



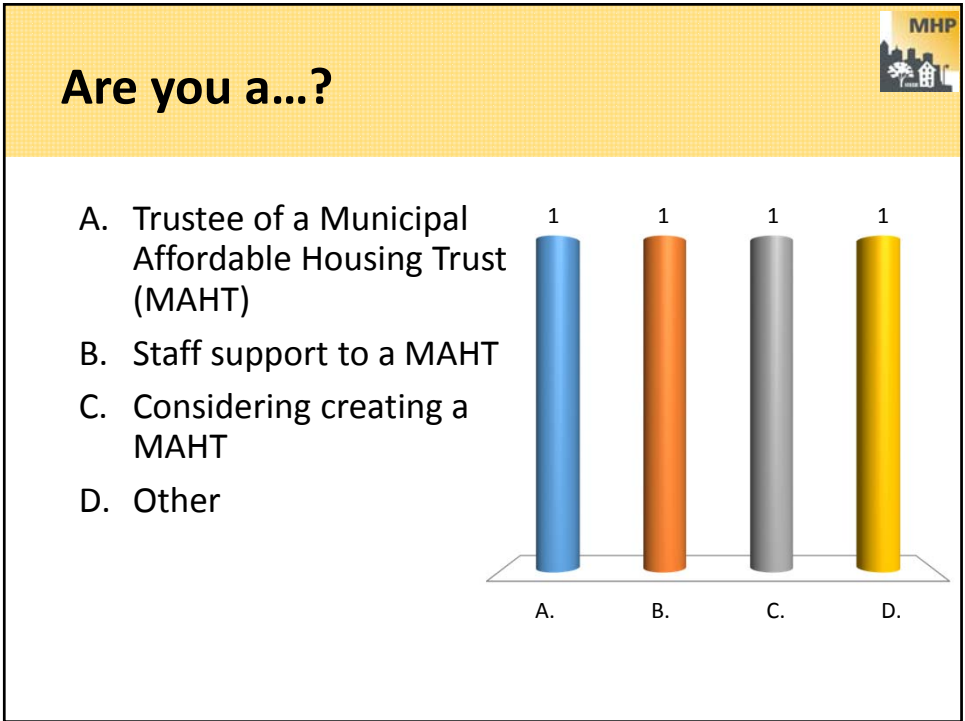
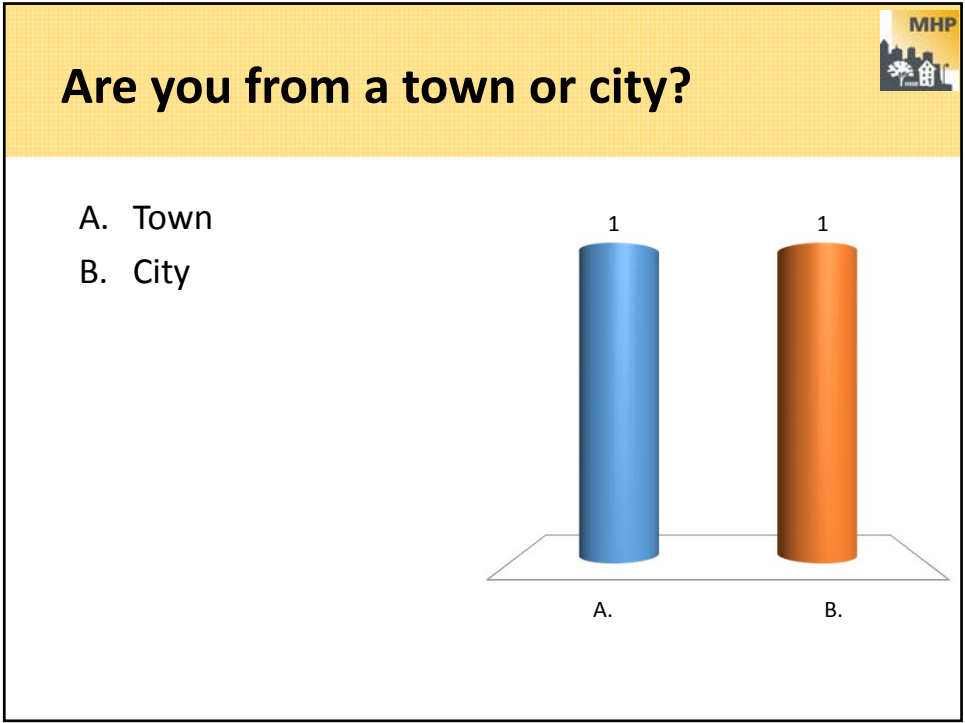
**Welcome!**

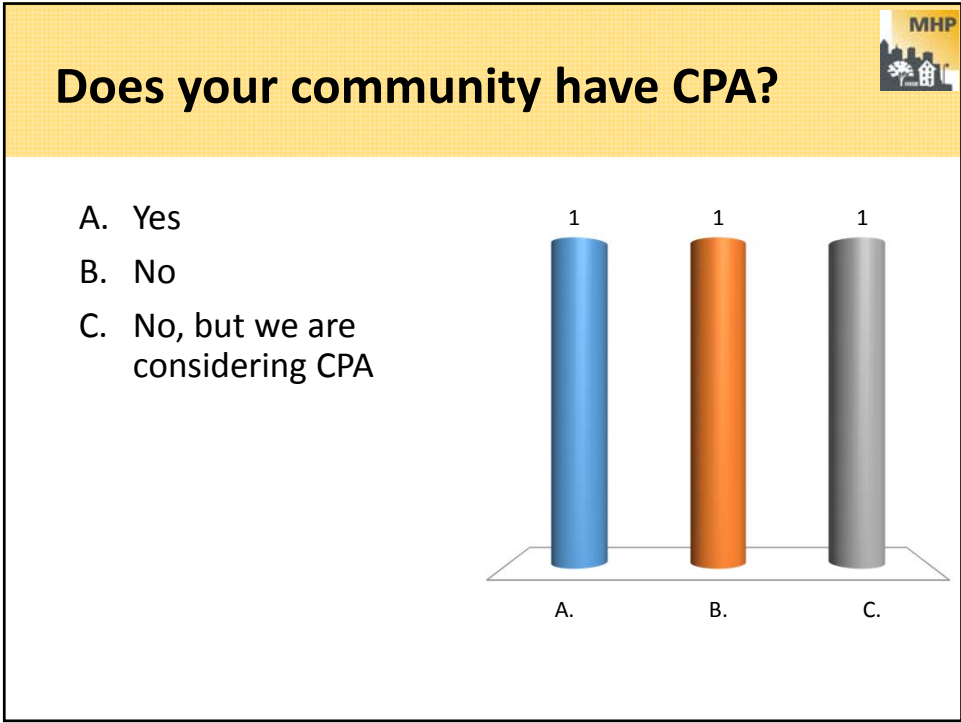
**Please introduce yourself.**

Your name

Organization you represent

Community





# Massachusetts Housing Partnership

MISSION

Use private investment to bring **more affordable housing** to Massachusetts

▪ Privately-funded public non-profit organization

▪ Work with communities, non-profit, for-profit developers

Lending

• Over \$1.1B for over 22,000 units

• Affordable rental

ONE Mortgage

• First time homebuyers

• Fixed-rate, one-time subsidy




Community Assistance

• Technical assistance

• 40B program

# MHP Services

Community Assistance Team



MISSION

To increase the supply of affordable housing by **fostering local leadership** and **providing technical support** to municipalities, non-profits and local housing authorities

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## Trainings

Sampling



### Housing Institute

Intensive two-day workshop, discussions & problem solving around affordable housing development

### Affirmative Fair Housing Marketing w/MassHousing

Legal foundation of fair housing and elements of acceptable AFHM and Resident Selection Plan

### Lotteries for affordable housing units w/MassHousing

Step by step guide to the lottery process

### Chapter 40B for municipal officials & board members

An overview of the 40B statute and review of the roles and responsibilities of ZBA and other municipal boards

## Technical Support

Predevelopment

RFPs

Zoning

HAs




Small grants

Engage consultants


Staff time

# Affordable Housing Trust Support



## Trainings

- Regional
- Community-based




## Resources

- Reporting form
- Topical one-pagers

## TA

- Phone & email


Supported by:




The Kuehn Charitable Foundation

# Today's agenda

May 6, 2017







## Trusts

Overview, operations & best practices

## Roundtable discussion






## Eligible activities

Development & FH

## Case Study

Break out groups

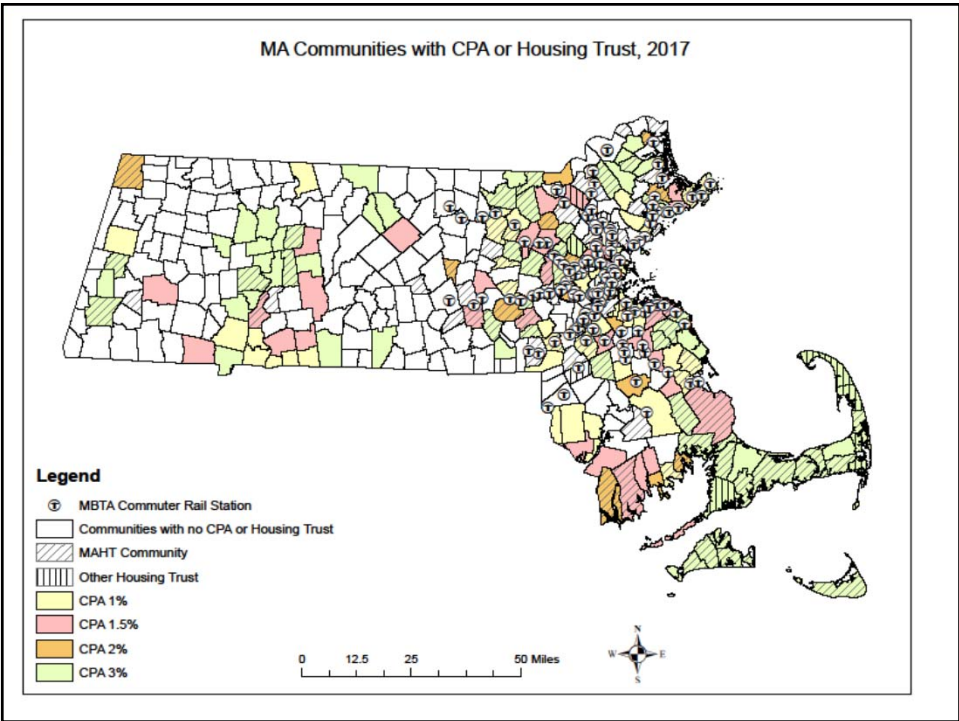


← Break

Stay for a networking lunch!

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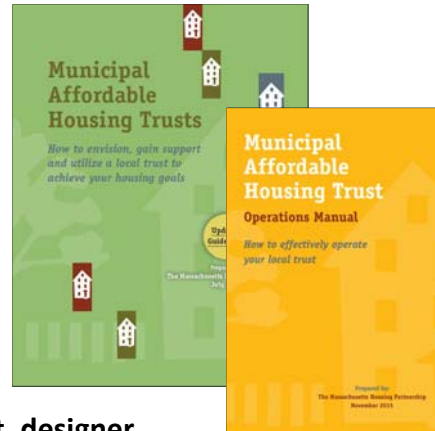




## What is a Municipal Affordable Housing Trust (MAHT)?



- Public entity
- Created by local legislative body
- Create & preserve affordable housing
- Led by Board of Trustees



**Subject to public procurement, designer selection, conflict of interest and public meeting laws**

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## What can a Trust do?



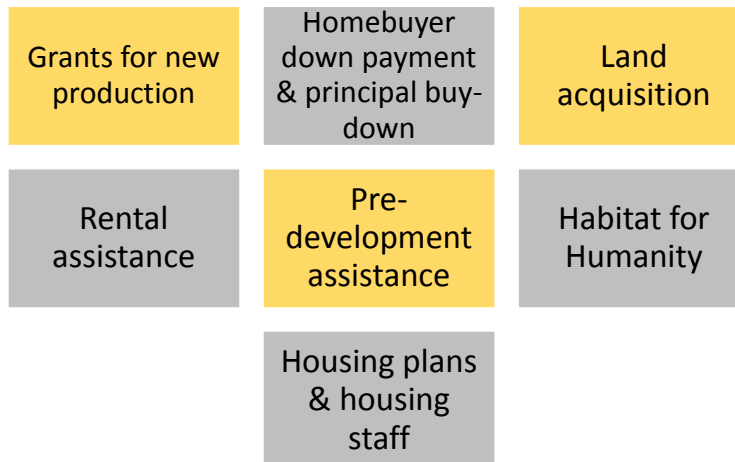
- Actively address affordable housing needs
- Support local control of housing initiatives
- Engage in real estate activity
- Make timely decisions related to housing
- Accumulate funds from variety of sources



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## Trust Accomplishments



## Trust Statute – MGL Ch.44, Sec 55c



### PURPOSE

*“...to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households...”*

- Limited scope
- Low and moderate income only

## Changes to Statute – H. 4565



1. Expands allowable activities for MAHTs to match those of community housing as defined by CPA.

## Changes to Statute – H. 4565



2. Clarifies that **all** rules and restrictions of CPA (Ch.44b) **remain in force** after transfer to MAHT.

## Changes to Statute – H. 4565



3. Requires trusts to track CPA funds separately and annually account for funds in CP-3 report to DOR.

## Changes to Statute – H. 4565



4. Authorizes MAHTs to execute grant agreements.

## You've created a Municipal Affordable Housing Trust (MAHT)



Now what?



## Step 1: Submit housing trust bylaw to Attorney General



Vote to adopt trust



Clerk certify vote & submit to AG



AG must approve w/in 90 days

## Step 2: Establish Board of Trustees



- Minimum of five members
- Includes chief executive officer (member of select board)
- Up to two year terms
- Board elects officers
- Orientation packet/binder



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## Step 3: Record Declaration of Trust



- Establishes board's authority, rules and regulations
- Required when acquiring interest in real property, by deed, restriction or mortgage

## Step 4: Set up the trust fund account



- Common to create municipal account through municipal treasurer
- End of year, all funds in account remain trust property
- Track revenue sources



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## Step 5: Ensure transparency



### Communicate

Report  
back  
regularly

Promote  
efforts

Use  
webpage  
and social  
media



## Step 6: Identify priorities



Determining needs



Setting priorities



Create benchmarks

## Create a Mission Statement

Example of Grafton



### Mission Statement:

Adopted February 17, 2010

*To provide for the creation, preservation and retention of affordable housing and rental housing in the Town of Grafton for the benefit of low and moderate income households through a variety of programs including education and advocacy.*

## Clarify roles

Example of Manchester-by-the-Sea (HPP)

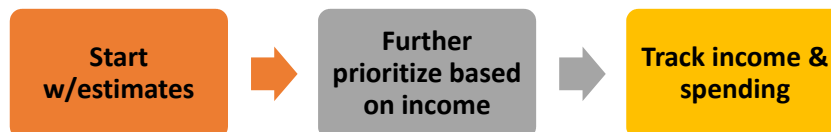


HOUSING STRATEGIES	Priority for Implementation		# AH units	Lead
	Years 1-2	Years 3-5		
<b>CAPACITY BUILDING</b>				
Establish & capitalize MAHT	X			BOS/CPC
Secure professional support	X			BOS
Ongoing education	X			MAHT+
<b>ZONING</b>				
Pursue 40R/40S	X			PB/MAHT
Modify multi-family requirements		X		PB/MAHT
Modify accessory bylaw		X		PB/MAHT
<b>DEVELOPMENT</b>				
Pursue mixed-use TOD	X		5	PR/MAHT
Public property for AH	X		16	BOS/PB/MAHT
Small-scale infill & conversions	X		48	PB/MAHT

## Step 7: Set a budget



Where will your income come from?



## Step 8: Determine operating approach



Funding  
entity

Active  
initiator

Both?



## Lessons Learned



**Trust statute does not define “low and moderate income”**

- Advice: Consult definitions commonly used in state/federal programs

**BEWARE: CPA area median income (AMI) numbers may differ from HUD numbers**

- Advice: Be clear about income numbers necessary per funding source or program.

## Lessons Learned



### Be clear with parameters of fund distributions – grant agreements

- Advice: Execute grant agreements for all distribution of funds and spell out timeline and recapture

### Report back to CPC

- Advice: Clearly document different funding sources/expenditures

Legal consideration

## Anti-aid Amendment to MA Constitution



- Public funds cannot be given or loaned to individuals or organizations for their private purposes
- Needs to have public benefit
- Payment after service rendered

Restriction

Lease  
agreement

Recapture

Legal Consideration



## Open Meeting Law

### MGL Chapter 30A, sections 18-25

- Within two weeks of appointment, trustees must complete Certificate of Receipt of Open Meeting Law Materials
- Some exceptions – executive session if deliberating purchasing, leasing or valuing of real property
- “Public meeting” includes deliberations that involve a quorum – careful with email

Legal Consideration



## Procurement Laws

From MAHT statute:


*The trust is a board of the city or town for purposes of **chapter 30B and section 15a of chapter 40**; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30b.*

**Section 15a of Chapter 40:** Requires 2/3 vote of legislative body to transfer land.

**Exception:** Accepted provisions of Section 15a then majority vote for transfer for low and moderate income housing.

Legal Consideration


**Procurement Laws**



Construction/capital improvement	Real property disposition, lease or acquisition	Contracting professional services
<ul style="list-style-type: none"> <li>Public construction &amp; bidding requirements</li> <li>Prevailing wage</li> </ul>	<ul style="list-style-type: none"> <li>Chapter 30b, Section 16 – various guidance</li> <li>If bought with CPA funds, exempt from 30b</li> </ul>	<ul style="list-style-type: none"> <li>Three Thresholds               <ul style="list-style-type: none"> <li>Under \$10,000</li> <li>\$10-<b>50,000</b> – 3 <b>written</b> bids</li> <li><b>\$50,000+</b> -- sealed bids or proposals</li> </ul> </li> </ul>

Legal Consideration

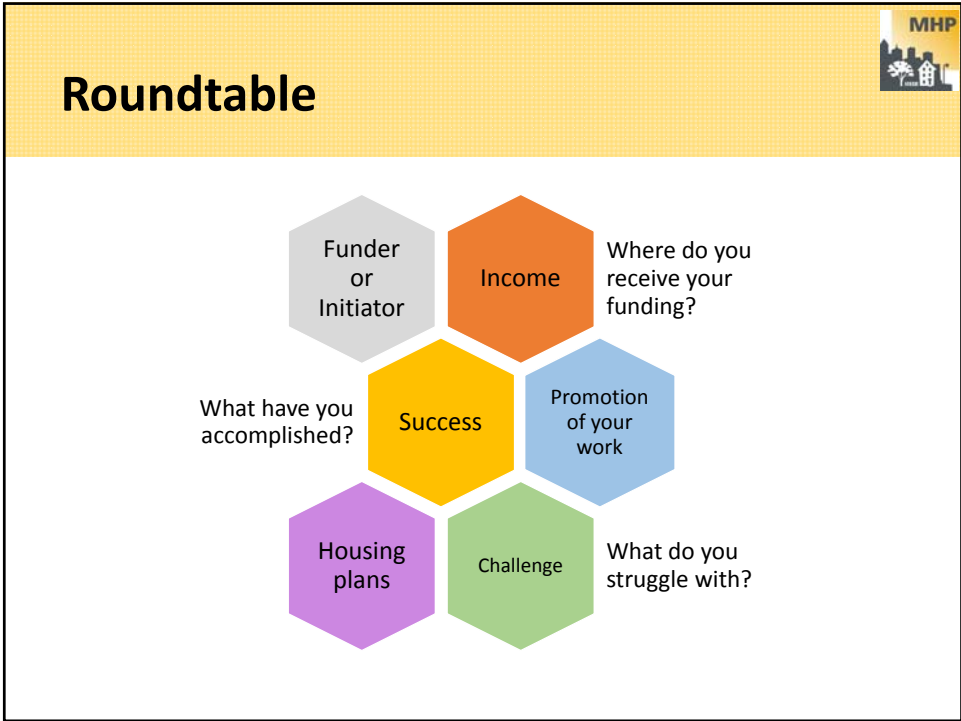
**Anti-aid Amendment to MA Constitution**



- Public funds cannot be given or loaned to individuals or organizations for their private purposes
- Needs to have public benefit
- Payment after service rendered

Restriction	Lease agreement	Recapture
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## Community Housing



Acquire

Create

Preserve

Support



## Acquire

Cromwell Court Apartments -- Barnstable



- 124 units of family rental housing
- Built in 1973. Acquired and rehabilitated in 2011.
- \$500,000 CPA funds

# Create



# Small Scale



Thankful Chase's Pathway  
Harwich, MA  
12 family rental units  
Opened in 2007  
Developer: Cape Community Development Partnership



Paradise Pond  
Northampton, MA  
12 family rental units  
Opened in 2007  
Developer: HAP Housing



Butternut Farm  
Amherst, MA  
26 family rental units  
Opened in 2011  
Developer: HAP Housing



Baker Street Apartments  
Foxboro, MA  
20 family rental units  
Opened in 2005

## Dennis

Melpet Farm



- New construction
- Disposition town owned land
- 27 affordable townhouses, 1-, 2-, 3-bedroom units
- 60% AMI, family rental housing
- \$475,000 CPA funds



## Cambridge

Port Landing



- 20 units of family rental (1-, 2-, and 3-bedroom units)
- Occupancy November 2016 in Kendall Square
- \$3,048,656 CPA funds (\$9m total budget)



# Re-use



**Shoe Shop Place**  
Middleboro  
25 rental  
(family housing)



**Stevens Corner**  
North Andover  
42 rental  
(family housing)



**Rockport HS Apartments**  
Rockport  
31 rental  
(age restricted)

# Preservation



## Amherst

Rolling Green affordable units preserved



- 204 unit multi-family development
- Refinanced in 1998 under Mass Housing's 80/20 prepayment program (15 year restrictions)
- **41 affordable units**/Section 8 vouchers, **\$1.25m** bonded w/CPA

## Cambridge

Bishop Allen apartments preserved



- 32 units of family rental (27 three-bed & 5 two-bed) in four buildings
- Purchased in March 2012 – restrictions due to expire in April 2012
- \$4,638,750 CPA funds through the local Affordable Housing Trust



# Support





Pre-develop-  
ment


Buy  
Downs  
(create)


Down-  
Payment  
Assistance

Rental  
Assistance

# Sudbury MAHT

Home Preservation Program



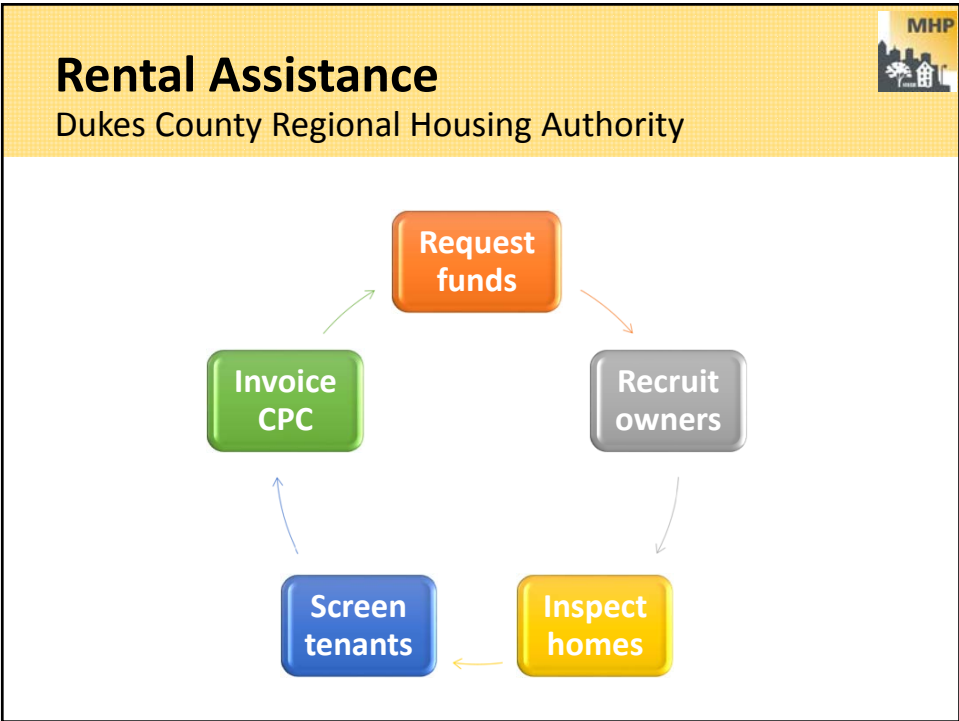
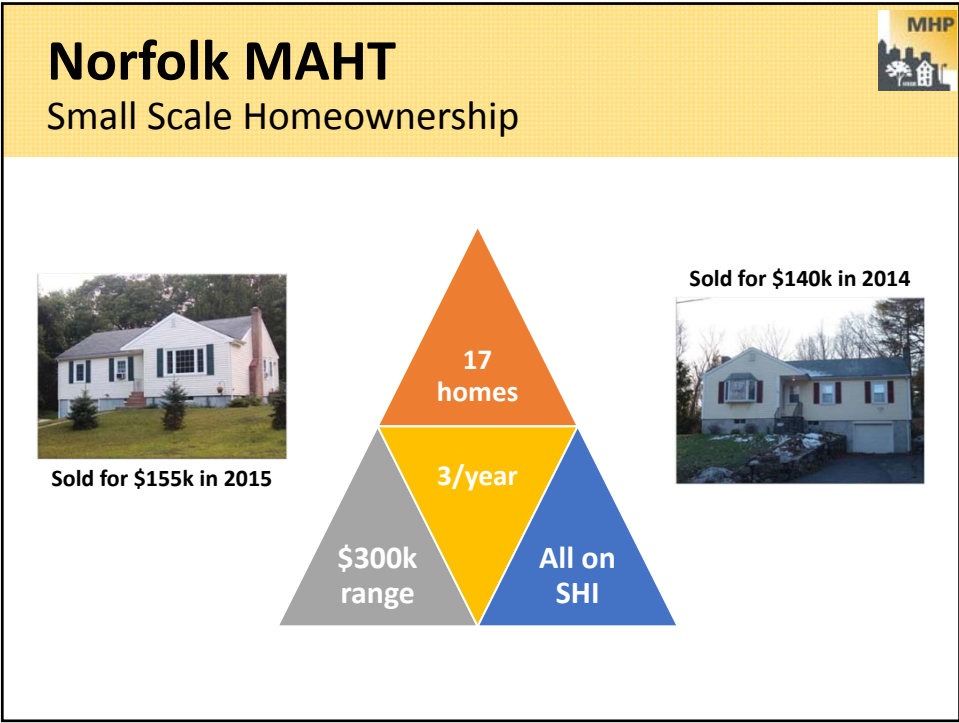


Identify  
house

Negotiate  
price

Lottery

\$180,000  
average  
subsidy



## Martha's Vineyard FY2014



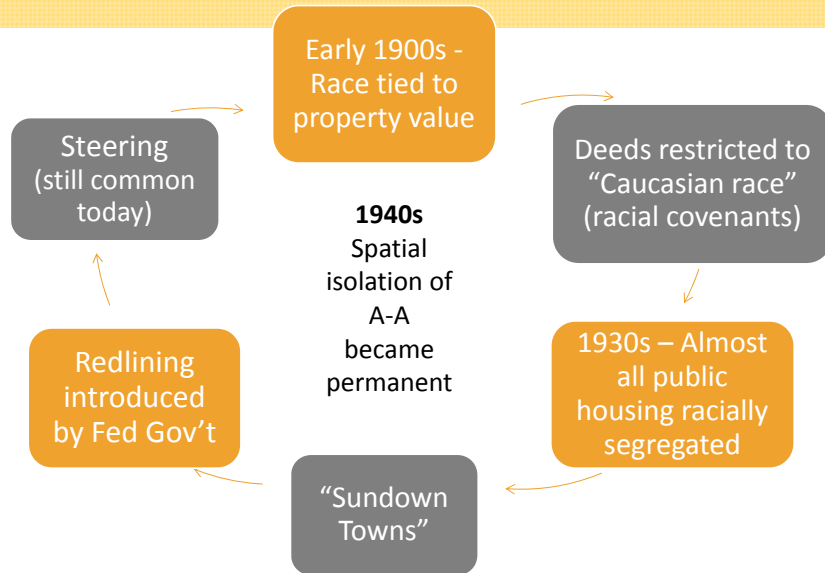
- 66 rental assistance subsidies
- 147 people on waiting list
- \$543,000 CPC appropriations
- Average monthly subsidy = \$499
- Average income served = 45% AMI



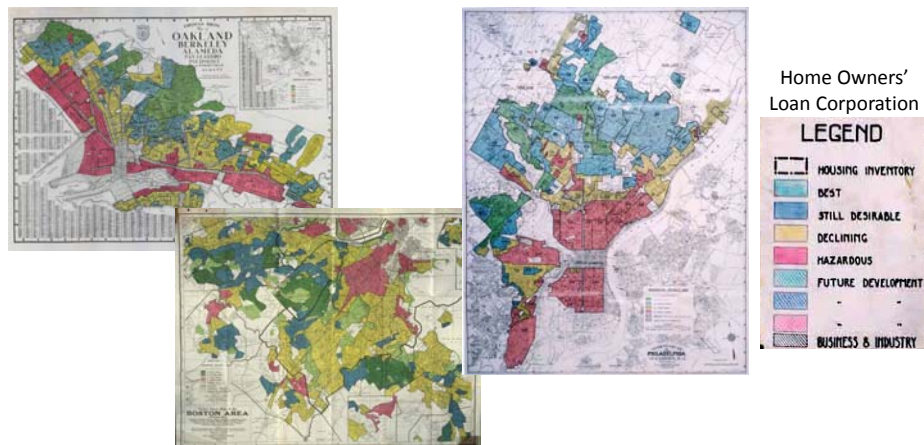
## Trusts & Fair Housing



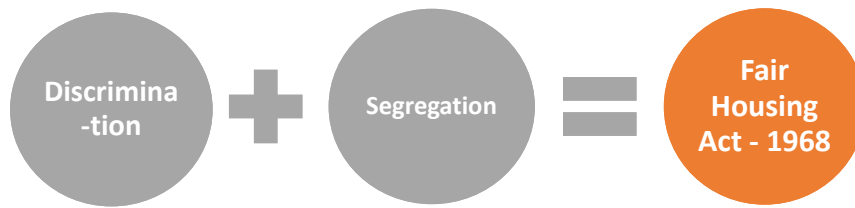
## (un)Fair Housing race



## Federal Government institutionalized racism and segregation -- REDLINING



## (un)Fair Housing



## Key Fair Housing Laws

### Protected Classes



#### Federal (Fair Housing Act)

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability

#### State (M.G.L. c. 151B)

All federal bases plus:

- Ancestry
- Age
- Marital Status
- Source of Income/Public Assistance
- Sexual Orientation
- Gender Identity
- Veteran History/ Military Status
- Genetic Information

## Route 128 and Interstate 495



Route 128



1927-1950s

Circumferential  
highway

Relocation vs  
reconstruction

I-495



1957

Auxiliary route of I-95  
Outer beltway

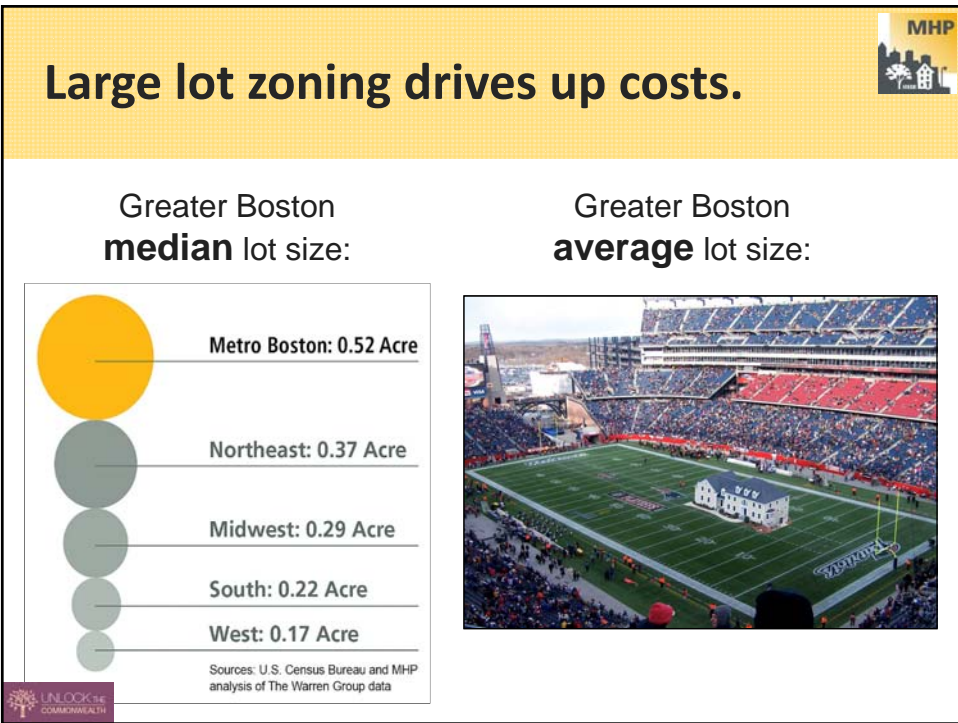
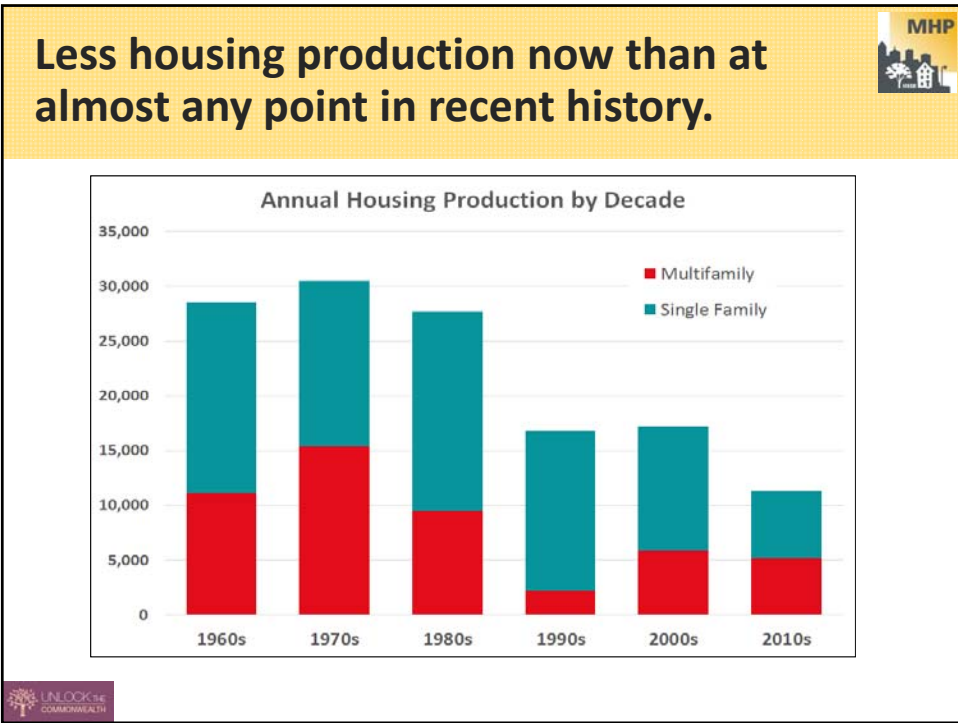
Facilitated suburban development and “white-flight”  
from Boston

## By 1970 in Massachusetts



**Towns and cities** outside of Boston  
(except Cambridge)  
were **98% white**.





## Two Primary Fair Housing Concepts



### Disparate Income

"Discriminatory Effect"

### Affirmatively Further Fair Housing

Obligated to FH

## Discriminatory Effect Rule

### Three Part Burden Shifting Test



Is it likely that policy or practice will negatively impact members of a protected class?

Is the policy or practice necessary to achieve substantial, legitimate, non-discriminatory interests?

Is there a less discriminatory alternative that would meet the same interests?

## Disparate Impact

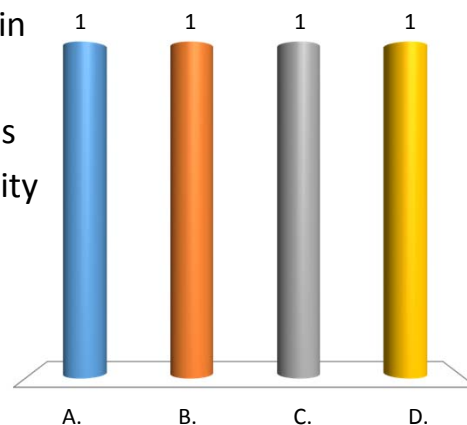


- Local plans or zoning bylaws prioritize studio and 1-bedroom units, restricting the number of bedrooms by unit rather than by development or lot.

## Who may be impacted by studios & 1-bedroom units?



- A. Based on national origin
- B. Based on race
- C. Based on familial status
- D. Based on gender identity



## Disparate Impact

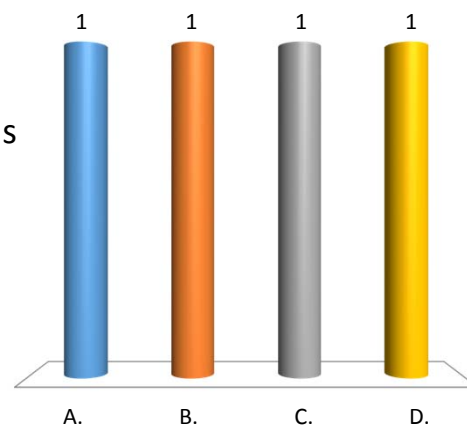


- A town is primarily white and decides to advertise new affordable housing units with flyers left at the local library, community center and Town Hall.

## Who may be impacted by hard copy advertising?



- A. Based on religion
- B. Based on race
- C. Based on familial status
- D. Based on disability



## Disparate Impact

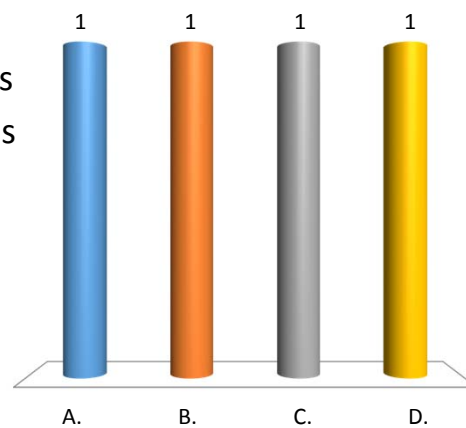


- Planning or zoning approval processes mandate or prioritize townhouses.

## Who may be impacted by townhouse?



- A. Based on sex
- B. Based on marital status
- C. Based on familial status
- D. Based on disability



## Key Case on Disparate Impact



### *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc. (2015)*

- Texas' allocation of Low Income Housing Tax Credits in racially and ethnically concentrated areas, causing disparate impact on racial/ethnic minorities – Supreme Court upheld the disparate impact theory of discrimination under FHA.
- The Supreme Court noted that the FHA recognizes disparate impact and that the purpose of the FHA “was ... to eradicate discriminatory practices within a sector of our Nation’s economy.”


### *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc. (2015)*

*(continued)*

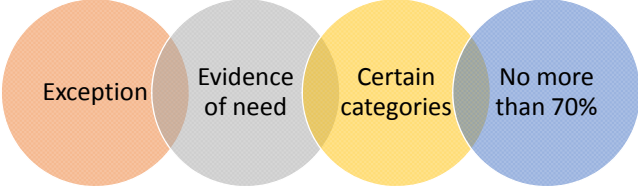
- The court specifically identified “**zoning laws and other housing restrictions**” as “unfairly ... exclud[ing] minorities from certain neighborhoods without any sufficient justification” as a core example of disparate impact and a practice that the FHA sought to prevent.



## Local Preference



<p><b>Federal (Fair Housing Act)</b></p> <ul style="list-style-type: none"> <li>• Race</li> <li>• Color</li> <li>• National Origin</li> <li>• Religion</li> <li>• Sex</li> <li>• Familial Status</li> <li>• Disability</li> </ul>	<p><b>State (M.G.L. c. 151B)</b></p> <p>All federal bases plus:</p> <ul style="list-style-type: none"> <li>• Ancestry</li> <li>• Age</li> <li>• Marital Status</li> <li>• Source of Income/Public Assistance</li> <li>• Sexual Orientation</li> <li>• Gender Identity</li> <li>• Veteran History/ Military Status</li> <li>• Genetic Information</li> </ul>
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## Obligation to Affirmatively Further Fair Housing





## How to Affirmatively Further FH



### Affirmative Fair Marketing

- Follow DHCD's marketing & resident selection plan guidelines
- Market to those least likely to apply

### Zoning

- Consider ways that zoning may be creating disparate impact

### Diverse Housing Options

- Multi-family AND single family
- Rental AND homeownership
- Family AND senior



## Key Case in AFFH



### ***U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County (2009)***

- Consideration merely of need for affordable housing for low-income households is inadequate (county certified AFFH but failed to address racial/ethnic segregation in its Analysis of Impediments to Fair Housing and to take steps to overcome it).
- \$30 million settlement with U.S. government included remedy for development of 750 units of affordable housing in 31 mostly White communities over 7 years.



## Break – 15 minutes



Please return to room listed on the back of your name tag at **11:15am**

## Case Study

Notuncommon, MA



- Individually read case study
- As a group, discuss the questions at the end of the case study.
- If information is not given (e.g., do they have a housing production plan?), assume “no.”

## Notuncommon



1. With limited housing infrastructure in Notuncommon, how should the new MAHT get started?

## Notuncommon



2. One early step the MAHT decided on was to host a public hearing on affordable housing. To the surprise of the trustees, 42 people showed up on a Wednesday evening. A few residents expressed support for affordable housing, but most folks expressed concern that new affordable housing would be built for people outside of the community. Instead, they want any new affordable housing to solely benefit people who already live in Notuncommon. How should the trustees talk about Fair Housing and “local preference” with neighbors?

## Notuncommon



3. Given the new census data in 2010, Notuncommon's affordable housing supply has fallen to 3.1% on the SHI. The trustees are considering ways to increase this percentage. What are suggestions you would make? How might Notuncommon's MAHT convince the Community Preservation Committee (CPC) to recommend transferring CPA funds to the trust?

## Notuncommon



4. A regional non-profit has proposed a 45-unit family rental development at a former elementary school in Lower River, a well-established, moderately-dense neighborhood. All units are proposed to be affordable. This proposal resembles existing density, allowing 11.25 units per acre (total of four acres), bringing their total on the SHI to 5.5%. Originally, the town urged the non-profit to apply for a special permit. Yet Selectboard member Ginny Sloan is concerned the proposal is too large. She has roused abutters against the proposal, assisting in submitting a letter of opposition to the local paper. It appears that the ZBA may vote against a special permit. The non-profit is a highly regarded housing developer that pays local property tax. How might the MAHT help mitigate this situation? Should the trust support the developer in filing under Chapter 40B?

## Notuncommon



5. One homeowner has posted a sign in his yard that says, “Future home of welfare queens,” with an arrow in the direction of the site for the 45-unit family rental development. The press has shown this sign on TV and the internet. It is making trustees, and other town leaders, uncomfortable. What might the trust do to address the impact of this homeowner’s sign?

## Notuncommon

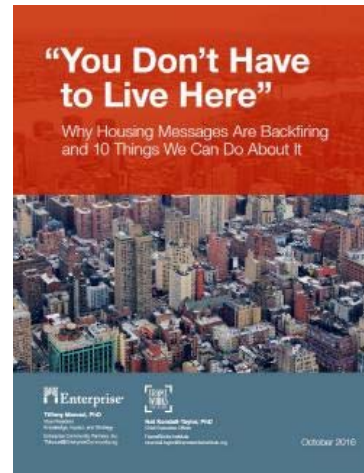


6. With the Selectboard members split on the issue of affordable housing and several other leaders being indifferent, if not hostile, toward affordable housing, how might the trust work to create a “culture of support” for diverse housing options in town?

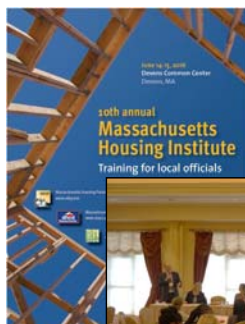
## Wrapping Up



- Balance people with places and systems
- Tell “story of us” rather than “story of them”
- Connect housing to other social issues and outcomes
- Where you live affects you
- Consider language that we use (e.g. home vs housing)



## Annual Housing Institute



### Annual Housing Institute

June 7 and June 8, 2017

Devens Common Center in Devens, MA



### Sessions include:

- State, federal policies and resources
- Understanding the development process
- Development finance & finding a site
- Demystifying fiscal impact
- Local strategies that work

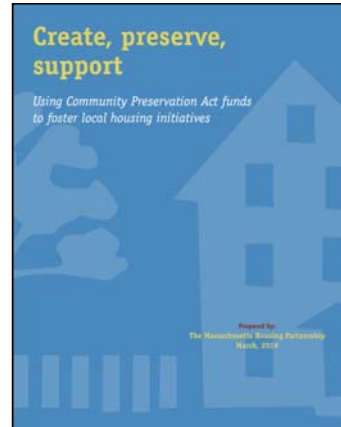
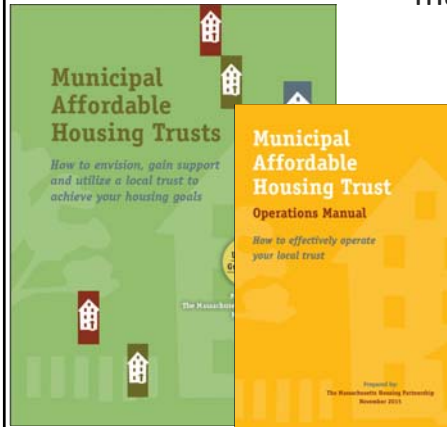
**More information:** [www.mhp.net/news](http://www.mhp.net/news)

## MHP Online Resources



### On our website:

<http://www.mhp.net/community/publications-and-materials>



## Questions?



**Massachusetts Housing Partnership**  
[www.mhp.net](http://www.mhp.net)

**Shelly Goehring**  
Program Manager  
[sgoehring@mhp.net](mailto:sgoehring@mhp.net)  
Direct line: 857-317-852