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March 31, 2022

Mr. Michael Kennealy, Secretary
Executive Office of Housing & Economic Development
100 Cambridge Street, Suite 300
Boston, Massachusetts 02114

RE: Multi-Family Zoning Requirements for MBTA Communities

Dear Secretary Kennealy:

On behalf of the Nahant Board of Selectmen, I offer these comments on the proposed guidelines regarding Multi-Family Zoning Requirements for MBTA Communities.

Even though we strongly believe that Nahant is not the type of community that was intended to be included in this legislation, we acknowledge the need for all MBTA Communities, such as Nahant, to comply with Section 3A of M.G.L. Chapter 40A (statute). We also understand the requirement set forth by such statute on the Department of Housing and Community Development (DHCD) to promulgate guidelines. This comment letter intends to identify where the current guidelines present issues to the Town of Nahant and how those are based on guidelines that go beyond the statute.

Requirements of Statute (Section 3A of M.G.L. Chapter 40A)

Acknowledged by mass.gov, "Section 3A of M.G.L. c.40A (the Zoning Act) requires that an MBTA community shall have at least one zoning district of reasonable size in which multi-family housing is permitted as of right and meets other criteria set forth in the statute:

- Minimum gross density of 15 units per acre
- Not more than ½ miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.
- No age restrictions
- Suitable for families with children."

The minimum gross density, according to the statute, is subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A.

-The structure of the current draft guidelines turn this requirement of a minimum gross density of 15 unit per acre into a maximum gross density of 15 units per acre.

-We do not see in the current draft guidelines any mention of how this minimum of 15 units per acre is decreased due to the impacts of section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A. It is clear the statute provides for such an exception.

Requirements of Draft Guidelines that go beyond the requirements of the statute

The current draft guidelines define the reasonable size of a district to be no less than 50 acres with at least 25 contiguous acres and the other 25 acres being made up of not less than 5 contiguous acres each. The current draft guidelines also require no less than a total of 750 units.

It is our understanding that 50 acres was determined to be the reasonable size of a district and by calculating 15 units per acre, the 750 unit minimum was determined.

-Nowhere in the statute is the Department directed to establish a minimum acreage. It is unclear how 50 acres was determined. We believe that DHCD went through a legitimate process that factored in years of professional experience and consultation from experts in the field to determine that 50 acres is the appropriate definition of reasonable size for all 175 MBTA communities. We request a thorough explanation of that process so to better understand these guidelines and be able to provide productive feedback and alternatives. We also request an explanation of the alternatives that were discussed through this process. One would assume that a percentage based approach had to be considered given that each of the 175 MBTA communities are of different size and a set number of acres would impact them differently.

-Nowhere in the statute is the Department directed to establish a contiguous district. The requirement of 25 contiguous acres, with the other 25 acres including no less than 5 contiguous acres each, is created through DHCD's discretion. Similar to the minimum 50 acre requirement, this one-size-fits-all approach needs to be explained and alternatives need to be considered.

- Nowhere in the statute is the Department directed to establish a unit minimum. We understand that the 750 units per community requirement is based off the 50 acre x 15 units/acre calculation. As previously mentioned, the 50 acre minimum, not included in the statute, may not be the correct definition of reasonable size per community.

-The calculation of 50 acres at 15 units per acre requiring a minimum of 750 units inadvertently turns the minimum gross density required by statute into a maximum. By linking these requirements, only 15 units in an acre that includes more than 15 units, actually count towards the total. The current guidelines do not provide for compliance of 750 units with less than 50 acres. The statute clearly says a minimum gross density of 15 units per acre and therefore the guideline should allow for more.

-The statute also allows for less than 15 units per acre when subject to the Wetlands Protection Act and Title 5 impacts. It is not articulated clearly by the statute how the minimum units per acre changes based on this impact. DHCD should explore this and include guidance in their final guidelines.

-Nowhere in the statute is the Department provided discretion to include additional penalties for non-compliance. Subsection (b) of the statute states that any MBTA community that does not comply with section 3A shall not be eligible for (i) the Housing Choice Initiative (ii) the Local Capital Projects Fund or (iii) the MassWorks infrastructure program. The current

guidelines state that non-compliant communities will not be eligible for additional programs and we believe the statute is very specific as to what programs are at risk.

-We applaud the Department for including flexibility to communities that cannot adhere to the location requirement of this zoning district. The statute clearly states that the district shall be within 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable. In a community like Nahant, the flexibility of where the district is required will be necessary.

Impact of current draft guidelines on Nahant compared to other MBTA Communities

Nahant, the smallest town in MA with only 1 square mile of land area, is considered an MBTA Community. Nahant has no commuter rail stop, has no park and ride facility, has no subway service, has no ferry service, and has only 1 bus route. The closest commuter rail stop and bus station is in our neighboring city of Lynn.

The Town boundary, at the Route 1A Lynnway Rotary, is a little more than 0.5 miles away from the closest MBTA Station. The land area of the Rotary and the Causeway, 59 acres, where no housing exists and may be undevelopable land pursuant to the Wetlands Protection Act, is completely under the control of the Department of Conservation and Recreation. Town controlled property and housing exists 1.5 miles from the Town boundary and at least 2 miles from the closest MBTA Station.

The draft guidelines require a minimum of 50 acres at 15 housing units per acre which equates to 750 units.

*- Nahant has around 1,680 housing units. **The guidelines would increase the number of units by 45%!***

*- Nahant is about 650 acres total. **50 acres would equate to just about 8% of Nahant's land area, far more than any other MBTA community.***

*- As an island community, **about 40% of the Town's land area is in Flood Plain or falls under the Wetlands Protection Act.** Satisfying the requirement will push development into environmentally sensitive areas, including wetlands, areas subject to flooding, and critical habitats.*

The fiscal impact on the community is incalculable. Increasing the number of dwelling units by 50% would result in the following impacts:

- An explosion of school age children potentially requiring the construction of new schools and adding a significant demand on our annual budget.*
- A significant increase in vehicles that will further exacerbate parking issues and will counter our efforts to reduce carbon emissions.*
- Increase demand for local public safety in departments that are already minimally manned.*
- Nahant receives drinking water from the Massachusetts Water Resource Authority (MWRA) and sends wastewater to the Lynn Water and Sewer Treatment (LWST) facility in Lynn. It is unknown if this increase in housing and demand on water and wastewater service would be feasible. MWRA and LWST would have to approve additional volumes and Nahant would potentially need to invest in an upgraded water and wastewater supply system.*

The requirements set forth in the draft guidelines could also contradict the Town's efforts to meet the requirements of Chapter 40B. A community that has achieved 10% on its subsidized housing inventory or is in safe harbor would appear to lose those protections. For a community such as Nahant, adding non-affordable housing further dilutes our housing stock and makes Chapter 40b compliance more difficult.

Recommended changes to the draft guidelines for consideration

The current guidelines present problems unique to the Town of Nahant and present other problems that apply to most, if not all, the MBTA Communities. We request the following:

- Eliminate the 750 unit requirement and the 50 acre minimum.
-These requirements are not required by the statute and it is where the Department has the most flexibility. Decreasing the minimum amount of units or acres does not satisfy our concerns. This really deserves a robust public process because the impacts will be different for each of the 175 communities. Further, communities like Nahant that have no real public transit and are already 98% residential, should have a very low requirement for compliance. As an MBTA community we understand how the statute applies to us however the intent of the statute is to promote housing near accessible public transit.
- Consider a percentage based approach for total number of units.
-A percentage based approach will apply to each community more equitably. It also dovetails nicely with Chapter 40b requirements. A 10% requirement that could be also achieved with affordable units would work well with Chapter 40b requirements. It may also help Towns educate residents when proposing the zoning district at Town Meetings.
- Eliminate the 25 acre contiguous and 5 acre contiguous thereafter requirement.
-These element of the guidelines is also not required by the statute. Many communities like Nahant will not have the ability to meet this requirement. Especially in a community where access to public transit is not readily available, the basis of contiguous acres does not apply.
- Give credit for communities that lack adequate school space, water or wastewater infrastructure.
-These capital needs are extremely expensive and can significantly impact a municipalities finances. Major impediments like these should make way for a reduction in the requirements. While we agree with the intention of the legislation that is to promote the development of housing and near MBTA stations, there are other factors and impacts to a municipality that need to be considered.
- Give credit for prior non-conforming multi-family units.
-Some MBTA communities may have plenty of undeveloped land that can be used to promote the intentions of this statute. However, for communities like Nahant, there is hardly any developable land available. A new district will have to encompass property where housing already exists unless we include land covered under the Wetland Protection Act. The multi-family units in our community should count towards any requirements of these guidelines.
- Give more guidance on compliance regarding a proposed zoning district that does not pass at a Town Meeting.
-Ultimately, a new district will need to be approved by the voters who attend Town Meeting. Asking a community to include this article on the Town Meeting Warrant year after year

is putting local officials in a difficult position. If Town Meeting does not approve the district after multiple attempts, there should be some relief provided to the community.

- Provide funding for costs associated with making the overlay district feasible.
- Eliminate the additional funding and programs at risk for non-compliant communities that are beyond the clear direction of the statute.

We recommend the changes above because the statute does not provide for an exemption. However, Nahant's true belief is that we are not the type of community that is intended to be impacted by the statute. We request that the Department support legislation to provide you such flexibility.

As you can see, we are concerned about the guidelines as proposed. However, with reasonable accommodations and flexibility we believe the guidelines can accomplish the Administration's goals while respecting communities' unique characteristics.

Finally, we request that there be another round of public comment after the Department makes changes to guidelines. Making changes and releasing final guidelines would not be the public process that the 175 MBTA Communities deserve. We hope you will embrace these suggestions in the spirit in which they are intended.

Sincerely,



Antonio Barletta
Town Administrator

Joshua Antrim, Chairman of the Board of Selectmen
Eugene Canty, Vice Chairman
Mark Cullinan, Secretary