 units being produced - which cost from \$300,000 up to \$800,000 - primarily serve households from wealthy communities nearby because Southborough's current senior population cannot afford these new units. (Koliass notes, however, that the community's middle-aged residents who occupy larger and more expensive homes will probably be able to afford these age-restricted units in 15 years when they are ready to move). Marlborough's Community Development Director Al Lima and a committee member express

similar concerns about the city's stock of age-restricted units, which can cost \$400,000 in a community where the 1999 median income was \$56,879 (U.S. Census Bureau 2000). Lima is also concerned that this segment of the market may be oversaturated, with three projects recently constructed totaling approximately 360 units.

## B. Fiscal Policy

Towns have also expressed interest in age-restricted development as a fiscal tool that enables them to strengthen the local tax base and provide housing for an important political constituency while avoiding the perceived financial drain of additional school children. Norfolk's Housing Plan recommends encouraging additional age-restricted housing, which helps "address the demand for senior housing created by the aging baby boomer generation while also providing fiscal stability for the Town," (20). While Norfolk is taking active steps to avoid additional residential development because it is concerned about the town's disproportionately low commercial tax base, the town has recently expanded the number of districts that allow construction of revenue-producing over-55 housing. Similarly, Marlborough and Bellingham's interest in redeveloping vacant industrial buildings into senior housing can be viewed as a way to put properties back onto the tax rolls without experiencing a net loss due to new services.

While representatives from the communities studied stress that their age-restricted housing responds to demands from residents, it is clear that local officials also favor such projects because they do not burden public school systems. Many representatives explain their support for such developments not in terms of addressing local need, but as a way to *avoid* school impacts. A Bellingham representative believes that a proposed 250-unit Comprehensive Permit development – which includes three and four bedroom units – is better suited for age-restricted housing because it will cause serious impacts on the educational system. The age-restricted housing bylaw proposed in Framingham is the main priority of one official because it is designed to preserve open space and it avoids increasing the number of children in the school system. Representatives from both Norfolk and Marlborough official likewise cite the benefits of over-55 housing in terms of their lack of school impacts. Says Marlborough's Lima, people "love [age-restricted], because it's the kind of multifamily we want, but I think that we have just about enough [units]. We don't have enough affordable, we don't have enough affordable anything."

Figure 6.3: Percent Change in Selected Community Characteristics, 1990 – 2000

	Number of Housing units	School Enrollment
Bellingham	12%	19%
Framingham	6%	9%
Marlboro	23%	22%
Norfolk	17%	33%
Southboro	31%	63%
Massachusetts	6%	16% in MAPC Region

Sources: U.S. Census Bureau, 1990 and 2000 Census; Massachusetts Executive Office of Environmental Affairs

Far from being a hollow excuse, the concerns about school costs associated with residential development are an important and very real issue for the communities in the rapidly-growing region along Route 495. Southborough, Norfolk, Marlborough and Bellingham all experienced increases in school enrollment of more than 20 percent during the 1990s (Mass. Executive Office of Environmental Affairs 2003). Figure 6.3 demonstrates that school enrollment increases in Norfolk and Southborough are approximately double the increase in housing units. This suggests that as many community officials fear, the newly constructed homes are being occupied by families with more than one child. A recent study on the impact of residential development on school costs found that in high-growth communities, large multifamily developments that include three- or four-bedroom units increase the need for new or expanded community facilities, notably schools (Community Opportunities Group 2003, p.2.3). The cost of public education is usually the largest expenditure for Massachusetts communities, and the proportion of educational costs paid by the community is greater in towns with larger tax bases (Commonwealth Task Force 2003). One Norfolk official notes that the town spends \$15,000 per student in educational costs, and most newly constructed homes will have two students. Though the taxes for the high-end homes admittedly cover these costs, and often students attend private schools, the fiscal impacts of multifamily housing would likely be far greater. Housing values – and therefore residential tax revenues – depend to a significant extent on the perceived quality of local schools. A community that welcomes multifamily development within its borders risks an influx of students that could result in an education funding shortfall, causing strong negative impacts on the quality of local public education. Thus the cycle of restricting housing is perpetuated – communities limit

development to that which will generate property taxes that can be poured into the school system to increase educational quality, in order to make homes more attractive and expensive.

### C. SHI Unit Creation

The final and most troubling explanation for municipal support of age-restricted housing is that it enables communities to create affordable housing that contributes to the 10 percent Chapter 40B affordability obligation while serving ‘deserving’ local senior citizens. Yet while there are indications that some communities may be intentionally promoting age-restricted development over family-oriented housing, municipal leaders are hardly engaged in a premeditated conspiracy to do so.

Several of the communities in this study have clearly encouraged the development of affordable senior housing to meet their Chapter 40B obligation. With affordable housing making up 9.3 percent of Bellingham’s housing stock, the town is looking for ways to reach the 10 percent goal without resorting to undesirable Comprehensive Permit projects. Bellingham officials indicated that they hope to have the first mill reuse project, with affordable units included, underway soon so that the community will not have to approve a recently-filed 250-unit Comprehensive Permit project. In Norfolk, town officials became more amenable to a 44-unit Comprehensive Permit development after the developer agreed to restrict one quarter of the units for seniors, according to Gino Carlucci, the consulting planner. According to Kathleen Bartolini of Framingham, even some anti-housing advocates supported the 150-unit Jewish Community Housing Comprehensive Permit project because it provided the opportunity to increase the town’s affordable housing stock with a relatively low-impact development. “There were those argued approve the [project] at 150 units, because 150 units guarantees us for another ten years. . . We’ll be OK with 150 ‘insurance’ units . . . Some of the residents who have become Monday morning 40B experts have . . . really figured out how to manipulate it.” Though Bartolini and other city staff supported the development because they genuinely believed it to be a good project, some residents are clearly looking for loopholes in Chapter 40B.

Yet the details of most local age-restricted bylaws suggest that most communities are motivated to promote age-restricted housing for other reasons. Norfolk’s age-restricted bylaw does not mandate the inclusion of affordable units. Southborough’s ordinance makes only a vague reference to affordability: “Evidence shall be shown that, to the greatest extent possible, the development is

offering to provide for the needs of Southborough residents of varying economic levels,” which has provided little legal cover for the Planning Board to require affordability-restricted units (Section 174.9.H of the Zoning Bylaw of the Town of Southborough). A local housing advocacy group recently proposed an amendment to the ordinance that would require sales caps on all new units constructed under the bylaw, but the cap would make the units affordable to moderate income households and would not qualify them for inclusion on the Subsidized Housing Inventory. Bellingham’s recently adopted Mill Reuse Bylaw requires only 5 percent affordability, not enough to keep pace with the state’s 10 percent requirement. Marlborough’s age-restricted bylaw was just recently amended to incorporate a 15 percent affordability requirement, but several projects built under the original language do not include affordable units. Finally, Framingham has failed twice to pass an age-restricted bylaw with an affordability component at Town Meeting, indicating that the community does not regard the combination of affordability and senior housing as a key affordability strategy. The fact that so many age-restricted housing ordinances do not mandate inclusion of affordable units that qualify for the SHI suggests that communities are responding to other motivations.

Chapter 40R, approved last year by the Massachusetts legislature, attempts to counteract community’s primary motivation to support age-restricted housing – the school-cost issue – by providing communities a financial incentive to create denser housing in “smart growth” districts. However, most of the officials interviewed for this study felt that the amount currently being provided is not enough to make up for the costs of the additional public services. Until the state devises a method to fully compensate communities for the financial hit they take by promoting moderate-income residential development – or municipalities decide that they want to promote development for other reasons – it appears unlikely Massachusetts municipalities will thoroughly support the large-scale production of affordable family housing. Moreover, as long as senior housing fulfills the state’s affordable housing inventory requirements and there remains a local demand for it, communities will continue to promote age-restricted development.

## **Downtown Revitalization and Housing Diversification**

A third theme to emerge from this study is a trend toward downtown revitalization and initiatives designed to diversify local housing stock. Almost every community I explored is taking steps to either promote residential development in the downtown district, or to expand housing options by making the construction of alternatives to single-family housing feasible. Often these goals are linked, in that communities view their town centers as the optimal location for units that serve smaller households, such as young professionals or senior citizens. While promoting affordability is an important goal for many of these communities, ultimately many of these initiatives are intended primarily to support economic development goals rather than to help meet affordable housing obligations under Chapter 40B.

Revitalizing - or creating - downtown neighborhoods with a mix of uses is a priority for three of the five communities studied. Framingham and Marlborough are seeking to revitalize their traditional downtowns by promoting apartment and condominium development, whose residents will add activity at all times of the day and support local businesses. In 2000, the Framingham Town Meeting approved a bylaw that provides “an opportunity for Mixed Use development with a residential component within a livable urban environment which supports the commercial revitalization of the Town’s commercial areas and encourages the adaptive reuse of existing buildings,” (Framingham Zoning By-law, Section IV.N.1). Three projects totaling more than 400 units are already in the development pipeline. Though Marlborough already allows multifamily housing in its downtown, the Community Development Director has proposed revisions to the zoning bylaws that would increase the maximum height limit and lot coverage associated with residential development in the district. Most interesting is Norfolk’s intention to establish a brand new downtown. To remedy what residents view as a flaw in the town’s design, Norfolk Town Meeting members approved the creation of a Town Center district in 1992 which allows ground-floor retail with residential units on the upper floors. Town Hall, the local library, and a proposed grocery store and pharmacy will add vitality to this new neighborhood.

For Framingham, Marlborough and Norfolk, the primary goal of downtown development appears to be economic development; the associated diversification of the housing stock is a secondary benefit. Framingham’s Bartolini says the town’s new mixed-use zoning was designed to rehabilitate



abandoned industrial properties in the downtown district while improving the character of the neighborhood. “I want the people in these units to have disposable income, to come down and spend in the stores . . . As much as I am the affordable housing person here in town, mixed-use was done as an economic tool. . . . I am being cautious that I don’t allow the creation of so much affordable housing in the Central Business District that I change the character of downtown [or] hurt my economic program.” The Marlborough Downtown Neighborhood Planning Study similarly recommends zoning regulations to “promote redevelopment and new development downtown,” including mixed-use development (3-27). Norfolk officials were originally opposed to the downtown Comprehensive Permit project because it would result in the residential development of scarce commercially-zoned property. This could have threatened the town’s ability to create the vibrant economic center it planned for.

Though the mixed-use and housing diversification ordinances in these communities are designed to provide housing choices for a wider range of households, new downtown units (as well as those in former mill buildings and in new duplexes) are not meant for everyone. The Housing Element of Norfolk’s Community Development Plan calls for the creation of “residential development areas that would permit a higher density of housing units of smaller unit size better suited for youthful and elderly lifestyles,” (17). Most of the ordinances examined include restrictions on the number of bedrooms that may be allowed in the new units. Norfolk’s Town Center bylaw originally allowed only one-bedroom units until it was clear that developers would not produce housing with such restrictions. The town then raised the cap to two bedrooms per unit (Norfolk Records 2004). Framingham’s mixed-use zoning prohibits the construction of any housing units with more than two bedrooms, but also limits the number of studio apartments in a development to 20 percent of the total. These requirements were designed to ensure that the new housing would not allow an influx of students from Framingham State College, over concern about creating unofficial dormitories, and also to avoid making the units attractive to families with children, who some residents believed should not live downtown, according to Bartolini. Given these unit-size limitations, it appears that while communities are certainly interested in serving seniors and young adults, they are not comfortable promoting the development of housing for low-income households with multiple children.

The promotion of downtown living and alternative housing types is an important step communities are taking to lower housing costs, though it appears much of this activity is not in direct response to Chapter 40B. For the most part, the bylaws adopted or proposed by the five communities in this study did not originally include a requirement ensuring that some of the units created would be affordable in accordance with the state's Subsidized Housing Inventory. Framingham adopted its mixed-use ordinance without such a requirement (although the town adopted an Affordable Housing Bylaw that will require all future downtown development to provide a percentage of affordable housing units). Similarly, Norfolk does not have a mandatory affordable housing requirement, though the consulting town planner Carlucci and at least one committee member feel it is a priority for the future. Rather than promoting the construction of housing that would increase local affordable housing percentages, it appears that communities are motivated instead to improve the appearance and vitality of their town centers. That such development provides an opportunity to meet a segment of local housing needs is a benefit, but not the motivating factor.

The implications of this trend are mixed. First and foremost, communities should be applauded for recognizing that the lack of allowable housing types and low-density requirements limits the options available to residents and inflates housing prices. A Bellingham representative also notes that developers are building only high-end single-family homes. Yet by insisting on restrictions on the number of bedrooms allowed in such units, communities are leaving an important gap in the spectrum of housing supply, slowing progress that could otherwise be made in the regional housing crisis. Though one- and two-bedroom units do fill an important need, communities may not be going far enough.

## Chapter 7

# CONCLUSIONS

The results of this study hold both promise and caution for housing advocates. Chapter 40B has clearly generated awareness and positive interest in addressing the region-wide lack of housing. This study challenges the idea that Massachusetts communities are cookie-cutter suburbs whose residents strive to erect walls around their exclusive and expensive neighborhoods. Local officials and planning staff are working together to develop innovative mechanisms to serve the needs of households impacted by the regional housing crisis, which many recognize to be in part the result of their zoning regulations. Yet it is not safe to assume that if all Massachusetts municipalities followed the examples set by these five communities, housing prices would return to sustainable levels. The ways in which communities are addressing housing needs are strongly influenced by community identity, fiscal concerns, and local history. Communities appear to be doing their part to address only limited pieces of the entrenched causes of our housing crisis. As a result, important parts of the regional housing demand may go unmet if Chapter 40B is not complemented by other interventions.

### **Local Affordability Initiatives and Chapter 40B**

Perhaps the most heartening result of this study, for housing advocates, is the widespread recognition of and action on the housing crisis. Chapter 40B has catalyzed interest in meeting “local housing needs,” as defined by the state, so that communities will not be vulnerable to unwanted Comprehensive Permit applications. Most of the five communities have demonstrated interest in creating housing that serves low-income households so they will have control over future development. For example, the Marlborough Zoning Board of Appeals supported an increase in a Comprehensive Permit project by 30 units to reach its 10 percent goal. Framingham’s Affordable Housing bylaw was designed as a way to ensure that the town continues to meet its affordable housing obligation into the future. Most of these initiatives are permanent changes to local zoning regulations, suggesting that communities are interested in more than stop-gap measures designed to meet local obligations under Chapter 40B.

One of the most interesting findings is the extent to which municipalities have promoted a more diverse housing stock through downtown development initiatives. Communities appear to be retreating from the large-lot zoning requirements and prohibitions on multifamily developments which, according to the Commonwealth Task Force (2003), are at the root of the regional affordability problem. This is perhaps most encouraging for housing advocates because it suggests that though concerns about density linger, communities are willing to address one of the fundamental barriers to affordable, privately developed housing – the high cost of land.

While Chapter 40B has influenced these local actions, the state’s policy does not work in a vacuum. The extent to which community planning for affordable housing is designed to respond to the goals set by Chapter 40B is shaped by fiscal realities and community development objectives, and by local history and identity. The last chapter discussed some of the ways this can occur. Concerns about the school costs have led to an emphasis on senior housing and limitations on the number of bedrooms in multifamily development. Residents who feel that their community has a tenuous hold on economic stability, such as in Framingham, are reluctant to encourage housing development that could invite further demographic change or alter the value of personal assets. The desire to serve the needs of populations who have historically been a part of a community results in differences in the types of affordable housing promoted by the local government. For example, housing initiatives have played out differently in Southborough, where programs target moderate-income households, than in Marlborough, which targets lower-income service workers.

A community’s experience with Comprehensive Permit development also appears to play an important role in how actively local leaders pursue other mechanisms to promote affordable housing. Towns that feel no pressure from the threat of Chapter 40B appear to be less likely to promote the development of affordable units that may be counted toward their 10 percent, while communities that have had heavy affordable housing development are more concerned with gaining control over future growth by attaining the 10 percent goal. Planners in the towns of Norfolk and Southborough feel that Chapter 40B poses little threat to their small-town character because infrastructure constraints prevents the development of large projects. Additionally, in Norfolk’s case, the town has been able to work with developers to ensure that projects contribute to the community vision. The affordability efforts in these towns are thus less focused on creating units

that meet the requirements of the Subsidized Housing Inventory (SHI). Southborough is working on ways to promote moderate-income housing, which may not be included on the SHI, and Norfolk does not have an inclusionary zoning bylaw that mandates the inclusion of affordable units in new residential development. In contrast, the affordability initiatives in Framingham and Marlborough seem to be in part designed to ensure that these communities remain above the 10 percent mark. Marlborough has had particularly heavy Comprehensive Permit activity, having approved more than 700 units in the last five years. In Framingham, the 150-unit senior housing Comprehensive Permit project generated such opposition that abutters appealed the ZBA approval. Both communities mandate the inclusion of affordable housing in new multifamily development, and Marlborough is promoting the preservation of affordable privately-owned apartments through its new pilot program.

Proactive planning for affordable housing is also influenced by structural factors such as the structure of local governance and planning capacity. The experience of Framingham's Draft Housing Plan demonstrates how the Massachusetts town meeting institution can make progress on a controversial issue very difficult. The Plan encountered such resistance by the Framingham town meeting because many members of the large and diverse organization opposed different recommendations. Marlborough's success in implementing creative and effective affordability initiatives appears to be in part due to the City's Council form of government, which allows planning staff to meet frequently with a much smaller group of elected officials. Planning capacity also affects the extent to which communities can prioritize affordable housing planning. The towns that do not have full-time professional planning staff – Norfolk and Bellingham – are simply limited in the number of hours per week spent on housing. Particularly in such fast-growing places, staff time is consumed by the daily duties of reviewing the many development proposals coming into the office.

### **The Limited Scope of Local Affordability Initiatives**

Though the communities in this study are taking concrete steps to address the housing issue, the scope of locally-designed affordability programs is limited. Family households earning less than 80% of the Area Median Income (AMI) are targeted by few communities, with the exception of Marlborough's pilot rent preservation program. Moreover, very-low income households earning less than 50% of the AMI are entirely left out of the local affordable housing supply chain. Instead,

zoning mechanisms and locally-initiated housing development projects serve seniors, moderate-income households, and low-income families small enough to find one- and two-bedroom units comfortable.

Two factors appear to be most to blame for this situation. The first – concern over the fiscal impacts of children living in units that provide less in property taxes than they consume in school costs – was explored in Chapter 6. A second element is that it is politically easier to promote the development of housing for “deserving” middle-class households, who if not for exorbitant housing prices, could afford to own their homes. Representatives from all of the communities in this study explained their support for affordable housing as a way to meet the needs of local employees, seniors, and the children of current residents. The prospects for “very low income” households, such as retail and service-sector workers, are more disturbing. These households cannot afford the affordable units created by local programs or through Comprehensive Permit developments, which target low-income households (a four-person household earning up to \$66,000 per year). Marlborough officials were the only ones interviewed that mentioned the housing needs of service-sector employees. A representative employed in the human services field is acutely aware of the needs of lower-income households; yet he acknowledged that the town would be most successful in promoting affordable housing if advocates focused on the “middle of the spectrum.” He believes that “people understand that need.”

A related issue is that locally-driven affordability initiatives are likely to be ineffective in breaking down suburban racial homogeneity. Though there is little evidence on whether Chapter 40B has fostered racial integration, it seems that local affordability programs are designed to provide housing for households drawn from the existing population of predominantly white residents that live in many suburban communities. In my own experience, I have heard a city councilor argue for strict local preference requirements because units created under the community’s inclusionary zoning ordinance are not meant for employees of the local Dunkin’ Donuts. This official apparently felt that the children of her peers were more deserving of the community’s affordable housing than the doughnut franchise’s predominantly Brazilian workers. Declining government funding for affordable housing and increasing reliance on private development under Chapter 40B and locally-driven initiatives do not appear to bode well for the racial and economic integration of suburban communities do not bode well.

## **Recommendations for State Policy-Makers**

Based on the experiences of the five communities examined in this study, I have developed several recommendations on how state policy-makers can better promote inclusion at the local level.

### Continue to promote denser housing development

Acceptance of more compact residential development is growing, particularly in communities that want to revitalize their town centers. The state should facilitate this type of development because it addresses one of the primary barriers to housing affordability, large lot requirements. Even if local ordinances that allow denser housing development do not initially require the inclusion of affordable housing, as was the case in Norfolk and Framingham, the housing created will still offer a less-expensive option. Though the new Chapter 40R attempts to promote denser housing in downtown areas, the high density requirements may be off-putting for communities with little experience outside of traditional single-family housing.

### Address local concerns over school costs

That community reluctance to encouraging residential development is strongly linked to local concerns about impacts on the school system is not a surprise. It is a particularly pressing issue in communities experiencing a high rate of residential growth, such as Norfolk and Bellingham. However, it is exactly these types of communities where the issue most needs to be addressed, because their growth coincides with the expansion of employment centers in the same region. We risk exacerbating the jobs/housing imbalance on the outskirts of the metropolitan region if we cannot address the lack of affordable housing in these areas at the same time that job opportunities expand there. The state has taken a preliminary step toward providing housing-related school assistance with Chapter 40R. However, community officials interviewed for this study argue that the financial incentives provided under the new program do not go far enough to offset local costs. The state should move forward with the Commonwealth Task Force's recommendation to provide municipalities with the entire additional public school cost for each child who lives in an Overlay Zoning District adopted under Chapter 40R. At the same time, any proposals for additional school funding for the suburbs should not come at the expense of funding for urban districts. Though it is important to address the challenges of growing suburban districts, the problems faced by the state's urban schools are much greater.

### Reconsider whether new age-restricted housing should count on the Subsidized Housing Inventory

Concerns about affordability are certainly an issue among the state's senior population. Young families in many communities support tax increases to pay for improvements to the school system, creating burdens for seniors on fixed-incomes. Often, there are few units available in the same community to which to downsize. Communities have responded to this real need by promoting age-restricted housing that is allowed at higher densities than family-oriented development. However it appears that overemphasis on the housing needs of seniors has coincided with a reluctance to address other local needs. Moreover, there are indications that some towns are promoting age-restricted units to meet their Chapter 40B obligation. Seniors looking to downsize are equally well-served by smaller units that are open to all ages. Moreover, overdevelopment of age-restricted housing uses up the limited supply of land needed to serve all types of households. This issue is not a new one: In 1978, the head of the state's Department of Community Affairs proposed a requirement that at least 20% of the units in new elderly housing projects be designated for family housing, though it was never formalized (Krefetz, 2001). The Department of Housing and Community Development should again consider the extent to which they should allow communities to count new age-restricted units on the SHI.

Do not rely exclusively on the "stick" of Chapter 40B to promote affordable housing production

Chapter 40B promotes development of housing affordable to low-income households only in communities where it is considered a threat – either because there are sites suitable for large projects or because there has been heavy Comprehensive Permit activity. The results of this study demonstrate that not all communities consider the law to be enough of a concern to prompt affordable housing planning. If it is a goal of state policy-makers to provide access for low-income households to all communities in the Commonwealth, then other incentives or programs must be developed to ensure that these communities will contribute to the supply of affordable housing.

### **Reflection on the Research**

Though I feel confident in my methodology and believe the results are indicative of broader trends occurring throughout the state, this study was limited in certain respects. Therefore, the results must be taken with a number of caveats.



First, my sample of Massachusetts communities is not necessarily representative of the state because three of the five have met the 10 percent obligation, or are close to meeting it. I did not originally intend to have such a large number of communities with a high percentage of affordable units, and anticipated having at least one community between 5 and 8 percent affordability. This would have given a better indication of the attitudes of communities within striking range of the 10 percent goal, unlike Norfolk and Southborough who are below 4 percent. Still, this skewed sample was useful in illuminating how communities view their role in the affordable housing supply chain once they have met their statutory obligation.

Much of this research was based on the responses of community officials and staff, who may have been motivated to paint their community in the best possible light. Therefore, the results may have been skewed by personal bias. I attempted to address this risk by gathering a range of data, including building permits and meeting minutes, to verify the perceptions created by my interview subjects. Moreover, from the comments made by a tiny sample of community leaders, I made assumptions about the views of the much larger population. Due to time constraints, I could not interview every member of all boards involved with land-use decision making to get a broader perspective on leadership attitudes toward affordable housing. I was unable to interview other municipal employees who contribute to land-use planning decisions, such as directors of public works and fire chiefs. I was struck, however, by how often representatives from the same community tended to echo each other.

Finally, it is difficult to know exactly how much community interest in affordability initiatives was caused by Chapter 40B, and to what extent it was caused by other factors - such as increasing media attention toward the affordable housing crisis. Interview respondents themselves may not fully comprehend the exact factors that inspired them or their communities to action. I tried to compensate for this issue by seeking other sources of primary data, such as building permit issuances and meeting notes, but it is difficult to detangle the threads of local experience.

### **Suggestions for Further Research**

A thorough analysis of the extent to which Chapter 40B has promoted suburban racial integration is long overdue. If it is true, as suspected, that Chapter 40B does little to provide housing options for

households of color currently concentrated in cities such as Boston, Lynn, Lawrence and Brockton, then the state should clarify the goals of the law and determine why it has failed in that task.

The issue of school funding needs to be studied more carefully as well. Research should build on a recent report by the Citizens' Housing and Planning Association (2003) which demonstrated that the impacts from new multifamily development, which typically consists of small units, on school budgets are negligible. Further research should examine the extent to which family-oriented multifamily housing would impact the quality of education in suburban communities. A broader discussion should also be held around educational equity issues and housing. Though it is important to explore incentives that would encourage communities to eliminate barriers to housing construction, whether those incentives should be provided at the expense of educational funding for cities is doubtful. Further research and debate over how to balance the needs of the entire region should help clarify how best to address this issue.

Finally, a similar but broader study that compares the reactions of communities with different proportions of affordable housing, and different experiences with Comprehensive Permit projects is warranted. Such a study would further illuminate whether communities are unlikely to promote the production of low-income housing if they do not consider Chapter 40B to be a threat, or if they feel they are too far from 10 percent to reach the goal.

### **In Closing**

Chapter 40B has been an effective tool to break down the exclusionary barriers erected by Massachusetts communities throughout the last three decades, resulting in the production of thousands of units of affordable housing. This study indicates that the law has been successful in ways that are less quantifiable yet more important in the long term. Communities, responding to a heightened awareness of affordable housing needs due to controversy over Chapter 40B, have begun to take ownership of the affordable housing crisis.

While the experiences of the five communities examined in this thesis do hold promise, they also demonstrate the need for caution on the part of state officials and housing advocates. Barriers remain, such as the school funding formula and NIMBY attitudes. Moreover, while communities can facilitate affordable development by removing regulatory barriers, they cannot force developers

to build. Market forces will continue to play an important role in the type of housing that is produced, often to the detriment of the affordable housing supply.

I believe that recent progress in eliminating some of the local regulations that impede housing development may demonstrate a new trend in local attitudes toward affordability. It would be easy for state legislators to take these signs of change as evidence that communities, in this Chapter 40B era, are doing their part to stem the regional affordable housing crisis, and that we simply have to wait for to see the results. Yet if our goal remains an economically stable, racially and economically integrated metropolitan region, some of the most difficult challenges lie ahead.

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Bartolini, Kathleen	Town of Framingham	Director of Planning and Economic Development	In person	February 23, 2003
Bernstein, Susan	Board of Selectmen	Planning Board	Telephone	March 8, 2005
Carlucci, Gino	Town of Norfolk	Consultant to Planning Board	In Person	March 3, 2005
Clancy, Ed	City of Marlborough	City Council	Telephone	March 7, 2005
Fenby, Barbara	City of Marlborough	Planning Board	Telephone	March 18, 2005
Gaffney, Charles	Town of Southborough	Planning Board	Telephone	April 8, 2005
Grande, Jay	Town of Framingham	Planning Board Director	In person	February 23, 2003
Guzowski, Ed	Town of Bellingham	Planning Board	Telephone	March 15, 2005
Kolias, Vera	Town of Southborough	Town Planner	Telephone	February 11, 2005
Lehan, Jim	Town of Norfolk	Board of Selectmen	Telephone	March 8, 2005
Lima, Al	City of Marlborough	Director of Community Development	In person	March 2, 2005
Meyer, Elizabeth	Town of Southborough	Southborough Housing Opportunities Partnership Committee	Telephone	March 17, 2005
Odabashian, Ann	Town of Bellingham	Board of Selectmen	Telephone	April 03, 2005
Phanneuf, Bonnie	Town of Southborough	Board of Selectmen	Telephone	March 15, 2005
Ross, Chris	Town of Framingham	Board of Selectmen	Telephone	March 24, 2005
Spruch, Arthur	Town of Norfolk	Planning Board	Telephone	March 16, 2005
Wetstein, Stacey	Town of Bellingham	Town Planner	In person	March 4, 2005

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