

CHAPTER 40B AND HOUSING SUPPLY IN MASSACHUSETTS

Clark Ziegler - Boston Bar Association - September 21, 2010

- There is compelling evidence that zoning and other local land use restrictions suppress the rate of housing construction in Massachusetts.¹
- The high costs and limited housing choices resulting from insufficient supply have choked off job growth, which would otherwise be much higher because of our favorable industry mix and highly-educated workforce.²
- More than two-thirds of the housing being constructed in Massachusetts is detached single-family homes on large lots. MIT's Center for Real Estate analyzed all building permits in eastern Massachusetts during a recent five-year (pre-recession) period and found an average lot size for single-family homes of 1.1 acres, which is the size of an NFL football field including the end zones.³
- Three out of four cities and towns in the metro Boston area outside Route 128 did not approve any multifamily housing developments larger than five units during the period analyzed by MIT. One out of five communities did not approve any multifamily housing at all during the period. In most communities multifamily housing represented less than 14 percent of all new housing created. This is despite the fact that 93 percent of the cities and towns in eastern Massachusetts claim to allow multifamily housing in their zoning codes.⁴

¹ See "Regulation and the Rise of Housing Prices in Greater Boston," Edward L. Glaeser, Jenny Schuetz and Bryce Ward, Rappaport Institute, Harvard University, www.hks.harvard.edu/rappaport/downloads/housing_regulations/regulation_housingprices.pdf. See also "Sustaining the Massachusetts Economy: Housing Costs, Population Dynamics, and Employment," Barry Bluestone, Northeastern University, May 2006, www.northeastern.edu/dukakiscenter/publications/projects_initiatives/documents/Sustaining_the_Mass_Economy.pdf

² "Recipe for Growth," Edward Moscovitch/Cape Ann Economics, January 2009, www.massgrowth.net/research/3/3/study_recipe_for_growth. Also see "Job Creation and Housing Construction: Constraints on Metropolitan Area Employment Growth," Raven E. Saks, Federal Reserve Board, September 2005, www.federalreserve.gov/pubs/feds/2005/200549/200549abs.html.

³ "Large-Lot Housing Construction in the Greater Boston Metropolitan Area", MIT Center for Real Estate and MHP, January 2006, www.mhp.net/uploads/resources/mhp_mit_1_30_06.pdf and web.mit.edu/cre/research/hai/land-use.html. The median single-family lot size was 0.9 acres; the average single-family lot size, more relevant for measuring impacts on overall land consumption, was 1.1 acres.

⁴ "Housing Regulation Database: Massachusetts Municipalities," compiled by Pioneer and Rappaport institutes in 2006 based on survey data collected from 187 eastern Massachusetts cities and towns in 2005, www.masshousingregulations.com.

- Less than 1-1/2 percent of the land area in eastern Massachusetts is zoned to allow multifamily housing, including sites that have already been developed. The percentage of cities and towns in the region allowing multifamily housing development as-of-right dropped from 44 percent in 1972 to 17 percent by 2004.⁵
- This pattern of zoning and land use is completely unsustainable. Census Bureau data shows large-lot sprawl in metropolitan Boston to be among the worst in the U.S. With more rational densities averaging four units per acre we could meet all of the region's housing needs while protecting natural resources, reducing time spent commuting, and preserving significantly more open space.⁶
- Chapter 40B is one of the only land-use mechanisms in Massachusetts that reduces sprawl and promotes more balanced growth. About a third of the multifamily rental housing constructed in Massachusetts over the last decade was permitted through Chapter 40B, and outside of large cities nearly two-thirds of the rental housing in Massachusetts was permitted through Chapter 40B.⁷ In MHP's experience virtually none of this housing would have been allowed under current zoning.
- A recent analysis by the UMass Donahue Institute found that Chapter 40B development over the last ten years contributed \$9.3 billion in economic expenditures in Massachusetts and resulted in more than 47,000 jobs.⁸ No alternative zoning mechanism has been proposed that would replace this level of economic activity if Chapter 40B were to be repealed.
- MHP frequently works with towns that are donating land and providing local funds to support small-scale development of affordable housing. In almost every case those locally initiated projects require a comprehensive permit pursuant to Chapter 40B because the local bylaws would not allow the development as-of-right and make no provision to allow the project by special permit. In those cases, getting a two-thirds vote of town meeting to approve a zoning change often proves to be a difficult or impossible hurdle.

⁵ "Guarding the Town Walls: Mechanisms and Motives for Restricting Multifamily Housing in Massachusetts," Jenny Schuetz, Joint Center for Housing Studies, Harvard University, July 2006, www.jchs.harvard.edu/publications/governmentprograms/w06-3_schuetz.pdf. Zoning map data available at www.mass.gov/mgis.

⁶ Open Space, Housing Construction and Home Prices: What's the Payoff from Smart Growth," Edward Moscovitch/Cape Ann Economics, September 2005, www.mhp.net/uploads/resources/cape_ann_report.pdf.

⁷ From data compiled for MHP. Between 1999 and 2009 Chapter 40B accounted for 32 percent of the rental housing overall and 62 percent of the rental housing outside the cities of Boston, Brockton, (town of) Brookline, Cambridge, Chelsea, Fall River, Holyoke, Lawrence, Lowell, Lynn, Malden, Quincy, Revere, Salem, Springfield and Worcester.

⁸ "Economic Contributions of Housing Permitted through Chapter 40B: Economic and Employment Linkages in the Massachusetts Economy from 2000-2010," Donahue Institute, University of Massachusetts, September 2010, <http://www.chapa.org/pdf/UMass40BReportFinal.pdf>.

- Massachusetts is a home rule state and – unlike many other parts of the U.S. -- there is no requirement that local zoning and land use regulations conform to state and regional land use plans. As a result, cities and towns are free to adopt land use regulations that advance perceived local interests even if those regulations are detrimental to the interests of the surrounding region or the Commonwealth as a whole. At present, Chapter 40B is the only meaningful check-and-balance on that regulatory system.

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