

GETTING HOME

Overcoming Barriers to Housing in Greater Boston

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ACKNOWLEDGEMENTS

Beware making innocent remarks to people with curious minds.

The origin of this paper was a stray comment I made to James Stergios of the Pioneer Institute. I told him I had a simple idea for solving the housing shortage in Greater Boston. “Why not,” I said, “have public agencies hand over land appropriate for housing to any developer willing to build housing and make one-third of all units affordable forever?” It would be the perfect marriage of excess state capacity and private-sector know-how. Forget about complicated disposition processes and arcane funding formulas! Let loose all the barriers to housing and just let it happen! I knew the idea was not as practical as it might sound—ideas that begin with the words “why not” seldom are—but I thought there had to be a way to use unexploited state properties for the larger goals of housing and community development.

After that conversation, James approached me about conducting a more detailed study of the barriers to housing construction in Massachusetts. By combining the resources of the Pioneer Institute and the Rappaport Institute for Greater Boston, he suggested, we might be able to make sense of the tangle of rules and regulations that seemed to stifle housing development in Massachusetts. The idea was to provide a roadmap for housing development and highlight the regulatory barriers along the way. Governor Jane M. Swift had already drawn attention to many of the barriers, but we thought an A to Z catalogue might get people who care about housing “on the same page” about how the state and local regulatory process could be simplified.

From those conversations this paper was born. The first acknowledgment for much that is good in this paper goes to James Stergios, a person of rare intellect and decency. I might add that he is a person of good humor and great patience as well. This report is months late, but all James ever wanted to do was help me to get it done.

Steve Adams, the executive director of the Pioneer Institute, offered encouragement and friendship and friendly but sharp critiques. Charlie Chieppo, also of the Pioneer Institute until signing on with the Romney administration, offered a good sounding board for understanding the complex policy matrix that is the Commonwealth of Massachusetts.

I was also fortunate to have a talented research assistant at the Pioneer Institute named Elena Llaudet, who tenaciously helped to track down arcane information, set up meetings, prepare graphs and charts, and put up with my delays with as much cheer as her boss.

We interviewed more than 80 people for this report. People in state and local government, housing developers, bankers and business people, scholars of all stripes, and numerous affordable housing activists offered sharp comments and walked us through the thicket of housing regulation. I only wish that the final product could capture the sharpness and subtlety of their understanding of the issue.

At the Rappaport Institute, Jennifer Flagg helped track down important details about housing policy. I have also benefited from conversations with friends and colleagues like Alan Altshuler, David Luberoff, Nicolas Retsinas, Eric Belsky, Howard Husock, Gretchen Weismann, Eleanor White, Aaron Gornstein, Barry Bluestone, and many others.

Greatest thanks go to Elizabeth Frieze, who not only gathered rich information and conducted important interviews, but who helped to write many sections of the paper. Liz is a dynamo, a person with great local knowledge, intellectual curiosity, and professionalism. I marvel at her talents and wonder where they will take her in the years to come. Wherever it happens to be, I hope it involves Greater Boston and maybe even the Rappaport Institute.

—Charles C. Euchner

PREFACE

Charles C. Euchner’s detailed analysis of the regulatory obstacles to building affordable housing in Massachusetts provides overwhelming proof that those obstacles are a major reason so little such housing exists there. I have long believed his basic conclusion to be true throughout the nation. Yet I was amazed and appalled by the almost impenetrable thicket of barriers formed by Massachusetts state and local regulations. Those rules add to planning time requirements, create lengthy delays in gaining approvals, and demand costly additional construction steps. In short, they all too often effectively block developers from building units that poor- to moderate-income households could afford to buy or rent. Yet many such rules do not actually achieve any worthwhile public benefits, or certainly none commensurate with their negative impacts.

Unfortunately, even Euchner’s incontrovertible evidence will hardly begin to alter this shocking situation unless authorities at the state level either (1) change the incentives facing local governments, or (2) modify the power of those governments over what gets built in each locality. I believe a central purpose of most suburban governments in Massachusetts and elsewhere is to sustain and increase the housing values of their predominantly owner-occupant electorates. This is a legitimate goal if not pursued at the cost of other important social goals. But most of those home-owning voters think permitting any lower-cost housing in their communities will reduce the market values of their homes—which are their major financial assets. Hence they pressure their local governments to create or at least maintain the very regulatory obstacles that Euchner so fully describes. So local governments have no significant incentives to reduce such barriers—and strong incentives not to. As a result, serious shortages of affordable housing have appeared in many suburban portions of major U.S. metropolitan areas, including the Boston region.

However, it is a waste of time merely to urge local governments to change this behavior because society as a whole would be better off. Countless previous official bodies studying regulatory barriers—some of which I have been on—have pronounced such pious exhortations, without any visible effects whatever. If this situation is to be changed, state officials—especially the Governor—must take strong action. They must recognize the gross injustice and serious region-wide disadvantages to the state’s economy of its inability to provide housing for low- and moderate-income workers near their jobs. And those state officials must resolve to take locally unpopular actions in response. Such actions should include creating a blue-ribbon commission to draft a mandatory statewide building and zoning code free from many of the unnecessary obstacles Euchner catalogs. Another such action is requiring every locality to create a housing plan showing how it will meet its inherent responsibility to provide some affordable housing for the state’s low-wage workers—who provide essential services to its own residents—and penalizing those localities that fail to do so with reduced state financial support. A third less controversial action would be passing a statewide law permitting any owner of a single-family home meeting certain minimum size and other requirements to create an accessory rental apartment in his or her home, regardless of what local laws say about it. That could add notably to the state’s supply of modest-rent apartments without additional expense to taxpayers.

Without such direct actions, mainly at the state level, the impressive evidence compiled by Euchner will merely sit on shelves next to all the preceding studies documenting similar conditions. I hope Euchner’s dramatic findings will galvanize Massachusetts’ state officials into meaningful action to cope with the state’s increasing shortage of affordable housing near where many of its low- and moderate-income wage-earners work.

—**Anthony Downs**, Senior Fellow
The Brookings Institution, Washington, DC

The views in this preface are solely those of the author and do not necessarily represent the views of the Brookings Institution, its trustees, or its other staff members.

EXECUTIVE SUMMARY

The housing crisis cannot be solved with public funding alone. In the end, the primary role of state and local government should be to lay a basic foundation and then allow developers, community development corporations, and others to build.

Few dispute the idea that Greater Boston faces a serious housing crisis that threatens the continued economic growth of the region. Evidence of a housing crisis in the Boston area includes high apartment rents, high home prices, and an insufficient supply of housing units. The lack of a varied housing stock prices many workers out of the market—and drives both households and businesses out of the region, including entrepreneurs and their colleagues who are engaged in the start-up phase of business.

Affordable housing is important to the vitality of Massachusetts communities, but the state needs to encourage the marketplace to create a broader range of housing types. The first step is to identify the factors that raise the cost and reduce the supply of housing in the Commonwealth.

Both state and local governments have a legitimate interest in regulating certain aspects of housing development to assure reasonable safety and health standards and allow for the overall well-being of the community and its character. Some regulations are clearly necessary. Government support of affordable housing may also require grants, tax credits, and the like. But the housing crisis cannot be solved with public funding alone. Even extraordinary sums of money can produce only a limited number of units. In the end, the primary role of state and local government should be to lay a basic foundation and then allow developers, community development corporations, and others to build.

Greater Boston's Housing Crisis

Much of the drag on housing production results from state and local regulatory policies and processes. From the beginning to the end of the process, developers wishing to create new housing meet resistance—whether at the stage of land acquisition and preparation or later in determining what and how to build. At times, the system seems to conspire *against* the construction and rehabilitation of housing.

Developers must meet local zoning laws, satisfy state building and specialty codes as well as local enforcement policies, and, almost necessarily, interact with state and local appeals boards. Local zoning laws govern what kinds of structures can be built in what parts of town. State building and specialty codes regulate the physical design of buildings. Because state regulations are enforced by local officials, local interpretations of the state regulations can pose another barrier along the road. Every such barrier has an associated cost, which is passed along to the homebuyer or renter. Among 10 major cities, Boston ranks third, behind San Francisco and Nashville, in average construction cost per housing unit.

Regulatory Barriers to Housing Construction

Wetlands Protection: The state's expansive wetlands protection laws—and the tendency of localities to adopt even stricter standards—are often cited by developers, bankers, and others involved in housing production as one of the biggest impediments to finding buildable lots in eastern Massachusetts. This dual authority in regulating wetlands is mirrored in a bifurcated appeals process. Appeals under the State Wetlands Act must go through the DEP regional office, then the Office of Administrative Appeals, and then to Superior Court. Appeals of local bylaw decisions travel directly to Superior Court. The wetlands process, as a result of this uneven two-track system, has become lengthy, risky, and expensive.

Building Codes: Unlike states such as New Jersey and Maryland, where a single agency regulates all aspects of building construction, a set of boards and commissions, each promulgating its own specialty codes, regulates building in Massachusetts. Inspectors employed by cities and towns enforce the state standards. Because of limited manpower at the local level, a lack of common training for inspectors, and the vagaries of local political culture, local implementation is uneven. Developers, realtors, and other housing professionals say that local officials can increase the time and expense associated with building and selling homes. Idiosyncratic interpretation of state standards introduces a level of risk that gets translated into added costs to developers and ultimately to the buyer.

Rehabilitation Code: The Massachusetts rehabilitation code, once considered a model for rehab of existing buildings, has become a barrier instead. Reforms in the latter 1970s provided developers with incentives and tools to complete renovations to existing buildings. Since its adoption in 1979, Massachusetts has made a number of alterations to this cutting-edge rehab code. The result has been a reversal of the intent of the reform—and a more difficult rehabilitation process.

Septic Regulations: Massachusetts has one of the nation’s toughest laws for residential septic systems and cesspools—known as Title 5. Some 125 communities in Massachusetts have adopted septic regulations that go beyond the Title 5 requirements. Such restrictions increase costs for developers and decrease the amount of land that is available for development.

Handicap Access: Through the Architectural Access Board (AAB), Massachusetts establishes guidelines for handicap access. When renovating a building, developers must comply with the provisions set forward in the AAB code, which significantly increases the cost. These state standards tend to be much stricter than federal requirements. Some provisions of the handicap access code actually conflict with the state building code, creating a headache for architects and building inspectors.

Local Zoning: Throughout the state, cities and towns in the last generation have adopted zoning standards, such as minimum lot sizes, height limits, density restrictions, and parking requirements, that preclude the development of significant new housing. Not only does the “envelope” for housing allow fewer units, but it also increases the per-unit cost of housing by increasing land requirements and reducing the efficiencies of scale that come from multi-unit construction.

Growth caps are another tool used by communities to block development. Approximately 45 communities across the state have adopted local bylaws that expressly restrict construction or ban it altogether. Some communities are reluctant to allow the development of housing appropriate for families with school-aged children since property taxes would not be sufficient to cover the cost of public schools.

Every barrier has an associated cost, which is passed along to the homebuyer or renter. Among 10 major cities, Boston ranks third in average construction cost per housing unit.

Extraordinary State Efforts to Promote Affordable Housing

Social scientists regularly warn about the unintended consequences of major reforms. Because policy systems are complex, simple strategies to achieve goals can backfire. Two major laws designed (at least in part) to promote housing development provide good examples of the problem of unintended consequences.

- A 1969 Massachusetts law known as **Chapter 40B**—the Comprehensive Permit Law or “anti-snob zoning” law—gives developers a tool to override local zoning to build affordable housing. But it has become a lightning rod in many communities and fostered anti-housing sentiment. The housing backlash has made it difficult to build housing of any kind in Greater Boston.

- The **Community Preservation Act (CPA)** has been championed by many advocates as an important new source of funding for affordable housing—but it has been used most often to acquire land for parks and open space and remove it from consideration for housing.

Key Recommendations

Massachusetts—and, in particular, Greater Boston—must clear away some of the regulatory underbrush in order to encourage the development of enough housing to accommodate the people who have made the area their home. Responsibility for the streamlining of housing regulations rests in two locations—local and state government.

Local Actions

- ▶ Allow developers to build housing that fits the historic character of the community on parcels acquired from the local government.
- ▶ Experiment with a split-rate tax system. By taxing vacant property at the rate that would prevail if the property were developed, the incentive to sit on property for speculative purposes would decline.
- ▶ Expand the prevalence of “as-of-right” rules in local zoning codes. By principle and by law, a zoning code should establish a clear and workable “envelope” for development of all kinds. What fits in that envelope should be understandable so that developers can make a fair profit on projects that fall within the envelope. Zoning boards of appeal should take up appeals only on extraordinary cases. Developers report that they are willing to follow the rules of the community, as long as those rules are clear, understandable, reasonable—and applied fairly to all.

State Actions

- ▶ Appoint a blue-ribbon commission, with adequate staffing, to examine all 351 local zoning codes in Massachusetts toward identifying outdated zoning.
- ▶ Develop a process for identifying buildable land and getting it into the hands of developers who are willing to provide housing for people at all income levels.
- ▶ Provide “carrots” for localities to accept new housing in their midst:
 - Create strong incentives for greater density at strategic transportation nodes in the region.
 - Offer significant increases in state aid when communities work with neighboring communities on housing development—the “good-neighbor bonus” proposed in the 2000 report of the Catholic Archdiocese and later advocated by Robert Reich in his 2002 campaign for governor.

The state needs to encourage the marketplace to create a broader range of housing types by identifying and addressing the factors that raise the cost and reduce the supply of housing in the Commonwealth.

- Require that, in exchange for greater latitude on land-use control, localities create a housing plan to meet aggregate performance measures—most importantly, housing affordability, but also including diversity of land uses and housing types (e.g., multi-family housing) and compact development/smart growth that preserves open space.

The state might choose to address piecemeal many of the regulatory issues—such as the uncertainty of Title 5 regulations and the dual authority over environmental and wetland regulations (which leads to stricter standards and a bifurcated appeals process). But it would do well to consider the following actions to streamline the regulation-making and inspection regimes:

- ▶ Consolidate building and specialty codes (including handicap access, electrical, and health codes) under the roof of a single agency, write a simplified code, and make that code understandable and available on a state-of-the-art Internet site.
- ▶ Reinvigorate rehabilitation of existing housing by restoring the simple requirements of safety and health.
- ▶ Ensure that local inspections are carried out in accordance with state codes—and are not open to varying local interpretations. Ideally, the state would assign state officials to enforce state standards, removing the local pressures to bend those standards. Short of that, the state can provide training to local officials to improve the reliability and uniformity of enforcement of building and specialty codes and environmental regulations.

Housing poses one of the Commonwealth’s more daunting challenges. Part of the answer, no doubt, is financial—“making it happen.” But another part of the answer is regulatory—“letting it happen.” It is clear that the current regulatory scheme raises the cost of construction, which in turn restricts the production of housing. States and localities need to recognize that they often pose unreasonable barriers to housing development. If they want families to be housed at reasonable cost, they need to reduce the time, expense, and frustration posed by the myriad regulations governing housing development and rehabilitation.

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In 1997, William Wolf decided to develop part of the 15-acre parcel that his family's third-generation bakery, Peggy Lawton Kitchens, bought almost three decades ago to expand its production facilities. The land in Mansfield, zoned for industrial use, had been given a special provision for high-density residential development as part of the town's master plan. With a special permit, Wolf could develop multi-family housing on the property.

Wolf designed the project to meet the growing needs of families with elderly parents. Duplexes would house families with children on one side and their elder parents or relatives on the other side. Wolf remembers the intergenerational duplex fondly from his childhood, when his grandparents lived in an attached unit in Weston. "I think we delayed their going into a nursing home by about seven years," Wolf said. "With the price of nursing homes and day care these days, the idea of intergenerational homes makes sense." Wolf said the 1,200- to 1,500-square-foot units, which come with garage parking, would cost around \$225,000 apiece.

The original idea was to build 52 units, but during the permitting and subdivision approval process with town officials Wolf agreed to scale the project back to 24 units. To meet the community's desire to enhance the environmental character of the area, he designed the homes in a cluster, so that wetlands and other green space would be protected. By 2002, Wolf decided the time to act was imminent—not only because of a desire to build a family nest egg but also because the tax bills on the undeveloped land have increased from \$2,000 to \$10,000 annually. Why pay for land that is not yielding any revenues? Besides, Massachusetts is experiencing a severe crisis in housing production. There has never been a better time to build.

But Wolf's plans have not been realized—and it is doubtful that they ever will be. After paying more than \$120,000 in engineering fees and spending years trying to gain approval, the town meeting voted 98 to 18 to reject his proposal in October 2002. The rub is simple: The town's interest in converting industrial land to residential development has

William Wolf's plans for multi-family housing have not been realized—and it is doubtful that they ever will be. After paying more than \$120,000 in engineering fees and spending years trying to gain approval, the Mansfield town meeting rejected his proposal.

What is “Chapter 40B”?

Chapter 40B of the Massachusetts General Laws allows builders to obtain comprehensive building permits—that is, to override local zoning—in communities with less than 10 percent affordable housing, if at least 25 percent of the housing units in the project are for low- and moderate-income tenants.

passed. One housing complex is in the final approval stages under the state’s Chapter 40B affordable housing law (see sidebar at left), and more proposals are in the works. Multi-family housing was encouraged under the master plan, said the town’s planner, Shaun Burke, because “we were trying to steer the land in a particular way without diminishing the value of the land.” At the time, town officials felt they needed to give landowners an incentive to convert their property to residential development since industrial land was worth more than residential land. One industrial property owner successfully developed housing. But in recent years, as residential land values have increased, town officials have concluded that there is no longer a need to offer special residential-development opportunities to industrial land owners.

Critics of Wolf’s plan said that it would not help the town meet its affordable housing goal because it is not subsidized. In effect, Chapter 40B projects undermine public support for market-rate housing. But that is not the only objection. The owner of a nearby industrial property fears that residential development would instigate controversy over truck traffic. Some residents object to plans to clear trees along a scenic roadway. The town planner doubts whether Wolf has adequately factored in the costs of site development required by state and local regulations. One resident argues that the town needs industrial jobs and should not encourage housing development. Even if Wolf got his permits approved, he could face a legal challenge that would delay any housing development.

Shaun Burke acknowledges that Wolf faces a difficult task in getting approval for virtually anything but a large-lot, single-family housing proposal. “There is no doubt that the permitting process is difficult and it can be lengthy,” the town planner said. “Development is about as risky as it gets....It takes a special kind of person to make it work.”

Wolf’s struggle to develop housing is not unique. Massachusetts and its 351 cities and towns require housing developers to work through a complex and ever-changing regulatory maze that takes years and sometimes decades. The regulations affect every phase of housing construction—from land acquisition to siting of units on the land, from architectural design to rehabilitation of existing structures, from the placement of cesspools to the allocation of parking. No one rule, in itself, appears to cripple the housing production process—but combined, the regulations make the goal of major housing production suffer the death of a thousand cuts.

Housing Policy at the Crossroads

Housing has become the signal issue in Massachusetts at the turn of the new century. Business leaders, social service providers, and community advocates say that the lack of housing affordable to people at all levels—from homeless families to students to young professionals to working families—threatens the region’s economy and basic well-being. A longstanding debate about “affordable housing,” which usually refers to subsidized housing for low-income populations, has expanded into a broader debate about “housing that is affordable” for a broader range of populations.

The Massachusetts Technology Collaborative stated the case simply in a 2000 report: “The single most important factor in the state’s high cost of living is housing. The state’s housing costs not only rank among the highest in the nation, but also are disproportionately borne by younger workers....High housing costs appear to be a key factor in the continued out-migration of Massachusetts residents, and the further depletion of the state’s workforce.”¹

Both state and local governments have a legitimate interest in regulating certain aspects of housing policy to assure reasonable safety and health standards and allow for the overall well-being of the community and its character. Some regulations are clearly necessary. Government support of affordable housing may also require grants, tax credits, and other subsidies. But in the end, the primary state and local role should be laying a basic foundation and allowing developers, community development corporations, and others to build in the most efficient manner possible.

All across the state, efforts to build housing have encountered resistance from residents who fear traffic congestion, increased costs for public services, damage to the environment, and threats to the community's established "quality of life." Developers and public officials have for years understood the power of NIMBYism—the cry "Not In My Back Yard"—as an important deterrent to development. But NIMBYism is not in itself the deciding factor in development issues. NIMBYism is potent because of state and local rules and regulations that provide tools to the foes of housing development.

NIMBYism is potent because of state and local rules and regulations that provide tools to the foes of housing development.

GREATER BOSTON'S HOUSING CRISIS

Few dispute the idea that Greater Boston faces a serious housing crisis that threatens the continued economic growth of the region. Evidence of a housing crisis in Boston includes high apartment rents, high home prices, and an insufficient supply of housing units. The lack of a varied housing stock prices many workers out of the market—and drives many households and businesses out of the region, including many entrepreneurs and their colleagues who are engaged in the start-up phase of business.

Relatively high average rents indicate a lack of affordable rental housing. *The State of the Nation's Housing*, an annual report of Harvard University's Joint Center for Housing Policy, found that the "fair market rent" for a two-bedroom housing unit in the Boston metropolitan area—\$942 in 2000—was higher than any other region in the United States with the exception of San Francisco (see figure 1). To afford that rent and pay the recommended 30 percent of income on housing, Boston area residents would need to earn \$37,680. According to the Harvard study, in Boston, janitors and retail salespersons would have to spend 54 and 63 percent of their incomes, respectively, on the average-priced two-bedroom rental.²

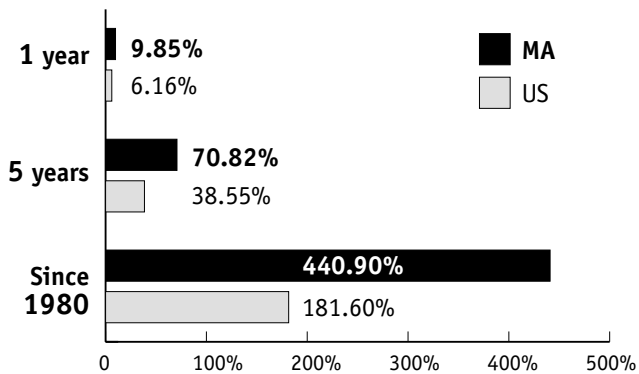
In recent years, increases in rents have also been considerable. A comparison of rents for two-bedroom apartments advertised in the *Boston Sunday Globe* found increases of as much as 67 percent in cities and towns from Boston to Winchester between 1998 and 2001. *Globe* listings are often biased toward the upper end of the market, but many communities with large poor

Figure 1. Rental Affordability by Metropolitan Area, 2000

Metropolitan Area	Two-bedroom fair market rent (2000)	Annual income requirement (fair market rent at 30% of income)
San Francisco	\$1,362	\$54,480
BOSTON	\$942	\$37,680
New York	\$920	\$36,800
Washington	\$840	\$33,600
Los Angeles	\$766	\$30,640
Chicago	\$762	\$30,480
Denver	\$728	\$29,120
Atlanta	\$712	\$28,420
Hartford	\$697	\$27,880
Pittsburgh	\$558	\$22,320

Source: *The State of the Nation's Housing 2002*, Joint Center for Housing Studies, Harvard University, Cambridge, MA, 2002, p. 40.

**Figure 2. Percent Change in House Prices
(period ended September 30, 2002)**



Source: Office of Federal Housing Enterprise Oversight (<http://www.ofheo.gov/house/state.html>).

and working-class families have experienced substantial price increases as well; Revere (prices rose 63 percent) and Everett (prices rose 55 percent) are cases in point.³

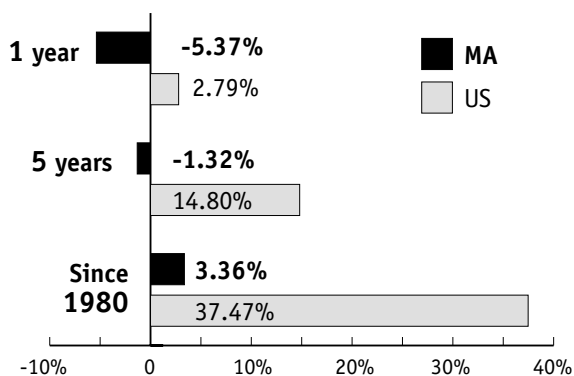
Those looking to purchase homes in Massachusetts also face high and steadily rising prices. While governor, Jane M. Swift drew attention to the cost explosion in the housing market. “Since 1996, housing costs in the Commonwealth have risen at a rate above the national average,” Swift noted in a policy paper.⁴ Housing prices all over the nation rose in the 1990s, but they rose in Massachusetts faster and from a higher base. In the last five years, Massachusetts housing prices, as measured by the Office of Federal Housing Enterprise Oversight House Price Index, rose faster than in any other region with the exception of Washington, DC (see figure 2).

The Supply-Demand Paradox

Housing prices are high because demand is high and supply is low. Standard economic theory holds that when demand increases, producers increase supply to meet the growing need. But paradoxically, high levels of demand and high sales prices and rents have not sparked a significant new level of development activity in the state and region.

Figure 3 shows the number of housing permits issued in Massachusetts lagging behind the nation as a whole.

**Figure 3. Percent Change in Housing Permits
(period ended 2001)**



Source: US Census Bureau.

The Center for Urban and Regional Policy at Northeastern University has documented the mismatch of demand and supply. From 1990 to 2000, the Greater Boston region (covering 161 cities and towns) added 129,265 households, an increase of 8.7 percent. During that same period, 91,561 additional housing units were made available to buyers and renters, an increase of 5.9 percent.⁵

Housing economists use vacancy rates as a basic indicator of the adequacy of housing supply. The statistics show a stunning decline in the adequacy of supply over the last decade. The average vacancy rate for owner-occupied units was 1.7 percent in 1990, slightly below the norm of 2 percent for such units. By 2000, that vacancy rate had fallen to 0.6 percent. The vacancy rate for rental housing was 6.7 percent in 1990, a healthy figure where 6 percent vacancy is optimal. But by 2000 the vacancy rate

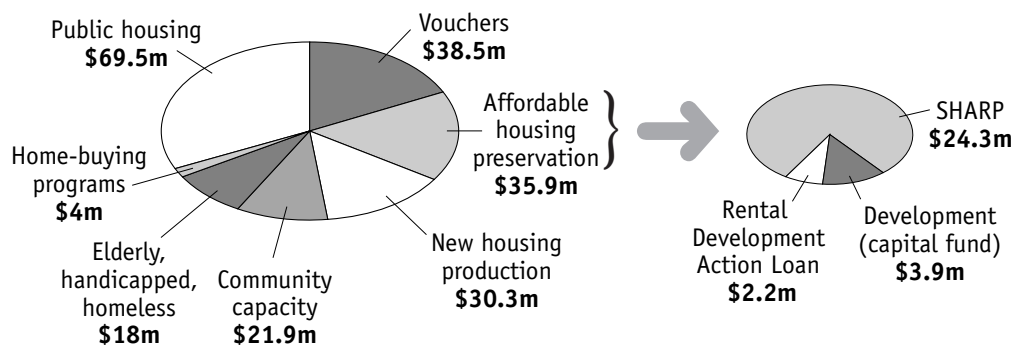
for rental housing dropped to 2.7 percent.⁶ All across the region, optimal vacancy rates seemed to vanish. In 1990, 59 cities and towns had vacancy rates of 6 percent or higher; in 2000, just five communities had vacancy rates of at least 6 percent.⁷

Why Is Supply Low?

What explains the inability of the housing market to respond effectively to demand—and to realize potentially significant profits from selling and renting new homes?

Housing advocates—from leaders of community development corporations to officials of state and local government—argue that the slow pace of housing development is the result of a virtual end to public funding of new construction. In 1990, the last year of the administration of Governor Michael S. Dukakis, the Commonwealth committed \$108 million to new housing construction, with state spending on all housing programs—new housing production, financing, affordable housing preservation, elderly, handicapped, and homeless, home-buying, voucher, public housing, and community capacity programs—amounting to almost \$350 million. By 2001 the state had reduced spending on new construction to just over \$30 million, with overall state spending on housing programs dropping to approximately \$220 million (see figure 4 and Appendix A).⁸

Figure 4. State Spending on Housing, 2001



Source: Massachusetts Department of Housing and Community Development.

Quasi-public agencies like MassHousing and the Massachusetts Housing Partnership Fund also invest in housing. MassHousing, which began as the Massachusetts Housing Finance Agency in the 1970s, provided \$562.6 million in long-term financing for 5,562 units of housing during fiscal year 2002. MHP, which is financed by the banking industry, made long-term commitments of \$48 million for 785 units of housing and coordinated a number of other programs for fiscal year 2003.⁹

Dukakis took on high-cost projects like the controversial rehabilitation of the Columbia Point housing project, which alone required \$150 million in loans from the Massachusetts Housing Finance Agency. Marvin Siflinger, the agency's director and the point man for many Dukakis housing efforts, earned a national reputation for his innovative approaches to fixing the state's crumbling housing infrastructure. But since the onset of the recession of the late 1980s and early 1990s, the state has directed most of its resources to "preserving" affordable housing stock that could be converted to market-rate housing under the conditions of the associated mortgage programs.

But the housing crisis cannot be solved with public funding. Because of the high cost of producing new or even rehabilitated units—around \$200 per square foot, not counting the cost of land and soft costs—even extraordinary sums of money can produce a limited number of units. If the state devoted \$200 million to new housing production, only several thousand units of housing could be built—even with the participation of nonprofit developers, banks, and other financial partners. Subsidized housing exacts even more costs in lower tax rolls.

There must be another suspect in the case of the missing housing units. To gain a full understanding of Greater Boston's inadequate housing production, it is important to examine the larger context of housing production in Massachusetts.

The housing crisis cannot be solved with public funding. Because of the high cost of producing new or even rehabilitated units—around \$200 per square foot, not counting the cost of land and soft costs—even extraordinary sums of money can produce a limited number of units.

It's too hard to get land, too expensive and time-consuming to navigate dozens of different state and local public entities and processes, and in the end, too expensive to build.

Housing policy in Massachusetts is even more complex and contradictory than in most other states. From the beginning to the end of the process, developers wishing to create new housing meet resistance.

Factors in Housing Cost and Production

Factors affecting Greater Boston's performance on housing development and rehabilitation include availability of land, regulation, and cost of construction. In short: It's too hard to get land, too expensive and time-consuming to navigate dozens of different state and local public entities and processes, and in the end, too expensive to build.

Land Availability: Housing development begins with land, so a lack of available land pushes up the per-unit cost of housing. Contrary to many popular accounts of Greater Boston, which suggest that the region is densely built up and therefore offers little space for housing, the area is actually not lacking buildable land. The fact is a number of communities have "zoned out" many forms of multi-family housing by increasing the land required for each housing unit. A 2000 study of 16 cities and towns, conducted by the Executive Office of Environmental Affairs, found that current zoning allows 0.9 units of housing per acre in residential areas—compared to 1.8 units per acre on already developed land.¹⁰

Local tax policies may also reduce land availability by creating disincentives for private landowners to sell, as the cost of holding on to land is generally very low. The state owns a great deal of land it does not use, some of which could be made available for housing development, as do cities and towns. Transferring land from public to private ownership is a complex, time-consuming process.

Regulation: Much of the drag on housing production results from state and local regulatory policies and processes. Michael Stone, the liberal housing expert at the Boston campus of the University of Massachusetts, has called housing policy in the United States "rococo" because of its complexity.¹¹ Housing policy in Massachusetts is even more complex and contradictory than in most other states. From the beginning to the end of the process, developers wishing to create new housing meet resistance—whether at the stage of land acquisition and preparation or later in determining what and how to build. The raft of regulatory procedures poses particularly high entry barriers for smaller developers. At times, the system seems to conspire *against* the construction and rehabilitation of housing.

Regulations at the local and state level set strict parameters on what can be built. Developers must meet local zoning laws, satisfy state building and specialty codes as well as local enforcement policies, and, almost necessarily, interact with state and local appeals boards.

Local zoning laws govern what kinds of structures can be built in what parts of town and how those buildings fit into the context of the street and neighborhood. A generation of "downsizing"—allowing less dense development—has substantially reduced community capacity to house residents of all kinds.

State building and specialty codes regulate the physical design of buildings. State building and specialty codes are the purview of a number of specialized boards and commissions (see figure 5). Each board and commission establishes and adjusts its own specialty code in isolation from the others, without consideration of its impact on the overall universe of codes.

Local enforcement of state regulations—which can be arbitrary and unpredictable—poses another barrier to housing.

Figure 5. State Boards and Corresponding Codes

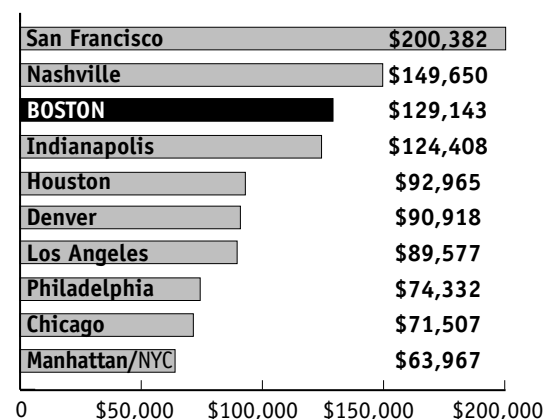
State body promulgator	Codes and regulations	Enforcement	Administrative appeal
Board of Building Regulations and Standards	State Building Code	Local	State
Board of Registration of Plumbers and Gas Fitters	State Plumbing Code	Local	State/Local
Board of State Examiners of Electricians	Electrical Code (inside the Fire Prevention Regulations)	Local	State
Board of Fire Prevention Regulation	Fire Prevention Regulations	Local	No administrative appeal
Board of Boiler Rules	Boiler Regulations	State	State
Board of Elevator Regulations	Elevator Code	State/Local	State/Local
Public Health Council/Department of Public Health	Sanitary Code	Local	State/Local
Dept. of Environmental Protection	Drinking Water Regulations	State	State
Dept. of Environmental Protection	Title 5	State/Local	State
Dept. of Environmental Protection	Wetlands Protection Act	State/Local	State
Architectural Access Board	Handicap Accessibility Code	Local	State

The lack of integration at the state level, then, can lead to confusion among local enforcement authorities such as building inspectors, fire chiefs, and boards of health and increase the number of appeals boards in front of which a builder has to appear. The process is especially complex (and confusing) in the case of environmental and handicap access regulations.

Public officials also regularly defer to “community process” when controversial projects are proposed. Many cities and towns specifically require that projects undergo community scrutiny, even when the projects fit into the existing look and feel of the neighborhood. Community process can be especially problematic in small communities with volunteer governance structures like town meeting and little professional staff in town hall.

The end result is a housing production process that is too expensive for small developers and unattractive to many large developers. John Smolak, a real estate lawyer, says, “Small companies are shut out. Look at the list of the National Home Builders Association. Massachusetts firms are almost never mentioned.” Benjamin Fierro of the Massachusetts Home Builders Association agrees: “It’s virtually impossible for a young builder to get involved in this business. There are a lot of talented builders who are idle or nearly idle. The atmosphere is so hostile that people say, ‘I don’t need this.’ They’re not real excited about being here anymore.”

Cost of Construction: Land-use restrictions and regulations drive up the cost of construction. Among 10 major cities, Boston ranks third, behind San Francisco and Nashville, in average construction cost per housing unit (see figure 6). These figures are based on Census data that include the cost of materials, building, and installation of materials. The cost differences across regions are considerable, with construction in Boston costing far more than other highly unionized areas such as Philadelphia.

Figure 6. Average per Unit Construction Costs, Ten Large Cities, 2001

Source: US Census Bureau, Building Permits, 2001 Building Permits, Monthly New Privately-Owned Residential Building Permits, available online at <http://censtats.census.gov/bldg/bldgprmt.shtml?>

A closer look at per-unit construction costs by building type helps complete the picture of Boston's construction cost problem. In 2001, single-family units cost an average of \$134,000, units in two-family structures \$92,000, in three-family buildings \$85,000, and in five- or more family structures \$144,000. Boston's per-unit cost of construction in every category but single-family units is relatively high.¹² The data need to be interpreted with care. But the numbers are suggestive.

Perhaps even more suggestive is a direct comparison of cost growth in five- or more family structures with New York City's borough of Manhattan. The increase in construction costs from 1996 to 2001 of five-plus-unit buildings was 172 percent in Boston but less than 36 percent in New York. In 2001, per-unit development costs for buildings with five or more units cost \$144,000 in Boston but only \$63,500 in New York.¹³

The higher costs of housing construction in Greater Boston are captured by the "location factor" data of R.S. Means Company. R. S. Means gives the city of Boston a location factor of 1.14, which is third in a ranking of 10 cities with large populations.¹⁴

GETTING LAND: STATE AND LOCAL DISPOSITION

State environmental regulations—especially wetlands and septic system regulations—determine the baseline for housing development. Once land is determined to be developable from an environmental standpoint, local zoning determines what kind of development may take place there.

All building projects require land. Developers seeking to find land to build housing must answer the two basic questions: What land is available for acquisition? Is the land developable given the current regulatory strictures?

Availability and market value of privately owned developable land vary widely across the Commonwealth. Some developers will seek to obtain publicly owned land for their projects. State and local governments are reluctant to dispose of their land without getting a fair return, which they establish in terms of purchase price and/or commitments to provide affordable housing or other public benefits. Critics ranging from the Citizens Housing and Planning Association to Governor Jane M. Swift have noted that state and local government processes are uncoordinated, unpredictable, and reactive—and constitute a considerable barrier to housing construction.

Whether land is developable depends on several kinds of regulations. State environmental regulations—especially wetlands and septic system regulations—determine the baseline for housing development. Once land is determined to be developable from an environmental standpoint, local zoning determines what kind of development may take place there.

The state's Chapter 40A law gives local authorities the power to enact local zoning laws and specifications, such as lot size or setbacks, that developers must follow to get a permit for new housing. In cities like Boston and Cambridge, many projects require zoning variances since zoning regulations are set so strictly. The variance process often requires long periods of negotiation between developers and city officials, which often involve community groups as well.

Outside of the city, new housing development goes through the subdivision control act. Special permits are granted to projects that go beyond as-of-right zoning standards if the developer can make a convincing case to local officials that the project would be in the community's long-term interest.

State Land Disposition

State government is the largest single landholder in the Commonwealth, with open lots dominating the reserves of land in the western part of the state and developed land more common in the eastern part of the state. The Commonwealth's land holdings total over 500,000 acres, or about 10 percent of the total land area of the state, and include 11,486 different properties, ranging from abandoned state hospitals to forests and parks. Only 2,547 acres have been classified as surplus properties (see Appendix B).

State agencies do not make information about the land appropriate for housing widely available to developers. A unit of the state's Division of Capital Asset Management (DCAM) called "MAssets"—the acronym stands for Massachusetts Real Estate Assets Management System—keeps track of all of the land parcels that the state owns. But the database is not easily accessible to people who might be interested in acquiring state-owned land, such as developers or housing advocates. Each spring, DCAM summarizes the contents of the MAssets database in an Annual Report, but the only way for the public to view this report is to travel to the State Library in Boston or to make a formal request for a copy. When the Rappaport Institute for Greater Boston visited the State Library to view the 2002 Annual Report, officials said the document had been sent away for micro-filing and would not be available for about three months. Even when available, the report is not very helpful; it contains no indication about which property is unused and might be appropriate for development, aside from the approximately 20 parcels labeled "surplus" that have been turned over to DCAM for management.

State agencies have discretion over whether or not they will petition DCAM to declare land surplus. Many developable state properties remain in the portfolios of individual agencies that choose to hold on to them for potential use rather than turn them over to DCAM. Governor Swift noted, "State agencies in possession of properties have little incentive to evaluate which are needed to carry out their missions and which could be put to more productive use if released."¹⁵ Some state agencies can, upon determining that certain property is vacant or underutilized, convert public land to "surplus" on their own. Even when land is declared surplus, disposing of the property for housing or other purposes requires an act of the legislature. As a result, "relatively few properties are authorized for disposition, and even when they are, the disposition process can drag out indefinitely."¹⁶

After designating property as surplus, the agency in question may still have to maintain the property—reducing the incentive for a handover. Once DCAM gains ownership of property, it must decide whether to assume responsibility for the upkeep of the property. Often DCAM requires the original agency to maintain the land.

Once land is declared surplus, DCAM notifies other state agencies of the availability of the land. State agencies have the first option to purchase the land. If another state agency does not claim the land, DCAM advertises the land to municipal governments, which have the opportunity to acquire properties. Eventually, if it has not transferred the land to another state agency or municipality, DCAM itself will oversee the land's development, putting out a request for redevelopment proposals and then forming a committee to review the proposals. In all cases, DCAM moves slowly on redevelopment plans, requiring long processes of community planning and consultation with local governments as well as state agencies. Of course, the state legislature must approve all disposition of state property.

The state's Division of Capital Asset Management moves slowly on redevelopment plans, requiring long processes of community planning and consultation with local governments as well as state agencies.

Closed Public Hospitals: Reuse Proposals Stalled

Public officials, developers, and community leaders have all identified the closed public hospitals as ideal sites for the development of new housing or the rehabilitation of existing buildings. Unfortunately, the fate of the old hospitals demonstrates how slow DCAM's land disposition process can be and offers a cautionary tale about the trials of reuse of public property for housing and other purposes.

- The state closed **Boston State Hospital** in 1981, making the 175-acre parcel the largest developable piece of land in the city. The Boston State Hospital Citizens Advisory Committee has guided the site's development, but progress has been slow. The CAC did not meet for years at a time and many members left without being replaced. It is not surprising, then, that more than 20 years after the hospital's doors closed, not a single residential unit has been built at the site.
- The 500-acre **Danvers State Hospital** site has remained untouched since it was closed in 1992. The Danvers State Citizens Advisory Committee is currently negotiating with national developer Archstone Communities regarding Archstone's plan to tear down two-thirds of the historic complex to develop housing units on a 77-acre section of the property. As mandated by 1997 state legislation, Archstone will have to reserve 10 percent of its units for the mentally ill and also provide job training and employment opportunities for mentally ill individuals. But the process has been slowed by the CAC's desire to preserve historically significant buildings on the site.¹⁷ The CAC does not have any explicit authority, but its opinion is likely to be echoed by local agencies whose approval does count and thus affect the negotiations between DCAM and Archstone. A decade after

the state closed Danvers State Hospital, the future of the property remains uncertain.

- The site of the former **Metropolitan State Hospital**, which includes land in Belmont, Lexington, and Waltham, remains unused as well. The 338-acre parcel has been tied up in government wrangling over the since 1991. DCAM assumed control over the land when it was declared surplus in 1992, and since then the agency has been responsible for overseeing the entire redevelopment process. A tri-community task force completed a preliminary reuse plan in 1994, but it then took several years to hammer out the details of the plan, and in particular to resolve Waltham's fear that Lexington's proposed housing development would add more cars to already congested Trapelo Road. In March of this year, the towns agreed on a new subdivision plan, and the land is finally in the process of being transferred from DCAM to the other parties. But in Lexington's case, the wait continues. Because Lexington is not going to develop the land itself, DCAM is going to transfer the land to a private developer rather than directly to Lexington. DCAM has issued a request for proposals. Even when a developer is chosen, a long road lies ahead, including creating a concept for the development and preparing rezoning plans. Even worse, the longer the wait, the more difficult it will be to rehab the property's old buildings—and so the larger the costly possibility of demolition looms. Since the buildings are listed on both national and state registers of historic buildings, obtaining permission to demolish the buildings might itself be an obstacle. It very well might be the 20th anniversary of the site's abandonment before construction of housing begins.

Public Trust and Prior Public Use: The doctrine of public trust—which requires the state to maintain certain lands held “in trust” for public use—can add another obstacle to DCAM's disposition process for public land. Article 97 of the Amendments to the Massachusetts Constitution, adopted by voters in 1972, codifies the public trust doctrine by establishing protections for certain government-owned lands acquired for natural resource purposes. In a 1973 opinion regarding Article 97, the Attorney General asserted that the resources protected under Article 97 include

air, water, wetlands, rivers, streams, lakes, ponds, coastal, underground and surface waters, flood plains, seashores, dunes, marine resources, ocean, shellfish and inland fisheries, wild birds including song and insectivorous birds, wild mammals and game, sea and fresh water fish of every description, forests and all cultivated flora, together with public shade and ornamental trees and shrubs, land, soil and soil resources, minerals and natural deposits, agricultural resources, open spaces, natural areas, and parks and historic districts or sites.¹⁸

Before disposing of lands that fall under one of these categories, the state must secure an affirmative two-thirds roll call vote in both houses of the state legislature.

Even with legislative approval, land disposition is not assured because of a common-law version of the public trust doctrine, known as the doctrine of prior public use. This doctrine gives the judiciary authority to reject legislation that alters the use or ownership of a particular piece of public land. In *Robbins v. Department of Public Works* (1969), the Massachusetts Supreme Judicial Court established a three-part test for legislation with regard to the government's disposition or change in use of public land: the statute must clearly identify the land, the statute must contain a statement of the proposed new use of the land, and the statute must include a statement demonstrating cognizance of the existing public use of the land.¹⁹

Past Reform Efforts: Attempts to reform the disposition of public land in Massachusetts have been limited in scope.

In February 2001, then-Governor A. Paul Cellucci announced that Massachusetts would set aside 1,100 acres of state-owned land for affordable housing construction. He filed a bill in June authorizing DCAM to move quickly to make this property available for housing development. The legislation would have given DCAM the power to transfer unused property to the Massachusetts Development Finance Agency, which would in turn market the property for housing development or give the property directly to housing developers. In essence, he called for accelerating—even circumventing—DCAM's surplus land disposition process. The legislation, however, would have required land transfers to be approved by the Department of Housing and Community Development—which in turn would set up a process to review proposals to ensure that “such plans include housing for households across a broad range of incomes, and must be consistent with any locally approved reuse plan.”²⁰ The law also would have allowed parts of the land to be used for open space or business development.

While the initiative aimed to provide more state land for housing, it did nothing to streamline the state land disposition process. In the end, since about 90 percent of the land was outside of the Boston metropolitan area, environmentalists lobbied against the bill, arguing that it would have fostered sprawl and disrupted plans to foster open-space networks at state hospitals and other sites.²¹ The legislation never passed.

In March 2002, Governor Swift and Boston Mayor Thomas M. Menino agreed to create a joint planning process to make land available for housing production. Under the city-state surplus land agreement, brokered by the Massachusetts Development Finance Agency, the Boston Redevelopment Authority would assume responsibility for the disposition of a number of empty state-owned properties in Boston. For each parcel of land involved, the BRA has committed to initiating a community planning process to create a disposition and development plan. Interestingly, an agreement designed to streamline land disposition required separate community processes for each major property.

Perhaps the most effective recent effort to dispose of state land did not aim to make land available for housing or other development but to fund the state election law. Because the state legislature did not fund the controversial Clean Elections Act, Supreme Judicial Court Justice Martha Sosman ruled that the state may provide election funds by selling state property. By declaring an emergency over the state of Clean Elections funding, the SJC created a fast-track system for disposing of state property. The SJC gave the

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plaintiffs the opportunity to identify properties that might be sold for such a goal, and the Office of the Attorney General identified suitable parcels—including abandoned state hospitals, an old clock tower, and state office buildings—for the effort. No such fast-tracking has been established for housing development.

The state’s role in the disposition of land is not limited to state-owned lands. The state also plays a role in the fate of tax-delinquent properties when those properties are auctioned (under Chapter 60 of the general laws) or transferred to a municipality (under Chapter 30B). A report of the Citizens Housing and Planning Association found that state and local rules for disposing of properties gained in tax-title foreclosures are slow and inefficient and result in hundreds of properties being kept off the marketplace. CHAPA further found that many of the tax-foreclosure cases exist in a complex “matrix” in which local governmental capacity, land conditions, past tax records, and property conditions all vary substantially.²²

Local Land Disposition

Every city and town in the state has its own processes for disposing of publicly held land. Most involve lengthy negotiations with developers and community organizations. No community has a simple process of land disposition in which clear standards for the land’s use are publicly posted and any qualified developer can obtain the land for development. As the CHAPA report bluntly puts it, “Some communities have unwieldy and unresponsive bureaucracies to administer the disposition of property. It is difficult to obtain information and help.”²³

The Case of Boston: The largest municipal landowner in the state is the City of Boston, which owns about 1,500 “buildable” parcels of land. Boston has a multi-pronged approach to land disposition for small lots, larger lots, and major development lots. The process always involves negotiations lasting several months or even years as city officials can assure that the property gets used for public priorities. The City of Boston sells lots smaller than 5,000 square feet to abutters and larger lots get sold through an RFP process, with CDCs and other affordable housing developers getting priority for the spaces. (Many small lots are not considered developable under current zoning, even though housing has been built on such parcels throughout the city’s history.)

Community process is a critical part of the land disposition process in Boston. The Boston Redevelopment Authority, the city’s planning and development agency, has created an extensive community process for disposition of lots for housing. Rather than simply allowing developers to build according to existing zoning—a common practice in other parts of the country—the BRA requires a process that can last a year or more for the release and development of a property. The disposition process for a parcel requires 13 steps and is sequential, so that a delay in any stage of the process can hold up other stages of the process (see figure 7).²⁴

Private Land

Securing private land requires that the owner be willing to sell. Tax policies can have a significant influence on private decisions regarding land holdings. Local communities determine both taxable values and applicable tax rates for privately held property. For most of Massachusetts history, the process of assessing value lacked scientific rigor or fair

Rather than simply allowing developers to build according to existing zoning—a common practice in other parts of the country—the Boston Redevelopment Authority requires a process that can last a year or more.

Figure 7. Boston Redevelopment Authority's Community Process for Disposition of Lots for Housing

1. Formation of a policy team.
2. Notification of the community that the authority plans to issue a request for proposals (RFP) to develop the land.
3. Release of a draft RFP for community review and comment.
4. Holding the first community meeting. The community may wish to meet many more times if the proposal involves properties bigger than 7,500 square feet.
5. Advertisement of the RFP.
6. A 45- to 60-day period for firms to respond to the RFP.
7. Opening of proposals.
8. Review of proposals by BRA project team.
9. Community meeting to review all proposals.
10. Selection of a developer by the BRA.
11. Tentative designation by the BRA board, for a period of 270 days or less, for the developer to demonstrate that it has met regulations and made arrangements for financing and construction.
12. Final designation of the developer by the BRA board.
13. Construction, under the continued review of the BRA project team.

implementation. The informal process of assessment by local officials and the infrequent updating of records meant that properties with the same market value were assessed at different values—sometimes dramatically different values. One national expert notes that inequitable assessment has been part of the anti-tax sentiment in American politics: “Critics often argue that the process of assessing the value of property for tax purposes is highly inaccurate and inevitably leads to substantial differences in tax liabilities among taxpayers with similar properties. Although economists have suggested that these criticisms of the property tax are overstated, it appears that they are at the root of much of the popular discontent with the property tax.”²⁵

In Massachusetts, a series of decisions by the Supreme Judicial Court from 1961 to 1979—most definitively, *Tregor v. Board of Assessors of the City of Boston* in 1979—found the uneven assessment was unconstitutional. The SJC ruled that the state must adopt a uniform approach to local property assessment. The state legislature responded by enacting landmark legislation in 1979 to require full and fair valuation of real property and consistent classification of property by types (e.g., residential, open space, commercial, and industrial).²⁶ The judicial and legislative mandates came at a fortuitous time. A year later, the passage of Proposition 2½—which limited overall property tax levies as well as the increase in levies that would be allowed in a single year—gave cities and towns more reason to rationalize their assessments. When the law took effect in 1982, 171 of the state’s 351 cities and towns had property tax rates that brought in revenues higher than the 2.5-percent limit and were required to reduce their rates. To increase the limit, communities needed to take full account of the value of their properties.²⁷

Despite the professionalization of assessment, many cities and towns have little manpower to enforce assessment standards. Local officials are often so overwhelmed by the volume of assessment work that they “lowball” assessments to avoid conflicts. Assessed value of housing is often below the appraised value or sale prices.

Despite the professionalization of assessment, many cities and towns have little manpower to enforce assessment standards.

Tax rates combined with assessment practices may encourage speculation—and keep developable property out of the hands of developers for long periods of time. Land values are assessed according to their current use, rather than their potential use. Richard Carlson, director of the assessing office for the City of Boston, states simply, “We don’t tax according to the highest and best use. We tax according to current use and occupancy.” Boston taxes vacant parcels at one-third the rate of nearby developed lots on the logic that the land itself accounts for one-third the value of a property. Land is valued higher in areas with high property values like the Back Bay, where the land is considered one-half the value of a property, and lower in low-value areas like Grove Hall section of Roxbury, where land is considered to be worth one-sixth the value of a property. A wide range of other factors account for the assessment, the overall level of taxes, and, therefore, the urgency

that a property holder feels to develop the land. Among the factors that reduce the overall assessment are hills and slopes, swampland, ledges, location along major arteries, and lot sizes that are too small under current zoning to be developed. As a result, the cost of holding land is often relatively low.

Finally, because they are considered too small for development, small lots are assessed at extremely low values—even when combining those lots might yield development opportunities. Many of these lots were formerly developable but, as a result of city or town efforts to reduce the overall density of housing, have been “downzoned” and are no longer developable.

With relatively low costs attached to holding on to land, private landowners can speculate on the boom-bust real estate economy, particularly in eastern Massachusetts. Landowners have little reason to sell the property when the value of parcels may increase dramatically in a few years. In boom times, there is always the prospect that the bubble will get a little larger, bringing a higher return on investment; in bust times, there is the perception that property values have no place to go but up. The consequence is that private landowners are being encouraged to withhold land from the market for speculative purposes, further limiting land available for development.

An alternative method: The split-rate property tax

The “split-rate” property tax offers an alternative system of property assessment. Under the split-rate approach, land and improvements on the land are separated for tax purposes. Land is taxed intensively, while improvements on the land are taxed lightly. The rationale for the split rate is twofold. Regarding the intense taxation of the land, the value of land itself derives from the public and social activities near the land—such as the location of a transit station or a park or the operation of businesses. The owner does not generate the value of the land, but the owner derives the benefits for his piece of property. At the same time, it is desirable to tax the improvements of the property at a low rate to encourage the owner to make those improvements. A 1997 study by Wallace E. Oates and Robert M. Schwab found that a split system in Pittsburgh produced a significant increase in building.²⁸

In Massachusetts, a number of communities, such as Acton, Natick, and Sudbury, have voted in recent years on whether to adopt the split-rate approach. The debate over the measure often turns on overall tax burden rather than the incentives for appropriate, balanced development and encouragement of infill development.

USING THE LAND: WETLANDS RESTRICTIONS

The state’s expansive wetlands protection laws—and the tendency of localities to adopt even stricter standards—are often cited by developers, bankers, and others involved in housing production as one of the biggest impediments to finding buildable lots in eastern Massachusetts. The Massachusetts Wetlands Protection Act (Chapter 131, Section

40 of the Massachusetts General Laws) was established with noble purposes—to protect specific areas from development, including the water bodies, land under water bodies, land areas that border on water bodies (including riverfront areas, fresh water wetlands, coastal wetlands, beach dunes, flats, marshes, meadows or swamps that border an ocean or estuary, creeks, rivers, streams, ponds, and lakes), land that is subject to tidal action or coastal storm flowage, lands that are subject to flooding, and buffer zones.

Concerns about environmentally sensitive land cannot be dismissed lightly. When irreplaceable land is used for development without concern for the ecosystem, communities and their ecosystems can experience devastating losses. Stories circulate in the environmental community about the abuse of precious wetlands, which are only reinforced when developers are caught violating the existing laws after the damage is done.²⁹

It is well worth asking, however, if the concept of wetlands is sometimes understood too expansively, to the detriment of *responsible* development. Under the Massachusetts Wetlands Protection Act, wetlands are separated into “coastal wetlands,” which are any “bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage,” and “freshwater wetlands,” which are “wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year...or that portion of any bank which touches any inland waters.” Not all wetlands play a critical role in the ecosystem, but there is no process for making hard judgments about the natural spaces that need the most protection—and the other spaces that might not be as vital to the ecosystem.

Development near wetlands is governed by both the Massachusetts Wetlands Protection Act and local bylaws. It is worth considering whether a dual-track regulatory process acts as a barrier to responsible development. Governor Swift’s Barriers to Housing Commission suggested that there are two significant problems with this dual authority: the tendency among cities and towns to pass bylaws that are stricter than the state law and the complex and bifurcated appeals process.

Stricter Local Wetlands Bylaws

Some municipalities have created wetlands bylaws that are more stringent than the state’s Wetlands Protection Act—they cover issues that are not within the Department of Environmental Protection’s (DEP) jurisdiction, they have created “no-build” and “non-disturbance” areas in excess of the state code, and they have established stormwater management guidelines that are above and beyond those created by the DEP. Approximately 160 cities and towns throughout the state—including Arlington, Belmont, Milton, Needham, and Newton—have adopted wetlands bylaws or ordinances to supplement the Wetlands Protection Act.³⁰

Local and state governments share enforcement authority. “At the local level, the community’s conservation commission administers the Wetlands Protection Act. On the state level, DEP oversees administration of the law, develops regulations and policies, provides technical training to commissions, and also hears appeals of decisions made by commissions.”³¹

Approximately 160 cities and towns throughout the state—including Arlington, Belmont, Milton, Needham, and Newton—have adopted wetlands bylaws or ordinances to supplement the Wetlands Protection Act.

MACC Model Wetlands Ordinance

The Massachusetts Association of Conservation Commissions (MACC) publishes a model wetlands protection ordinance.³² Some communities choose to follow the MACC model closely, while others veer far from it. Experience has demonstrated that the state wetlands law does not give adequate protection to vernal pools, so MACC's model bylaw restricts development on all isolated wetlands, including vernal pools and small ponds. Also, the state law does not cover areas that are at risk of suffering from coastal storms, so the model bylaw encourages municipalities to consider creating rules governing those areas. Individual towns might also choose to enact other restrictions, such as protecting the recreational values of certain areas. Barnstable won a court battle regarding its ability to regulate a dock that the town claimed interfered with recreation. Localities have also acted to protect areas with special aesthetic value, protect rare plant species (the state law only protects certain animals), and forbid building on dunes (the state law only prohibits building on the front of dunes).

The Permitting Process

Consider the developer's journey through the regulatory system:

- When a developer wants to work in a wetland resource area or within 100 feet of a wetland (an area called the buffer zone), he should file an application, called a Notice of Intent (NOI), which requires a plan describing the details of the proposed project, location of wetland resource areas and buffer zones, and measures to be taken to protect them. He must also determine whether the particular city or town has its own bylaw that supplements the Wetlands Protection Act.
- The DEP reviews the application for administrative completeness, files it, and makes comments on issues relevant to the Wetlands Protection Act to the local conservation commission.
- The commission will visit the site to verify the resource area boundaries on the property.
- At a public hearing on the project, the applicant may present information, and abutters and other members of the public may ask questions.

- Following the hearing, the commission will issue a permit, called an Order of Conditions. The Order will either approve the project— with special conditions that will protect the public interest—or deny the project if impacts to resource areas cannot be avoided or mitigated.

- The applicant, landowner, any aggrieved person, abutter, group of 10 citizens, or DEP may appeal the local commission's decision.³³

The dual authority in regulating wetlands is mirrored in a bifurcated appeals process. Appeals under the state wetlands act must go through the DEP regional office, then the Office of Administrative Appeals, and then to Superior Court. Appeals of local bylaw decisions travel directly to Superior Court.

The wetlands process has become lengthy, risky, and expensive. Localities issue about 10,000 permits for development in wetlands areas each year, of which 10 percent are appealed. According to Steve Pearlman, program director at the DEP Bureau of Resource Protection, the DEP receives about 415 requests to overturn wetlands decisions made by local conservation commissions each year.

The Cellucci-Swift Barriers Commission report recommended that the state wetlands act take precedence, and that any local rules above and beyond its provisions should have a scientific basis and DEP approval. It also called for creating a consolidated appeals process, which the DEP would administer.³⁴ That change would dramatically improve the regulatory process, but it would still leave in place a complex apparatus. It would also likely generate legal conflict over the scientific basis of higher-order local rules. Absent a complete streamlining of the wetlands protection system, localities are likely to establish barriers that prevent housing development.

The question is how to streamline the wetlands process. On the one hand, local standards tend to be higher and therefore impede development; on the other hand, the local approval process tends to be quicker. Developers and experts disagree about whether state or local regulations and processes are more difficult, but all agree that the two-level system creates uncertainty at many stages of the permitting process—and that developers must meet extraordinary standards for building in the vicinity of wetlands.”

Developers worry that wetlands regulations are just the leading edge of a new layer of environmental regulation of housing development. EOEAs development of “biomaps” under Secretary Robert Durand has given anti-housing forces a new tool to fight development. Endangered species have become a new front in the housing battle.

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HOW TO BUILD: STATE CODES

Unlike states such as New Jersey and Maryland, where a single agency regulates all aspects of building construction, a set of boards and commissions, each promulgating its own specialty codes, regulates building in Massachusetts.

State Boards

Four major state boards deal with housing construction and rehabilitation:

Board of Building Regulations and Standards: BBRS assumes responsibility for promulgating and maintaining the Massachusetts State Building Code, 780 CMR. The members of the BBRS include engineers, an architect, building officials, fire officials, general contractors, and the state fire marshal. The board also has a professional staff and eight advisory committees comprised of specialists in fields such as seismic protection. BBRS holds monthly public meetings, two of which are public hearings at which the Board hears testimony regarding code change proposals it has received.

In addition to overseeing 780 CMR, the BBRS licenses construction supervisors; certifies building commissioners, inspectors of buildings, and local inspectors; registers home improvement contractors; and manages the State Building Code Appeals Board. An individual who wishes to appeal an action, order, interpretation, or failure to act of a building official must file an appeal at the Boston or Taunton office of BBRS within 45 days of the action, order, interpretation, or failure to act and pay a \$150 filing fee. The appeals board holds hearings for appeals at the BBRS Wellesley headquarters, in the order in which it receives the appeals. According to BBRS, there is usually a four- to five-week delay between the receipt of an appeal and the hearing regarding the appeal. The Appeals Board must provide at least 10 days notice of a hearing to all parties to the appeal.

Board of Fire Prevention Regulation: The BFPR, a part of the Department of Fire Services, is a 14-member board responsible for promulgating and maintaining the Massachusetts State Fire Code (527 CMR). Members of the BFPR include electrical and chemical experts, fire chiefs, a mechanical engineer, and a representative of the public. Critics claim that the BFPR exceeds its authority in fire prevention by adopting regulations that affect the design and construction of housing units.

Unlike states such as New Jersey and Maryland, where a single agency regulates all aspects of building construction, a set of boards and commissions, each promulgating its own specialty codes, regulates building in Massachusetts.

Critics argue that fragmentation at the state level produces needless overlap, duplication, and even contradictory standards for homebuilding and rehabilitation. State officials openly agree, even acknowledging that the current system makes it difficult for homebuilders and others to bring new units to the market.

Under “Regulations to Prevent Fire Hazards and Fires” (ML 148-28), first adopted in 1914 and amended several times since, BFPR had authority to “make such rules and regulations, and the head of the fire department shall make such orders or rules not inconsistent therewith, as may be necessary for remedying and condition in or about any building...” This law—derisively known as the “God law”—has been used by fire officials to mandate a wide range of standards for buildings. The creation of the BBRS took away these regulatory powers, but fire officials’ power to grant or deny permits gives them effective power over a wide range of building issues. Those decisions cannot be appealed outside the court system, creating long odds for developers who would challenge them.

Board of Registration of Plumbers and Gas Fitters: The board, which consists of nine members, is responsible for promulgating and maintaining the Massachusetts State Plumbing Code (248 CMR). The board holds public hearings related to potential code changes and grants variances on specific provisions. The board issues 13 different licenses for plumbers and gas fitters and approves plumbing and gas products for use in Massachusetts. Full board meetings are held the first Wednesday of each month, usually in Boston but at least twice a year in other locations in the state. Subcommittee meetings are held the last Wednesday of each month at Winthrop Town Hall.

Board of State Examiners of Electricians: The board, chaired by the state fire marshal, is primarily comprised of electrical experts and meets once a month in Boston. The board licenses electricians and fire and security alarm installers; enforces the Massachusetts State Electrical Code (527 CMR 12.00); helps to mediate conflicts between electricians and local wiring inspectors; prosecutes individuals working as electricians without the proper license; and manages the Board of Electricians’ Appeals, which handles disputes regarding decisions made by local wiring inspectors.

Department of Public Health: Under the state’s Sanitary Code (105 CMR), DPH has the authority to develop regulations to prevent threats to dwellers and users of buildings. Issues such kitchen and bathroom facilities, accessibility of electrical outlets, ventilation, asbestos, lead paint, and other issues. Many of the sanitary standards overlap with building standards.³⁵

Additional regulatory boards include the following:

- Architectural Access Board—Handicap Accessibility Code (521 CMR)
- Board of Elevator Regulations—Elevator Code (524 CMR)
- Department of Environmental Protection—Drinking Water Regulations (310 CMR 22.00), Title 5, Wetlands Protection Act
- Board of Boiler Rules—Boiler Regulations (522 CMR).

Critics argue that fragmentation at the state level produces needless overlap, duplication, and even contradictory standards for homebuilding and rehabilitation. State officials openly agree, even acknowledging that the current system makes it difficult for homebuilders and others to bring new units to the market. Brian Gore, technical director of the Board of Building Regulations and Standards, asserts that “New Jersey did it right. In the early 1970s, they were able to consolidate building construction and specialty construction under one roof—wiring, plumbing, gas, building—whatever conflicts there are are resolved internally.”

Massachusetts has also attempted to merge its building code and specialty codes, but with less success. In 1984, the state legislature approved Chapter 143, Section 96 of the Massachusetts General Laws, which mandates that “the state building code shall incorporate any specialized construction codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair, or demolition promulgated by and under the authority of the various boards which have been authorized from time to time by the general court.” However, the Technical Code Council, created in 1972 to oversee alterations to the state building code, has no authority over specialty codes and therefore could not revise the state building code as the legislature directed.

Governor Jane Swift in 2002 established a Code Coordinating Council to “identify areas of duplication and conflict and make recommendations to clarify and concisely publish the building code as well as the related specialty codes.”³⁶ But eliminating statutory contradiction and repetition would not solve another problem in the regulation process. Boards hear appeals relating to their own codes—with the exception of the fire prevention board, which offers no non-court appeals process. Builders often have to appear before more than one appeals board; some developers have complained that board members tend to be defensive of the codes they have designed. Architect and code expert Herbert Eisenberg states, “The current system of separate appeals boards for each of the four code promulgators should be scrapped. Appeals before them are often a waste of time, money, and effort. You should not have to make an appeal to the same group that writes the code because they don’t have an objective view. They’re there to defend their own code.”³⁷ BBRS officials say that the vast majority of appeals are decided in the builder’s favor, but Eisenberg maintains that the system remains fatally flawed. Eisenberg proposes a single “super” appeals board consisting of representatives of each individual, specialized board.

Local Enforcement

Although a number of state boards and commissions set the standards for buildings in the state, cities and towns actually enforce the state standards. Because of limited manpower and other resources at the local level, a lack of common training for inspectors, and the vagaries of local political culture, local implementation is uneven. Developers, realtors, and other housing professionals say that local officials can increase the time and expense associated with building and selling homes. Idiosyncratic interpretation of state standards introduces a level of risk (and actions to reduce project risk) that gets translated into added costs to the developers and ultimately to the buyer.

An unpublished document of the Board of Building Regulations and Standards details the ways in which local officials create de facto local codes.³⁸ As part of their everyday implementation of the state rules, local officials often take it upon themselves to upgrade the state standards. The document classifies the local extension of state codes as legislation, regulation, and implementation.

Legislation: In many communities, Town Meeting has adopted zoning bylaws that have the effect of creating new building code standards. Attorney General Thomas Reilly reviews all zoning bylaws to determine whether they exceed local authority and disapproves the ones that do so. Previous attorneys general did not undertake such reviews.

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The Attorney General may consider complaints about local enforcement of state building and specialty codes, but does not issue any information about the cases that it receives.

“Therefore there exist an unknown number of ‘building code-like’ bylaws in force throughout the Commonwealth,” code officials said in the unpublished document. City and town councils have also adopted legislation that extends code requirements beyond the state standards.

The Office of the Attorney General may consider complaints about local enforcement of state building and specialty codes, but does not issue any information about the cases that it receives. The Attorney General may also take action against local bylaws that overstep local authority. But the everyday activities of cities and towns are so numerous and varied—and the attorney general must also tend to a raft of state laws and policy issues. The case-by-case oversight of local code enforcement works against consistency in code enforcement. The creation of an accessible database—with information about the complaints filed against code enforcement officials—would help builders and ordinary citizens to understand the local environment for housing construction.

Regulation: Even without legislative approval, local agencies often expand the building code standards for housing. Local planning and subdivision control boards often create code-like requirements in their decisions about “contract zoning” and “orders of conditions.” The attorney general does not review local zoning decisions for overreaching with regard to building and systems codes. Local building departments are also widely recognized as overextending state standards.

Implementation: Perhaps the most frequent overextension of state building standards occurs during inspections. The state does attempt to keep local building inspectors up-to-date by sending each municipal building department a copy of BBRS’s quarterly newsletter, *Codeword*, which contains information about recent code amendments, BBRS policies, and the like; by requiring local building inspectors to attend the monthly meetings held by regional state building inspectors, who communicate updates and discuss problems with interpreting the building code; and by requiring inspectors to complete 45 hours of continuing education every three years. Local building inspectors can also obtain information through building associations.

The training mandated and information provided by BBRS is inadequate. BBRS officials like Thomas Riley acknowledge that they do not have the time or resources to train local officials well. Local building officials’ interpretations of and even knowledge about state building code vary significantly from one town to the next. Vernon Woodworth, chair of the Codes Committee for the Boston Society of Architects, claims that inspectors suffer from a lack of training, tend to learn on the job, and do not spend a lot of time reading the state’s building code. But even if they did want to pour over the code, their time might be wasted. Paul Moriarity, a building code expert who is helping to write the upcoming seventh edition of the Massachusetts code, says that he knows of at least one local building department that is using an edition of the code earlier than the current sixth edition.

The discrepancy in knowledge from one local building inspector to another is especially pronounced with regard to the rehab code, according to a study by David Listokin, an expert on housing rehabilitation.³⁹ When the rehab code first went into effect, the state provided extensive training about the code for all building inspectors. But now, local inspectors have varying degrees of expertise with regard to the code, and in particular differ in their knowledge about compliance alternatives, the availability of which can significantly impact the costs associated with rehabilitating a building. “In municipalities

like Boston, Worcester, Springfield, and other large cities, the inspection services departments have professional staffs more capable of processing compliance alternatives. Few, however, employ rehab specialists who are trained to deal with the particular nuances of Article 34. Some (inspectors who are not experts) rise to the occasion and are readily engaged in thinking through compliance alternatives, but others tend to avoid these requests.”⁴⁰ In other cases, building inspectors are reluctant to authorize departures from the code because they fear that they will be criticized for failing to secure public safety—another problem that additional education and training could remedy.

In other cases, local building inspectors interpret the state code differently not because of a gap in knowledge but because of the building inspector’s own sense of how things should be or the inspector’s willingness to implement the requests of other local officials. Benjamin Fierro says that building inspectors have “dual masters,” since they are trained and licensed by the state but are employed by individual communities. Inspectors, loyal to the city or town that has hired them, often ignore the state building code, essentially telling developers to “do it this way in our town.” Since most homebuilding companies tend to work in the same few communities—and thus want to remain in the good graces of local officials in those communities—they tend to go along with what the inspector requires and pass the cost along to homebuyers. New Jersey, frequently an innovator in building code policy, has made building inspectors employees of the state rather than individual municipalities in an attempt to ease the problem of local building inspectors who act as, in Fierro’s words, “de facto zoning enforcement officers.” John Smolak of Peabody and Arnold notes that developers are reluctant to challenge local officials: “There’s a fear of burning bridges. It’s easier to move on and find another parcel of land.”

It should come as little surprise that for whatever reasons—either a lack of knowledge about the code, personal inclination, or the opinions of those to whom they report—some local building inspectors continue to apply the defunct “25-50 percent” rule that required that old buildings undergoing extensive repairs be brought entirely into compliance with the code requirements for new construction. “Where an extensive rehab project (in terms of expense) is contemplated, building code officials may demand a building improvement that goes beyond the standards specified. The building owner and architect will often comply to ‘move the project along’ and to not antagonize the code officials.”⁴¹

But even if local building inspectors are prepared to enforce the state code correctly, their task is particularly daunting because so much of the homebuilding industry is in the dark about what the state requires. The BBRS adopts about 15 amendments to the building code each year and issues numerous decisions related to the interpretation of the code, but the board fails to communicate such changes effectively. The board does not send updates to licensed members of the building industry or include updated code information—or *Codeword*—on its website. Ironically, in the section of the website entitled “Is Your Code Current?” BBRS’s own information in the summer of 2002 was not current; the site listed only four sets of amendments (all from either 1997 or 1998) that had been adopted into the sixth edition of the building code.

To get updates about changes to the code, developers and others must pay a \$16 fee to subscribe to *Codeword* or be a member of an organization such as the Home Builders Association. But even with dissemination of the new rules and regulations, code enforcers often work with outdated documents. Frustrated with the lack of knowledge about the

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Code enforcement at the local level falls into the hands not only of building inspectors, but also of other local officials, such as fire chiefs and members of boards of conservation and health, who have little or no training in code enforcement. Fire chiefs often hold the trump card in local implementation of building and specialty codes.

code among the building industry, Moriarity filed a bill with the state legislature two years ago that would have required continuing education for construction supervisors, but the bill languished on Beacon Hill. The Boston Society of Architects' Vernon Woodworth estimates that 90 percent of the industry does not following the state's new energy conservation requirements, which were adopted in 1998.

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Fire officials often insist on stricter standards than those mandated by the state fire code, but as Listokin explains, that is not the end of the story. First of all, fire departments tend to lack well-trained plan reviewers. "Unlike minimal requirements for building code officials, the fire marshal's designee does need not have any particular professional background or training for the task at hand. Often the marshal's plan reviewer is an older firefighter who needs a desk job until retirement or a firefighter who has been injured in the line of duty."⁴²

Unlike the building inspectors, the fire department reserves the right to make additional requirements once a building is finished, a situation that "creates great consternation among building professionals who thought they were in full compliance after preconstruction reviews, only to find at the end of construction that there is a long list of additional or changed requirements being imposed by the fire marshal."⁴³ Sometimes, these requirements include bringing the building into compliance with the building code that is in effect at the time of the project's completion and which might differ significantly from the code in place when the planning and construction commenced.

Massachusetts Rehabilitation Code: Undoing Reform

In a state with one of the oldest building stocks in the nation—where the greatest development challenges lie in older industrial and mill cities like Lawrence, Lowell, and New Bedford—the desirability of renovating existing structures for housing and other uses is obvious. Many old buildings, located near attractive waterfronts or near railroad lines, could offer ideal space for new housing. Existing homes that were allowed to deteriorate during decades of disinvestment and population exodus also could accommodate housing if they were renovated to meet the contemporary needs of families. But the Massachusetts building code, once considered a model for rehab of existing buildings, has become a barrier instead.

The 25-50 Rule: Prior to 1975, cities and towns in Massachusetts used the so-called 25-50 rule to govern repairs to existing buildings. If the value of the rehabilitation were equal to 50 percent or more of the value of the building, the entire building would have to be upgraded to meet current building standards. If the value of the rehabilitation ranged between 25 percent and 50 percent of the building's value, only the specific repairs made to the building would have to be upgraded. If the value of the rehabilitation was equal to less than 25 percent of the value of the building, the area being repaired did not have to conform to current standards.

The 25-50 rule was especially problematic in the case of older buildings in older urban areas. A house bought for \$100,000 in Lawrence, for example, could only have renovations totaling less than \$50,000 before the entire structure would need to be

Dampening Rehabilitation: Sprinkler Regulations

One particular complication posed by local fire officials relates to the rehabilitation of existing buildings. Thirty-four Massachusetts communities have adopted a local option law (MGL chapter 148, sec. 26I) that requires sprinklers to be installed in residential buildings that contain four or more dwelling units and that are undergoing “substantial alteration.” The definition of “substantial alteration” varies significantly from one community to the next, however. Herbert Eisenberg, the architect and code expert, charges that some local officials have even used the sprinkler provision to prevent the creation of affordable housing units. Moreover, local officials have applied the law to row houses, which are usually separated by firewalls and therefore resemble one- or two-family homes rather than the multi-family dwellings that the law targets. Listokin asserts that “the law should be clarified or row houses (new or rehabilitated) may become cost prohibitive.”⁴⁴

“When a building is being rehabilitated, at what point do you require it to be sprinkled?” asks Thomas McNicholas, a former Boston building commissioner. “When it comes to three-family houses being sprinkled, it’s crazy. A house on Shawmut Avenue [in Boston] was recently required to be sprinkled. That costs an extra \$20,000. Even worse is the requirement that builders use standpipes for fire hose connections. Standpipes are meant for fighting fires in large buildings, where you need to [distribute] water horizontally. There is absolutely no reason for a standpipe in a smaller building like a three-decker. That could cost an extra \$25,000 or \$30,000....When you bring in a new service—when an extra unit requires utilities like gas or electric or water service—everything’s open. It’s in the eye of the beholder whether you need to bring the whole building up to code.”

brought to the same standards as new buildings. Since these structures are severely undervalued compared to their potential worth—precisely because of flaws that would require significant investments in repairs—the 25-50 percent rule militated against major improvements.

Another problem with the 25-50 percent rule was that, as was the case with local zoning variances, property owners could only get exemptions from local building inspectors on a case-by-case basis. The resulting process of gaining approval for exemptions was slow, uneven and unpredictable—and so it drove up risk and, again, final costs.

The major conceptual problem with the requirement for total overhaul is that many elements of the buildings were safe even if they did not meet new building standards. Ceiling heights, window sizes, door widths, stair risers, emergency exits, fire alarm systems, and floor sags do not profoundly affect a building’s health or safety, but new building standards might require a total gutting of the building. For instance, in the late 1970s developers sought to transform the property at 175 Commonwealth Avenue in Boston from a church into a five-unit dwelling. The cost of construction was estimated to be \$350,000 and the replacement cost for the building was in the range of \$330,000 to \$500,000, and so according to the 25-50 percent rule, the entire structure would need to be brought into compliance with the code for new residential buildings. Such a requirement was particularly burdensome because the code for new construction would not permit the existing connecting balconies to be used as a means of egress. Normally builders could construct a fire escape as an alternate means of egress, but the building was located in an historic district where the special commission in charge had explicitly forbidden fire escapes. An interior stair tower was the only other option, but building one would have “further reduced the already very cramped interior area in this typically narrow row house, making rehabilitation unlikely and very uneconomical.”⁴⁵

The Hazard Index: Reforms in the latter 1970s—most importantly the incorporation of what was then Chapter 22 (and later Chapter 32 and currently Chapter 34)—provided developers with the tools to complete renovations to that and similar buildings. The reforms were prodded by a National Bureau of Standards study of building rehabilitation that concluded that the 25-50 percent rule needed to be amended. In 1979, Chapter 22 replaced the 25-50 percent rule with a “hazard index” that corresponded with the health and safety posed for a building’s users and neighbors. The index gave residential buildings a rating of 2, lecture halls a rating of 4, nightclubs a rating of 7, and so on. If a building’s rehabilitation involved a change of one or less in the hazard index, the renovations would need to meet a minimal set of safety requirements. If rehabilitation involved a change of two or more in the hazard index, the renovations would have to bring the entire building into compliance with the current building code (with some exceptions for energy and structural provisions). The code also provided for compliance alternatives in order to maximize flexibility while still meeting safety goals. Local building inspectors bear responsibility for determining which compliance alternatives are acceptable and which are not.

Since its adoption in 1979, Massachusetts has made a number of alterations to this cutting-edge rehab code. The result has been a reversal of the intent of the reform—and a more difficult rehabilitation process.

The state’s first changes came in 1980, when the state legislature directed the board to add energy conservation requirements to building rehab and increased the amount of time for which a building needed to be occupied (from two to five years) to qualify for the simpler rehab code.

Seismic Standards: In 1995, as a result of a study documenting catastrophic losses that might occur as a result of an earthquake, the state added new seismic provisions to the rehab code.⁴⁶ Previously, seismic requirements were tied to the fire safety-driven hazard index. If there was no change in the building’s hazard index, there would be no seismic requirements; if there was an increase in the hazard index by one, the code mandated that the building’s lateral load resistance not be reduced; and if there was an increase of two or more in the hazard index, the building would have to meet the seismic requirements for new buildings. The updated seismic provisions created a separate seismic hazard scale with its own triggering factors, including whether the alterations increase the building’s occupancy by 25 percent or more (for buildings with occupancy of more than 100 people only), whether the cost of the rehabilitation is greater than 50 percent of the building’s value, and whether there is any change in the building’s use as measured on the regular hazard index. Based on these factors, a building is assigned a seismic hazard category of 1, 2, or 3, with specific safety provisions corresponding with each number. Special allowance is made for buildings that do not meet current ductility requirements.

A 1994 case study by BBRS concluded that the new seismic requirements succeeded in reducing injury risk, clarifying standards, and relaxing requirements for buildings that do not meet modern ductility standards. But the study also conceded that the new standards increased construction and design costs.⁴⁷ Experience has demonstrated that in addition to increasing these costs, the new seismic requirements have also triggered structural peer reviews, which impose further time and cost burdens. None of the situations mandating a peer review, which are detailed in section 110.11 of the building code, specifically relate to seismic issues, but “the new [seismic] standards are relatively complex, so peer reviews are sometimes called for when similar situations resulted in routine waivers in the past.”⁴⁸

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The hurdles imposed by the new seismic requirements have had the net effect of discouraging rehabilitation projects. According to Thomas McNicholas, “Abolishing [the 25-50 percent rule] was supposed to get rid of the craziness. But the seismic rules are a case in point about how [rules] creep back in....The language regarding seismic issues is crazy....Bracing [buildings] would make the cost [of rehabilitation] prohibitive for almost all old buildings. It gets us back to percentages that no one can justify....For example, breweries are great places to make more housing but people walk away from them because of this rule alone.” Brian Gore of the BBRs acknowledges that “this would be cost prohibitive” but adds “we have a variance process” for extraordinary situations where the code impedes reasonable rehab projects.

Revising the Reforms: In 1997, the state made further alterations to the once-innovative rehab code. The state appeared to remove three use groups—assembly use, institutional use, and residential use—from the hazard index. According to many readings of the new standards, these groups were now required to conform to the applicable codes for new construction. According to Moriarity, the state did not intend for the stricter requirements for residential buildings to apply to small (i.e., one- or two- family) buildings, as had been done in some communities; the new version of the code will clarify the rules about what standards apply to what kinds of buildings. Thomas Riley of the BBRs states simply, “They are right to be griping about this....Nobody knew how to interpret the rules....The additional language has stupefied the practitioners.”

The net result of changes incorporated into the rehab code since 1979 has been to recreate barriers to rehabilitation in Massachusetts. And, as new requirements have seeped into the rehab code, they have eroded a key advantage of the original Chapter 22—brevity. In the third edition of the code, published in 1980, the relevant section (known as Chapter 22) is 10 pages long. In the current sixth edition, the provision (now known as Chapter 34) is 17 pages.

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SPECIAL CONSTRUCTION STANDARDS

Even when land is available and developers meet basic zoning and building standards, special state regulations can dampen housing production.

Title 5

Massachusetts has one of the nation’s toughest laws for residential septic systems and cesspools. Title 5 was originally adopted in 1978 and subsequently underwent extensive tightening in 1995.

Key among the 1995 provisions is the requirement that a state-licensed system examiner inspect septic systems and cesspools before the title to property is transferred, the use of a building is altered, or a building is expanded. Some 600,000 properties in the state rely on septic systems.

For large systems, shared systems, and systems serving a condominium with five or more units, the state requires inspections to be conducted on a regular basis. If a system fails an inspection, the owner of the property is responsible for bringing the system up to code. The average cost of replacing a septic system is \$6,500 to \$7,100, but the procedure

Title 5 Process: Inspection Before Housing Production

10,000 gallons per day or less	More than 10,000 gallons per day	Innovative alternative technology: IAT	Nitrogen sensitive area /protective water supply area
<p><i>Jurisdiction:</i> Local board of health</p> <ul style="list-style-type: none"> witnesses the soil evaluation—determines the loading rate (amount of gallons that the sanitary flows) holds a hearing reviews the engineering plan registers the sanitarian—criteria: regulation DEP, title 5 reviews the design issues <i>Disposal System Construction Permit</i>. <p>Once the construction is finished, the local board of health does an inspection and issues the <i>Certificate of Compliance</i>.</p> <p><i>Time frame:</i> From 6 to 9 months if everything goes well.</p>	<p><i>Jurisdiction:</i> DEP (Developer must already have the town permit before going to DEP)</p> <p>Various DEP processes include the following:</p> <ul style="list-style-type: none"> Administrator review (30 days) Technical review, including 23 step DEP process, legal review done by an attorney from DEP, and hydrogeology review (200 days) Public notice (90 days) If all goes well, DEP issues the <i>Grown Water Discharge Permit</i> <p><i>Time frame:</i> 320 days minimum (at least 10-11 months if everything goes well)</p>	<p><i>Jurisdiction:</i> DEP (In case of failed Title 5 system—remedial use)</p>	<p><i>Jurisdiction:</i> State</p> <p>One can build until 4-bedroom house per acre land—maximum of 440 gallons per day (110 gallons per day per bedroom).</p>

sometimes costs in excess of \$25,000, depending on the particular site involved.⁴⁹

A decision to sell, change, or add on to property is thus complicated by Title 5 requirements, although the real estate market seemed to adjust fairly well to the new requirements. “The cost of inspection was contained by the large number of certified inspectors. The time required for inspections has been accommodated by the real estate sales industry. Title 5 inspections are now understood to be one of the first ‘check-list’ items to be accomplished when a house is listed for sale.”⁵⁰

But Title 5 has a more profound effect on the creation of new housing units:

- The 1995 changes to Title 5 increase the distance by which a septic system must be set back from a reservoir from 50 to 400 feet and alter the size of homes that can be built on “isolated lots,” limiting new construction to one bedroom per 10,000 square feet. The Department of Environmental Protection estimates that these provisions apply to between 3,000 and 5,000 lots; many of these lots are located in the southeastern part of the state.⁵¹ The provision clearly limits the creation of new housing; a house constructed on a half-acre isolated lot could have no more than two bedrooms.

- Percolation rate standards incorporated into Title 5 are far more restrictive than scientific standards would recommend. To understand the issue, it is useful to break down the septic system into two parts. When wastes are put into the system, they enter the drain field, a container where wastewater is treated and then released into the ground. The remaining wastes are stored in the septic tank. Regulations set a minimum number of minutes for an inch of wastewater to be treated—the “percolation rate”—before it can be

released. Percolation rates vary depending on the consistency of soil, with coarser soils having faster percolation rates and denser soils, like clay, having slower rates. A report published by the Cooperative Extension at the University of Nebraska's Institute of Agriculture and Natural Resources says that in order to be appropriate to use for a drain field, soil should have a percolation rate that is between 5 and 60 minutes per inch. If the percolation rate is too fast, sewage would flow through the drain field too rapidly and reach the groundwater without adequate treatment. If the percolation rate is too slow, the drain field could become clogged, resulting in hydraulic overload and potential septic system failure. Current Title 5 requirements state that the percolation rate of drain fields associated with new construction be no greater than 30 minutes per inch, meaning that many land parcels that meet scientific standards for septic systems are not available for building.

Before leaving office, Governor Swift caused controversy when the state Department of Environmental Protection issued a regulation that changed the acceptable perc rate from 30 to 60 minutes. Environmentalists and "smart growth" advocates protested that the revision would lead to more housing construction in areas that they consider inappropriate for new building. The ultimate fate of the rule remains uncertain.⁵²

Local Septic Regulations: Some 125 communities in Massachusetts have adopted septic regulations that go beyond the Title 5 requirements. Local boards of health are authorized to adopt stricter sanitary regulations than those required by the state. The regulatory process requires local boards of health to hold public hearings and later report the requirements to the DEP. Local authorities are not required to base their standards or actions on science. Governor Swift's Barriers Commission identified seven specific areas where local regulations exceed those promulgated by the state:

- **Oversizing requirements** can add substantially to the cost of housing. Such requirements include increasing the Title 5 flow allowance by 50 percent or even double, considering all rooms above the first floor to be bedrooms in Title 5 calculations, and increasing the Title 5 standard for the long-term acceptance rate of soil.
- **Process limitations** can add both additional costs and time delays to housing construction. These limitations include placing restrictions on the time of year when soil evaluations and percolation tests can be observed and on-site systems can be constructed, making fewer agents than necessary available for witnessing soil testing and conducting design reviews, and mandating that systems be designed based upon "policies" instead of regulations or good engineering practices.
- **Reserve area restrictions** increase the requirements for setbacks between primary and reserve areas.
- **Additional percolation rate limits** include decreasing the maximum percolation rate to 20 minutes per inch, as opposed to the 30 minute per inch maximum established by Title 5, and establishing a minimum percolation rate of two minutes per inch.
- **Limiting or prohibiting alternative technologies** prevents the adoption of lower-cost systems being installed elsewhere in the United States. As is the case in other areas of modern life, processing and disposing of wastes has produced new technologies in recent years—but Massachusetts's towns are reluctant to approve these new approaches. But there is some good news on this front. In 1998, the state opened the federally funded Massachusetts Alternative Septic System Test Center in Sandwich. The center was established to test and promote innovative wastewater disposal systems in Massachusetts.

Before leaving office, Governor Swift caused controversy when the state Department of Environmental Protection issued a regulation that changed the acceptable perc rate from 30 to 60 minutes.

- **Limiting or prohibiting mounded systems** expands the land needs for housing and crimps building location. Many communities have begun to require mounding of septic systems to protect groundwater. Most experts have concluded that two-foot buffers between septic systems and groundwater is sufficient to protect the groundwater. State regulations require a four-foot buffer, while some towns have adopted buffers from six to eight feet.

- **Prohibiting community systems** reduces the possibility for shared costs. Some towns prohibit shared septic systems among households, though the practice is common in other parts of the United States.

All seven of these types of restrictions increase costs for developers and decrease the amount of land that is available for development, without having a “demonstrable public health or environmental protection benefit.”⁵³

To combat the problem of communities imposing septic system requirements that exceed Title 5’s provisions, Governor Swift ordered DEP to require local Boards of Health to explain in writing why they need to go beyond the state’s provisions. It remains unclear, however, whether DEP will have any veto power if it does not approve of a community’s explanation for more demanding local rules. At a June 2002 meeting of the Home Builders Association of Massachusetts, Swift said her goal in issuing the directive to DEP was simply “to make cities and towns think deliberately before they pass bylaws that make it harder to build.”⁵⁴

Some of the 1995 changes to Title 5 do attempt to make things easier for developers and homeowners. Additional varieties of fill are now acceptable; the state has approved the use of more alternative technologies, which potentially could save money and hassle; and the state has also adopted a new “maximum feasible compliance” standard, such that local Boards of Health can approve upgrades that bring existing systems as close to compliance as possible, instead of a homeowner having to apply to DEP for a variance because of the quirkiness of a particular system. DEP has instructed local Boards of Health to consider the financial viability of the Title 5-mandated option in determining whether a system qualifies for maximum feasible compliance provisions.

To combat the problem of communities imposing septic system requirements that exceed Title 5’s provisions, Governor Swift ordered DEP to require local Boards of Health to explain in writing why they need to go beyond the state’s provisions.

Handicap Access

Through the Architectural Access Board (AAB), Massachusetts establishes its own guidelines for handicap access. State standards tend to be much stricter than federal requirements.

Other aspects of the state’s handicap access code impose hardships on the process of rehabilitating old buildings for housing. David Listokin provides an extensive survey of difficulties with the Massachusetts handicap access code in a report for the U.S. Department of Housing and Urban Development.⁵⁵

According to Listokin, many complications arise from the fact that handicap access provisions are wholly separate from the state building code. Some provisions of the handicap access code actually conflict with the state building code, potentially creating a headache for architects and building inspectors. Since Chapter 34 applies only to the state building code, when renovating a building developers also need to comply with the provisions set forward in the AAB code. The AAB requirements significantly increase the cost of repair. Listokin notes, “If the AAB calls for clear passageways of 36 inches but an

existing hallway is only 35 inches wide and bounded by a structural wall, the access mandate may be to tear out the wall and widen the passage by 1 inch. If a three-story building has a ground floor storefront with two apartments on the floors above, then an elevator may be required, even though the \$50,000 cost is prohibitive and means that the building is not likely to be rehabilitated.” Worsening the problem, the people charged with enforcing the code tend to be literalists who “measure each detail down to the fraction of an inch,” and intimidate local code officials who otherwise might have been more flexible.⁵⁶

Stricter Handicap Access Standards in Massachusetts

Massachusetts state guidelines for handicap access tend to be more stringent than federal guidelines.

Building Component	Federal Guidelines	Massachusetts State Guidelines
Regulations	Guidelines only; builders may use alternatives	Absolute requirements; advance variances required for departures
Compliance	After the fact, upon action by an aggrieved party	Before the fact by the Architectural Access Board or a building official; after the fact by any party
General applicability	4 or more units	3 or more units
Applicability in walk-up buildings	Ground floor must be accessible, or at least 20 percent of the ground floor if otherwise impractical	Ground floor must be accessible; no exceptions, including second floor if commercial/parking uses on the ground floor
Entrances in public spaces	At least one entrance must be accessible, unless impractical due to terrain	All primary public entrances must be accessible and on an accessible route; no impracticability exceptions
Common areas in public spaces	All common spaces and facilities must be accessible except, if otherwise impractical, only a reasonable selection of them must be	All common spaces and facilities must be accessible; no exceptions
Laundries in public spaces	No restrictions, so long as assistive devices are available	No front-loading machines; no stacked washers/dryers unless capable of replacement
Passageways in public areas	ANSI standards (typically 3 ft. clear)	3 ft. door providing 34 in. nominal opening
Passageways in dwelling units	2 ft., 10 in. door providing 32 in. nominal opening	3 ft. door providing 34 in. nominal opening
Thresholds	$\frac{3}{4}$ in. maximum threshold; $\frac{1}{2}$ in. maximum drop from interior floor level to exterior grade, except 4 in. if impervious or as required by local code	$\frac{1}{2}$ in. maximum threshold; $\frac{1}{2}$ in. maximum drop from interior floor level to exterior grade, except 4 in. if impervious and capable of retrofitting
Switches and outlets	15 in. to 48 in. above floor (reduced if overhang)	15 in. to 48 in. above floor
Thermostats and intercoms	Same as switches, but with flexibility to relocate	36 in. to 48 in. above floor (or relocatable)
Circuit breakers	No guidelines	36 in. to 48 in. above floor
Primary bedrooms	No guidelines	Minimum of 10 ft. by 13 ft. for furnishing and maneuvering
Secondary bedrooms	No guidelines	Minimum of 10 ft. by 11 ft. for furnishing and maneuvering

Source: David Listokin et al., *Barriers to the Rehabilitation of Affordable Housing: Volume III*.

Certain AAB requirements are triggered when a project costs more than \$100,000 or when a rehab project costs more than 30 percent of the value of the existing structure. Therefore the AAB makes developers less likely to undertake expensive projects—by reverting to the sort of cost-triggering mechanism that the state’s rehab code attempted to eliminate.

Further complicating the situation for developers, the AAB must hear all requests for variances—a process that is often time-consuming. A representative of the Massachusetts Housing Finance Agency reported to Listokin, “Triggering involvement with the Architectural Access Board will generate a minimum of three months delay in a project. There is little room to negotiate and this is preventing some rehab from proceeding.”⁵⁷ In a business already rife with delays, the development of a streamlined process—and a wider range of remedies to assure access to homes—would clearly improve the prospects for housing construction and rehabilitation.

LOCAL REGULATION: ZONING AND LAND USE

As zoning standards have become more restrictive and rigid, developers have been required to seek special variances from local housing and development agencies—even when the kind of housing they propose matches the scale and style of existing units in the community.

Under Chapter 40A, the Zoning Act of 1965, local governments have the authority to enact zoning codes to “encourage the most appropriate use of land” and promote “a balance of housing opportunities.”⁵⁸ Zoning codes regulate the design, dimensions, and location of buildings and other structures in the community.

Throughout the state, cities and towns in the last generation have adopted zoning standards that preclude the development of significant new housing. Not only does the “envelope” for housing allow fewer units, but it also increases the per-unit cost of housing by increasing land requirements and reducing the efficiencies of scale that come from multi-unit construction. “Buildout analyses” of cities and towns across the Commonwealth—which estimate how much development would be allowed to occur under current state and local building regulations—found that 95 of 155 communities required, on average, more than one acre per dwelling unit.⁵⁹

Most communities have not undertaken detailed analyses of their capacity for housing now compared with previous periods. But one has, and the results are striking. The town of Arlington calculated its buildout both before and after 1975 modifications to its zoning code, which increased the number of zoning districts in the town and tightened dimensional controls, and found that its changes reduced the town’s buildout from 75,000 people to 45,000 people. The actual population of the town decreased from 53,500 people pre-1975 to 42,000 people today. Developers, government officials, and other housing experts told the author of this report that Arlington was not more restrictive than any other community in Greater Boston; if anything, Arlington has a strong reputation for its openness to development of all kinds.

As zoning standards have become more restrictive and rigid in the last generation, developers have been required to seek special variances from local housing and development agencies—even when the kind of housing they propose to build matches the scale and style of existing units in the community. Those processes that often require lengthy community processes and negotiations with local officials.

The demise of the triple-decker underscores the antagonism toward housing development in Massachusetts cities and towns. The triple-decker is New England’s unique

contribution to housing affordability. These three-story buildings allow the human scale that characterizes many classic neighborhoods like Dorchester, South Boston, and Jamaica Plain. For generations, many working class families could afford home ownership by buying a three-family building and renting out spare units—and at the same time offer a good deal to family and friends. Triple-deckers offer a neighborhood the possibility of developing density—not only a good place for many people to live, but also support for local businesses, cultural and community organizations, and transit lines—without overwhelming the neighborhood. But modern zoning codes virtually outlaw triple-deckers.⁶⁰

Issues in Local Zoning

Over time, zoning codes across Greater Boston have become antagonistic to the development and rehabilitation of housing. By separating uses, increasing lot sizes and parking requirements, reducing allowable density, banning boarding houses and accessory apartments, and restricting manufactured units, local zoning severely reduces the options available to developers.

Separation of Activities: Historically, zoning codes were intended to provide protection from the negative impacts of manufacturing, highways, dumping, large-scale facilities such as bus shelters and hospitals, and high-impact retail and commercial activity. By separating different activities into separate “zones,” local codes prevented noxious activities from damaging neighborhood life.

In the early years of zoning, communities still commonly located a variety of activities near each other. For example, downtown business districts often included residences as well as public services and amenities. But in the years after World War II, many communities adopted zoning regulations that strictly separated activities. Residential areas were strictly for housing, retail areas were strictly for retail, industrial areas were strictly for manufacturing, and so on. Modern zoning not only separates activities from each other, but also creates zones within zones. Rather than simply designating an area for residential development, modern codes restrict development to certain kinds of housing—such as single-family homes, multi-family homes, or apartment buildings.

In general, older communities allow for more mixed use zoning than cities and towns that developed bylaws after World War II. Arlington, Belmont, Brookline, Newton, and Watertown all offer opportunity for a mix of uses in their neighborhoods and districts. Still, the overall trend is toward greater separation of activities and less dense development in all of the zones of the community (see Appendix C).

Local cities and towns have used zoning tools other than dimensional and density requirements to reduce their community’s housing capacity. For example, when Arlington rewrote its zoning bylaws in 1975, it converted a number of uses from by right to special permit, with the reasoning that changes need to be carefully controlled in order to dampen potential adverse effects. In 1985, Waltham created non-buildable Conservation-Recreation Districts. Currently, 15.8 percent of Waltham lies in CR Districts.

Planned Unit Development offers one tool that cities and towns can use to encourage developers to include a mix of residential, retail, and recreational uses in a given area. Cambridge has adopted that tool. According to the city’s ordinance, “Planned Unit Development districts and uses...are intended to provide greater opportunity for the construction of quality developments on large tracts of land by providing flexible guidelines which allow the integration of a variety of land uses and densities in one development.”

Modern zoning not only separates activities from each other, but also creates zones within zones. Rather than simply designating an area for residential development, modern codes restrict development to certain kinds of housing—such as single-family homes, multi-family homes, or apartment buildings.

Since the PUD approval process involves a good deal of interaction with various city boards, Cambridge's government gets a significant say in determining how the city will look.

Lot Size: Minimum lot size is a powerful zoning tool that communities can use to limit development. To give some examples: forty-seven percent of Needham falls into either the Rural Residence-Conservation or Single Residence A districts, where the minimum lot size is an acre; over half of Milton (50.8 percent of the town) is part of the Residence A district, where the minimum lot size is almost one acre; and over half of Lexington (52.5 percent of the town) falls into the RO district, where the minimum lot size is more than three-quarters of an acre. Many Boston area communities have increased their minimum lot sizes significantly since first adopting zoning bylaws in the 1920s. Lexington increased its minimum lot sizes in 1938, 1950, and 1953. Waltham increased its minimum lot sizes in 1952 following a rash of post-World War II development. When Belmont overhauled its zoning code in 1988, it introduced a minimum lot size requirement as well as a requirement regarding the percentage of a developed lot that must remain open space.

FAR and Height Limits: Limiting the heights and floor-to-area ratios (FAR)⁶¹ of buildings is a standard practice for controlling the density of neighborhoods. Urban residential districts limit heights to 30 to 50 feet. Suburban communities usually impose stricter height limits across the board. The highest buildings allowed are usually in the range of 30 feet, while some residential communities allow heights of only 20 feet.

In recent years, cities and suburbs have put strict limitations on heights for residential developments. For example, in 1988, Everett tightened its height limitations on apartment buildings. In the past few years in Newton, a perceived problem with "monster homes" has led the city to insert a FAR requirement in cases of new buildings or when 50 percent or more of an existing structure is torn down, and to reduce the allowable height of dwellings from 36 feet to 30 feet (or from 3 stories to 2½ stories).

Public bodies in Greater Boston have experienced political problems increasing heights for housing developments. The Boston Redevelopment Authority in 2002 proposed increasing the height limit for buildings in the city's financial district, from 155 to 350, if half of the overall square footage was reserved for housing. The authority was forced to shelve the proposal temporarily after community groups and members of the City Council protested. The BRA Board of Directors approved a new overlay in January 2003.

Density: Cities and towns have explicitly limited the density of districts by changing the size of the structures that can be located there. Over the past 20 years, Cambridge has rezoned a number of districts from high-density to low-density in an attempt to "maintain the character of the city's neighborhoods," according to Les Barber of Cambridge's Department of Community Development. In Everett, the zoning code has been altered to convert Apartment Districts to Dwelling Districts, due to the petitioning of neighbors who were unhappy because of the creation of large apartment complexes. At one point, one-quarter of the city was located in Apartment Districts, but currently there are only two Apartment Districts. Many of these district conversions occurred in the late 1960s and early 1970s, although some occurred as late as 1989. Also, prior to 1975, Everett permitted single-, two-, three-, or four-family residences in its Dwelling District. In May of 1975, the city amended its zoning code to ban four-family residences and allow only certain buildings to be converted into three-family housing.

In recent years, cities and suburbs have put strict limitations on heights for residential developments. Public bodies have experienced political problems increasing heights for housing developments.

Local Progress

In spite of the trend towards downzoning, some Boston area cities and towns have found innovative ways to increase their housing capacity.

Within the past 15 years, Lexington has adopted two significant changes to its zoning bylaw. First, it implemented a cluster bylaw that bases the number of allowable units on impact measures rather than on unit measures. In order to determine the permissible number of units, the town uses multipliers for factors such as gross floor area, living area, lot size, and vehicle trips generated. Second, Lexington abolished its old multi-family zone. Now, rather than decreeing the dimensional requirements for multi-family developments, Lexington creates a new RD district, with its own dimensional table based on the measurements of the area where the development is to be located, for each proposed multi-family development.

Milton has allowed developers to convert some of its old estates into condominium complexes, albeit with the requirement that the density of the condominiums does not exceed the density permitted for single-family home districts. The town has also permitted lots that are four acres or larger not

to have frontage on a public way. This provision establishes the possibility for development in cases of very deep lots where it would be impossible to build a dead-end road because the town has established a maximum length for dead-end roads. Duxbury provides for “flexible zoning” to streamline the development process and reduce the time and uncertainty of projects. The flexible zoning laws set general goals while allowing more leeway for a variety of projects that meet the goals.

Perhaps the most significant improvement in zoning for housing has occurred in Quincy. Homeowners can now make horizontal and vertical extensions to non-conforming structures by right, whereas they previously needed to obtain a special permit in order to do so. According to Kathy Brash, former clerk for the Zoning Board of Appeals, the new requirements for non-conforming dwellings have made a “big difference” in terms of making it easier to create additional living space. The changes have enabled homeowners to build additions without going through the zoning board of appeals,” Brash said in an interview.

Parking: One hundred years ago, parking spaces were not of particular concern to homebuyers. Now, as automobiles have become ingrained into the American way of life, homes must be adapted accordingly. With the exception of Needham, the cities and towns we surveyed have imposed parking requirements for residential units, most requiring two parking spaces per dwelling unit for one- and two-family homes, with some imposing fewer space requirements for smaller or multi-family homes.⁶²

In the past decade or so, both Quincy and Somerville increased their parking space requirements; Cambridge has bucked the trend and reduced its parking requirements (to one per dwelling unit for all residential uses) to encourage the use of alternate sources of transportation.

There is no doubt that parking is a basic requirement of housing, especially in suburban communities that lack effective transit systems. But at the same time, many of the urban and transit-centered communities offer great opportunities to reduce parking requirements and expand the area available for housing development. Greater Boston is well known as a region of “streetcar suburbs”—communities that developed around trolley and train stations—but in recent years there has been no serious attempt to build significant amounts of housing near transit nodes and corridors. The Massachusetts Bay Transportation Authority is the largest landowner in eastern Massachusetts but has not developed a major agenda for development of any kind along its lines. Interestingly, the MBTA has the authority to build parking garages on its property, but not residential or commercial properties. This understandable but counterproductive situation exacerbates the housing and congestion problems at the same time.

Accessory Apartments: Historically, households with elderly parents or young adults have added on to their homes to provide independent housing at low cost to family members. Accessory apartments—also known as in-law suites and “granny flats”—provide simple units with separate entrances, kitchens, and bathrooms. But most cities and towns forbid the construction of in-law suites. Eight of the 13 cities and towns along the edges of Boston do not permit in-law suites, four communities permit in-law suites so long as certain conditions are met, and only one city allows in-law suites by special permit only.

Why the reluctance to permit accessory apartments? Community planners fear that when the homes containing these apartments are sold, or the original inhabitants of the in-law suite move out, the owners of the house will rent the apartment on the market. Alan McClennan, the highly regarded director of planning and community development for Arlington, says that his town considered permitting in-law suites but decided against doing so because of the potential for creating a “back-door” way of violating the town’s bylaw. Although it would be possible to mitigate the problem by issuing special permits and closely monitoring each affected dwelling, McClennan fears that doing so would create an “administrative monster.”

Although communities might outlaw these apartments, their rules are not necessarily effective. Lee Newman, Needham’s Planning Director, says that even though the town does not permit in-law suites, she knows that many exist illegally.

Lodging Houses: Lodging houses, or “single-room occupancy” apartments (SROs), provide a housing option for people who cannot afford to rent standard apartments. “SROs are a disappearing resource in Boston,” said Leslie Lawrence of the Massachusetts Coalition for Homeless. “They are viewed as housing for former DMH patients, and they can serve a much wider group.”

In 1950, Boston had more than 25,000 single rooms that could be rented by the week for modest amounts. Today, the city has fewer than 2,500 rooms.⁶³ Of the 12 communities for which information about lodging house policies was available, three communities prohibit them outright and the other nine communities permit them so long as certain specifications were met—for instance, special permits were obtained from the city or town or the lodging house was located in a particular district. (The Pine Street Inn, the South Middlesex Opportunity Council and Caritas Communities have been devoting resources to SRO preservation and development with state money. Caritas recently renovated the Dudley Inn in Roxbury to accommodate 68 single furnished rooms.)

Manufactured Housing: Massachusetts has one of the lowest levels of manufactured housing stock in the country. Shipment to Massachusetts of homes built away from the permanent site in a factory, not including travel trailers and motor homes, accounted for less than 1 percent of all U.S. shipments in 2001.⁶⁴

The economic benefits of manufactured housing are significant. In May 2002, a family in Orange purchased a five-bedroom, 2,800-square-foot modular home from a Pennsylvania manufacturer for \$142,000, some \$40,000 less than a traditionally built home.⁶⁵ But, as Thayer Long, director of state and local affairs for the Manufactured Housing Institute, notes, “Manufactured housing suffers from a perception problem. In Massachusetts, single units are used as temporary shelters while residences are being rebuilt as a result of fire or other natural disaster, but they aren’t being used to address the affordable housing market like they should.”

Thayer Long of the Manufactured Housing Institute notes, “Manufactured housing suffers from a perception problem. In Massachusetts, single units are used as temporary shelters while residences are being rebuilt as a result of fire or other natural disaster, but they aren’t being used to address the affordable housing market like they should.”

Seeking Variances

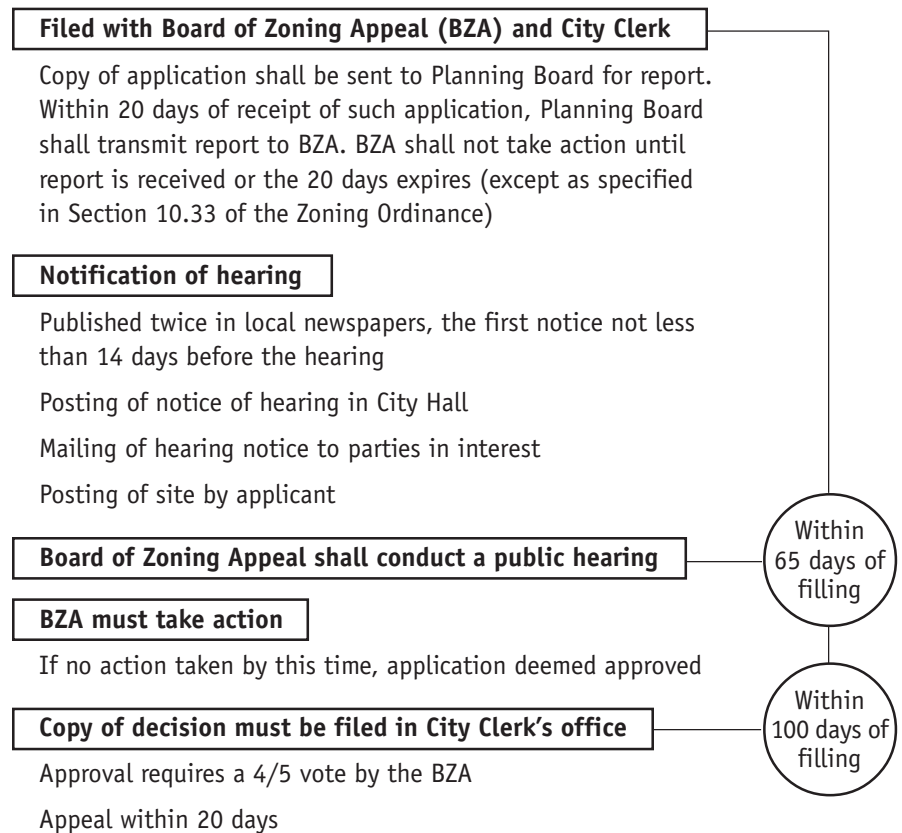
Stuart Meck of the American Planning Association has called modern zoning codes a “post-it” system. The exceptions to the rules become the rules themselves. “It becomes like a zoning code with a bunch of Post-It notes attached to it. When there get to be too many Post-It notes,” it is time to streamline the system.⁶⁶

The lack of “by right” zoning in Massachusetts is one of Massachusetts developers’ biggest complaints. Communities with clear and enforced development standards—where developers who meet the zoning regulations do not need to go through exhaustive public review processes—are producing housing in great numbers. Communities elsewhere in the United States that offer “one-stop-shopping” for housing permits enable developers to begin construction of housing within a year after submitting plans to local authorities.

In communities across the Commonwealth, however, major new housing development almost universally requires special exemptions from local zoning. Chapter 40A allows zoning boards of appeal to grant variances and specifically allows local ZBAs to consider financial hardship when determining whether or not to grant a variance. Zoning standards are often so restrictive that all but the most modest development goes through variance processes. In effect, cities and towns in the state operate under “zoning by exemption,” which requires months and often years of negotiations between developers and local officials and encourages community organizations opposed to development to enter the fray. Smaller developers are most adversely affected by the lack of a transparent development zoning process, as they are unable to marshal the legal and financial resources and political connections to advance a project through a multi-year process.

The Case of Boston: The Boston Zoning Enabling Act (1956) established the authority of the Zoning Board of Appeals (ZBA) to grant a zoning variance for a specific building or piece of land given that certain conditions are met, including that there are “conditions especially affecting such parcel or such building,” that “a literal enforcement of the provisions of such zoning regulation would involve substantial hardship to the appellant,”

An Example of a Variance Process: Cambridge



Source: City of Cambridge, Community Development Department, Community Planning Division, *The Zoning Guide* (<http://www.ci.cambridge.ma.us/~CDD/complan/zoning/zoningguide/diagram4.html>).

The Alliance of Boston Neighborhoods claims that Boston’s Zoning Board of Appeals members do not follow the legal criteria that the city’s zoning code establishes, instead relying on their own instincts and pressure exerted by elected officials in its decision-making process.

and that granting a variance would not substantially harm others or undermine the zoning regulation. Article 7 of Boston’s Zoning Code creates even more stringent standards:

- There are special circumstances applying to the land or building in question, such as the lot’s extreme narrowness, shallowness, or shape, or extreme topological conditions.
- “For reasons of practical difficulty and demonstrable and substantial hardship...the granting of the variance is necessary for the reasonable use of the land or structure.”
- The granting of the variance would not neither be disharmonious with the Zoning Code nor cause harm to the neighborhood or public interest.
- Finally, the variance must be the minimum variance that would allow for such reasonable use.

Incrementally, over time, zoning codes have gotten “so rigid that very little can be done without going through the appeal process,” notes Lawrence S. DiCara, a former member of the Boston City Council and candidate for mayor who is now a legal specialist on development issues. “Whether it be a variance or a special permit (called a conditional use permit in Boston), it is necessary to go through the process.” As to whether too many variances are being granted, DiCara adds, “It is a question with many answers. For those of us who are zoning lawyers, we never get enough of them through municipal boards. For opponents of whatever might be proposed, one is too many.”

The process of getting a variance in itself is very irregular and problematic, as the Alliance of Boston Neighborhoods (ABN) pointed out in an October 2001 report.⁶⁷ ABN is a community advocacy group that is critical of Boston’s development and zoning policies on a full range of issues. ABN claims that Boston’s ZBA members do not follow the legal criteria that the city’s zoning code establishes, instead relying on their own instincts and pressure exerted by elected officials in its decision-making process:

- **Applications** for a variance do not require evidence relating to the stricter standards in Article 7. The applicant must simply list the request, the reasons for the request, and reasons why the board should grant the variance.
- **Hearings:** It is not clear who receives notice about or can testify at a hearing. Hearings are conducted during work hours, making them difficult to attend. Finally, members of the ZBA can suspend testimony at any time when they “feel they have heard enough,” and representatives of City Councilors or the Mayor’s administration often testify. The appearance of administration officials is particularly problematic because the Mayor appoints members of the ZBA.
- **Deferrals** can be requested by applicants when project critics attend hearings—the postponement requested in the hope that critics will not spend attend follow-up hearings. Opponents are not usually allowed to request deferrals.
- **Decisions** to grant variances are often made by the ZBA without reference to the legal criteria established in the city’s Zoning Code. Rather, “they are decided according to the Board member’s judgment of the applicant’s stated needs, impression of local impacts, and the level of support or opposition. The result is that decisions frequently constitute ‘spot zoning.’”⁶⁸
- **The process and who has standing as an “interested party” to challenge a decision** is not clearly set out in Article 7 of the Zoning Code. As a result, courts have defined “interested party” narrowly. Challengers to a decision may also be deterred by the high cost. (Posting a bond to file a challenge may be required.)

The variance process is unsatisfactory to all involved—project proponents and opponents. The lack of transparency creates confusion and wastes valuable time—and leads to suspicions about back-room deals for well-connected developers. The variance obstacle course costs significant time and money, creating serious “barriers to entry.”

Experts and developers agree that “by-right” zoning standards tend to work on open sites that do not involve complex community interests or values. Lawrence DiCara, a longtime real estate lawyer and former member of the Boston City Council, remarked, “It is much more realistic to establish planning standards against which housing developments are measured on a case-by-case basis and a climate in which local officials are held more accountable to act in good faith. That approach might require *more* development by special permit and *less* developed as-of-right.”

But at the same time, experts and advocates agree that the development of a zoning system that is more predictable and efficient is essential for the region to produce more housing. How that happens in the complex and fragmented world of politics and development in Greater Boston remains to be seen.

Extraordinary Local Policies

To respond to the pressurized development environment of the 1990s, a number of communities have adopted extraordinary measures to limit growth or to take advantage of that growth. Those policies go beyond the standard systems of zoning and land-use regulation.

Growth Limits: Growth caps pose the most direct barrier to housing development in Greater Boston. Once thought to have dubious legal standing, the courts have given them sanction.

In 1973, the Town of Arlington responded to what it considered to be excessive growth by imposing a two-year moratorium on the creation of apartment buildings in certain districts where apartment buildings would ordinarily have been permitted. In 1975, the Massachusetts Supreme Judicial Court ruled against a developer named Joseph Collura who challenged the legality of Arlington’s moratorium, paving the way for future growth restriction bylaws. In a recent 6-3 judgment, the U.S. Supreme Court upheld the right of state and local governments to temporarily limit growth while formulating a development plan. However, the court noted that “any moratorium that lasts for more than one year should be viewed with special skepticism”⁶⁹ and it refused to set a limit on the length of any ban or restriction.

Today, approximately 45 communities across the state have adopted local bylaws that expressly restrict construction or ban it altogether.⁷⁰ Some communities are reluctant to allow the development of housing appropriate for families with school-aged children since property taxes would not be sufficient to cover the cost of public schools.

Since the growth control bylaws limit the amount of new building permits available for development in each year, such bylaws can drive up the cost of housing by both reducing supply and adding to the costs of developers, who must wait even longer and fight even harder in order to win approval for their projects. A report by the Commonwealth Research Group, commissioned by the North East Builders Association of Massachusetts, asserts, “The greatest time requirement in the development of a real estate parcel is that established by growth management ordinances, [which] can cause delays of several

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Under inclusionary zoning statutes, developers must set aside units or money for affordable housing in certain development projects. Proponents of inclusionary zoning say that it offers a powerful way to enable low-cost units to ride the wave of a strong economy by getting special funds from the development of market-rate and luxury units.

years in the completion of a development.” The study examined the relationship between the percent increase in growth management bylaws and the percent increase in new home prices in the Boston area during the 1987-1999 period and obtained a correlation coefficient of 0.901.⁷¹

Growth-control bylaws are, at least in theory, supposed to be temporary reprieves from development, imposed in order to give a community time to create a strategic growth plan so that new construction corresponds with the community’s capacity and needs. But as Governor Swift’s Barriers Commission found, many cities and towns use “temporary” freezes to permanently block development. Towns with growth freezes usually have no plan for correcting the problem that initiated the restriction.

The appeal of the growth caps is undeniable. New housing imposes new costs on local governments—from public schools to everyday services like garbage pickup to infrastructure to traffic congestion. People who have already bought into a community have an interest in maintaining the scale and character of their community and minimizing new disturbances. But the region and the state have a direct stake in new housing development. Only the state government can take the steps necessary to prevent unwarranted growth restrictions.

Linkage and Inclusionary Zoning: To take advantage of growth in office and luxury housing markets, a number of Massachusetts communities have developed a financing tool to leverage significant new resources for affordable housing. But like other efforts to promote affordable housing, the strategy may actually discourage the production of low-cost units.

In the last generation, 100 cities in Massachusetts—including Boston, Cambridge, and Newton—have made “inclusionary zoning” a critical piece of their overall housing strategy.⁷² Under inclusionary zoning statutes, developers must set aside units or money for affordable housing in certain development projects. Proponents of inclusionary zoning say that it offers a powerful way to enable low-cost units to ride the wave of a strong economy by getting special funds from the development of market-rate and luxury units.

In Boston, all developers that build housing with city funds or that build 10 or more units must provide affordable units in the development that equal 10 percent of the total number of market units (15 percent if the affordable units are built off site—that is, on a different site from the market units). If developers do not wish to build affordable units on site, they can contribute to an affordable housing fund instead.

The experience of inclusionary zoning has shown that the program may produce unintended incentives and constraints. For example, because of a benefit schedule that makes no distinction between luxury and middle-class housing or between large and small units, Boston’s inclusionary housing program actually discourages middle-class and small housing construction.⁷³

One of the incentives is produced by the way the “cash out” contribution is calculated. Using a fixed amount of money (\$52,000 in 2001) per affordable unit not built and ignoring the cost of the actual development, it favors those projects with a large component of luxury units. Consider two scenarios, one in which a developer builds 20 units of housing priced at \$300,000 apiece and the other in which a developer produces 20 units of housing priced at \$600,000. The developer’s contribution for each multi-unit project would be \$156,000, or \$7,800 per unit. But the percentage of the project the fee represents

is different—1.3 percent for the luxury units, 2.6 percent for the modest units—which serves to encourage building the luxury units rather than the more modestly priced units. For the sake of illustration, the contribution required in homes priced at \$200,000 would be about 3.9 percent of the home’s value, while the contribution required of a \$1 million home would be .78 percent of the home’s value. Such a difference in the inclusionary fee burden might not make a large difference in the developer’s overall calculus, but it might make a difference on the margins. At the very least, it sends a powerful signal to developers.

The other unintended consequence is created by the fact that the inclusionary zoning policy exempts developments smaller than 10 units, creating a disincentive for developers to create large-scale multi-family housing. Most housing experts argue that the housing supply problem can only be solved with the production of developments with large numbers of units. By taxing larger developments, the linkage communities could be subtly discouraging large-scale solutions to the state’s housing crisis.

In 2002, a bill filed in the state Senate proposed that municipalities be given permission to pass inclusionary zoning ordinances, under the theory that explicit state support would reduce communities’ fear of lawsuits from developers claiming that inclusionary zoning constitutes an uncompensated taking of property. In July, the state legislature backed away from this proposal—ironically because it feared such developer lawsuits would be directed against the state should it provide support for inclusionary zoning.⁷⁴

EXTRAORDINARY STATE POLICIES: 40B AND CPA

One of the basic realities of public policy is the law of unintended consequences. Because the housing issue is so complex—involving hundreds of state and local agencies, private developers, and a constantly changing economy—policies that might seem like straightforward answers to complex problems can turn into problems in themselves. Chapter 40B and the Community Preservation Act (CPA) provide two examples of such unintended consequences.

Chapter 40B

The keystone of the state’s affordable housing policy is Chapter 40B of the Massachusetts General Laws, which sets a goal for cities and towns to provide at least 10 percent of their housing stock at “affordable” rates. The law allows builders to get comprehensive building permits—that is, to override local zoning—in communities with less than 10 percent affordable housing. The law has won national plaudits for combating “snob zoning” and creating a mechanism that forces communities to allow affordable housing in their midst. In the three decades of Chapter 40B’s existence, some 25,000 units of housing have been built under the law. In most cases, at least 25 percent of the units built under 40B are set aside for low- and moderate-income tenants and homebuyers.

According to data compiled by Sharon Krefetz of Clark University, comprehensive permits were obtained for 374 projects in the state between 1969 and 1999.⁷⁵ While the creation of housing over three decades has been noteworthy, it does not amount to a significant enough number to meet current needs.⁷⁶ As of 2001, only 23 of the state’s 351 cities and towns had met the 10 percent goal.⁷⁷

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By counting only units in subsidized developments, the law ignores—and possibly discourages—the private development of housing that is affordable.

The key to the law is its ability to trigger state override of local policies. If a developer proposes a 40B project—say, a 60-unit development in an area that would not normally be dedicated to housing—the local zoning board of appeals may refuse to approve the permit. But then the case can be taken to a state Housing Appeals Committee. Most 40B proposals do not require recourse to the appeals committee, however. The state law’s clear intent is to allow housing that otherwise could not be built under the locality’s current zoning. Most localities are resigned to that reality and seek to negotiate the design and scale that works best for them.

Two provisions in Chapter 40B might actually work against the robust construction of affordable housing. One provision limits the definition of “affordable” to subsidized units. The other provision allows numerous market-rate rental units in mixed-income developments to count as affordable in the tally of each city and town’s affordable housing inventory.

Counting Affordable Units: The enabling 40B legislation defined affordable housing to exclude units created and operated by the private sector without public subsidies. “‘Low or moderate income housing’ [is defined as] any housing subsidized by the federal or state government,” the statute reads, “under any program to assist the construction of low or moderate income housing as defined by the applicable federal or state statute, whether built or operated by any public agency or any non-profit or limited dividend organization.”

By counting only units in subsidized developments, the law ignores—and possibly discourages—the private development of housing that is affordable. Officials from Somerville and other communities with triple-deckers and other “ma and pa” multi-family buildings—where prices are often kept low without subsidies—regularly complain that the 40B law punishes communities where many units are kept affordable by people running small rental businesses. If the community does not get 40B credit for non-subsidized affordable units, why should the community make such housing a priority?

Oddly, localities may count expensive and even luxury units in their affordable housing inventory. Under 40B, developers may override local zoning to build housing complexes where as few as one-quarter of all units are affordable under 40B standards. The other three-quarters of the units may be sold or rented at market rates. The market-rate rental units may be counted as part of the city or town’s affordable housing stock if they are built under 40B.⁷⁸ The logic is simple—the market-rate units subsidize the affordable units and are thus part of the overall affordable package. But counting expensive units in an inventory of low-price units seems odd at best.

Because Chapter 40B gives developers the opportunity to bypass local zoning regulations in communities that have not met the 10 percent affordable housing goal, the statute has become one of the most controversial burrs in the saddle of state-local relations. A number of bills to alter Chapter 40B have been offered on Beacon Hill in recent years, including measures that would count Section 8 vouchers, housing that serves mentally ill or retarded citizens, mobile homes, and even prison beds.

New 40B Regulations: After failed legislative attempts to make it easier for cities and towns to reach the 10 percent mark by changing the tally system, the Department of Housing and Community Development (DHCD) in 2002 issued regulations that list four

new types of units that can be counted toward 40B goals: long-term affordable housing units that are subsidized by the Department of Mental Retardation or the Department of Mental Health for use by mentally challenged individuals; low- and moderate-income units that are created by locally subsidized projects; new accessory apartments; and housing units created through the Community Preservation Act that are occupied by people earning below 80 percent of the area's median income. Further, a community can include new Chapter 40B units in its subsidized housing inventory as soon as final approval of the comprehensive permit has been granted, with the condition that a building permit must be issued for the project within one year.

Regulations adopted by the DHCD also make it easier for cities and towns to thwart the plans of developers whom they fear will use Chapter 40B to overdevelop a community. Communities can now deny Chapter 40B applications if the number of units proposed is greater than a certain level (which varies depending on the size of the community) or if it has increased its low- or moderate-income housing stock by at least 2 percent in the year immediately prior to the Chapter 40B application. Moreover, if a community approves and issues building permits for enough comprehensive permits to result in an increase of 0.75 percent or greater in its affordable housing stock, the city or town does not have to accept, review, or approve any comprehensive permit applications for the year after the plan is certified.

Perhaps the greatest drawback of Chapter 40B is its dominance of the debate about housing policy for the last generation. Residents and officials from cities and towns all over the state resent the state's intrusion into local affairs. In particular, they resent the use of a tool that they consider a bludgeon. People in communities with significant stocks of housing that is affordable but not subsidized—like Somerville—argue that the law wrongly lumps them in with communities with low levels of commitment to affordable housing. Whatever the respective merits of the Chapter 40B law, it has sucked the oxygen out of the housing debate. Rather than seriously considering other approaches to the housing crisis, state and local officials and housing advocates are locked in a bitter battle over 40B.

Community Preservation Act

Another law intended, at least in part, to encourage housing development actually removes considerable land and resources from consideration for housing development.

The Community Preservation Act, passed by the state legislature in 2000, allows communities to impose up to a 3 percent property tax surcharge—which could be matched by as much as 100 percent by the state—to raise money for housing, open space, and historic preservation. Under the law, cities and towns must devote at least 10 percent of all revenues to each of the three purposes and can use the rest of the money as they see fit.⁷⁹ The state's major champion of the measure, Secretary of Environment Affairs Robert Durand, has fostered the impression that the law's major function is to direct development to existing communities and preserve open space in exurban areas.

Most communities are using CPA money to purchase open space and prevent new housing development. Amherst, Bedford, Cambridge, and Newton are among the rare communities that have used CPA to fund new housing construction. Even the 10 percent

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of funds used for housing are often directed toward existing housing programs rather than development of new residential units.⁸⁰ In Chilmark, for instance, where the CPA passed in April 2001 and where there are currently no housing units that qualify as affordable, 71 percent of the affordable housing budget for FY 2003 will be used for projects that help people pay their rent and mortgages. The remaining 29 percent of the affordable housing money will help fund a study regarding the feasibility of turning 20 acres of town-owned land into an affordable housing development.⁸¹

In a survey of 26 communities that have passed the CPA done by Bridget Smith of Harvard University's Graduate School of Design, officials from 15 communities reported that affordable housing was a "low" or "medium" priority for their community. Of those, 13 were towns with less than 3 percent affordable housing in their stock and the other two towns had less than 6 percent. Twenty communities acknowledged that preserving open space was a high priority for their community.⁸²

WHAT IS TO BE DONE?

The housing crisis is real. Families report that their children are moving out of the Greater Boston region because of the lack of housing affordable to even middle-class households. Businesses report that they cannot expand, and sometimes even need to move, because of the high cost of housing. Doctors, academics, and startup firms that otherwise might make Greater Boston their home decide that the cost of living is too high and the locate in other parts of the country.⁸³

Regulations—even strong regulations—are necessary to insure the safety and health of the citizens of Massachusetts. Regulations are also necessary to assure that housing fits into the larger built environment—roads, schools, business districts, schools and community centers, and parks. It is even appropriate for regulations to guide the "look and feel" of homes so that they fit with the character of individual communities.

But excessive regulation by agencies and boards at both the state and local level has gotten to the point of frustrating the development of housing in Massachusetts. Both levels of government need to prune back the sprawling regulations and improve coordination among the different regulatory players.

Mark Leff of the Salem Five Cents Savings Bank captures the overwhelming burdens posed by state and local zoning: "We have created a system under which there are over 2,000 public bodies and forums that control land use in Massachusetts. In addition to state and regional planning agencies, local communities control and impact land use through various boards. We have seen planning boards, zoning boards of appeal, conservation commissions, and boards of health impact how development takes place through expensive and sometimes peculiar local rules. Water and sewer boards can adopt expensive fees without justification, and this compounds the cost of housing projects. Sometimes historic commissions weigh in on projects. More recently we have seen housing policy adopted by boards of selectmen and even at town meetings where restrictive growth measures are proposed and passed without thoughtful debate."⁸⁴

Reforming the Massachusetts housing system will require major commitment by leaders from Governor Mitt Romney down to the leaders of cities and towns all over the

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Commonwealth. Such reform requires a new understanding of how regulation succeeds and fails. In recent years, authors as varied as Virginia Postrel, Steven Johnson, and Jane Jacobs have argued that society thrives when it establishes relatively few strong rules, then backs off and allows people to build and innovate in their own distinctive ways.

“The world is full of X factors, the unarticulated and unrealized knowledge that can be elicited only by experience and experiment,” Virginia Postrel writes in *The Future and Its Enemies*. “Most predictions are wrong, and the more specific the claim, the more likely the error.”⁸⁵ Learning and action, Postrel argues, should take place within “simple, generic units” that can “combine in many different ways.”⁸⁶ We might call this the modular law of politics. Rather than establish an excessive number of rules that overprescribe the right way of doing things, we need to find ways of creating simple rules that can be elaborated to fit different circumstances. “From atoms to the alphabet, from music to math, the world’s plenitude depends on very primitive units,” Postrel writes. “Their meaning and purpose arise from the bonds they create: the way they fit together and the new building blocks these combinations then become. From this infinite series of bonds upon bonds, inspired by our imagination and diverse tastes, we enrich the world.”⁸⁷ In the context of housing, this means identifying the core values that must be protected by regulation and allowing some variation beyond those core rules.

It is understandable that Massachusetts and its 351 cities and towns have created a complex tangle of rules and regulations. The state’s history is long and its political system fragmented. Old arrangements—from home rule to postwar-era zoning codes to town meeting forms of government—require change and accommodation. Because they represent so many constituencies, political systems have a hard time devising streamlined systems. But Massachusetts—and, in particular, Greater Boston—must clear away some of the regulatory underbrush in order to encourage the development of enough housing to accommodate the people who have made the area their home. Responsibility for the streamlining of housing regulations rests in two locations—local and state government.

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Local Actions

Cities and towns clearly need to increase the supply of housing in ways that do not cause explosions in local traffic congestion and greater costs in local service provision. Among possible actions to be taken are the following:

- ▶ Allow developers to build housing that fits the historic character of the community on parcels acquired from the local government.
- ▶ Experiment with a split-rate tax system. By taxing vacant property at the rate that would prevail if the property were developed, the incentive to sit on property for speculative purposes would decline.
- ▶ Expand the prevalence of “as-of-right” rules in local zoning codes. By principle and by law, a zoning code should establish a clear and workable “envelope” for development of all kinds. What fits in that envelope should be understandable and workable so that developers can make a fair profit on projects that fall within the envelope. Zoning boards of appeal should take up appeals only on extraordinary cases. Developers report that they are willing to follow the rules of the community, as long as those rules are clear, understandable, reasonable—and applied fairly to all.

State Actions

The state government needs to take the lead on reform of local zoning. Here are a few steps the state can take:

▶ Appoint a blue-ribbon commission, with adequate staffing, to examine the state’s 351 local zoning codes. Zoning authority belongs at the local level, but the state can encourage reform by identifying zoning provisions with abstract and disconnected rules—and offer incentives to adopt simpler zoning standards. A Zoning Reform Working Group that in 1999 began to investigate large-scale zoning reforms—including the zoning-planning mismatch, comprehensive permitting, and the archaic language of most codes—could provide a good start.

▶ Streamline disposition of land for the development of housing for all income levels. The state now disposes of its surplus property in a clumsy, time-consuming, and frustrating way. Numerous agencies must be involved in complex processes before land can be let loose for housing development. To be sure, the state’s holdings deserve care. But at the same time, the state can develop a process for identifying buildable land and get it into the hands of developers who are willing to provide housing for people at all income levels. The Romney administration can reasonably claim some urgency for housing the people of the Commonwealth. When a sense of urgency exists, as was the case with the state’s auctioning of vacant hospital land to fund the state’s Clean Elections Law, the state clearly has the capacity to move land.

▶ Provide strong carrots for localities to accept new housing in their midst. Chapter 40B has been a creative and noble experiment, but it has only achieved roughly 825 to 850 units annually across the state, many of which might have been built under other auspices. Moreover, as Chapter 40B has stirred resentment and resistance to affordable housing across the state, it might make more sense to work toward a new consensus on affordable housing acceptable to both the state and localities. Specifically, in this regard, the state can take the following steps.

- Require communities to set aside land identified in the state’s build-out analysis as suitable for multi-family housing.
- Create strong incentives for greater density at strategic transportation nodes in the region.
- Offer significant increases in state aid when communities work with neighboring communities on housing development—the “good-neighbor bonus” proposed in the 2000 report of the Catholic Archdiocese and later advocated by Robert Reich in his 2002 campaign for governor.
- Require that, in exchange for greater latitude on land-use control, localities create a housing plan to meet aggregate performance measures—most importantly, housing affordability, but also including diversity of land uses and housing types (e.g., multi-family housing) and compact development/smart growth that preserves open space.

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The state might choose to address piecemeal many of the regulatory issues—such as the uncertainty of Title 5 regulations and the dual authority over environmental and wetland regulations (which leads to stricter standards and a bifurcated appeals process). But it would do well to consider the following actions to streamline the regulation-making and inspection regimes:

▶ Consolidate building and specialty codes (including handicap access, electrical, and health codes) under the roof of a single agency, with the authority to reconcile conflicting or overlapping rules among the many existing boards. Over time, the state should write a simplified code. The should make the code available and understandable to all with a state-of-the-art Internet site.

▶ Reinvigorate rehabilitation of existing housing by restoring the simple requirements of safety and health—and avoid getting mired in systems that require new-building standards on old buildings that would have to be destroyed to be saved. It should go back to the original spirit of the 1979 rehabilitation code: simplicity.

▶ Ensure that local inspections are carried out in accordance with state codes—and are not open to varying local interpretations. Ideally, the state would assign state officials to enforce state standards, removing the local pressures to bend state standards. Short of that, the state can provide training to local officials to improve the reliability and uniformity of enforcement of building and specialty codes and environmental regulations. As Massachusetts building officials are quick to point out, New Jersey’s code system works well because the state runs an extensive training program for local enforcement officials.⁸⁸ If the state wishes to encourage fair development, which serves people’s need for decent housing that complements community character, then the state needs to ensure that developers do not have to play games of either roulette or back-scratching.

Housing poses one of the Commonwealth’s more daunting challenges. Part of the answer, no doubt, is financial—“making it happen.” But another part of the answer is regulatory relief—“letting it happen.” States and localities need to recognize that they often pose unreasonable barriers to housing. If they want families to be housed at reasonable cost, they need to reduce the time, expense, and frustration posed by the myriad regulations governing housing development and rehabilitation.

Ideally, state officials should enforce state standards, removing the local pressures to bend state standards. Short of that, the state can provide training to local officials to improve the reliability and uniformity of enforcement of building and specialty codes and environmental regulations.

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⁶⁰ Howard Husock, "Rediscovering the three-decker house," *The Public Interest*, 1990.

⁶¹ FAR is the floor-area ratio, often used instead of height restrictions to limit building density. A floor area ratio of 1:1, for example would allow 2,000 square feet of development on a 2,000-square-foot parcel—probably by building a two-story structure on a 1,000-square-foot footprint.

⁶² A dwelling unit is a group of rooms, including eating and sleeping areas, designed as living quarters for one family. For instance, a single-family home consists of one dwelling unit and a two-family home consists of two dwelling units.

⁶³ Davis Bushnell, "Nonprofits Try to Save a Housing Tradition," *Boston Globe*, April 25, 2002.

⁶⁴ See <http://www.census.gov/pub/const/mhs/stpla01.pdf>.

⁶⁵ "Modular home saved \$40,000," *Worcester Telegram & Gazette*, May 13, 2002.

⁶⁶ Alan Ehrenhalt, "The Trouble With Zoning," *Governing*, February 1998, available at <http://www.governing.com/archive/1998/feb/zoning.txt>.

⁶⁷ Alliance of Boston Neighborhoods (ABN), "Boston Zoning Board of Appeal: Variance Process Reform," White Paper No. 3, October 29, 2001, available online at <http://www.abnboston.org/newse/2001/1029-whitepaperzoning.pdf>.

⁶⁸ *Ibid.*

⁶⁹ *Collura v. Town of Arlington*, 367 Mass. 881 (1975).

⁷⁰ *Policy Report - Bringing Down the Barriers*, pp. 22-23.

⁷¹ The North East Builders Association, Inc. and Commonwealth Research Group, Inc., *An Economic Analysis of the Causes of High Housing*

Prices in Massachusetts. See a summary of the report at <http://www.hbama.com/News/viewsCRGExcerpt.htm>.

⁷² Philip B. Herr, "Zoning for Affordability in Massachusetts: An Overview," *NHC Affordable Housing Policy Review*, January 2002, p. 3.

⁷³ See Meg Kiely, "Boston's Policy Gives Developers Choice," *NHC Affordable Housing Policy Review*, January 2002, pp. 26-28.

⁷⁴ According to the just compensation clause in the U.S. Constitution, the government must compensate citizens for private land that the government seizes for public use. Last year, a Massachusetts Superior Court struck down Barnstable's Inclusionary Housing Ordinance, under which developers had to contribute to the town's Inclusionary Housing Fund in an amount proportional to the size of the development. The Supreme Court, however, has yet to consider the issue. "Because it has yet to endure a robust, comprehensive constitutional review in court, and because it selectively impinges on one class of property owners, inclusionary zoning does not enjoy as solid a constitutional grounding as some land use regulations. Nonetheless, enough legal information is available to craft ordinances that reduce the risk of judicial invalidation." Jerold S. Kayden, "Inclusionary Zoning and the Constitution," *NHC Affordable Housing Policy Review*, January 2002, p. 12.

⁷⁵ Information made available to the author.

⁷⁶ Barry Bluestone, Charles C. Euchner, and Gretchen Weismann, "A New Paradigm for Housing in Greater Boston," Center for Urban and Regional Policy, Northeastern University, February 2001, available at <http://www.curp.neu.edu/projects/finalhousing.pdf>.

⁷⁷ Gretchen Weismann, "More Than Shelter: Housing the People of Greater Boston," p. 144.

⁷⁸ "Chapter 40B Subsidized Housing Inventory 2001: Notes to Accompany DHCD's Chapter 40B Subsidized Housing Inventory," available at <http://www.state.ma.us/dhcd/components/hac/HsInvN01.pdf>.

⁷⁹ The Massachusetts Municipal Association keeps track of CPA adoptions on its website, http://www.mma.org/news/news_files/econ_develop_news/cpa_votes_4-11-01.html.

⁸⁰ Information on the use of CPA funds is available at <http://www.communitypreservation.org>.

⁸¹ Bridget Smith, "The Community Preservation Act: A Status Report," prepared for Jerold Kayden's Advanced Topics in Design, Law, Policy course at the Harvard Graduate School of Design, Spring 2002, p. 12.

⁸² Unpublished paper.

⁸³ See Charles C. Euchner, "Don't Forget the Economy's Driving Forces," *The Column*, Center for Urban and Regional Policy, Northeastern University, available at <http://www.curp.neu.edu/sitearchive/column.asp?id=1232>.

⁸⁴ Mark H. Leff, "A Close Look at a Failing System," *Banker and Tradesman*.

⁸⁵ Virginia Postrel, *The Future and Its Enemies: The Growing Conflict Over Creativity, Enterprise, and Progress* (New York: Simon and Schuster, 1998), p. 84.

⁸⁶ Postrel, p. 125.

⁸⁷ Postrel, p. 125.

⁸⁸ New Jersey law calls for the state to assess minor fees on development from city and town governments to "provide for the training and certification and technical support programs" for local code enforcement officials. The training programs are conducted by state code officials. See the state's Department of Community Affairs website at <http://www.state.nj.us/dca>.

Appendix A. State Spending on Housing, 1990-2001 (in thousands of dollars)

Category	Program	1990	1994	1998	2001
New Housing Production	Development (capital fund)	\$82,603	\$10,967	\$6,732	\$3,850
	Rental Development Action Loan	\$1,816	\$2,675	\$2,295	\$2,220
	SHARP	\$23,407	\$30,107	\$30,099	\$24,279
Financing	MHP Fund	\$7,269	-	-	-
Affordable Housing 'Preservation'	MHFA-Chapter 13	\$6,000	\$8,231	\$8,184	\$8,166
	Housing Stabilization Fund	-	-	\$9,177	\$15,200
	FCF (new capital program)	-	-	\$2,781	\$2,500
	State LIHTC	-	-	-	\$10,000
Elderly, Handicapped, Homeless	Alternative Housing Vouchers	-	-	\$2,327	\$4,000
	Transitional housing for homeless	-	-	-	\$2,550
	Homeless prevention / HIP	\$6,102	\$3,718	\$4,742	\$2,447
	Housing Innovations Fund	\$9,945	\$2,031	\$5,625	\$6,500
	Individual Self Sufficiency Program	-	-	-	\$2,500
Home-buying Programs	HOP / Soft Second Loan	\$427	\$1,000	\$2,999	\$4,000
Vouchers	Mass Rental Voucher Program	\$122,243	\$61,606	\$41,347	\$38,525
Public Housing	Public Housing Subsidies	\$26,503	\$21,883	\$27,683	\$34,274
	Modernization and renovation	\$56,580	\$19,302	\$46,742	\$35,250
Community Capacity	Affordable Housing Trust Fund	-	-	-	20,000
	CEED (local infrastructure)	\$1,558	\$749	\$1,675	\$1,900
TOTAL		\$348,917	\$162,271	\$193,158	\$220,162

Source: Massachusetts Department of Housing and Community Development

Appendix B: Massachusetts Government Surplus Land

Surplus land held by the Massachusetts Division of Capital Asset Management as of April 2002

Parcel	Location	Acreage	Improvements	Gross Square Footage
Belchertown State School	Belchertown	711.12	37	379,130
Metropolitan State Hospital (3 parcels)	Belmont	55.56		
	Lexington	89.8	15	844,748
	Waltham	229.8	19	671,380
Lancaster Complex (2 parcels)	Bolton	31.1		
	Lancaster	158.19	30	146,338
Embankment Road	Boston	0.04		
Boston State Hospital	Boston (Dorchester)	95	7	54,623
105 S. Huntington Ave.	Boston (Jamaica Plain)	1.8	1	39,000
Incinerator Parcel	Boston (South Boston)	3.43		
Danvers State Hospital	Danvers	83.14	40	882,686
Foxborough State Hospital	Foxborough	147.39	22	427,024
Grafton Complex (3 parcels)	Grafton	242.73		
	Shrewsbury	167.8		
	Westborough	35.17		
UMass Lawrence Mills	Lowell	10.5	13	530,875
Armory	Marlborough	0.31	1	29,600
J.T. Berry Regional Center (2 parcels)	North Reading	86.62	21	142,610
	Wilmington	3.14		
Northampton State Hospital (2 parcels)	Northampton	172.33	41	859,629
	Williamsburg	28.4		
Rutland Heights Hospital (2 parcels)	Rutland	88	39	345,633
Armory	Waltham	0.66	1	18,300
Lyman School for Boys	Westborough	105.55	25	135,175

Source: Table 3, *Report on Real Property Owned and Leased by the Commonwealth of Massachusetts*, Division of Capital Asset Management, 2002

Appendix C: Residential Zone Composition of 13 Communities

ARLINGTON				
Zone	Description	Area (sq. mi.)	Acreage	% of Total Land
R0	Large Lot Single-Family District. It has the lowest residential density of all districts and is generally served by local streets only. Intensive land uses, uses which would detract from the desired residential character, and uses which would otherwise interfere with the intent of this bylaw are discouraged.	1,167,512	289	8%
R1	Single-Family District. The predominant use is single-family dwellings and public land and buildings. Intensive land uses, uses which would detract from the desired residential character, and uses which would otherwise interfere with the intent of this bylaw are discouraged.	9,382,014	2,318	67%
R2	Two-Family District. The predominant use is a two-family dwelling and the district is generally served by local streets only. This district is generally within walking distance of the stores and transportation facilities along Massachusetts Avenue and Broadway.	1,916,720	474	14%
R3	Three-Family District. The predominant use is a three-family dwelling with locations along Massachusetts Avenue and Broadway. It is the intent that no businesses be located in the R3 district.	32,559	8	0.2%
R4	The Town House District. It is located along arterials or in the Center area. The predominant uses are one- and two-family dwellings in large, older houses. Conversions of these old homes to apartments or offices is allowed to encourage their preservation. Town house construction is permitted at the same density as the apartment conversions, and at a scale in keeping with the older houses.	76,593	19	0.5%
R5	Low-Density Apartment District. The predominant use is two- to three-story garden apartments located along or near principal arteries. Small-scale offices would be allowed on principal arteries only.	235,212	58	2%
R6	Medium Density Apartment District. The predominant use is apartments up to four stories high with offices permitted at a smaller scale. Locations are principally Massachusetts Avenue and Pleasant Street.	187,056	46	1.1%
R7	High Density Apartment District. The predominant use is apartments up to 5 stories high, although offices are also permitted at the same scale. Locations are principally within or adjacent to Arlington center.	76,293	19	0.5%
BELMONT				
SRA	Single Residence A: detached single-family dwellings and with special permit, elderly housing and cluster developments.	NA	719	24%
SRB	Single Residence B: same as A	NA	139	5%
SRC	Single Residence C: same as A	NA	852	28%
SRD	Single Residence D: same as A	NA	581	19%
GR	General Residence: detached single-family dwellings, two-family dwellings, and with special permit, elderly housing.	NA	601	20%
AH	Apartment House: two-family dwellings, and with special permit, elderly housing and other apartment houses.	NA	9	0.3%
CAMBRIDGE				
Res. A-1	Single-family dwellings: detached dwellings occupied by not more than one family and existing one-family detached dwelling converted for two families.	6,265,984	NA	3%
Res. A-2	Single-family dwellings: same as A-1	28,250,375	NA	14%
Res. B	Two-family or semi-detached dwellings: detached dwelling occupied by not more than one family, two-family dwellings, existing one-family detached dwellings converted for two families, townhouse development and existing dwelling converted for more than two families.	27,893,689	NA	14%
Res. C	Multi-family dwellings: same as B and in addition, multi-family dwellings, tourist houses in existing dwellings and lodging houses.	5,227,824	NA	3%
Res. C-1	Multi-family dwellings: same as C.	29,857,499	NA	15%
Res. C-1A	Multi-family dwellings: same as C.	1,031,333	NA	0.5%
Res. C-2	Multi-family dwellings: same as C.	5,590,610	NA	2.8%
Res. C-2A	Multi-family dwellings: same as C.	746,784	NA	0.34%
Res. C-2B	Multi-family dwellings: same as C.	986,497	NA	0.5%
Res. C-3	Multi-family dwellings: same as C.	13,773,246	NA	7%
Res. C-3A	Multi-family dwellings and limited office: same as C.	NA	NA	NA
Res. C-3B	Multi-family dwellings: same as C.	2,687,389	NA	1%

CHELSEA				
Zone	Description	Area (sq. mi.)	Acreage	% of Total Land
R-1	Residential and associated uses: dwellings containing three or fewer units	17,766,945	NA	26%
R-2	Multi-family dwellings and associated uses: dwellings containing three or fewer dwelling units.	13,445,491	NA	19%
NHDDR	Purpose: to redevelop a portion of the former Naval Hospital site for residential purposes: dwelling containing six or fewer dwelling units, apartment buildings	1,227,429	NA	2%
DEDHAM				
SRA	Single Residence A (SRA) districts are intended to be areas of low density, relying mostly upon on-site utilities, providing one-family residences in a semi-rural setting and allowing the use of some space in large homes for small subsidiary apartments. They are also intended to accommodate appropriately regulated and designed Assisted Living Residences and public and institutional uses which require large parcels of land and usually rely upon onsite utilities.	3,993	2,556	37%
SRB	Single Residence B (SRB) districts are intended to be areas of medium density, served by municipal utilities, providing one-family homes for families and small households, including the use of small subsidiary apartments in large homes, and accommodating appropriately regulated and designed Assisted Living Residences and appropriate public and quasi-public uses.	3,573	2,287	34%
GR	General Residence (GR) districts are intended to allow residential use at a higher density and provide dwellings in one- or two-family and semidetached houses, including conversions from one- to two-family residence where appropriate, suitably regulated and designed Assisted Living Residences and apartments or row (town) houses containing three or more dwelling units for the elderly or veterans, as defined and authorized by General Laws Chapter 121B.	1,376	881	13%
EVERETT				
Dwelling	Dwelling district	38,753,588	NA	40%
Apartment	Apartment district	1,827,784	NA	2%
LEXINGTON				
RO	One family dwelling: intended to be a district with a low density of development providing housing for families with children and small households with related public and institutional uses.	243,291,056	NA	53%
RS	One family dwelling: intended to be a district with a low density of development providing housing for families with children and small households with related public and institutional uses.	161,476,641	NA	35%
RT	Two family dwelling: is intended to be a district with a low density of development providing housing for both families and small households and opportunities for both ownership and rental.	3,131,836	NA	0.7%
RM	Multi-family dwelling: is intended to be a district with a higher density of development providing dwelling units in apartment buildings principally for small households desiring rental accommodations. The district describes multi-family developments approved by the Town Meeting prior to 1980. It is not intended that new RM districts will be added but that the RD, Planned Residential district will be used instead.	2,455,769	NA	0.5%
RD	Planned residential: is intended to be a district with a higher density of development providing housing in dwelling units or group quarters for families or small households or single persons in a variety of types of housing, all in a planned setting for which the approval of the Town Meeting is obtained.	8,141,417	NA	2%
MILTON				
Res. A	Possible residential uses: detached one-family dwelling, two-family houses, condominium units converted from existing estate buildings, detached one family dwelling with temporary apartment.	186,984,543	4,293	51%
Res. AA	Same as A	60,392,666	1,386	16%
Res. B	Same as A	40,429,529	928	11%
Res. C	Same as A	71,535,714	1,642	19%
Res. D	Housing for the elderly	217,000	5	0.1%
Res. D1	Housing for elderly or handicapped	2,910,651	67	0.8%
Res. D2	Housing for elderly owned and operated only by either a private non-profit organization or by a local Housing Authority.	1,409,414	32	0.4%
Res. E	Same as A. In addition: attached cluster development.	1,863,992	43	0.5%

NEEDHAM				
Zone	Description	Area (sq. mi.)	Acreage	% of Total Land
RRC	Rural Residence Conservation: Single-family detached dwelling, and with special permits, Planned Residential Development and Residential Compound	35,542,733	NA	10%
SRA	Single Residence A: same as RRC.	129,532,480	NA	37%
SRB	Single Residence B: same as RRC.	150,857,574	NA	43%
GR	General Residence: single-family detached dwellings, two-family detached dwellings and conversions of a single-family dwelling to a two-family dwelling.	7,105,774	NA	2%
NEWTON				
SR1	Single Residence 1: one-family dwellings and accessory apartments.	71,892,194	NA	17%
SR2	Single Residence 2: same as 1.	112,908,674	NA	27%
SR3	Single Residence 3: same as 1.	66,799,909	NA	16%
MR1	Multi Residence 1: one-family dwellings, two-family dwellings. With special permits: boarding house, rooming house and lodging house for four or more people and single family attached dwellings.	45,604,496	NA	11%
MR2	Multi Residence 2: same as 1 (with different requirements in some cases), and in addition, with a special permit, multi-family dwellings.	13,307,287	NA	3%
MR3	Multi Residence 3: same as 1 (with different requirements in some cases), and in addition, with a special permit, multi-family dwellings.	5,028,633	NA	1%
MR4	Multi Residence 4: same as 1 (with different requirements in some cases), and in addition, with a special permit, multi-family dwellings.	779,361	NA	0.2%
QUINCY				
Res. A	Detached dwelling occupied by not more than one family.	NA	2,712.6	5%
Res. B	Detached dwelling occupied by not more than one family, two-family, multi-family dwelling and tourist home for a maximum of two transient borders.	NA	1,517.6	14%
Res. C	Same as B. In addition, lodging house, dormitory and with special permits, fraternity-sorority on campus site.	NA	157.4	1%
Res. D	Multi-family dwelling.	NA	5.0	0.1%
SOMERVILLE				
RA	Purpose: to establish and preserve quiet neighborhoods of one- and two-family homes , free from other uses except those which are both compatible with and convenient to the residents of such districts.	NA	748	28%
RB	Purpose: to establish and preserve medium density neighborhoods of one-, two- and three-family homes , free from other uses except those which are both compatible with and convenient to the residents of such districts.	NA	803	30%
RC	Purpose: to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district.	NA	190	7%
WALTHAM				
RA-1	Residence A-1: single family detached, accessory dwelling units (with special permit) and rooming houses.	29,164,991	NA	8%
RA-2	Residence A-2: same as A-1.	51,647,810	NA	14%
RA-3	Residence A-3: same as A-1.	68,558,980	NA	18%
RA-4	Residence A-4: same as A-1.	37,243,531	NA	10%
RB	Residence B: single-family detached, two-family detached and rooming houses.	22,134,625	NA	6%
RC	Residence C: single-family detached, two-family detached, multi-family dwellings, rooming houses and lodging houses.	20,530,046	NA	5%

Source: Executive Office of Environmental Affairs

DATA AND METHODOLOGY

This report does not purport to present new data on rental prices and housing prices or the cost of construction in Massachusetts. Rather, we have summarized some of the analyses of the rental market and affordability done by the Joint Center for Housing Studies at Harvard University and the City of Boston's Department of Neighborhood Development. We have used data from the Office of Federal Housing Enterprise Oversight and from the US Census Bureau to analyze the growth of the housing price and of the housing permits, respectively. On housing construction costs, we have performed analyses based on 1996-2001 building permit-related data available from the U.S. Census Bureau. We have additionally considered location factors provided by R.S. Means.

The analysis in the main body of the text describes the regulatory factors that inhibit the development of new housing units in the Greater Boston area. To gather this information, we conducted numerous interviews and considered documentation provided by developers, academic specialists, government agencies, and financial institutions. In total, we interviewed more than 80 people, most of them listed here, and attempted to distill from these conversations a representative picture of the major steps and bottlenecks in the development process. Thank you to all.

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The Rappaport Institute for Greater Boston, a new enterprise of the John F. Kennedy School of Government at Harvard University, works with universities, public agencies, and other organizations in the region to improve the governance of Greater Boston. The Institute (1) coordinates internship and fellowship programs that place the “best and the brightest” in meaningful positions in government agencies doing policy work in the region; (2) coordinates a wide range of research projects that provide useful information and analysis to practitioners as well as students of public policy; (3) convenes forums of all types and sizes to engage the community in open-ended conversations about the public policy challenges we face in the next generation; (4) serves as a foundation of a comprehensive information resource for public policy in Greater Boston through its website (<http://www.ksg.harvard.edu/rappaport>); and (5) offers workshops and other programs for public officials, stakeholder groups, journalists, and others.

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