



ON THE GROUND: 40B Developments Before and After

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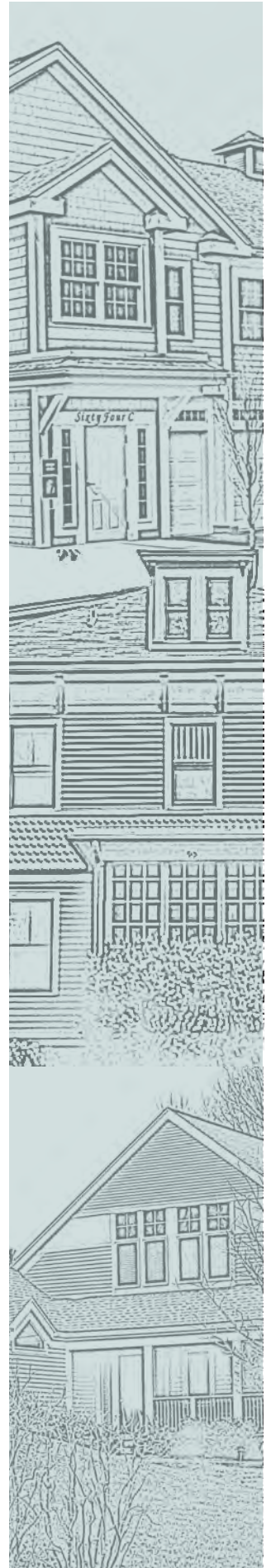




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Chapter 6 4

WELLESLEY HASTINGS VILLAGE

The permitting process for Hastings Village is unique among the case studies in this report because of the intensity of the opposition and length of the permitting process. The neighborhood opposition to this 52-unit rental development was primarily concerned with traffic, environmental impacts, and the developer's track record. When the project was constructed after a permitting process that spanned over a decade, these concerns were ultimately not realized to the extent originally feared.

Wellesley Community Profile

The town of Wellesley boasts a unique mix of residences, recreation, and education. With approximately 26,000 residents located 13 miles west of Boston,¹ it is considered a highly desirable suburb of Boston. Wellesley is home to Wellesley College, Babson College, Mass Bay Community College, a host of private schools, and a renowned public school system. As such, it is an attractive Boston suburb for those with the means to afford the cost of living. According to 2007 ACS data, the median cost of a home in Wellesley is \$910,900 and it consistently ranks among the wealthiest communities in Massachusetts.² The town boasts a vibrant cultural scene and takes immense pride in its town parks, preserves, and tree-lined streets.

Many Wellesley residents believe that its commitment to planning over the past century is one of the main reasons it has remained a desirable and attractive community. Indeed, according to the Town of Wellesley's Comprehensive Plan: 2007-2017, "the town passed a zoning law in 1925 and was a pioneer in the development of a planning board, a board of survey, and a billboard bylaw." Indeed, the town of Wellesley takes a great deal of pride in controlling the look take the look of the community. While this has resulted in a highly desirable and attractive community, it has not effectively created affordable housing. Indeed, this has become a critical issue in the past decade; even town employees

are not able to afford the costs of living in Wellesley. According to Brad Reed in the *Wellesley Townsman*, “If scarcity creates value, then affordable housing for town employees might be the most valuable commodity in Wellesley.”³

Although Wellesley has drafted guidelines to address its lack of affordable housing, these plans do not reflect the realities of the housing market in the town, nor do they encourage expediency. The Town’s comprehensive “Affordable Housing Guide” was voted and approved at town meeting in 1989 and remains the guiding document for the creation of affordable housing. Consider the first two of eight criteria in Wellesley’s Affordable Housing Guide: “1. The predominantly single-family residential character of Wellesley shall be preserved; and 2. Urban-scale projects are to be avoided.”⁴

Given the emphasis placed on preserving the present character of Wellesley’s housing stock, proposals for dense developments have historically been confronted by heated opposition, thus creating a contentious environment for the creation of affordable housing. Logan Huffman, in a 1997 letter to the Town of Wellesley Housing Partnership Committee in relation to the Hastings Village permitting process, argued, “Wellesley needs the [Hastings Village] apartments, both market and affordable, much more than it needs another five single family houses which will sell in the low- to mid-\$500,000s.”⁵

Since Wellesley has never achieved the 10 percent affordable housing quota, it has remained vulnerable to development under Chapter 40B. The first housing created under the Comprehensive Permitting Process was a 125-unit apartment complex in Wells Square constructed in 1974. The project was met with some opposition; but given its location across the street from a preexisting condominium development, many believed the density was well suited to the neighborhood.⁶ The Ardmore apartment complex on Cedar Street has 36 rental units, all of which are counted towards Wellesley’s affordable housing stock. When the developer proposed changing these apartments to condominiums, the town protested the fact that the entire building would no longer count towards Wellesley’s SHI. Instead, only nine units would qualify. Years later, when the new building owners were considering converting from partially subsidized condos to expiring use condos, the Supreme Judicial Court ruled in a landmark decision that housing units created under Chapter 40B must remain affordable in perpetuity.

Hastings Village

The decade-long debate over Hastings Village began in June 1994. Developer Logan Huffman of Eastland Partners applied for a comprehensive permit to

WELLESLEY DEMOGRAPHICS	
Population	26,613
Area (square miles)	10.49
Race	90% White 6.4% Asian 1.6% Black
Median Household Income (1999 dollars)	\$86,052
Total Housing Units	8,861
Owner Occupied	83%
Rental Occupied	17%
Median Home Value	\$548,100
Subsidized Housing Inventory (SHI) ³	
SHI Before Development (1997)	4.54% (396 units)
SHI After Development (2008)	5.5% (480 units)

Figure 10: Wellesley Demographics
Sources: 2000 Census Data, DHCD Community Profile, and
DHCD Subsidized Housing Inventory

build an 87-unit, mixed-income rental housing development on Hastings Street. Wellesley's Zoning Board of Appeals rejected the application, citing concerns regarding the density of proposed construction on the 2.18-acre site and the resulting impacts this would have on environmental contamination. Eastland Partners reduced the size of the proposed complex and appealed to the state Housing Appeals Committee, which ruled in favor of the developer. The neighbors appealed to the State

Superior Court, which again ruled in favor of the developer. Finally, after a six year legal battle, the ZBA granted a comprehensive permit for the development of 52 units of mixed-income rental housing in July 2002.⁷

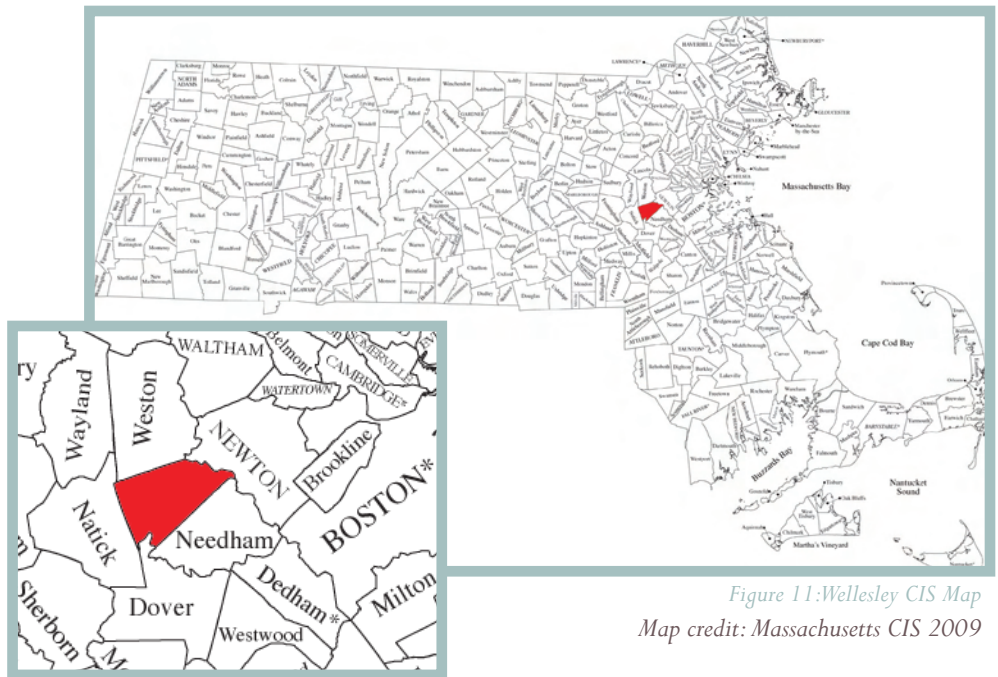


Figure 11: Wellesley CIS Map
Map credit: Massachusetts CIS 2009

The 2.19-acre tract of land now occupied by Hastings Village sits less than 200 yards from Route 9 in Wellesley, close to the Route 9/Route 128 (Interstate 95) interchange. The land is situated between a commercial area, a residential area, a school, and a town preservation area. Located to the north is a commercial district, consisting of an office building, two car dealerships, and an office building housing Harvard Community Health (now Harvard Vanguard Medical Associates). To the south is the Sheridan Hills neighborhood, which is almost entirely comprised of single-family homes. Across the street from the 2.19 acres is Fiske Elementary School and directly behind the property is the Rosemary Brook Town Forest.

The 40B permitting process for Hastings Village spanned over a decade. While this was partially a due to the lengthy appeals process through Housing Appeals Committee and Supreme Judicial Court proceedings, it was primarily due to the forceful and well-organized opposition to the development.

Just up the hill from the site of Hastings Village sits the historic Sheridan Hills neighborhood. Developed in the 1940s, the quiet, comfortable streets of Sheridan Hills were named to commemorate presidents: Monroe, Madison, Jackson, and Jefferson. One interviewee referred to Sheridan Hills as a “starter-home” area of Wellesley. With its single-family, New England colonial-style homes, it is a neighborhood where, according to the *Wellesley-Weston Magazine*, “where stories of childhood sound like ‘Leave it to Beaver.’”⁸ Resident Ellie Everts agreed, “It’s a charming area, lively, humble. These aren’t big gaudy houses, they’re warm and cozy homes.”⁹ According to longtime resident Donna Kemp, the community is indeed tightly knit, “Everyone knows their neighbors and there’s so much chatting, so much friendliness. That makes for a very close community.”¹⁰

The strong sense of community in the Sheridan Hills neighborhood helps to explain residents' ability to quickly and efficiently organize a committee to oppose the first Hastings Village proposal in 1994. According to one interviewee, word of the proposed housing development spread quickly through the neighborhood, "I first heard from the postman that the lot we thought would be developed for five houses had been sold to a developer." The neighborhood held their first organizational meeting in the Fiske School. "There were about 100 houses in the Sheridan Hills neighborhood," said Stanley Brooks, a neighbor and early organizer against the development. "We were concerned that the original 87-unit proposal would just about double the population of our neighborhood."¹¹

This was not the first time the neighborhood had come together in the interests of their neighborhood. Indeed, there had been many battles prior to Hastings Village. "We got a traffic barrier installed on Hastings Street to prevent access from the commercial area off of Route 9 because the car dealership was test driving through our neighborhood," said one interviewee. "We were also instrumental in creating the conservation land and water protection area and we played a role in the construction of the Harvard Community Health building." Clearly, the neighbors were preparing for the long haul. "At one point we set ourselves up as a nonprofit to get contributions," said one interviewee. "This allowed us to maintain a lawyer throughout a good part of the process."

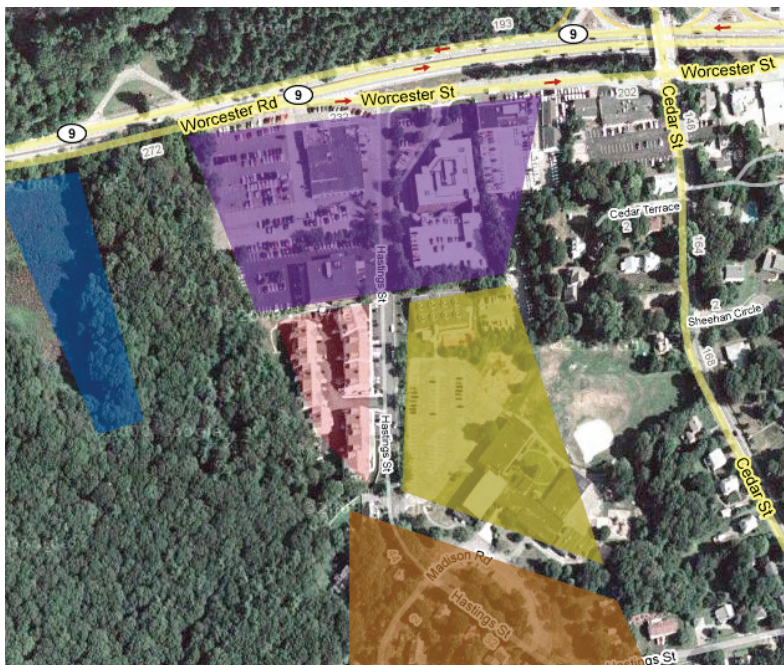
On the Ground: Before

Although consensus was rare among the main players in the Hastings Village development, all parties agreed that the Hastings Village comprehensive permitting process was long, drawn-out, and steeped in controversy. "I've worked on 100 or so 40B developments, and Hastings Village in Wellesley is easily the most controversial," said Bob Engler, consultant to the developer.¹² Although the permitting and appeals process lasted over ten years, the main concerns and controversies remained largely unchanged throughout the entire ordeal.

Density

The density of the Hastings Village development was of primary concern to the town and the abutters throughout the entire permitting process. The original application for an 87-unit development was met with intense scrutiny and disapproval. In the Zoning Board of Appeals' 1995 permit rejection, the board found that "the proposed site is located in a 15,000 square foot district, in which one dwelling per lot is allowed. Five single-family dwellings could be constructed on this lot. The density of this project is 40 units per acre, or 39 percent denser than allowed in any zoning district in the town."¹³

One interviewee thought that the density of the project, both in the original proposal (87 units) and after it was reduced to 52 units, was out of character with the Sheridan Hills neighborhood and the town as a whole. "Typically, lots are 10-15 square feet or a quarter acre. If you extrapolate what that would be with 52 units it's quite a difference from what was being proposed. It's something you'd find in Cambridge or Brookline, not in Wellesley." The ZBA agreed in its 1995 decision, concluding that the "height of this building [five stories] is totally inappropriate for the site and incompatible with its surroundings."



Located to the north of the Hastings Village Site (red) is a commercial district (purple), consisting of an office building, the Silver Lake Dodge dealership, and an office building housing Harvard Community Health. To the south is the Sheridan Hills neighborhood (orange), which is almost entirely comprised of single-family homes. Across the street from the 2.19 acres is Fiske Elementary School (yellow), and directly behind the property is the Rosemary Brook Town Forest (blue).

Figure 12: Hastings Village CIS Map, Copyright Google Maps, 2009.

Another interviewee agreed that this was of special concern to the Sheridan Hills Committee. “We [the neighborhood opposition] looked at other instances of moderate income housing being developed under Chapter 40B across the state. We didn’t find anything analogous to Hastings Village, the original proposal of 87 units seemed to be setting a significant precedent in terms of mass and density. Even when it was reduced to 52 units, it seemed much too large for the acreage.”

But, according to Engler, density per se is not a viable argument in opposition to a 40B development, particularly in the case of Hastings Village. “There are no density requirements on the books. Our analysis showed there were other developments in the town and in the state with similar density to the 87-unit proposal and certainly the 52-unit final construction.”¹⁴ The HAC agreed; and in its June 11, 2002 decision ruled that the site was suitable for some use denser than single-family residences, as it was “transitionally” located between a dense, heavily used commercial district and a residential district zoned for single family homes.¹⁵ As Huffman wrote in a *Wellesley Townsman* editorial, “The site is well separated by height, by distance, and also visually from the adjacent neighborhood and has only two residential abutters.”¹⁶ Indeed, Engler noted that, from a planning perspective, the Hastings Village site was the ideal location for transition from a commercial area to a residential neighborhood. “We weren’t blocking anyone’s view or in anyone’s backyard.”¹⁷

Still, disdain for density and development in general seemed to be the underlying reasons for the intense opposition of the Sheridan Hills Committee. Although density may have been the motivation for opposition, as consultant Engler said, the neighbors were smart enough to couch it in other terms. “In blue-collar communities, people say it like they mean it. In Wellesley, they’ll cite the danger of cadmium-wear contamination.”¹⁸

Stanley Brooks said that the expertise of the neighborhood residents was key to the approach of the neighborhood association in opposition to the development. “We had



Photo credit: Shannon Moriarty

lawyers, environmentalists, engineers, and people who are knowledgeable in all areas that needed to be addressed in these proposals.” Thus, although density was a key concern of the Sheridan Hills neighborhood, it was understood that other, more pertinent arguments would be of interest to the Zoning Board of Appeals.

Several members of the neighborhood indicated that they were uncomfortable with the idea of apartment units in a neighborhood comprised of single-family homes. According to Brooks, “People in rental units don’t have the same investment in the neighborhood as property owners.” This also changed the way the Sheridan Hills Committee approached their handling of the development in relation to the Fiske School, located right across the street. Rather than raising concern over the number of school children overwhelming the school system, the safety of the children was the primary issue. Since the rental housing was presumably better suited towards households without children, one neighbor wrote in a letter to the ZBA that “families without children would probably be less concerned with the school than families with children,” thus compromising their safety.¹⁹

Traffic

Years before the first comprehensive permitting process began for Hastings Village, residents of Sheridan Hills had organized to have a barricade installed at the base of the hill on Hastings Street, essentially cutting off access to Route 9 from the Sheridan Hills neighborhood. Early in the permitting process, Eastland Partners conceded that this barricade would be moved up the hill to prevent future residents of Hastings Village from accessing Cedar Street and the Sheridan Hill neighborhood via Hastings Street. This meant that the only access for residents of the development would be from Worcester Street (Route 9). The goal of this early concession, according to Bob Engler, was to make traffic volume a “non-issue” during the permitting process.²⁰ Indeed, this was ruled the “preferred option in relation to traffic safety.”²¹

Despite this early understanding that Hastings Village would not be accessible through the streets of Sheridan Hills, this remained a key concern of several residents. “My initial

concern, upon hearing about the proposed development, was putting 87 or 52 units of housing on less than two-and-a-half acres of land,” said one interviewee. “If you have two cars per unit, that’s a significant amount of traffic.”

Although the Sheridan Hills Committee was not worried about traffic volume through the neighborhood, the Town of Wellesley’s traffic consultants were still concerned about safety issues. As a result of the relocated barrier, the Worcester Street (Route 9)/Cedar Street intersection and the Worcester Street/Hastings Street intersection would be affected by the Hastings Village development. The Worcester Street/Cedar Street interchange was recognized by the Mass Highway Department as one of the top 100 high accident sites in the state. Thus, the state agency implemented changes to the road in 1995 to address these safety concerns.²²

While the town traffic consultants ruled that the additional volume of the initially proposed 87-unit development would not impact the interchange, the addition of residential units to this largely commercial area was identified as problematic. In 1995, police records show only one accident in three years at the Hastings Street/Worcester Street intersection, a rate the traffic consultant deemed “remarkable” in light of the current design and the volume of commercial traffic.²³ The addition of dense housing, the ZBA argued, would bring with it motorists traveling at all hours of the day and night. Thus, the ZBA concluded this could result in a “dramatic change in this accident record.”²⁴ The specific elements that could lead to “potentially hazardous” traffic issues with the addition of Hastings Village were the limited sight distance for cars exiting Route 9, the danger of vehicles making right turns from Hastings Street onto Worcester Street, and the danger to vehicles making left turns into Hastings Street from Worcester Street westbound.

Environment, Health and Safety

The town forest, which encompasses the Rosemary Well and Longfellow Well, directly abuts the rear of the Hastings Village site. The preservation of open space is typically of special concern to neighborhoods, and Sheridan Hills was no different. As one resident wrote in a letter to the Zoning Board of Appeals, “The natural resources jeopardized by this development can never be renewed. The town forest is vulnerable, the water supply is vulnerable, and the existing vegetation and greenery are vulnerable. This vital and non-renewable area must be protected from the run-off and pollutants naturally associated with a development the size and scope of Hastings Village.”²⁵

From the beginning of the permitting process, the developer planned on connecting the Hastings Village sewage line to the town system. There were two alternatives for making this connection, which were critiqued and modified throughout the permitting process. The first option was to lay the sewer pipe through the rear of the property, through the town forest, and connecting to the town sewer trunk on the Waterworks. The downgrade of the forest would allow for a gravity line rather than incur the expense and requirements of a pump system. According to Duggan, the town was concerned that cutting through the town forest would be overly invasive and not easily accessible for maintenance and cleaning without affecting the wooded preserve land.²⁶

The second alternative was to tie into the existing sewer on Hastings Street. Since the grade of the proposed connection is flat, Duggan contended that it would be prone to clogging and backup which could, in turn, contaminate the town water supply. Although

“In blue-collar communities, people say it like they mean it. In Wellesley, they’ll cite the danger of cadmium-wear contamination.”

neither alternative proposed by the developer for connecting to the town sewage main was entirely satisfactory to town government officials, the second alternative was deemed preferable by the Zoning Board of Appeals when the Supreme Judicial Court ruled that the project move ahead.

Storm water drainage was also a concern from the very beginning of the Hastings Village permitting process, in particular, the potential for contaminating the Rosemary Well. Many believed that, if proper measures were not taken to thoroughly assess the building's footprint, the town's water source would be vulnerable to contamination during both the construction of the development and once the buildings were constructed.

The drainage plan in the 2002 Comprehensive Permit placed the drainage system at the bottom of the basin, did not retain storm water, and outflow poured directly onto Waterworks land (i.e. the town water supply). Woodward & Curren, authors of the town's site drainage assessment, expressed concerns about the site's drainage plan, "Contaminants in parking lot runoff and any careless or accidental spills are sent directly to the aquifer with no possibility of detection or renovation."²⁷ Thus, with the addition of an impervious parking lot, impervious roofing, and the resulting concentrating of drainage, town officials were concerned that the outflow would be "dumped into one spot onto Waterworks land within proximity of the town wells."²⁸

Finally, the developer's plan to use existing infrastructure for storm water runoff also concerned town officials. Duggan questioned the viability of this plan, stating that the existing storm drainage on Hastings Street did not have the appropriate capacity to handle any additional drainage.²⁹ A consultant for the town recommended an 18-inch pipe for the Hastings Street storm drainage system, deeming the existing 10-inch pipe inadequate.³⁰

Developer's Track Record

The Zoning Board of Appeals recognized in its 1995 rejection of the Hastings Village application that the developer's track record is "not usually within the province of the Board of Appeals, as it is more properly the concern of the subsidizing agency."³¹ But because there was no subsidizing agency to provide oversight, the developer's track record and experience became a key controversy and concern of the opposition.

Brooks was wary of the intentions and track record of developer Logan Huffman from the start. "I ran into him one day at the site when I was out walking my dog. He told me he didn't care if neighbors weren't happy about the apartment buildings; he was building to earn his retirement money."³² Several interviewees stated that Huffman's track record was questionable: his most recent project, single family homes on Upwey Road in Wellesley, resulted in several lawsuits for shoddy construction and failing to comply with contractual obligations. It was also known that he left a subdivision in Ashland unfinished, opting to pay off the town rather than complete the project.

The Sheridan Hills Committee highlighted their concerns regarding the developer in a leaflet distributed to the neighborhood: "To our knowledge the developer has no previous experience building a project of this size or scale or managing an apartment complex. At the September 29th ZBA public hearing, testimony was presented regarding the developer's prior construction projects and the problems which have been encountered as a result of the developer's actions or inactions."³³

Still, one interviewee felt the scrutiny of Logan Huffman was exaggerated. He was, after all, a fellow resident of Wellesley building on land that he rightfully owned. “There are things Logan Huffman was accused of doing that I think would even surprise Logan Huffman. To a degree, he got a rap he didn’t deserve. He wasn’t doing anything horrible or outside the law. He was just the villain.”

Property Values

In Wellesley, the half-million dollar homes of the Sheridan Hills neighborhood are mostly occupied by “college professors, lawyers, engineers, teachers, and other highly educated people who tend to be Democratic,” said one interviewee. “We’re not the wealthy businessmen or conservative financiers. There aren’t many areas of Wellesley where you can easily point out two to four blocks of people who tend to vote Democrat, but this is one of them.”

Yet, even if residents of the neighborhood are progressive or proponents of affordable housing, people tend to look at their property investments in terms of resale. “A development may not bother someone who lives there now, but they may be thinking about whether it might be a concern to the next person who will live there,” said Rick Brown, retired town planner for Wellesley. “The neighborhood you live in is a big thing to



“Although the road block separating Hastings Village from the Sheridan Hills community was a point of agreement between the developer and the neighbors, it seems to isolate the people in the development from the Sheridan Hills neighborhood, which is very unwelcoming.”

-Former Town Planner Rick Brown

Photo credit: Shannon Moriarty

people in suburban areas. When you buy a house in a wealthy community like Wellesley, you don't want to be in the neighborhood with "it" in it. It's human nature, not because they are bad people."³⁴

On the Ground: After

The Hastings Village Rental Community has been constructed and occupied since 2005. Eastland Partners, the original developer, remains the property owner and manager. According to Karen Fromm, the Hastings Village Property Manager, the controversies that consumed the Sheridan Hills neighborhood for over a decade seem to be unknown to the people living in Hastings Village apartments today.

Nevertheless, the addition of 52 units of housing to the Sheridan Hills neighborhood has certainly had impacts, large and small. Residents of the neighborhood have noticed slight changes in their neighborhood since the addition of the Hastings Village development. Brooks pointed out that the exterior lighting in Hastings Village allows him to "see his shadow in the middle of night." Another interviewee agreed, "The building's exterior lighting is extremely bright and shines in the wrong places at the wrong times." Noise pollution has also become more noticeable to some neighbors: the removal of 2.2-acres



Photo credit: Shannon Moriarty

of wooded area means there is less of a buffer between Route 9 and the Sheridan Hills neighborhood.

With the addition of people, one resident has noticed more unfamiliar faces walking around the neighborhood. “The intensity of people,” said Brooks, “has brought an intensity of dog droppings.”³⁵ Yet, other neighbors who had taken part in the organization against the development have not noticed an impact at all. According to another interviewee, “For the most part, it’s out of sight and out of mind.”

Traffic

Many of those interviewed for this study believe that the placement of the barrier at the north end of the development was key to mitigating traffic impact in the Sheridan Hills neighborhood. Although, Brooks points out that traffic has not gone completely unnoticed. “The barricade doesn’t show up on most GPS systems or in online maps, so you still get a lot of delivery vehicles, lost cars, and taxis dropping people off at the top of the hill.”³⁶

Several Sheridan Hills neighbors believe that the dangers of the off-ramp have not been adequately addressed, “It is potentially really dangerous for residents of Hastings, cars come off Route 9 fairly quickly and it’s a blind turn.” Another interviewee added, “Traffic off Route 9 was already an issue with the car dealership and Harvard Community Health Care, but Hastings has added more cars to the area.”

City officials confirm that concern over traffic issues related to Hastings Village have not been realized to the extent feared. However, some of the steps taken to mitigate traffic concerns have had other, unrelated effects. “Although the road block separating Hastings Village from the Sheridan Hills community was a point of agreement between the developer and the neighbors,” said former town planner Rick Brown, “it [the road block] seems to isolate the people in the development from the Sheridan Hills neighborhood, which is very unwelcoming.”³⁷

Environment, Health and Safety

During the development process, the sewer requirements were altered to allow for the installation of a gravity pump through the town forest. After so much scrutiny of the sewer lines and their environmental implications, this change seemed to happen without the Sheridan Hills Committee’s knowledge. “Interestingly, the developer did not connect to the Hastings Street sewer line as we thought, but to another sewer line through the town forest,” said one interviewee, “he saved a great deal of money because he was able to use a gravity line instead of a pump, thus circumventing the requirements of a pump.” But according to town officials, this connection to the town sewer main had no negative impacts on the town’s infrastructure or damaging environmental impacts whatsoever.

Retired Town Planner Rick Brown considered the Sheridan Hills Committee’s drainage concerns a red herring from the start. “If there was truly concern about pollutants in the town well, why wasn’t there concern about the automobile dealerships within 50 feet of the well, closer than Hastings Village? Or Route 9 and the potential for a hazardous waste truck overturning?”³⁸

In the years before the Hastings Village development process began, several projects in Wellesley’s Water Supply Protection Districts were approved without dispute, such as

“The neighborhood you live in is a big thing to people in suburban areas. When you buy a house in a community like Wellesley, you don’t want to be in the neighborhood with “it” in it.”

projects for Babson College, Silver Lake Dodge, and Wellesley Toyota. “The zoning by-law clearly gives the town the authority to have improvements completed if a risk actually exists,” wrote Huffman in a letter to the Wellesley Housing Partnership Committee. “Given the way all other projects are reviewed one can only conclude there is no risk until the project includes affordable housing.”³⁹

Since the development of Hastings Village, city officials confirmed that there have been no issues with the storm water draining system. In addition, there has been no contamination to the Rosemary Well or the Rosemary Brook Water Supply Protection Area.

SUMMARY OF CONTROVERSIES AND OUTCOMES

Controversy	Concern	Outcome
Traffic	<ul style="list-style-type: none"> The addition of residential units will increase the volume of traffic coming off of Route 9, causing potential safety issues and increasing threat of accidents 	<ul style="list-style-type: none"> No increase in accident incidence
Environmental Impacts	<ul style="list-style-type: none"> The building footprint would impact runoff from the development into the town water supply, causing potential for contamination 	<ul style="list-style-type: none"> No known impacts
Infrastructure Impacts	<ul style="list-style-type: none"> Existing sewer lines could not accommodate the additional output from a dense development 	<ul style="list-style-type: none"> No known impacts
Developer’s Track Record	<ul style="list-style-type: none"> The developer would not follow through on project or create a shoddy development that might be an eyesore 	<ul style="list-style-type: none"> Development looks nice and is well-maintained
Property Values	<ul style="list-style-type: none"> The addition of a dense development of rental housing units would decrease the property values of abutting properties 	<ul style="list-style-type: none"> Property values have not been affected

Figure 13: Wellesley Controversy Summary

Developer's Track Record

"I'll be the first to tell you that in spite of my fears, it's a nice-looking development," said one interviewee, echoing the resounding sentiment among the Sheridan Hills residents interviewed. Nevertheless, some residents feel that the condition of the buildings, and the ability of the developer to effectively maintain them, can only be determined once more than four years has passed. "The buildings are fairly new, they aren't really old enough to have required significant maintenance," said Brooks. "We won't know for another five to ten years how these buildings will hold up."⁴⁰

"I'll be the first to tell you, it's a nice-looking development."

Property Values

Anecdotal evidence confirms that properties in the Sheridan Hills neighborhood have not been impacted by the construction of Hastings Village. One homeowner who has lived in the neighborhood for over 20 years, confirms that, "this development has not had any effect on my property value."

Conclusion

Countless town officials, speculators, consultants, Sheridan Hills residents, and other individuals were involved in the decade-long battle to develop Hastings Village. Over a decade of hard work and debate went into the process to create a housing development that increased Wellesley's affordable housing stock while meeting the preferences of the neighbors. Millions of dollars in private investment and public resources, not to mention thousands of volunteer hours and paid time, were dedicated to the process of developing Hastings Village. Although the outcome was not what all of the key players wanted, none of the people interviewed for this study expressed regret for their involvement in the process.

One resident feels that the project would not have turned out as it did if not for their scrutiny of and involvement in the project. "I like to think that the reason the development is 52 units instead of 87 is because of our neighborhood involvement," one interviewee said. "If there was more I could have done to make it a 12- or 24-unit development, I most certainly would have done it."

"I've learned that what we have there is not horrible, of course," said one interviewee. "Clearly, one of the best ways you can bring affordable housing to a community is by building something a little more dense than what the zoning allows, and by incenting developers to do that." One positive result of the Hastings Village process is that many of the community members who were involved have gone on to play key roles in town government posts, as housing advocates and as participants in the town's planning process.

Still, an important question remains: has the focus on affordable housing effectively increased Wellesley's stock of SHI units since the Hastings Village permitting process? No. Wellesley's SHI currently accounts for 5.5 percent of all residential units in town, according to the DHCD SHI Inventory. No new affordable units have been created since Hastings Village was constructed in 2005, so the town is still vulnerable to 40B developments.

Although Wellesley has not met the 10 percent SHI threshold, residents are no more receptive to 40B developments today than they were in 1994. In February of 2007, the chairman of the Wellesley Housing Development Corporation lobbied for the creation of five townhouse-style units, one of which would be affordable. The neighborhood's reception to this plan can only be described as déjà vu. According to the *Wellesley Townsman*, "the proposal was met with skepticism and disapproval from neighbors and abutters, who said the proposed development was too dense, and that it would alter the character of Washington Street."⁴¹

Endnotes

¹ U.S. Census Bureau, Census of Population and Housing, 2000: Summary Population and Housing Characteristics: Wellesley, Massachusetts.

² U.S. Census Bureau, 2005-2007 American Community Survey 3-Year Estimates: Summary Population and Housing Characteristics: Wellesley, Massachusetts

³ Reed, "Affordable housing still an elusive goal"

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Chapter 7 5

WESTON DICKSON MEADOW

Dickson Meadow, an 18-unit, mixed-income homeownership development, was one of Weston's first 40B projects. Developed under the Local Initiative Program, and on land donated by residents for this purpose, the proposal received significant support and input from town officials and residents. Opposition to the project came exclusively from neighbors who wanted to lower the project's density in order to mitigate a host of potential problems. Weston's Board of Appeals approved The Community Builders' comprehensive permit application, allowing the developer to build the total number of units sought, with few conditions attached. Though the density of the project was not lessened as opponents had hoped it would be, it seems that the potential negative impacts of Dickson Meadow that opponents feared have not been realized.

Weston Community Profile

Weston is a quaint and scenic suburb of Boston, located 12 miles west of the city. This largely residential community is one of the wealthiest in the state. Residents are proud of Weston's reputable schools and beautiful homes in quiet and well-maintained neighborhoods. Another of Weston's distinct features is its over 60 miles of hiking and horseback riding trails, golf courses, parks, ball fields, and other carefully preserved open space.¹

Dickson Meadow

Dickson Meadow was the third development in Weston to successfully include affordable housing units. The two mixed income developments built before Dickson Meadow were each unique. Built at a former school site, the Brook School Apartments, opened in 1979, features 75 apartments for people who are over age 62 or are handicapped. Of these 75 units, 55 are subsidized units funded through the HUD Section 8 program. The remaining units are supported by Weston's Community Preservation Funds.² Winter Gardens, a 50-unit

homeownership condominium complex along Route 30, was completed in the 1990s, and was Weston’s first development completed under Chapter 40B.

Dickson Meadow differed from these earlier developments because it grew out of a family’s vision for their land; and because it encountered controversy despite the fact that its planning closely involved town officials and residents. In December 1997, Edward and Priscilla Dickson donated 10.8 acres of their property to a non-profit developer for the purposes of developing a mixed-income housing development on the site. The recipient was The Community Builders, Inc. (TCB), an experienced affordable housing developer in the Boston-area. TCB agreed to work with the Dicksons and their advisory board of town residents who had experience developing housing, to plan for Dickson Meadow. The site that the Dicksons selected had been undeveloped land in a neighborhood of single-family houses and more open space.³ The Dicksons and the Paine Estate, were the property’s only direct abutters. In fact, the closest structure to the site was 105 feet from the southern property border of this parcel, and was owned by the Dicksons.⁴ Other adjacent parcels were large, undeveloped tracts of wooded land owned by the Paine Estate. Parcels beyond these abutters contained single-family houses.⁵ The land in this area of town was zoned

for single-family houses each sited on 60,000 sq. ft. minimum sized lots. In other words, a maximum of .73 units were allowed per acre.⁶

WESTON DEMOGRAPHICS	
Population	11,469
Area (square miles)	17.34
Race	90.3% White 6.8% Asian 1.2% Black
Median Household Income (1999 dollars)	\$153,918
Total Housing Units	3,718
Owner Occupied	86.1%
Rental Occupied	13.9%
Median Home Value	\$739,200
Subsidized Housing Inventory (SHI)	
SHI Before Development (1997)	2% (76 units)
SHI After Development (2008)	3.5% (133 units)

Figure 14: Weston Demographics
Sources: 2000 Census Data, DHCD Community Profile, and DHCD Subsidized Housing Inventory

On the Ground: Before

At the beginning of the planning process, the Dicksons and their Advisory Committee established key objectives of the mixed income development that they envisioned for this property: 1) to provide a minimum of six affordable homes in a mixed-income community; 2) to develop a total of 18 single family homes (12 were to be sold at market or moderate rates), in order to support six affordable homes and create a stable, balanced community; and, 3) to preserve as many trees and as much open space as possible, particularly with respect to the meadow that runs across the front of the development site, along Highland Street.⁷ In March 1998, Weston’s Housing Needs Committee approved a design concept for Dickson Meadow.

In May 1998, the Weston Board of Selectmen endorsed the development in connection with an application to the Local Initiative Program (LIP). Sometimes known as the “friendly 40B” process, LIP is “a state program that encourages the creation of affordable housing by providing technical assistance to communities and developers who are working together to create affordable rental opportunities for low- and moderate-income households.”⁸ According to TCB, the application was the product of their close

collaboration with the Dicksons, their Advisory Committee, and the Board of Selectmen; and it reflected “their effort to plan a development that will meet the town’s need for affordable housing, within a self-sustaining project with a sensitive and suitable design that will fit the look and feel of the Town.”⁹ In addition, a written agreement between TCB, the Dicksons and the Board of Selectmen guaranteed the town the right to participate in development team meetings and to approve all significant aspects of the development.

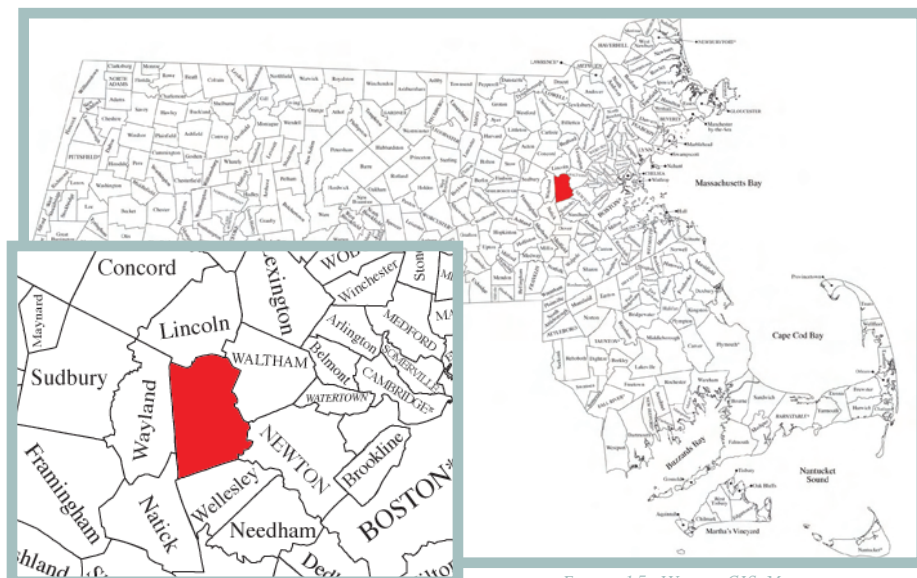


Figure 15: Weston CIS Map
Map credit: Massachusetts CIS 2009

TCB applied to Weston’s Board of Appeals for the comprehensive permit to build Dickson Meadow under Chapter 40B, after having received DHCD’s approval under LIP. According to TCB, the design for Dickson Meadows was consistent with standard health and safety practices, retained as much open space as possible, was attractively designed, and met the town’s affordable housing need.¹⁰ A broad range of community members agreed with this vision for Dickson Meadow, as letters submitted with the project’s LIP application indicate.¹¹

Polly and Edward Dickson’s idea to donate their land for the creation of affordable housing came from the unlikeliest of sources: a Weston resident who was opposed to affordable housing development. According to Dixon, “At a town meeting, I heard someone ask ‘why don’t you spread the affordable housing throughout the town instead of having it all right where we are?’ I thought, ‘Well, that sounds like a good idea – we should build some here.’” They did not think a housing development would inconvenience anyone, since they didn’t have any neighbors in close proximity. “The development would be next to us, and the other end of it was vacant,” said Dixon. “We did not know where any potential opposition would come from. As it turns out, they [opponents] surfaced all up and down Highland Street.”¹²

As Dickson indicated, some neighbors strongly opposed the Dickson Meadow plan. In fact, documented opposition to the project came exclusively from neighbors to the development site. Shortly after TCB proposed Dickson Meadow, some neighbors organized the Highland Area Neighborhood Association, which lobbied town officials to purchase the land in order to control its development. In the neighbors’ own words, “We live in the Highland Street area and support the proposed creation of affordable housing units on Highland Street. However, we are concerned about the site plan, density, preservation of trees and open space, building architecture, and other similar matters. If done correctly, this development can be an asset to the neighborhood and to the town. But any land development, if done incorrectly, will be a permanent mistake. . . .”¹³ As outlined above, those in opposition to Dickson Meadow raised concerns over density and the destruction of open space, mainly, but also to the site plan and architecture proposed for Dickson Meadow.

“The development would be next to us, and the other end of it was vacant. We did not know where any potential opposition would come from. As it turns out, they [opponents] surfaced all up and down Highland Street.”

Density

All of the concerns raised by opposing neighbors were centered around issues of density. Reducing the density, opponents claimed, could solve multiple problems that Dickson Meadow potentially posed. At public hearings to consider TCB’s comprehensive permit application and in correspondences from abutters to town officials,¹⁴ community members opposed to the plan encouraged the Board of Selectmen to reduce the number of units from 18 to a 12- or 13-unit development.¹⁵ Reducing the number of units, these community members argued, would address several problems, including their concerns over road safety, open space, and the layout of the development. In all written records throughout the process, neighbors supported the development of six affordable housing units at the site. TCB, in turn, defended the need for 18 total units and 12 market rate units for Dickson Meadow in order to maintain the project’s economic viability: fewer market rate units would yield an insufficient subsidy to support six affordable units.¹⁶

Neighbors encouraged town officials to encourage the town to buy the Dickson’s 10.8 acres so that Weston-- rather than TCB-- could oversee the development of a smaller mixed income development on the property.¹⁷ About ten Highland Street area neighbors organized themselves and their lawyers around this initiative. These neighbors argued Weston’s right to purchase the land that the Dicksons were offering to TCB under MGL Chapter 61A, which states that a city or town has the right to purchase a land parcel that is changed from agricultural to residential land-tax status—as the Dicksons had recently done with this parcel—within 120 days of that transfer. One neighbor, Richard Harrison, acted independently to create a new nonprofit, WCAH, Inc., to which he hoped the town would turn over development rights, so that WCAH could implement its plan for only a 12 unit development for the site. Harrison temporarily delayed Weston’s Board of Selectmen from rejecting the town’s option to buy the land via a temporary restraining order from Middlesex County Superior Court that suspended the Town’s authority to decide on the matter. Within a week, however, a Superior Court Judge denied an injunction that would have stalled the development process further.¹⁸ When Weston did not purchase the land, Harrison offered \$1 million to TCB or any other developer who would adopt WCAH’s 12-unit plan for Dickson Meadow.¹⁹

The town did not move to purchase the land, as some neighbors had hoped it would, because it recognized that TCB’s Dickson Meadow plan was the most immediate and least expensive way for Weston to gain mixed-income housing. “The town saw The Community Builders’ proposal for Dickson Meadow as being in its best interest,” said Nichols. “I think it’s fair to say that the Board of Selectmen felt that this was a good use of that land. We knew we needed affordable housing in town and this seemed like a sort of wonderful way to get it, because the land was being donated.”²⁰

Open Space

Relating to the density concern, neighbors claimed that Dickson Meadow would destroy beloved open space. A plan that pared down the number of units for the development would leave more open space at the site, opponents argued. As Kenneth Fish, a member of the Dickson’s Advisory Committee, described the land before it was developed, “It was a beautiful meadow, surrounded by trees. It was used for growing hay but was otherwise undeveloped.” Complaints about development arose because, “the neighbors were going to miss it.”²¹ Larry Gerber, another Weston resident and former head of the town’s Housing Needs Committee explained, “Highland and the surrounding streets are among the most

desirable in Weston, because of the scenic open space there. Though most of this space was owned by the Dicksons the neighbors wanted to preserve that open space.”²² Many in town, Gerber observed, believed that at least one of the neighbors who had led the opposition to Dickson Meadows had built a huge mansion next to that empty piece of the Dicksons’ property, feeling that this abutting land should remain undeveloped. The problem was, of course that, “no one guaranteed land near his property would never be developed. It wasn’t conservation land; it was owned by the Dicksons.”²³

Site Plan, Architecture, and Impact on Surrounding Properties

Opponents were concerned that the turning radius and grade of Dickson Meadow’s road, as originally proposed by TCB, would be unsafe. TCB’s engineer defended the safety of the planned road, while opponents argued that reducing Dickson Meadow’s density would allow for a safer design for the development’s looping road, Livermore Lane.

Concerns about the septic system that TCB originally proposed for Dickson Meadow were cited by the Town Board of Health and neighbors who worried the system’s capacity would be inadequate and that it was too close to the development’s property line.²⁴ Opposing neighbors hired an engineer to test soil percolation at the development site. Their engineer expressed concern that Dickson Meadow could encounter storm water drainage problems, where TCB’s engineer did not identify this as a problem after repeated tests.²⁵

Neighbors were also concerned about the quality of the buildings and landscaping at Dickson Meadow. Besty Nichols, a former Weston Selectman who served as the Board of



All of the concerns raised by opposing neighbors were centered around the issue of density.

Photo credit: Google Earth



Photo credit: Alexandra DeGenova

Selectmen’s advisor to the Dickson Meadow development team, explained that some town residents feared for their property values because they perceived that affordable units might make Dickson Meadow prone to poor quality or unattractive construction. “The fact that it was a mixed income development led to concerns about maintenance and how it would affect property values. Property values are a big deal in this town since people put so much money into their homes.”²⁶

In its final decision to approve The Community Builders’ comprehensive permit application, the Weston Board of Appeals summed up the arguments for and against the Dickson Meadow proposal.²⁷ While reducing the number of homes at Dickson Meadow, “might be financially feasible and would have a less disruptive impact on the area and mitigate health and safety and environmental concerns strongly expressed by opponents,” the Board contended, it also acknowledge that it was “faced with impressive legal constraints against its [the Board’s] right to redesign or substantially modify the proposed project in view of many countervailing considerations.”²⁸ These constraints included: providing the developers a “margin for risk,” maintaining costs high enough to build well-constructed and landscaped homes, maintaining enough units to proportionally distribute condo fees across all units, and wanting to encourage the creation of moderate-rate homes within the development.²⁹ The Board thereby granted a comprehensive permit for Dickson Meadow to The Community Builders based on terms and conditions set forth in the developers’ application and subsequent supplementary documentation.³⁰ The decision included twelve conditions set forth by the Board, but these did not appear to require substantial changes to the plan outlined in The Community Builders’ application.³¹

On the Ground: After

Neighbors’ main concerns about Dickson Meadow during its proposal stages focused on density and open space, TCB’s site plan and the architecture of its proposed buildings. The

negative impacts that neighbors feared would result were not realized at Dickson Meadow, aside from the reality that the development did create a denser collection of homes than what previously existed in the neighborhood and on the previously empty site. This however, did not harm the community, as Weston residents have recognized.

Many of the key players involved in Dickson Meadow’s development, including town government officials, development advisors, and Dickson Meadow residents, agree that since Dickson Meadow opened, the dissent that some neighbors expressed during the planning stages has disappeared. “It’s been accepted, I would say, as an existing part of the town,” said Dickson, who still lives adjacent to Dickson Meadow.³² Gerber agreed, “Anyone I’ve ever run into in town has liked living at Dickson Meadow. There was no subsequent controversy that I know of.”³³ Sally Locke who, with her husband, bought the first home at Dickson Meadow said, “My husband and I followed it in the newspapers during the building stages when it was very controversial. Now that it is built and blended into surroundings and environment, I don’t sense any hostility.”³⁴ According to Donna VanderClock, the Weston Town Manager, the only complaints the Town hears regarding Dickson Meadow are residents calling to question disproportionate condo fees and income eligibility standards for affordable residents. “Nobody has called about concerns that were raised about the development before it was constructed.”³⁵

Density

The Comprehensive Permit allowed TCB to create the 18-unit development that it sought in its permit proposal. With this permit, Weston’s Board of Appeals allowed the developer to increase density normally permitted for this area of town to 1.8 units per acre, with lot sizes measuring 37,800 sq. ft.³⁶ Fourteen of the homes were built as detached structures.



Livermore Lane today. Curve that some considered “dangerous” in original site plan has not caused known problems.

Photo credit: Alexandra DeGenova

The remaining homes were built as two-family structures attached by garage to minimize overall density.³⁷

Open Space

To meet the objective of preserving open space, Dickson Meadow’s homes were built in a ring around 2.5 acres of the existing meadow. That encircled land has been permanently preserved as open space thanks to a town conservation covenant.³⁸ TCB addressed some of opponents’ open space concerns in the final Dickson Meadow site plan, which left 82.5 percent of the land tract (8.25 acres) undeveloped. Buildings now account for just 7.5 percent (0.75 acres) of Dickson Meadow; while parking and pavement cover the remaining 10 percent (approximately one acre) of the site.³⁹

Site Plan, Architecture, and Impact on Surrounding Properties

According to Alan Slawsby of Slawsby and Associates, the management company that maintains Dickson Meadow, “There really have been few operational challenges. There were some minor punch list items for homes which the developer, by and large, completed.”⁴⁰

SUMMARY OF CONTROVERSIES AND OUTCOMES

Controversy	Concern	Outcome
Density	<ul style="list-style-type: none"> • Too many units for land area 	<ul style="list-style-type: none"> • 18 units built on 10.8 acres, as proposed • No direct negative impacts found
Open Space	<ul style="list-style-type: none"> • Development would destroy open space that should be preserved 	<ul style="list-style-type: none"> • Homes replaced some open space • 2.5 acres of development site preserved as conservation land
Site Plan, Architecture, and Impact on Surrounding Land	<ul style="list-style-type: none"> • Unsafe road design • Inadequate septic and drainage systems • Risk of poor quality or unattractive construction and landscaping • Development would not fit into the neighborhood • Problems with development or unappealing aesthetics could lessen surrounding property values 	<ul style="list-style-type: none"> • No reported problems with road design, septic and drainage systems, building construction or landscaping • Town residents report the development fitting into its surroundings • No known impact on surrounding property values

Figure 16: Weston Controversy Summary

In its decision to approve a comprehensive permit for Dickson Meadow, the Weston Board of Appeals acknowledged that, “the private roadway, while curved and undulating has been modified to a degree that should be less hazardous than many in town.”⁴¹ In an updated plan submitted before the Board came to its decision, TCB amended the road grade. The Board upheld this version of the roadway plan in its permit approval decision. These changes alleviated the problem and there has been no evidence of continued concerns.

When asked about any reported building problems at Dickson Meadow since residents have moved in, VanderClock, replied, “I think everything’s okay there physically. We had a quality developer, so there have been no structural problems. The infrastructure was solid. We have had problems with the septic system in another development; but not at Dickson Meadow.”⁴² Of the septic system, Locke noted, “occasionally we have troubles with the septic pump, but other than that, Dickson works pretty smoothly.”⁴³ Adequate capacity and the positioning of the septic field too close to adjacent properties- rather than the functioning of the pump- were opponents’ worries for the septic system at Dickson. Thus, it can be said that pre-development concerns about the septic system at the development were not realized once it was built. There is also no evidence of drainage problems as the development site. Any problems or concerns over these two systems may have been alleviated through conditions that the Appeals Board placed on the permit and that TCB implemented to ensure that the systems meet all local and state government health and safety requirements.⁴⁴

Where some neighbors had raised concerns over the aesthetics of the development and the quality of what would be built there during the development process, Locke sees no cause for such concerns these days. “It’s a very well thought out community. The houses are very well constructed and the landscaping was intended to be well done. As money became tighter at the end of construction, the landscaping became a bit more sparse, but it still looks nice.”⁴⁵ To help Dickson Meadow fit into its surrounding neighborhood, the site and landscaping plans for the site called for the preservation of as many trees and stonewalls as possible.⁴⁶ “Since it’s been built, many people, including some who opposed it, have told me, ‘Oh, but it looks so nice,’” said Dickson.⁴⁷ Alluding to some Weston residents’ misconceptions of what a mixed-income development would look like, Nichols added, “When you hear ‘mixed income’ facility, you don’t necessarily think it’s going to look as nice as Dixon Meadow.”⁴⁸ Many who were involved in the planning of Dickson Meadow underscored the choice of a reputable architect for the Dickson Meadow homes, when interviewed. “We went with Acorn as the architects. Part of why we chose them was because they were well known for setting the houses in conformity with the terrain. We were very impressed with their architect. And if you drive by you think, ‘That looks alright.’ I would say physically it has not been a problem,” explained Dickson.⁴⁹

Supporters of the original Dickson Meadow proposal suggested that opposing neighbors had underlying fears that it would reduce their property values. The Board of Appeals’ decision also acknowledges the existence of these fears in referencing the potential “negative impact on surrounding properties.” Though it is impossible to know how the value of properties neighboring Dickson Meadow may have risen or fallen if the development had not been built, a general upward trend in property assessment values for homes closest to Dickson from the year that Dickson opened until recently mirrors the increased trend in property values throughout Weston during the 2000s.⁵⁰ This may indicate that the construction of

The increase of affordable units in the community has increased town residents’ awareness of the need for more affordable units and the need for Weston to contribute.

Dickson Meadow did not devalue property in the surrounding neighborhood.⁵¹ Dickson and Nichols both echoed this finding, attesting that there hasn't been any reduction in property values in the neighborhood since the development was completed.⁵²

Conclusion

The most evident effect that Dickson Meadow has had on Weston is that it increased the town's affordable housing stock by six units, its moderate-rate units by two, and its market-rate condominiums by six. But those closest to the development insist that it has had other effects on the Weston community. Dickson said she has seen a direct connection between Dickson Meadow and the housing constructed in Weston under Chapter 40B since. "I think the main impact was that affordable housing became a household term in Weston, which it had not been before," she said. "This is partly because of what we were doing and partly because of what was going on in the wider, greater Boston community."⁵³ For Locke, Dickson Meadow has made Weston residents, "a little more aware that there are people who need homes at a reduced price." And the increase in affordable units in the community, has increased town residents' awareness of the need for more affordable units and the need for Weston to contribute, she believes.⁵⁴ Also important, Locke stressed, is the role Dickson Meadow played in the way that Weston residents perceive affordable and moderate rate housing. "People realize that we all keep our homes looking nice and that we are good neighbors," Locke said of neighbors' opinion of Dickson Meadow's residents.⁵⁵

Several interviewees highlighted the increase in moderate-income housing that Dickson Meadow provided the town as an important outcome of this development on the community. "People couldn't buy into Weston for what single homes cost at market value. In these types of developments, we were providing housing that served a need, separate from the affordable housing component,"⁵⁶ explained Gerber.

While not necessarily a direct result of the construction of Dickson Meadow, a much larger, mixed-income development located next to Dickson Meadow is currently in the final stages of development. Highland Meadow will feature 70- homeownership development including seven affordable units. Some Weston residents that we spoke to alluded to the possibility that, because Dickson Meadow fit into the community so well, it may have made it easier for new affordable and mixed-income developments, such as this one, to succeed in Weston. Highland Meadow and other affordable housing proposals, in addition to the creation of the Weston Affordable Housing Partnership, indicate that the Town of Weston is proactively planning to increase its stock of affordable housing. This may be a result of lessons learned from Dickson Meadow.

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Chapter 8 6

CONCLUSION

Each 40B project is unique. There are differences in tenure, scale, residential composition, socio-economic demographics and, of course, differences in the communities in which they are located. Many 40B projects are proposed and developed without controversy, while others are met with opposition and fear. In this report, we have studied four different projects that demonstrated clear opposition and controversy. The concerns that were raised varied for each project, but the roots of the controversy involved fears about the loss of local control over zoning and unknown impacts of the proposed development. Of course, the heart of the Comprehensive Permit Law involves the ability of the state to override local zoning. In fact, proponents argue that this is the very reason why the law has been successful in creating more than 26,000 units of affordable housing during its 40 years.

Despite the law's success, controversies around 40B continue to arise. Municipal governments want to be able to plan for and manage their own growth. Among their tools is the ability to enact and enforce local zoning laws. Private citizens choose a place to live based on their perceptions of neighborhood character, aesthetics, home values, accessibility, quality of schools, safety and a number of other qualities. They expect that their neighborhood will retain these qualities and that they will be protected from unwanted uses, based on existing zoning. When a state is in a position to remove control over land use decisions from the locality, there is sometimes controversy and organized opposition. This significant power of the state may stimulate an overstatement of the concerns and fears by the opposition. At the same time, proponents point out that municipalities have had 40 years, since the enactment of 40B, to increase their stock of affordable housing on their own terms.

This study provides significant evidence that the fears of new affordable housing development are far more myth than reality.

For this study, four sites were selected using a mixed methodology, where a number of filters were applied to a set of developments monitored by the Client and another set of developments compiled by the researchers from other sources. Through interviews with key stakeholders and archival research, this study has found that the fears and concerns expressed during the permitting process of four highly controversial 40B developments have not been realized. This was true of both of the two sites selected from the Client list (Walpole and Weston) and those selected from other sources (Newton and Wellesley). Nearly all of the controversy has evaporated now that the developments have been completed and occupied. A partial explanation for this result may be that the heightened fears and opposition during the permitting process led to negotiations and concessions between the municipalities and the developers that resulted in improved developments. For example, the Wellesley ZBA required improvements and mitigation to potential environmental, drainage and traffic impacts. Also, the Newton ZBA granted a comprehensive permit with conditions to monitor the engineering, landscaping and contracting decisions of the developer. In the Walpole case, many of the fears raised by the town such as impacts on school enrollments, and sewer and water capacity issues involved services that every municipality is legally obligated to provide. But here too, the concerns about undue costs were overstated and only minimally realized.

Moreover, there is evidence that the experience of the 40B process has yielded some other benefits to the municipalities in addition to the increase in affordable housing. In three of the four locales studied in this report there is significant evidence that, as a result of the controversial 40B developments, the communities are more aware of the need for affordable housing and are being more proactive in planning for and developing that housing. In the last ten years, the City of Newton's Subsidized Housing Inventory has risen from 4.9 to 7.6 percent, and the Town of Walpole's has increased from just below 2 to 5.7 percent. Walpole has also created a Housing Production Plan and it has been approved and certified by the DHCD through 2013. In Weston, the Town has established an Affordable Housing Partnership to involve town officials from several departments in increasing Weston's affordable housing units. The more proactive stances in these three communities may lead both to more affordable housing units, as well as to the more managed growth and the local control that the cities and towns desire. This may result in better working relationships *with* developers, city and town government officials, and with community residents and groups, to bring more positive outcomes and less controversy to the affordable housing production process. As communities gain experience with developing 40B housing, hopefully the level of controversy will diminish. This study provides significant evidence that the fears of new affordable housing development are far more myth than reality.



APPENDIX A HOUSING APPEALS COMMITTEE REVIEW

The Housing Appeals Committee is a body consisting of five members who hear and rule on disputes involving Chapter 40B, the Massachusetts Comprehensive Permit Law. Its mission is “to provide, within the parameters of the comprehensive permit process [. . .], an impartial forum to resolve conflicts arising from the siting of affordable housing.” This mission is carried out while attempting to balance the need for affordable housing and “legitimate local concerns – planning, environmental, open space, design, health, safety, and other local concerns.”¹ Per the Comprehensive Permit Law, a local zoning board of appeals (ZBA) can grant a comprehensive permit that overrides existing town zoning and other local regulations. If the ZBA denies the comprehensive permit or imposes conditions that “make the proposal uneconomic,” a qualified developer can appeal the decision to the Housing Appeals Committee. A qualified developer is “any developer of housing approved under an eligible state or federal housing program who has been denied a comprehensive permit by a Zoning Board of Appeals in a city or town with less than 10% of its housing units affordable to low or moderate income persons.”² Once a city or town meets the 10% threshold (as measured through the Subsidized Housing Inventory, a listing maintained by the Massachusetts DHCD), the municipality is said to “have met ‘local needs’ for affordable housing and has the right to deny applications by developers to obtain Chapter 40B comprehensive permits.”³

See Figure 17 for a graphic representation of possible paths comprehensive permit applications can take.

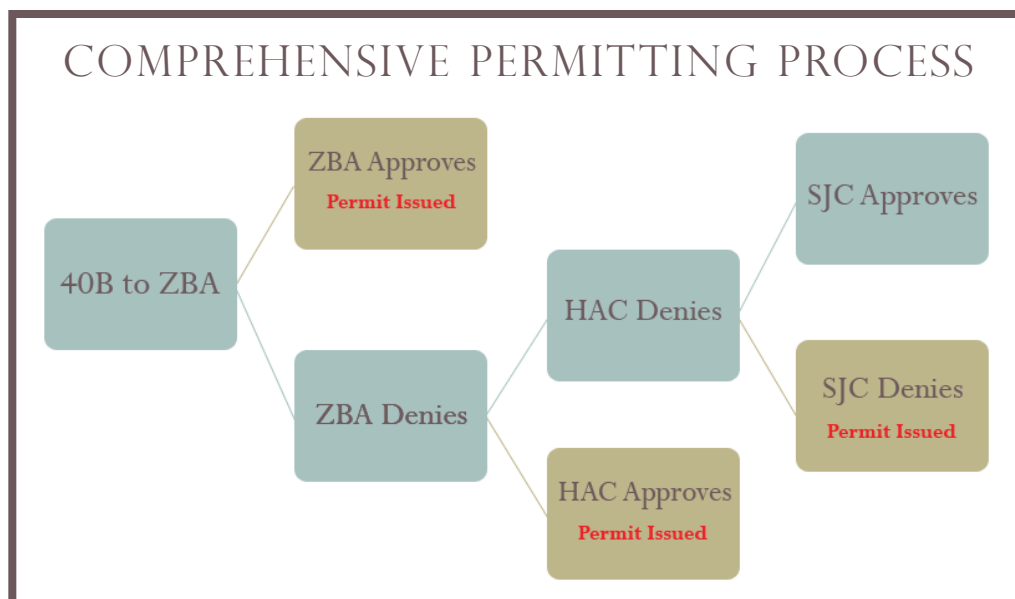


Figure 17: HAC Process



APPENDIX B LITERATURE REVIEW

Much research has been done to evaluate and to criticize Chapter 40B as a mechanism for expanding the availability of affordable housing and to assess its impact on specific issues or controversies (including property values and municipal services). In his mostly favorable assessment, Paul Stockman asserts that with its 10% threshold for HAC override immunity, Chapter 40B “implicitly sacrifices a full attainment of the regional housing need [. . .] but it serves as an effective vehicle for achieving reasonable and stable levels of suburban heterogeneity.”⁴ Stockman maintains that the Massachusetts zoning appeals system takes local concerns into account, almost to a fault; and that localities have many opportunities “to ensure that legitimate planning considerations are addressed and resolved.”⁵

Stockman also suggests a number of possible revisions to MGL Chapter 40B. These include: (1) guarding against the construction of elderly housing at the expense of family housing; (2) needing to safeguard the zoning appeals system from procedural delays; (3) constraining localities’ ability to create delays; (4) integrating future state environmental laws into the process, and (5) strongly discouraging appeals to the courts from HAC decisions.⁶ Subsequent studies addressed many of these concerns.

On the occasion of its thirtieth anniversary, Sharon Krefetz presented a much more critical assessment of the Comprehensive Permit Law. In Krefetz’s estimation, “Chapter 40B has not produced anywhere near the amount of affordable housing that is needed, nor has it overcome all the obstacles to ‘opening up the suburbs.’ It has created small footholds, but the walls of suburban exclusion remain high.”⁷ The author divided the history of Chapter 40B into four distinct periods: an initial period of turbulence (1970-1979), a period of relative calm (1980-1984), years of increased activity (1985-1989) spurred by the passage of Executive Order 215,⁸ and an era of local reassertion of influence (1990-1999).⁹ In so doing, Krefetz highlights key changes to local responses, state actions, and the types of projects that tend to be built. Included among these changes are: (1) the shift from elderly housing to multifamily housing, due to changing demographics and the framing of a housing crisis in terms of a lack of family housing in the 1980s;¹⁰ (2) the decrease in ZBA denials of comprehensive permit applications and the decrease in HAC decisions overruling the ZBA because of increasing collaboration and accommodation between developers and ZBAs; and (3) a decrease in the size of projects proposed and built, as a result of the increased active involvement of city officials in proposals for affordable housing in their municipalities.¹¹

Krefetz concludes that “state and federal actions and funding programs need to be expanded, including more direct subsidies for the construction of low-income housing and offsetting funds for services.”¹² As long as few low-income people live in certain localities and are unable to exert political pressure on local governments to create affordable housing, and as long as local property taxes subsidize the creation of housing, infrastructure and services, the need for low- and moderate-income housing will not be fully met.¹³ The best laid plan for the construction of affordable housing are only as effective as financial and

economic realities allow. Pockets of opposition will persist; and where political will and economic feasibility allow, affordable housing projects will continue to be approved.

In their “Mixed Income Housing in the Suburbs: Lessons from Massachusetts,” Gornstein and Verrilli hail a number of regulatory changes made to Chapter 40B for giving communities tools and reasons to proactively plan for and encourage new affordable housing development. These changes include the 1998 HAC ruling that qualified the Federal Home Loan Bank of Boston’s New England Fund (NEF) program as 40B-eligible funding.¹⁴ DHCD also responded with new regulations in 2001 and 2002 that gave increased power to municipalities in the face of increasing numbers of 40B applications by:

- Eliminating the right of developers to appeal decisions on very large projects;
- Providing time-limited exemptions from ZBA decision appeals for towns that have increased housing by a significant amount in the last 12 months; and
- Creating a monitoring process for projects using NEF and other non-governmental funding that imposed income limits and allowed local preference for 70% of occupants.¹⁵

However, the authors maintain that these changes “do not remove the biases of fiscal zoning.”¹⁶ In approaching development with a myopic view toward “the net fiscal impacts of development today, [communities tend] to encourage mixed income non-family housing - especially elderly and age-restricted (55+) developments.”¹⁷ In practice, Massachusetts municipalities have constrained the extent to which mixed-income development reduced concentrations of poverty with higher income targeting, increased use of local preferences and the exclusion of families.¹⁸

In 2003, Governor Mitt Romney appointed a Chapter 40B Task Force to address the opposing factions of affordable housing advocates who support Chapter 40B and opponents who argue that it impedes a municipality’s ability to control its own growth.¹⁹ The task force made a number of recommendations, including:

- Counting affordable units in homeownership developments twice when calculating the subsidized housing inventory in order to remove inequity in counting while preserving the incentive to create rental housing;
- Studying further the prospect of counting manufactured housing (mobile homes) in the SHI, though the authors do not endorse adopting this approach;
- Allowing the municipality to submit written complaints to the subsidizing agency to be answered by the applicant; and
- Requiring the Department of Housing and Community Development to update the SHI at the request of the city or town (this was eventually enacted).²⁰

Regnante and Haverty maintain that if the recommendations were adopted, they could “give municipalities a greater ability to plan for the creation of affordable housing [while giving developers] a better idea where and when an affordable housing development would be appropriate.”²¹

Fears of decreases in property values are of particular concern to abutters in Chapter 40B developments. A study conducted by MIT researchers concluded that, “large-scale, high-density 40B multi-family rental developments in single family neighborhoods [do] not affect the value of adjacent homes.”²² In addressing the effects of affordable housing on market values of nearby homes, George C. Galster posits that the impacts “depend in an interactive

way on concentration, context, and type of development.”²³ Concentration matters least when affordable housing is “inserted into high-value, low-poverty, stable neighborhoods,” and the construction and rehabilitation of affordable units can have positive impacts, just as long as an area does not succumb to too much concentration and “a diminishing marginal positive impact” as can be the case with large rental complexes.²⁴ Neighborhoods with “modest values, nontrivial poverty rates, and owner perceptions of vulnerability” tend to experience smaller positive impacts and run the risk of experiencing negative impacts.²⁵ Additionally, while owner occupied affordable developments provide more positive impacts than rental units, developments which “remove (through rehabilitation or construction) a preexisting source of negative externalities likely generate more positive impacts than those developed on vacant land.”²⁶

Nakosteen and Palma claim that population growth associated with new housing does not necessarily yield increases in demand for services or higher municipal costs.²⁷ The fact that municipal costs tend to increase regardless of growth suggests “that the standard models relied upon by cities and towns to estimate the fiscal impacts of development may be systematically overestimating these costs in many communities.”²⁸ The authors suggest that their results might even show that growth saves money “by slowing down per capita increases in costs.”²⁹ However, they also suggest that “growth squeezes municipal budgets and makes certain mandated expenditure areas, such as education, take precedence over others, such as public works.”³⁰ Nakosteen and Palma suggest an alternative approach (the marginal-cost method) to forecast the fiscal impacts of housing developments.³¹

In a 2007 study, Nakajima et al. employ the marginal cost method, the per capita multiplier method and an original methodology (the fair share method) to understand the fiscal impacts of mixed-income affordable housing. The fair share method compares the distribution of residential property taxes to the average cost of municipal services per housing unit. Through the study of eight home ownership housing developments, the authors found that none had measurably negative impacts on public services in their respective municipalities. Also, Nakajima et al. suggest that since school costs are rising even in places with declining enrollments, other factors are at play in boosting these costs. Finally, through the use of the fair share methodology, the authors find that mixed-income units (including 40B projects) have fiscal impacts the same as surrounding properties.³²

The authors of *On the Ground* hope to add it to the canon of works on Chapter 40B, its impacts and its effects. This report is positioned well to respond to some of the questions Krefetz posed on the occasion of the Comprehensive Permit Law’s 30th anniversary: what are the effects that 40B projects have had on communities in which they have been built; how have the attitudes of community residents changed, especially those who were initially opposed; and have property values, local school or town budgets been greatly impacted?³³ It is these issues, and other initial community concerns and current perceptions of 40B projects that *On the Ground* addresses.



APPENDIX C FURTHER RESEARCH

This study, raised several questions and topics for topics for further research. These include:

- Do controversial 40B projects tend to have more conditions placed on their permits and more negotiations between ZBAs and developers than do non-controversial projects? And if so, what is the nature of the conditions and negotiations?
- How do projects constructed under the Local Initiative Program (LIP) compare to other 40B developments? Are there still cases of abutter opposition, and if so, how do municipalities balance the concerns of their residents while collaborating with DHCD and the developer?
- This study has concluded that three of the four cases appear to recognize the need for affordable housing in their communities and have become more proactive in planning for that housing. A potential topic of research could be a study of the communities that currently have Housing Production Plans (HPP) certified by the DHCD. What is the history of 40B development in these communities? Have they always been more proactive in creating affordable housing? Or has the experience of highly controversial 40B developments spurred the community into developing an HPP?
- How does the SHI 10% threshold (and subsequent immunity to zoning overrides) motivate the development of affordable housing? As towns approach the SHI threshold, are they more likely to approve comprehensive permit applications in the hopes of attaining that goal? Or are many of the common controversies still evident in the proposals brought before the ZBAs?
- A comparative study of market rate and affordable units within the same 40B development. What sort of community dynamics result from stark disparities in condominium fees, home purchase values or monthly rent or wide ranges in income levels within these developments?



APPENDIX D

LIST OF INTERVIEWEES

The case studies detailed in this report relied heavily on information provided by key players in each development. Below is a list of individuals interviewed for each case study. A number of subjects chose not to be identified in this report and, therefore, are not listed.

Walpole – The Preserve

Michael Boynton
Donald Johnson
Jon Rockwood
Michael Stanton

Newton – The Kayla’s House Development

Eileen Freiberg-Dale
Trisha Kenyon
Michael Kruse
Josephine McNeil
Jason Rosenberg
Amy Yuhasz

Wellesley – Hastings Village

Stanley Brooks
Rick Brown
Robert Engler
Karen Fromm
Meghan Jop

Weston – Dickson Meadow

Polly Dickson
Kenneth Fish
Larry Gerber
Edward Lashman
Sally Locke
Betsy Nichols
Alan Slawsby
Donna VanderClock

Endnotes

- ¹ Massachusetts Department of Housing and Community Development (DHCD), “Housing Appeals Committee.”
- ² Massachusetts DHCD, “Housing Appeals Committee,” DHCD Fact Sheets.
- ³ Fisher, “Chapter 40B Permitting and Litigation.”
- ⁴ Stockman, “Anti-Snob Zoning in Massachusetts: Assessing One Attempt at Opening the Suburbs to Affordable Housing.” Stockman refers to Massachusetts General Law, Chapter 40B, Sections 20-23 as the “Low and Moderate Income Housing Act of 1969.”
- ⁵ Ibid, 569.
- ⁶ Ibid, 577-9.
- ⁷ Krefetz, “The Impact and Evolution of the Massachusetts Comprehensive Permit and Zoning Appeals Act: Thirty Years of Experience with a State Legislative Effort to Overcome Exclusionary Zoning,” 415.
- ⁸ Massachusetts DHCD, “Affirmative Fair Housing Policy” (accessed April 21, 2009). Signed on March 15, 1982 by Governor King, Executive Order 215 “established that state agencies were not award development-related discretionary funds to cities or towns determined to be unreasonably restrictive of new housing growth.”
- ⁹ Krefetz, 400.
- ¹⁰ Ibid, 405.
- ¹¹ Ibid, 402.
- ¹² Ibid, 416.
- ¹³ Ibid, 415.
- ¹⁴ Gornstein and Verrilli, “Mixed Income Housing in the Suburbs: Lessons from Massachusetts.” The NEF program was controversial in that it could be used for homeownership units, but did not required authorization from local authorities. Developers jumped at the opportunity to develop more lucrative homeownership units at a time when the housing market was booming. This brought on a significant boost in the number of 40B applications, and prompted the DHCD to take subsequent action with additional regulations in 2001 and 2002.
- ¹⁵ Ibid, 21. The time-limited exemptions applied to those towns that increased the subsidized housing supply by 2% of total housing units or by 0.75% of the subsidized housing inventory (SHI) count with a state-approved production plan.
- ¹⁶ Ibid, 22.
- ¹⁷ Ibid, 22.
- ¹⁸ Ibid, 34-5.
- ¹⁹ Regnante and Haverty, “Compelling Reasons Why the Legislature Should Resist the Call to Repeal Chapter 40B.”
- ²⁰ Ibid, 86-88. Regarding the first recommendation, only affordable units in a homeownership developer count toward the SHI count, whereas all units in an apartment complex, whether they are market rate or affordable, count toward the SHI count. This proposed change would “level the playing field” between rental and homeowner unit development while retaining an incentive for producing rental units.
- ²¹ Ibid, 89.
- ²² Ritchay and Weinrobe, “Fear and Loathing in Massachusetts: Chapter 40B, Community Opposition and Residential Property Value,” 3-4.
- ²³ Galster, 199.
- ²⁴ Ibid, 200.
- ²⁵ Ibid.
- ²⁶ Ibid.
- ²⁷ Nakosteen and Palma, “The Fiscal Impact of New Housing Development in Massachusetts: A Critical Analysis,” 18.

²⁸ Ibid, 19.

²⁹ Ibid, 19.

³⁰ Ibid, 19.

³¹ It should be noted that Chapter 40S provides state funding to cities and towns that establish a 40R district (a special zoning overlay district that incorporates Smart Growth) to cover the costs of school-aged children who move into these districts. See DHCD, “Chapter 40S,”

³² Nakajima, Modzelewski and Dale, “The Fiscal Impact of Mixed-Income Housing Developments on Massachusetts Municipalities.”

³³ Krefetz, 417.



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